

**Conflict and Communication: Critical
Theory, International Relations and the
Intervention in Kosovo**

Naomi Claire Head

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The candidate confirms that the work submitted is her own and that appropriate credit has been given where reference has been made to the work of others.

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Abstract

This thesis examines contemporary developments in critical theory and good international citizenship in order to develop a normative framework for the evaluation of humanitarian intervention. Situated at the interface of critical theory and practice in international relations, the thesis investigates the concepts of legitimacy, normativity and evaluative standards, and explores problems surrounding their practical application in relation to NATO's intervention in Kosovo in 1999.

The research builds on recent developments in discourse ethics to formulate, ground, test and evaluate a critical theoretical framework. This framework is presented as a series of 'communicative imperatives' which might inform initiatives in conflict resolution. The 'communicative imperatives' are derived from an analysis of contemporary debates around Habermasian discourse ethics and good international citizenship. The research thus explores several existing applications of Habermasian discourse ethics in international relations, notably Linklater's, and examines recurrent concerns relating to the relationship between the universal and the particular in normative international theory. The argument draws upon Benhabib's procedural emphasis, Shapcott's move towards Gadamerian hermeneutics and feminist critiques of discourse ethics in order to formulate a conception of dialogue that gives critical purchase on contemporary practices of exclusion and coercion; practices that all too often remain unproblematised.

What emerges is a clearer understanding of the need for communicative fairness in processes of conflict resolution - rather than a substantive standard of right - and an appraisal of how such a procedural evaluation can be justified and applied. This, then, is a theoretical analysis of the potential and limitations of an evaluative framework which prioritises 'good communication' in the practices of international deliberations. It seeks to test the communicative imperatives in the particularity of the deliberations surrounding the intervention in Kosovo. Consequently, it draws conclusions about communicative practice during the conflict and the implications of a communicative model both for international relations and what it means to be a good international citizen.

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List of Abbreviations

CDHRF	Council for the Defense of Human Rights and Freedom
CSCE	Commission on Security and Cooperation in Europe
EC	European Community
EU	European Union
ECCY	European Community Conference on Yugoslavia
FRY	Federal Republic of Yugoslavia
ICFY	International Conference on Former Yugoslavia
ICG	International Crisis Group
IDP	Internally Displaced Person
IICK	Independent International Commission on Kosovo
KDOM	Kosovo Diplomatic Observer Mission
KLA/UÇK	Kosovo Liberation Army/Ushtria Çlirimtare e Kosovës
KND	Kosovan Nansen Dialogue
KVM	Kosovo Verification Mission
LDK	Democratic League of Kosovo
LPK	People's Movement of Kosovo
LBD	United Democratic Movement
NATO	North Atlantic Treaty Organisation
NAC	North Atlantic Council
NGO	Non-governmental Organisation
OSCE	Organisation for Security and Cooperation in Europe
PPK	Parliamentary Party of Kosovo
SACEUR	Supreme Allied Commander Europe
SFRY	Socialist Federative Republic of Yugoslavia

TNC	Transnational Corporation
UN	United Nations
UNSC	United Nations Security Council
UNICEF	United Nations Children's Fund
WHO	World Health Organisation

A note on names and pronunciation

A few notes are necessary to explain the terminology used in this thesis due to the common usage of more than one language in Kosovo. When referring to inhabitants of Kosovo I refer to 'Kosovo Serbs' or 'Kosovo Albanians' to distinguish between ethnicities. From time to time I also employ the term 'Kosovar' which means 'Kosovo Albanian'. Personal names are given in the relevant language or as in publications. Kosovo, as the name of geographical territory, is also contested. Serbs refer to it as 'Kosovo-Metohija', whilst Albanians refer to it as 'Kosova' or 'Kosovë'. For simplicity and in conformity with international practice, I will refer to it throughout as 'Kosovo'. This does not, however, indicate a position on the issue of Kosovo's political status. Serbian is used for place names within Kosovo although, once again, this does not indicate a position on language policy in Kosovo.

Introduction: Theory and Practice in International Relations

The problem

By narrowing the space for dialogue you create a boxing ring.

Alexsander Baljak¹

One of the underlying problems in international relations remains the persistent question of “what should we do?” This is primarily an ethical question and haunts our deliberations over our role, be it as individuals, non-governmental organisations, or as is most often the case, as states, in global disorder, conflict and instability. The concept of humanitarian intervention which emerged in the 1990s in response to evidence of mass suffering, ethnic cleansing and varying kinds of violence, sought to provide an answer which reflected what was referred to as the ‘conscience of humanity’. No longer was it acceptable to stand by and watch as internal conflicts were waged by states, or paramilitary organisations often connected to states, against their own people. The global technological revolution meant that such events had become armchair viewing for substantial proportions of the world’s population, and inactivity lay uncomfortably alongside growing awareness of human suffering. Emerging doctrines such as the *droit d’ingérence*², and the *responsibility to protect*³ have become the tools with which we address this moral question, yet they have also established the challenges that humanitarian intervention holds for traditional norms of non-intervention and sovereignty. Humanitarian intervention offers a critique of traditional norms of international society which indicate a preference for order rather than justice, and reveals the clash between established norms of human rights and state-centric national interests. In place of non-intervention and sovereignty, norms which reify the practices of the state, humanitarian intervention raises questions of humanity, cosmopolitanism, responsibility and justice.

It is necessary to clarify what we mean when we refer to intervention, as this is a complex issue and refers to a range of actions taken by actors external to a particular

¹ Heidrun Sørli Røhr (ed.) 2005: *Dialog - Mer Enn Ord*, Nansenskolen, Lillehammer, p.95

² Joelle Tanguy, 2003: ‘Redefining Sovereignty and Intervention’, *Ethics and International Affairs*, 17(1), p.142; The term was coined in the late 1980s by Mario Bettati and Bernard Kouchner

³ *The Responsibility to Protect*, December 2001, Report of the International Commission on Intervention and State Sovereignty

crisis. Broadly, forms of intervention may include the use of force⁴, economic and political sanctions, negotiations or dialogue, and the involvement of NGOs, non-state actors or international organisations; the element common to these different types of intervention is their claim to act for humanitarian purposes. The context of Kosovo, which is the focus for the testing and evaluation of the theoretical framework presented here, offers two aspects of intervention which we are primarily concerned with. First, it refers to the use of force by NATO states in 1999, and secondly, it refers to the dialogue which surrounded the decision to intervene militarily. Whilst the dialogue leading up to NATO's intervention remains the object of critique in Chapter 5, other opportunities for communicative engagement which may come under the rubric of intervention but do not refer to military action are central to the exploration of agency and legitimacy in international relations undertaken here and are highlighted in preceding chapters.

NATO's intervention in Kosovo arguably represented the clearest clash between conflicting norms in contemporary politics. It took place at the end of a decade fraught with questions over the rights and wrongs of humanitarian interventions from Bosnia to Haiti, Somalia and Rwanda. The conflict was between the Serbian state and its own citizens in Kosovo, where ethnically-oriented, socially and politically divisive and violent methods of repression were carried out against the majority population of Kosovar Albanians. The decision to intervene in Kosovo emerged as one which not only challenged the existing interpretations of international law and humanitarian intervention, but also challenged contemporary understandings of the 'right', of how we ought to act in certain circumstances. Arguably, although it was the moral argument which provided the justification to intervene, it did so with dubious qualifications of consensus. These moral and ethical problems seem unlikely to disappear, making it crucial to ask how recourse to humanitarian intervention will be decided in the future, and how such interventions will be conducted. Thus, the moral impulse to protect others, which is fundamental to concepts of humanitarianism and cosmopolitanism, cannot be detached from complicated notions of process and consequences. The means by which such policies are constructed and their sources of legitimacy are crucial to any future formulations of norms of intervention.

⁴ The term 'humanitarian intervention' in this context refers to 'the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.' Holzgrefe, Keohane (eds.) 2003: *Humanitarian Intervention*, Cambridge, Cambridge University Press, p.18

Humanitarian intervention provokes a powerful set of emotive claims to justice, morality and legitimacy in contemporary societies. The case study of Kosovo, the concept of good international citizenship and its responses to humanitarian intervention allow us to explore notions of agency and legitimacy in international relations which address the following questions. Has the controversy over a norm of humanitarian intervention and the related moral dilemmas resulted from inadequate communicative practices, a lack of reflexivity and recognition of intersubjectivity? Can good international citizenship incorporate a principle of discourse? Is a discursive approach to decision-making procedures in conflict situations able to help us assess the legitimacy of the decision to use force? If so, what kind of moments of illegitimacy can such a communicative framework reveal in the decision to use force in Kosovo? To answer these questions we must not only be willing to interpret the intervention in Kosovo from the perspective of deliberative legitimacy⁵, but to look to critical theory and Habermas's discourse ethics for the tools with which to do so: can the theory identified – discourse ethics and critical theory – enable us to better understand legitimacy in international relations? With this in mind, a set of rigorously grounded evaluative criteria will be formulated and used to analyse communicative practice in the case of Kosovo. The aim here is to see what can be learnt through such an approach and what problems arise, particularly as regards the relationship between theory and practice.

Kosovo: a case study

Kosovo illustrates the dilemma characterising humanitarian interventions which 'pits powerful normative beliefs and international legal conventions against each other: state sovereignty and the rule of law may be violated to protect or promote individual rights.'⁶ These legal and moral issues were merged in the key question surrounding NATO's intervention of whether or not humanitarian intervention can be legitimate in the absence of explicit Security Council authorisation, highlighting concerns over who has the authority to intervene and on what grounds. Whilst it is generally agreed that

⁵ The term comes from Corneliu Bjola, 2005: 'Legitimizing the Use of Force in International Politics: A Communicative Action Perspective', *European Journal of International Relations*, 11(2). See also Bernard Manin, 1987: 'On Legitimacy and Political Deliberation', *Political Theory* 15(3)

⁶ Neta Crawford, 2002: *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention*, Cambridge, Cambridge University Press, p.402

only the UN Security Council can authorize external intervention, we are presented with a paradox in which international law (in the form of the UN Charter) only permits the use of force in the cases of self-defense against armed attack or collective security. Article 2(4) of the Charter prohibits the threat or use of force by states.⁷ The Security Council is empowered to authorize the use of force on the basis of its responsibility towards maintaining international peace and security. However, the Charter also grants importance to human rights. How can these be reconciled? Reisman suggests that assigning the near exclusive right to use force to the Security Council is only workable if the responsibility of the Council is restricted to resisting threats to and breaches of the peace and acts of aggression. If the mandate of the UN Security Council is also extended to the protection of human rights, then this becomes impossible as ‘there are profound, possibly unbridgeable divides between the permanent members’.⁸ Despite the famous verdict of the Independent International Commission on Kosovo that NATO’s actions were ‘illegal but legitimate’⁹, consensus on the relationship between legitimacy and morality and legality as regards the use of force remains as elusive now as it was in 1999.

Regardless of the legality of the war, it was shown that the human rights discourse has the capacity to challenge the primacy of international law. This raises questions concerning the role of human rights in world politics. Chandler argues that this has become accepted as a *fait accompli* and that for some academics, critical discussion of the human rights framework is unproductive and dangerous; Midgley insists we should accept its dominance unquestioningly, acknowledging that:

there may be uncertainties about the central justification for human rights, but warn[ing] that academics should not take an approach that is ‘predeterminedly destructive’. Instead, they should be positive about the ‘mysterious’ power of the human rights concept which has emerged as a result of the ‘immense enlargement of our moral scene’.¹⁰

This approach to the human rights framework and the concomitant justifications it secured for intervention was largely accepted during the conflict in Kosovo without

⁷ Bruno Simma, 1999: ‘NATO, the UN and the Use of Force: Legal Aspects’, *European Journal of International Law*, 10(1); Tom Farer: ‘Humanitarian intervention before and after 9/11: legality and legitimacy’, Holzgrefe, Keohane (eds.), 2003

⁸ M. Reisman, 1999: ‘Kosovo’s Antinomies’, *The American Journal of International Law*, 93(4), p.861-2

⁹ Independent International Commission on Kosovo, 2000: *The Kosovo Report*, p.186

¹⁰ David Chandler, 2002: *From Kosovo to Kabul*, London, Pluto Press, p.14, citing Midgley

sufficient critical scrutiny of its implications for the manner in which the conflict and those involved in it were portrayed, and thus dealt with.

A review of the literature on Kosovo shows that by and large such writing has focused on the period 1998-1999, with less consideration of the international dimension to the conflict prior to 1998. The period prior to 1998 is usually only considered in order to provide a particular interpretation of the political history of Kosovo.¹¹ As Bellamy notes, this suggests that there was no international dimension prior to 1998.¹² Despite the fact that ‘this proposition itself presupposes a decision (made by influential states and international organisations) that the conflict should not be seen as an international one prior to 1998, it is also factually inaccurate.’¹³ Consequently, by failing to consider the debates and key issues before 1998, we might think that the conflict which broke out then took the West by surprise. A closer look at the preceding period indicates that this is far from the truth and that the refusal to place the simmering and predictable conflict in Kosovo on the international agenda paved the way for the situation which broke out in 1998. In addition to moments of engagement by the international community prior to 1998, there were a number of missed opportunities for creative political engagement. Furthermore, while attention is frequently paid to significant international events like Dayton, more often ignored is the political action by citizens within Kosovo and Serbia which, if supported, might have yielded political alternatives. Certainly, the existence of these political activities and the international reaction to them casts doubts on the essentialized, pre-given identities given those involved by the international community and the language of last resort used to justify the strategic shift to military intervention in a situation cast in oversimplified, black and white terms.

Those in favour of military intervention maintained that all diplomatic remedies had been exhausted; there was an imminent risk of humanitarian catastrophe and the only prospect for an effective humanitarian intervention seemed to depend on acting outside the Security Council, as this forum was blocked by Russia’s (“unreasonable”)

¹¹ See Miranda Vickers, 1998: *Between Serb and Albanian: A History of Kosovo*, London, C. Hurst & Co.; Julie Mertus, 1999: *Kosovo: How Myths and Truths Started a War*, London, University of California Press; Noel Malcolm, 2002: *A Short History of Kosovo*, London, Pan Books

¹² Alex Bellamy, 2001: ‘Kosovo: After the War, the War of Words’, *The International Journal of Human Rights*, 5(3), 2001, p.99

¹³ *ibid.*

threat of veto. Anti-interventionists declared NATO's actions as illegal without explicit authorisation from the UNSC and therefore fundamentally challenging the prohibition on recourse to force within existing international law. They do not accept the argument that diplomatic means were properly used or exhausted:

They point to the exclusion of Russian diplomatic participation prior to NATO's recourse to war, the rigidity of the Holbrooke/Rambouillet formula, the absence of any evident diplomatic effort to induce China and Russia to accommodate the Security Council majority by shifting their veto to an abstention. Critics of the NATO intervention compare this pattern of prewar negotiation with the success of the war-ending diplomacy, which was based on a major Russian role and face-saving gestures toward Belgrade that included willingness to "conceal" the NATO-led peacekeeping force beneath a UN cover story.¹⁴

These differences fuelled parallel debates concerning the actual conduct of the war both in terms of military strategy and political motivation.

Much of the literature on intervention in Kosovo covers the issues with broad brushstrokes, reaffirming the dominance of one of several positions. Less of the literature recognises the fluctuations in positions held by the Kosovo Albanians or the less radical elements within Serbia. By painting an oversimplified picture, many important nuances connected with the potential for dialogue are lost in the entrenchment of international norms, be it territorial integrity, sovereignty and non-intervention, or human rights, the victimisation of the Kosovo Albanians, and emerging arguments for military intervention in the name of humanitarianism. A lack of contextual sensitivity to the position of Kosovo within the dissolution of Yugoslavia, a preference for ethnic animosity as the root cause of conflict and the absence of in-depth knowledge of domestic politics renders these accounts bereft of the subtleties of the negotiations, the interests and the positions held by all actors involved in the crisis. With a few exceptions, the conventional debates concerning legitimacy in relation to Kosovo do not look at legitimacy from a normatively grounded communicative approach.

An International Relations approach

The moral and ethical problems raised by humanitarian intervention are addressed in most mainstream international relations paradigms. The shift in focus beyond the boundaries of the realist paradigm has increasingly led to approaches which

¹⁴ Richard Falk, 1999: 'Kosovo, World Order, and the Future of International Law', *American Journal of International Law*, 93(4), p.851

are no longer entirely state-centric. The boundaries between domestic and international politics have become increasingly blurred as the political and economic processes of globalisation erode sovereign state boundaries and the location of authoritative norms and values is questioned. International Relations is no longer simply the analysis of the relations between securely demarcated sovereign states in an anarchic world. Although the struggle for power and security remains undiminished in the face of global security challenges in a post Cold-war era, the realist claim that war and anarchy are endemic within the international system is no longer universally accepted. Critics of realism belong to a broad spectrum of opinion and increasingly, cosmopolitans, critical international theorists, constructivists and post-structuralists have argued that the Western idea of progress, often embodied by the construct of the sovereign state, has created many of the global problems we now face. As Linklater and MacMillan argue, the:

growing sense that anarchy is what states make it is not coupled with any resounding confidence in the state's capacity to bring about profound and necessary political change. The contention that the state is an obstacle to peace and justice is not new. What is new is the conjunction whereby many authors deny that political boundaries are essentially fixed or that the context of anarchy is immune to significant change, yet simultaneously resist traditional theoretical and practical alternatives anchored in Western conceptions of nature, freedom, progress, the state and gender.¹⁵

Whilst the concept of globalisation and its impact are contested, it has, arguably, led to the simultaneous challenges of increased integration and increased fragmentation. The state remains central in both of these processes but it is no longer the only pivotal, nor indeed always the most important, actor. Increased integration and fragmentation have raised moral questions which lay dormant during the bi-polar ideological struggle of the Cold War era, demanding that attention be paid to the location of responsibility for ethical and moral concerns and laying the foundations for a closer analysis of inclusionary and exclusionary practices. Such responsibilities include: minority groups whose rights are being violated by sovereign authorities; the role of the world community in preventing conflict and resolving existing conflict, particularly concerning issues of self-determination and its role in rebuilding failed states/communities.

¹⁵ Linklater, MacMillan (eds.) 1995: *Boundaries in Question: New Directions in International Relations*, London, Pinter Publishers, p.5

It is clear that the sovereign state is no longer necessarily a form of political community that provides the requisite forms of human security and stability. The power of the state in its many forms is often perceived as the principal threat to minority or subordinate groups. This reflects the arguments of groups such as refugees, ethnic minorities and asylum seekers, who claim that their identities and interests are excluded from the dominant images of nation or community as constructed by the state. The state itself operates as a system of inclusion and exclusion through its prescriptions for membership – citizens and aliens – and the concepts of sovereignty and territoriality.¹⁶ This practice of inclusion and exclusion is repeated at an international level by principles which determine membership of the society of states – a practice which bars non-state groups from representation.

Traditional understandings of good international citizenship claim to identify normative criteria which can inform legitimacy and specify a key agent – the state. It is from a perspective which conflates the possibilities for good international citizenship with the role of the state that this concept will be critiqued. Consequently, this concept will be examined in terms of its critical capacity for analysing legitimacy and its preference for (and limitations of) agency. Bearing in mind the problematic role of the state in addressing humanitarian intervention, the concept of good international citizenship and its evolution is charted and critiqued with the intention of incorporating a reflexive element sensitive to inclusive and exclusive practices in state practice. While Lawler locates the idea of the ‘good’ state firmly within classical internationalism and this research locates good international citizenship within a critical-theoretical framework which problematises the role of the state and questions its ability to engage in fair communicative practices key to legitimacy, I would nonetheless suggest that there are parallels which can be drawn concerning the role of the state and its ethical responsibilities. As Lawler describes it:

In evoking a spirit of cosmopolitan-mindedness rather than full-blooded cosmopolitanism, it occupies a precarious normative space between the poles of contemporary international political debate. In invoking the possibility of the state as a morally-driven agent with ‘purposes beyond itself’, it simultaneously invites the charge of ‘idealist’ naivety from realists, of being timid and anachronistic from more thoroughgoing

¹⁶ Andrew Linklater, 1992a: ‘The Question of the Next Stage in International Relations Theory: A Critical-Theoretical Point of View’, *Millennium: Journal of International Studies*, 21(1), p.83

cosmopolitans, [and] of being an example of ‘statist myopias’ from post-structuralists’.¹⁷

While the role of the state is questioned increasingly within critical international thought, as Lawler points out, the further erosion of state capacities may not be matched by the evolution of effective and, perhaps more importantly, legitimate structures of local, regional or global government in a cosmopolitan or post-sovereign world.¹⁸ As indicated, current notions of good international citizenship generally see the state as the primary agent in international relations although, in line with Evans’ original concept, see it as an ethical actor rather than one governed solely by national interests.¹⁹ By focusing on issues of exclusion intrinsic to citizenship within the nation-state, Linklater claims that analogous concepts of citizenship might be adopted in international relations. Consequently, by rethinking the boundaries of the modern state, Linklater attempts to overcome the tension between ‘the rights of citizens and duties to the rest of humanity’.²⁰ Despite the challenges to the principles of sovereignty and non-intervention offered by solidarist understandings of good international citizenship, they do not critically analyse the definitions of order and justice or the power inequalities inherent in these ideas. It is not clear that an intersubjective methodology concerned with communicative fairness as key to legitimacy informs the processes through which states who claim to be good international citizens arrive at decisions to intervene.

Without necessarily using the language of good international citizenship, the mainstream schools of thought in international relations have some conception as to what it means to be a good international citizen in accordance with their values and principles. Communitarians, cosmopolitans, realists, liberals, pluralists, solidarists, just war theorists: all have their own understanding of how states should behave. Most of these schools of thought recognise some form of normative perspective and seek to offer some notion of a standard of right; a normative standard by which states understand their roles and responsibilities in response to the problems of human suffering.

¹⁷ Peter Lawler, 2005: ‘The Good State: in praise of ‘classical’ internationalism’, *Review of International Studies*, 31(3), p.433

¹⁸ *ibid.* p.440

¹⁹ Gareth Evans, 1989: ‘Making Australian Foreign Policy’, *Australian Fabian Society*, Australia, Pluto Press; Tim Dunne and Nicholas Wheeler, 1998: ‘Good international citizenship: a third way for British foreign policy’, *International Affairs*, 74(4)

²⁰ Andrew Linklater: ‘What is a Good International Citizen?’, in Paul Keal (ed.) *Ethics and Foreign Policy*, UK, Allen and Unwin, 1992 (henceforth, Linklater, 1992b)

There are two main theoretical and methodological problems with many of these approaches: Firstly, they focus on the need for substantive standards, rather than on process. A focus on process permits scrutiny of claims of legitimacy and justification for action or for the adoption of particular positions, as well as for the way in which such actions or positions may necessitate particular practices of exclusion or coercion. Secondly, wittingly or otherwise, they participate in what Beck calls ‘methodological nationalism’. Beck defines the concept of methodological nationalism as taking the following ideal premises for granted:

it equates societies with nation-state societies, and sees states and their governments as the cornerstones of a social science analysis. It assumes that humanity is naturally divided into a limited number of nations, which on the inside, organize themselves as nation-states and, on the outside, set boundaries to distinguish themselves from other nation-states.²¹

Just as Beck does not see this critique as a thesis of the end of the nation-state, neither does a critical theoretical understanding of good international citizenship perceive the role of the nation-state as obsolete. No longer, however, is it sufficient for social inequalities, justice, law, politics and cultural identity to be negotiated solely against the background of the nation-state. By opening up questions of security in terms of these issues the state can no longer remain the sole, or even primary, referent.

By locating good international citizenship within a critical-theoretical perspective, this research seeks to play a part in reconfiguring our understanding of ‘ethical behaviour’ in international relations and the subsequent role of the state. It is with this in mind that it will be suggested that states may be neither the only, nor necessarily the best, actor capable of meeting the criteria laid out by a revised understanding of good international citizenship. The precepts of good international citizenship can, it will be argued, apply to all actors in terms of core commitments to dialogue and reflexive practice, although the term clearly recognises the role of states within this framework and in terms of the case study of Kosovo. While both universalist and particular conceptions of justice and morality are problematic, as we shall see in Chapter 2, some notion of universality is required to maintain normative power. However, complicated issues concerning the relationship between theory and practice arise which must be acknowledged. The relationship between these two

²¹ Ulrich Beck, 2002: ‘The Terrorist Threat: World Risk Society Revisited’, *Theory, Culture and Society*, 19(4), p.51

parallel and connected debates is a theme which runs, both implicitly and explicitly, throughout this work.

The move to Critical Theory

Certain manifestations of good international citizenship by themselves are insufficient to answer the basic moral question, “What should we do?” when faced with extremes of human suffering, and when humanitarian intervention faces the triple, interlinked, dilemmas of legitimacy, justification and application. We should, therefore, move to a theory which can assist in interpreting and addressing these dilemmas, notably that of legitimacy. Such a theory is critical theory and, in particular, Habermas’s discourse ethics. While Habermasian critical theory seeks to retain a practical intent, discourse ethics is appropriate because Habermas recognises the centrality of communication and dialogue to questions of justification and offers normatively grounded regulative criteria for a communicative ethics. It is through a consideration of recent developments of Habermasian discourse ethics that our theoretical framework will be constructed. Although unable to shed light on how, or indeed if, military intervention for humanitarian purposes should be carried out, this theoretical framework seeks to expand our understanding of the legitimacy of the process by which the decision to use force is taken so that we may begin to address some of the problems faced within a state-centric and often strategic process. This research problematises current practices of exclusion and coercion, locating specific examples in the international deliberations surrounding the intervention in Kosovo and revealing how these communicative and structural distortions impacted upon the deliberative process and the legitimacy of the intervention.

Critical theory neither rejects institutions of modernity such as the state, nor accepts them uncritically.²² The intersection of critical theory and international relations has led to increased focus on the ways in which images of ethnic identity, national interests, states and global values aid in the constitution of power relations which favour some but disadvantage many others. Thus, it addresses the ways in which

²² The term “critical theory” is intended to refer not only to the influence of the Frankfurt School, notably Habermas, on international theory, but also to the broader influence of other aspects of critical thought, including post-structuralism and constructivism, on areas such as political theory, IR theory and feminism.

structures and beliefs function to exclude or marginalize specific groups.²³ The concepts of emancipation and reflexivity are important for the relationship between theory and practice embedded in a critical theoretical approach – how do established practices of inclusion and exclusion impact on people?²⁴ Critical theory is intended to reflect upon the social context which has given rise to it, its function within that society and the purposes and interests of its practitioners. Such reflections are then built back into the theory. In this way, there is something of the dialectical about it; taking a determined stance against the prevailing positivism, critical theory understood that the facts and our theories about them are part of an ongoing dynamic historical process.²⁵ The way we perceive the world and the way the world is are mutually constitutive. Booth suggests that critical theory is intended to help create social and political conditions which are more conducive to human flourishing than the present conditions.²⁶ Critical social theory should not only offer greater understanding of the social world, but also guide its practical transformation. There are two branches of normativity intrinsic to critical theory: diagnostic and remedial. Habermas articulates this in his discussion of theory and practice: ‘In the one case, we have a social praxis, which as societal synthesis, makes insight possible; in the other case, a political praxis which consciously aims at overthrowing the existing system of institutions.’²⁷ These two normative elements reflect the dual intention of the communicative framework presented here: first, it is intended to serve as a critical tool to analyse and critique dialogue and the construction of dialogue, and secondly, it is intended to offer a normative approach to dialogue in the context of conflict resolution.

The moral question which haunts debates in International Relations, “What should I do?”, becomes particularly problematic when either the norms or values which help provide an answer are in doubt or contested, or when one’s actions will affect the interests of others. Both of these conflicts are present in the debates on humanitarian intervention. White’s theoretical framing of this dilemma as the tension between the

²³ Stephen K. White, 1991: *Political Theory and Postmodernism*, Cambridge, Cambridge University Press, p.8

²⁴ The self-conscious difficulties raised by these issues are noted in Martin Jay, 1996 (2nd edn): *The Dialectical Imagination*, Berkeley, University of California Press, p.xxviii

²⁵ Max Horkheimer, 1931: ‘The Present Situation of Social Philosophy and the Tasks of an Institute for Social Research’, <http://marxists.org/reference/archive/horkheimer/1931/present-situation.htm>, accessed June 2007

²⁶ Ken Booth, (ed.) 2005: *Critical Security Studies and World Politics*. London, Lynne Rienner Publishers, p.267-9

²⁷ J. Habermas, 1974: *Theory and Practice*, London, Heinemann Educational Books, p.2

'responsibility to act' and the 'responsibility to otherness' offers a helpful perspective for thinking about this problem and for understanding the present approach to it.²⁸ The argument for a communicative framework suggests that such conflicts are best resolved through the application of a communicative, rather than instrumental, rationality. Bearing in mind the primarily moral nature of the humanitarian intervention debate and the tendencies of all sides to make claims to justice and norms, then such dialogue belongs to the realm of moral discourse, bringing us to Habermas's discourse ethics.

Any application of Habermas raises a number of significant problems concerning the relationship between theory and practice and the extent to which Habermas's notions of universal moral norms can translate into practical politics.²⁹ On the one hand, there are general problems with using Habermas as a guide for action rather than critique, whilst on the other, there are specific problems in applying Habermas's theory of communicative action, and in particular the principles of discourse ethics, to the study of the use of force in international relations. As Habermas did not apply the theory of communicative action to conflict in international relations, and his theory is based on a communicative rationality, so the very noticeable presence of strategic, or instrumental, rationality within international politics and its relationship with communicative action must be accounted for.

Critics of Habermas³⁰ argue that discourse ethics ensures that any practical communicative politics is likely to be authoritarian, and that consequently, Habermas is unable to deliver practical advice to those wishing to resist colonising processes. Alternatively, they argue that it is too abstract a theory to offer guidance in a world tainted by inequalities, power and distortion. This framework, through a recognition and negotiation of the mutually constitutive relationship between the universal and the particular, not only offers a corrective to Habermas's universalism, but also seeks to offer practical guidance to those who wish to recognise and establish forms of communicative fairness in deliberative situations without anticipating their outcomes. In other words, it offers a means to examine process and claims to legitimacy through an understanding of exclusion and coercive behaviour present in practice, and not, as other schools of thought on humanitarian intervention attempt to determine, a

²⁸ White, 1991

²⁹ Ricardo Blaug, 1999: *Democracy: Real and Ideal*, Albany, State University of New York Press

³⁰ For a discussion of critics see David Rasmussen, 1990: *Reading Habermas*, Basil Blackwell, Oxford

substantive standard of right. Communicative action is an intersubjective process, not an end in itself, and such an approach helps avoid charges of utopianism and its at times dangerous, totalising consequences. In order to develop this approach, we will attempt to flesh out a number of concepts within critical theory which anchor this orientation, drawing on the concepts of hermeneutics, difference feminism and placing an emphasis on procedure.

The resulting theoretical framework is presented as a series of ‘communicative imperatives’. These indicate criteria which not only provide us with a normative power of critique, but also guide us towards understanding what might constitute ‘good communication’ in the here and now. The communicative imperatives focus on process rather than offering any substantive solution to the dilemmas posed by the concept of humanitarian intervention, thus retaining the space Habermas saw as requisite for participants and actual dialogue to determine substantive content. The theory which grounds the communicative imperatives affects both our understanding of process and raises questions concerning who may be a relevant subject for those processes.

The plurality of legal and moral positions regarding humanitarian intervention demonstrates the need for an intersubjective methodology in order to examine the process by which particular norms are validated. Such a method should, however, also be able to offer normative standards with which to judge competing positions. A communicative rationality is an appropriate means with which to ground an analysis of existing legitimacy in practical deliberations because it offers normative standards of democracy with which to judge process; without this we are faced with relativistic claims to truth and rightness likely to prevent us from acting in the face of events such as genocide, ethnic cleansing, or crimes against humanity. It suggests, in other words, not that the use of military force in Kosovo was right or wrong (there will be no revelation from ‘above’), but that if we are to have a greater understanding of conflict and conflict resolution, then we must be able to adequately theorize the processes of legitimacy and justification which are key elements in the global debates surrounding humanitarian intervention and the use of force.

Much attention has been paid to the question of the legitimacy of NATO’s actions in terms of morality and legality. On the other hand, little attention has been paid to the relationship between legitimacy and communicative action, otherwise termed deliberative legitimacy. Legitimacy is the expression of consensus, free from

coercion, on relevant norms of legality, morality and constitutionality. According to Clark, legitimacy is not to be thought of as a norm co-equal with the above three norms; there is no independent scale of values, as legitimacy can only be understood through contestation of these norms within the political sphere.³¹ Legitimacy, like moral and political norms, does not stand still; it shifts to reflect the spirit and politics of the age.³² Deliberative legitimacy can be no different; however, it offers a particular kind of framework within which debates over policy and the conduct of actors may take place. With regard to humanitarian intervention, the notion of legitimacy must extend not only to the communicative process prior to the decision to intervene, but also to the perceived consequences and the potential gap between the ends and the means. Clearly, legitimacy cannot reside solely in a consequentialist approach, for otherwise the humanitarian argument would be unable ever to override the caution derived from national interests or other motives, so a critical understanding of process and consequences suggests that a more reflexive approach to decision-making and methods of intervention should be adopted.

Throughout this thesis, reference is made to the legitimate or illegitimate nature of decision-making concerning the use of force. Legitimacy may be said to comprise two elements: firstly, reasons must be offered to justify actions which may refer to, but need not be restricted to, legality, morality, and constitutionality³³; secondly, consensus on these reasons/actions should be sought through engagement in appropriate, practical, dialogue. Consensus should indeed be a requisite element of the decision to use force, although it is not, by itself, sufficient. The mere presence of consensus does not automatically grant legitimacy to a decision without a consideration of how that consensus was arrived at. As Clark reminds us, consensus can be ‘encouraged, and thwarted, by a range of power-political, self-interests, and coercive means.’³⁴

³¹ Ian Clark, 2005: *Legitimacy in International Society*, Oxford, Oxford University Press, p.4

³² *ibid.* p.13

³³ Clark defines constitutionality as ‘the realm neither of legal norms, nor of moral prescriptions. Instead, it is the political realm of conventions, informal understandings, and mutual expectations. At its core are political sensibilities about what can properly be done, and how affairs should be conducted’. *ibid.* p.220

³⁴ Clark, 2005, p.192

Thesis structure

Chapter 1 expands on the problem represented by Kosovo and sets it up as a problem of legitimacy. It explores the situation in Kosovo and the international engagement with the conflict before 1999, examining key events prior to NATO's decision to intervene from a communicative perspective. In addition, it locates concerns over legitimacy in relation to a number of actors and processes, argues that conflict was not inevitable, and that communicative actions and omissions played a key role in the development of conflict and a military and strategic mindset.

Chapter 2 sets out the first stage of the theoretical framework, introducing the concept of good international citizenship and locating it within the cosmopolitan and communitarian literature which echo concerns over the universal and the particular reflected in critical theory. It charts the evolution of the concept, demonstrating its current responses to the problem of humanitarian intervention, sets out some of its limitations and indicates how it might be constructed as a more critical tool.

Chapter 3 sets out the second stage of the theoretical framework and encompasses the shift from international relations to critical theory. It articulates Habermas's discourse ethics and builds on recent developments in discourse ethics to formulate and ground the critical theoretical framework. It examines recurrent concerns relating to the universal and the particular present in discourse ethics and examines the extent to which 'hidden' content appears in Habermas's formulation of discourse ethics, through his principles of (D) and (U). It identifies similar concerns in Linklater's discursively constituted cosmopolitanism. In order to mitigate these concerns and formulate a conception of dialogue that retains practical critical purchase on current practices of exclusion and coercion, we turn to Benhabib's procedural emphasis, Shapcott's move towards Gadamerian hermeneutics and feminist critiques of discourse ethics.

Chapter 4 sees the formulation of the theoretical framework which is presented as a series of 'communicative imperatives'. It raises a number of methodological concerns relating to the application of theory to practice. Having interpreted Habermas's model of discourse as a principle of legitimacy rather than a concrete institutional design, we further examine the relationship between legitimacy and communicative practices. It also critically examines existing applications of

Habermas's discourse ethics to international relations by Ian Johnstone³⁵ and Corneliu Bjola³⁶.

Having formulated and clarified the theoretical framework, the communicative imperatives are then tested in Chapter 5 through their application to an empirical analysis of the dialogue which took place over Kosovo within the Security Council, from March 1998 to June 1999, and at Rambouillet. Through such an application we establish the interpretive power of the framework, in other words, the extent of its ability to identify different forms of constraints on practical dialogue and some preliminary conclusions as to its limits. A variety of documentary sources will be used for analysis, foremost of which will be the records of UN Security Council meetings between March 1998 and June 1999. This period covers the key Security Council discussions and subsequent resolutions concerning Kosovo. In addition, a series of available documents from the negotiations at Rambouillet will be examined. There are fewer publicly available documents from Rambouillet, as the talks themselves were held behind closed doors, however, much secondary literature has been written, including some by participants at the talks and, not least, the Rambouillet Accords drawn up prior to NATO's intervention in March 1999. This research has not attempted to access secret sources, having deliberately chosen to work with documents available in the public domain in order to assess the legitimacy of justifications offered publicly.

Chapter 6 draws together a number of strands concerning the relationship between the universal and the particular and clarifies the relationship between good international citizenship and the intersubjective, communicative framework. It offers an appraisal of the communicative imperatives and the extent to which evaluative criteria formulated in this way can be used to assess practice. It concludes an evaluation of the intervention in Kosovo in light of the theoretical framework and indicates several implications concerning the use of this framework for agency and legitimacy in international relations. In its elaboration of a communicative approach to conflict resolution, it seeks to attest to the continuing relevance of Habermasian discourse ethics for International Relations.

³⁵ Ian Johnstone, 2003: 'Security Council Deliberations: The Power of the Better Argument', *European Journal of International Law*, 14(3)

³⁶ Bjola, 2005

1. Practice: Kosovo prior to 1999

1.1 Introduction

The controversy which arose over military intervention in Kosovo resulted from concerns over legality, legitimacy, the ends and the means of diplomacy and the use of force for humanitarian ends. These dilemmas, particularly the degree to which legitimacy was contested, are relevant to this thesis as they were played out on the international stage through a series of dialogues and negotiations. It is not, however, the intention of this research to offer a definitive version of the road to intervention.¹ Instead, it will seek to present the story of Kosovo as a problem of legitimacy. Legitimacy in this context is not simply a matter of the controversial legal status of NATO's intervention, but is grounded in concepts of dialogue, inclusion, participation, coercion, recognition and reflexivity. These are all issues which are intrinsic to an analysis of the international community's involvement, or indeed its lack of involvement, in the situation in Kosovo. A close look at the relationship between events in Kosovo and international engagement reveals a number of missed or flawed opportunities for dialogue and non-military forms of intervention intended to constitute effective conflict prevention.

To this end, this chapter identifies a number of key processes and actors that contributed to the marginalisation of Kosovo between 1989-99 and thus to the development of violent conflict. Such processes include the European Community Conference on Yugoslavia, the Badinter Arbitration Commission, the London Conference and the International Conference on Former Yugoslavia, the side-lining of the non-violent resistance movement, the Dayton Accords and the Holbrooke Agreement. We are seeking to identify patterns of exclusion, coercion and illegitimacy which will then pave the way for a more detailed analysis of the dialogue surrounding the intervention. This emphasis on deliberative legitimacy, developed both theoretically and empirically in the following chapters, is derived from a communicative ethics approach which offers normative grounds for a critique of the morally difficult question

¹ For thorough discussions see: Tim Judah, 2002: *Kosovo: War and Revenge*, New Haven, Yale University Press, 2nd edn; Alex J. Bellamy, 2002b: *Kosovo and International Society*, New York, Palgrave Macmillan; John Norris, 2005: *Collision Course: NATO, Russia and Kosovo*, USA, Praeger Publishers; Noel Malcolm, 2002: *Kosovo: A Short History*, London, Pan; Louis Sell, 2002: *Slobodan Milosevic and the Destruction of Yugoslavia*, USA, Duke University Press

of military intervention. It also challenges conventional representations of ethnic conflict and indicates that the actions and omissions of external actors played a key role in the development of conflict and a military and strategic mindset. Whilst most analyses focus on the period 1998-99, it may be argued that an understanding of the process which led to conflict in March 1999 is crucial and must take in a number of factors which are not usually addressed in an assessment of the legitimacy of intervention.

Problems concerning the source of authority for intervention, the need for consensus, the threat of the veto and doubts as to appropriate threshold criteria for intervention are not the only problems related to intervention or its legitimacy.² Apart from the social, political and economic rebuilding required post-intervention, the solution or outcome of the intervention is often effectively decided by the intervening parties rather than by the warring parties themselves. So, it is often outsiders, unintentionally or otherwise, who decide whether partition, autonomy or independence is appropriate, whether or not communities should be ethnically pure or multi-ethnic. This was seen in the Dayton Accord for Bosnia and the earlier Vance-Owen plan in 1993. The Vance-Owen plan effectively facilitated the establishment of ethnically homogenous regions and allowed the Bosnian Serbs and the Bosnian Croats to keep some of the land they had gained through ethnic cleansing.³ Dayton is similarly argued to have rewarded ethnic cleansing, dividing Bosnia into two entities: the Muslim-Croat Federation and Republika Srpska. The agreement stipulating Bosnia's constitutional structures was drawn up by US government advisors and imposed on the parties separately. The fact that 'elected representatives from the new state had little input into the agreement was to be par for the course for the region, and repeated in the

² For a variety of perspectives, see Nicholas Wheeler, 2001: 'Legitimizing Humanitarian Intervention: Principles and Procedures', *Melbourne Journal of International Law*, vol.2; *The Responsibility to Protect*, 2001; Holzgrefe, Keohane (eds.), 2003; Wheeler, 2000: *Saving Strangers*, Cambridge, Cambridge University Press; Chandler, 2002; Smith, Light (eds.) 2001: *Ethics and Foreign Policy*, Cambridge, Cambridge University Press; Michael Ignatieff, 2000: *Virtual War*, UK, Vintage; Mary Kaldor, 2001: *New and Old Wars*, Cambridge, Polity Press; Falk, 1999; Chatterjee, Scheid (eds.) 2003: *Ethics and Foreign Intervention*, Cambridge, Cambridge University Press

³ Karin Von Hippel, 2000: *Democracy by Force*, Cambridge, Cambridge University Press, p.143

Rambouillet, Paris, ‘talks’ on Kosovo’⁴, raising questions concerning the communicative conditions of negotiations intended to deliver peace agreements.

This chapter demonstrates that the need for intervention in 1999, posed by those who argued that there was no alternative, pays little attention to the myriad of opportunities to influence events in Kosovo over the previous decade. It attempts, to borrow the words of Howard Clark, to ‘counter the tendency to write non-violence out of history.’⁵ The importance of the extended period of civil resistance, or non-violence, in Kosovo is that it ‘demonstrated alternative possibilities to the calamity in Bosnia, averting war for eight years and giving those intergovernmental bodies that claim responsibility for European security time to develop a preventive peace policy.’⁶ It is this ‘time’, this ‘space created’, by the non-violence movement which will be considered here and the way in which it was responded to by the international community.

1.2 The political and social construction of ethnic tension

In order to understand what happened in 1999, it is necessary to understand earlier events in Kosovo. Both Serbian and Kosovar Albanian identities have been constructed in part through perceived ties to Kosovo and influential historical myths. We need, therefore, to have some understanding of the history of Kosovo and to see how political manipulation has created and strengthened ethnic divisions. The 1981 Yugoslav census indicates that of Kosovo’s total population of 1.585.000, 77.5% were Albanian and 13.3% were Serb. By 1991, despite attempts by Belgrade to increase Kosovo’s Serbian population, Albanians constituted 90% of the population and Serbs only 10%. Kosovo was and remains the poorest region in the former Yugoslavia.⁷ It will be argued that the wars in the former Yugoslavia in general, and the conflict in Kosovo particularly, were due less to the eruption of ancient ethnic hatred and enmity, as is often suggested, than the consequence of specific policies.⁸

⁴ David Chandler: ‘Western Intervention and the Disintegration of Yugoslavia, 1989-1999’, from P. Hammond and E. Herman, 2000: *Degraded Capability: The Media and the Kosovo Crisis*, London, Pluto Press, p.27

⁵ Howard Clark, 2000: *Civil Resistance in Kosovo*, London, Pluto Press, p.5

⁶ *ibid.*

⁷ Sell, 2002, p.67

⁸ Clark, 2000, p. 7

It is conventional when narrating the events leading up to the conflict in 1999 to differentiate between ethnic identities. Although an analysis of the different interpretations of what happened in Kosovo and of the region's history is beyond the scope of this research, it is, however, fundamental to this thesis and the concept of reflexivity that forms a core to the revised notions of good international citizenship and dialogue that we recognise that representations of identity and of 'ethnic conflict' are contested. In doing so, we shall explore some of the events leading to conflict which invariably draw on ethnic issues without falling into the trap of asserting a static and essentialized conception of identity.⁹ We can identify two common strands to representations of Kosovo: the 'liberal focus on Milosevic and elite manipulation of popular sentiment' and 'the realist characterisation of the outbreak of suppressed hatreds at the end of the Cold War'.¹⁰ As Stavrianakis points out, both accounts construct Kosovo and 'the Balkans' as the 'backward or uncivilized Other of 'Europe'; a discursive construction pivotal to policies taken in relation to the region.'¹¹ Accounts which favour the portrayal of the Balkans as a 'confused, often violent ethnic cauldron'¹² waiting to explode with the revival of ethnic hatred following the end of the Cold War do not, for example, explain the non-violent resistance of the Kosovo Albanians during the 1990s which had a deep impact on Kosovar politics and identity. This is worth noting because Western accounts of the violence in Kosovo would inform the consequent and, many argue, inadequate response to it.¹³

⁹ It is worth noting that fairly static ethnic identities are also at times portrayed by Serbian and Albanian writers which aided the entrenchment of particular 'truths': 'The Serb campaign of terror did not begin on March 24, 1999, the day NATO began bombing Serbia, nor in March 1998, when the massacres of Drenica happened, nor in 1988 or 1981. Rather, it has been an entire period of hatred and cultivating racism by Serbs pushing the idea that they are superior to the Albanians, a period that has lasted at least from 1912 to the present.' Baton Haxhiu: 'Kosova: A Place Where the Dead Speak', from William Buckley (ed.) 2000: *Kosovo: Contending Voices on Balkan Interventions*, Cambridge, Wm. B. Erdmans Publishing Co., p.180

¹⁰ Anna Stavrianakis, 2002: 'A Tale of Two Ethnicities? An Analysis of Approaches to 'Ethnic Conflict': The Case of Kosovo', *Global Politics Network*, p.1

¹¹ *ibid.* See Henry Kissinger, 1999: 'Doing Injury to History', *Newsweek Magazine*, April 5. For a critical perspective of this discursive construction, see Elizabeth Dauphinee: 'Rambouillet: A Critical (Re)Assessment', Florian Bieber, Zidas Daskalovski (eds.) 2003: *Understanding the war in Kosovo*, London, Frank Cass Publishers

¹² Robert Kaplan, 2005: *Balkan Ghosts: A Journey Through History*, New York, Vintage Books, p.xi-xii; Norris, 2005, p.xix

¹³ Jasmina Husanović: ' 'Post-Conflict Kosovo': An Anatomy Lesson in the Ethics/Politics of Human Rights', Ken Booth (ed.) 2001: *The Kosovo Tragedy*, London, Frank Cass, p.277

Campbell's approach to identity has much to offer when trying to understand ethnic violence and formulate a response to it. Campbell suggests that conflict on the basis of ethnicity is a consequence of the dominance and exclusivity of one identity, rather than the inherently violent nature of ethnic identities themselves.¹⁴ It is then, the process of 'degrading' othering which may take place through language, religion, race and other social factors, which leads to violence.¹⁵ When the Other is seen as a threat to one's own national identity and feelings of victimhood are created and manipulated, then can conflict emerge. Campbell refuses to accept that ethnicity is a stable or static factor in the explanation of ethnic conflict, arguing that identity can only be perceived in relation to difference and that ethnicity is a term which 'signifies relationships of power in the problematic of identity/difference rather than being a signifier for which there is a stable referent.'¹⁶ Difference, then, can be translated into otherness through exclusivist policies. Campbell's approach suggests:

identity creation is an ongoing process, that Kosovo Serb and Kosovo Albanian identities were/are being (re)created through certain practices, using history and tradition in that process.'¹⁷

It is with these notions of identity in mind, whilst recognising that narratives of history and of demographics are most commonly used to represent difference in Kosovo¹⁸, that I shall move on to examine the history behind the conflict.

Kosovo holds a special place in the history of both Serbians and Albanians. It is not what is true that matters, but rather what people believe to be so, and this approach pervades any interpretation of Kosovo.¹⁹ Although myths and legends surrounding Kosovo have been passed down through the centuries, 'it was only in the late nineteenth century that they were resurrected as part of the narratives of rival Serb and Albanian national movements.'²⁰ Although populated largely by Albanians, there is little agreement as to 'first possession' of the land. The Serbs viewed Kosovo as the holy place of the Serb nation, where the Serbian Army, under Lazar, was defeated by the Turks at the Battle of Kosovo Polje in June 1389. Kosovo is also home to the Serbian

¹⁴ David Campbell, 1998a: *National Deconstruction: Violence, Identity, and Justice in Bosnia*, Minneapolis, University of Minnesota Press, p.88-93

¹⁵ Julie Mertus, 1999: *How Myths and Truths Started a War*, Berkeley, University of California Press, p.4

¹⁶ Campbell, 1998a, p.92

¹⁷ Stavrianakis, 2002, p.12

¹⁸ For example, Layne, 1999, p.4

¹⁹ Mertus, 1999, p.2-10

²⁰ *The Kosovo Report*, 2000, p.33

Orthodox Church. The early 20th century saw continuing conflict in the Balkans and between the Serbs and Albanians over Kosovo. Albanians resisted both Serb and Yugoslav rule not only because it prevented any union with the newly created Albanian state (1912), but also because, in an attempt to address the ethnic balance, the Serbian-dominated authorities encouraged Serbs and Montenegrins to settle in Kosovo.²¹ In addition, all key positions were in the hands of a 'largely imported Serbian elite. Every effort was made to obstruct the development of Albanian national consciousness.'²² In 1937, Vaso Čubrilović drafted a plan calling for the expulsion of Albanians. Čubrilović's suggestions as to how to 'persuade' Albanians to leave are instructive as they were to be revived later on under Milošević:

The law must be enforced to the letter so as to make staying intolerable for Albanians: fines, and imprisonments, the ruthless application of all police dispositions such as on the prohibition of smuggling, cutting forests, damaging agriculture, leaving dogs unchained, compulsory labor and any other measure that an experienced police force can contrive.²³

If this failed to work, then there always remained the practice of 'burning down Albanian villages and city quarters.'²⁴ Such statements may be seen not as evidence of a pre-given identity prioritising ethnic hatred, but as discursive interventions in social relations in Kosovo which served to create antagonism and conflict.

In July 1945, Kosovo became an autonomous province within a federal Serbia (which was a constituent part of the new Federal People's Republic of Yugoslavia).²⁵ Serbs retained their dominant position in Kosovo. However, demonstrations in 1968 by Albanian students called for the province to be upgraded to a republic and to be given its own Albanian-language university.²⁶ The demand for republic status was rejected. The 1974 Yugoslav Constitution gave Kosovo republic status in all but name, granting it economic and political autonomy virtually identical to that of the republics. It was represented on the federal presidency, along with Vojvodina, and the six republics which granted it an equal vote in all decisions. Serbs saw the autonomy granted to Kosovo by the 1974 Constitution as the first step towards secession and unification with Albania. However, while Tito had maintained a balance over the simmering discontent

²¹ Malcolm, 2002, p.278-286

²² Sell, 2002, p.74

²³ cited by Malcolm, 2002, p.284

²⁴ *ibid.*

²⁵ *ibid.* p.315-17

²⁶ Pristina University opened in 1970, strengthening ties with Albania.

in Yugoslavia, the system began to unravel following his death in 1980. In 1981 demonstrations and rioting spread across the province which the Yugoslav authorities suppressed harshly. The exact number of dead is unknown, but thousands of Albanians were arrested, tried and imprisoned.²⁷ Many of these protesters who were jailed were later instrumental in founding the Kosovo Liberation Army (KLA). Judah argues that it is crucially important to remember that until 1989 it was Albanian Communists who were ruling Kosovo, not Serbs:

This fact was to have enormous significance later on, as Western diplomats could never understand why it was so hard to bring together a Kosovo Albanian negotiating team which would represent a fair spectrum of opinion especially since they all agreed on the basic demand of independence. The answer often lay in who had done what, in and after 1981.²⁸

The events of 1981 were a turning point. Propaganda on both sides played an important role in the construction of hostilities and the degeneration of inter-communal relations. During the 1970s and 1980s, Kosovo was increasingly Albanianised. The case of the Kosovo Serb farmer, Djordje Martinović, became symbolic of the sentiment being nurtured by Serbs concerning their treatment at the hands of Albanians. In May 1985, he was rushed to hospital to have a broken bottle removed from his anus. He claimed to have been attacked by two Albanians, a claim seized upon by the Belgrade media, but some doctors believed the injury to be self-inflicted, which Martinović himself later admitted was the case before then retracting this confession.²⁹ This incident was an example of the way perceptions of social relations in Kosovo were shaped, fuelling feelings of Serbian victimization and being portrayed by the Serbian press as an attack by Albanian nationalist separatists on Serbs.

Another important element in the reproduction of hostile ethnic identities occurred in January 1986 when 216 Serbian intellectuals presented a petition to the Serb and Yugoslav Assemblies declaring that: “The case of Djordje Martinović has come to symbolize the predicament of all Serbs in Kosovo.” Later that year, the Serbian Academy of Arts and Sciences published a document which became known as the *Memorandum*. The language of the *Memorandum* is seen as an important step on the road to war, particularly in its discussion of the position of the Serbs in Croatia and

²⁷ Judah, 2002, p.40

²⁸ *ibid.* p.41

²⁹ Mertus, 1999, p.100-114

Kosovo. The document spoke of the “physical, political, legal and cultural genocide” of Serbs in Kosovo and argued that the “remnants of the Serb nation (...) faced with a physical, moral and psychological reign of terror (...) seem to be preparing for their final exodus.”³⁰

Milošević visited Kosovo on 24 April, 1987 at the request of Stambolić, the Serbian President, to listen to the grievances of the Kosovo Serbs. He arrived in Kosovo Polje while thousands of Serbs were clashing with the Albanian police. Milošević told Serbs “Yugoslavia does not exist without Kosovo! Yugoslavia would disintegrate without Kosovo! Yugoslavia and Serbia are not going to give up Kosovo.”³¹ This attitude matches that described by Kostovicova; citing Gellner, she argues that, ‘Nationalism holds that they [nations and states] were destined for each other; that either without the other is incomplete, and constitutes a tragedy.’ Serb and Albanian claims to Kosovo were greatly informed by this view.³²

Between 1987-9, when he assumed the Serbian Presidency, Milošević consolidated and increased his support, primarily through hundreds of rallies, known as ‘Meetings of Truth’ held across the country. These populist gatherings served the purposes of politicians, nationalist or communist, like Milošević who manipulated the myth of Kosovo to create nationalist ideology, rhetoric and propaganda.³³ On 17 November, Milošević achieved the removal of Kosovo’s Albanian communist leaders. Preparations began to alter the constitutional status of Kosovo, in order to ‘reunite’ it with Serbia. To legalise this step, Kosovo’s own assembly had to vote to approve it. On 23 March 1989, surrounded by tanks and police and with Serbian officials monitoring the votes of the Albanian delegates, the Kosovo assembly voted for the constitutional amendments which were ratified in the Serbian parliament five days later.³⁴ Those Albanian delegates who stood up to Serbian pressure were expelled from the Assembly, dismissed from their jobs, and threatened with criminal prosecution.³⁵ The province reverted to its former name of Kosovo and Metohija, and Serbia gained control over Kosovo’s security, judiciary, finances, and social planning. It is important

³⁰ *The Kosovo Report*, p.40

³¹ Judah, 2002, p.52-3; *The Kosovo Report*, p.40-1

³² Denisa Kostovicova, 2005: *Kosovo: The Politics of Identity and Space*, London, Routledge, p.10

³³ Mertus, 1999, p.7

³⁴ Judah, 2002, p.56

³⁵ Sell, 2002, p.87

to understand why the provinces still existed even though they had lost their autonomy. Milošević now controlled Montenegro as well as Kosovo and Vojvodina and therefore held four out of the eight votes on the federal presidency.

When the Serbian Assembly adopted the amendments on 28 March, 1989, the Assembly President Borisav Jovic warned that the Constitution would be “used without remission” against anyone who dared attack the integrity of Serbia.³⁶ On 28 June 1989, the six hundredth anniversary of the Turkish victory at Kosovo Polje, Milošević celebrated his triumph over Kosovo to a crowd of approximately one million, actively drawing on the history and legends surrounding Lazar’s defeat. This erosion of Kosovo’s status was compounded by further deliberate actions by both Albanians and Serbs to institute ethnic polarisation and segregation such as the mass sacking of Albanian staff throughout all employment sectors from 1990 onwards, police and paramilitary presence and intimidation, media control, and the Albanian boycott of the December 1990 Serbian elections.³⁷

Campbell’s argument that ethnic identities on which claims are based are not in any sense innate, but rather a discursive practice can be seen in key moments of the run-up to conflict in Kosovo as they involve actors ‘reproducing and rearticulating a historical representation and violently deploying it in the present to constitute ... (individual and/or collective) subjectivity.’³⁸ In other words, identities and actions are mutually constitutive. It is not, taking this to Campbell’s logical conclusion, that any identity may be adopted, as ‘the pool of resources from which identities can be materialized is never infinite, and in Kosovo it became an ethnicized pool’, but rather recognising discursive practices and the use of dialogue to recreate identities for political ends.³⁹ Identity, then, is not static, but is reflected in its ‘dynamics with the Other, which has a constitutive role in the articulation of identity.’⁴⁰ This is particularly apt in regard to the constitutive role of education policy in forming a wider political identity. The increasing segregation of both political and social space in Kosovo, particularly after the construction of the Albanian parallel systems in 1992, reflects these dynamics. The appeal to non-violence by the Albanians was both a necessity for survival in the face of superior Serb military strength, and a choice (a chance to reject

³⁶ *ibid.*

³⁷ Clark, 2000, p.71-85

³⁸ Campbell, 1998a, p.83

³⁹ Stavrianakis, 2002, p.16

⁴⁰ Kostovicova, 2005, p.12

the Serbian portrayal of Albanian identity and to identify themselves with contemporary Europe).⁴¹ The limited fluidity of identity can be demonstrated in context of Castells' definition of legitimizing, resistance and project identities. Castells claims that legitimizing identity 'is introduced by dominant institutions of society to extend and rationalize their domination *vis à vis* social actors.' Resistance identity is 'generated by those actors who are in positions/conditions devalued and/or stigmatized by the logic of domination, thus building trenches of resistance and survival on the basis of principles different from, or opposed to, those [dominant ones] permeating the institutions of society.' Project identities are those built by collective social actors that not only redefine their position in society, but seek to transform the overall social structure.⁴² Kostovicova argues that this model explains the transformative path of Albanian national identity in Kosovo:

Starting off as a resistance identity to the legitimizing identity of the Serbian state and social order in the early 1990s, it was premised on the project of independent Kosovo throughout the 1990s, only to itself become a legitimizing identity after the NATO intervention in 1999, albeit with an element of the project identity retained due to the unresolved status of Kosovo.⁴³

1.3 Missing dialogues and non-violent resistance

Following Serbia's unconstitutional assumption of control over Kosovo in 1991, the province lost its status as a legal entity with rights. The Serb authorities passed a series of laws whose effect was to erode Albanian rights. They passed laws which prevented Albanians buying land or houses from Serbs. Other measures included incentives to encourage Serbs who had left Kosovo to return. Public companies such as the electricity organisation were taken over by their Serb counterparts. Workers who were not sacked were forced to resign as they were presented with loyalty oaths they were expected to sign. Many doctors and medical staff were sacked, leading to the closing down of many, particularly rural, medical facilities. The police force was purged, making it in essence an all-Serb force. The police then took over television and radio buildings and large numbers of Albanian journalists lost their jobs. All cultural

⁴¹ Clark, 2000, p.67. The campaign to reconcile blood feuds is an example of communicative attempts to break out of traditional and violent practices and thus a shift in identity. (p.60)

⁴² Manuel Castells, 1997: *The Power of Identity*, Oxford, Blackwell, p.8-9

⁴³ Kostovicova, 2005, p.13

and other institutions were closed down or merged with their Serbian counterparts.⁴⁴ Education became highly contentious as the Serbian curriculum was imposed on Albanian students. The financing of Albanian schools and educational materials ceased from March 1991 and the University became a Serb-only institution.

It was from these social and political conditions that the non-violent resistance emerged. Following Milošević's destruction of Communists in Kosovo, new Albanian political groups began to appear, often growing out of existing groups of intellectuals. Ibrahim Rugova, head of the Kosovo Association of Writers rapidly rose to prominence as did Veton Surroi, a journalist and head of the Kosovo branch of the Association for a Yugoslav Democratic Initiative. The Association circulated a petition entitled 'For Democracy, against Violence.' Clark argues that this petition, signed by over 400,000 Kosovo Albanians, played an important role in shaping the strategy of non-violent resistance to increasing Serb repression. It was representative of an increasing number of symbolic moments of unity and resistance which became part of everyday life for Kosovo Albanians.⁴⁵ It has been noted that this strategy of non-violence ran counter to Kosovar Albanian tradition (for example, the *kaçak* tradition), thus demonstrating the shaping of political and cultural identity to be a continual process and not merely a retreat to innate ethnic characteristics. The Democratic League of Kosovo (LDK), led by Rugova, was founded in December 1989 and rapidly became the focal point of Kosovar politics; it would remain dominant until 1998. Rugova insisted that Kosovo's status should be equal to that of the other Yugoslav republics. Once Yugoslavia had disintegrated, Rugova insisted that Kosovo must become independent.

Clark argues that non-violence is often over-simplified in the case of Kosovo and is usually identified with Rugova's position within Kosovar politics. However, the civil resistance movement described by Clark goes much further than the stance taken by the LDK, who, certainly at first, were the supporters rather than the initiators of such a position. The initiatives which made non-violence a viable strategy in this context came from a number of other sources. Clark identifies the roots of contemporary civil resistance as being in the dignified and non-violent protests of the Trepça miners in November 1988. Out of this grew a movement initiated both by local communities and

⁴⁴ Judah, 2002, p.62; Sell, 2002, p.93-4; Marc Weller, 1999a: *The Crisis in Kosovo 1989-1999: From Dissolution of Yugoslavia to Rambouillet and the Outbreak of Hostilities*, vol. 1, Cambridge, Documents & Analysis Publishing Ltd, Chapters 6 and 14, p.347

⁴⁵ Clark, 2000, p.57. Sell, 2002, p.89

workers and the *Kosova Alternative*, a group of political and intellectual organisations intent on ending the cycle of domination in Kosovo. This included the Writers Association, the Social Democratic Party, the Youth Parliament, the Parliamentary Party (PPK), a Green Party and a feminist group. From 1990, following the establishment of the Council for the Defence of Human Rights and Freedoms in November 1989 (CHDRF), it became the pattern for activists from the CDHRF or the new parties to go to the scene of any violent incident. This was partly to document what had happened and partly to urge restraint among local populations and to explain the idea behind non-violence.⁴⁶

On 2 July 1990, 114 out of 123 Albanian members of the provincial government voted to declare Kosovo a republic; Kosovo would be independent of Serbia, but would remain part of Yugoslavia. Three days later, the Serbian parliament voted to dissolve the Kosovar parliament and the Serb Assembly took over all legislative functions. On 7 September, a secret meeting of Kosovar deputies voted for a constitution for their own Republic of Kosovo. It was not until fighting was taking place in Croatia that the deputies voted for the Resolution on Independence of Kosovo on 22 September 1991. On 19 October 1991, the Kosovar 'parliament' voted to confirm the results of a referendum and declared Kosovo to be the independent 'Republic of Kosova'.⁴⁷ The Republic of Kosova existed only virtually at this point, as Serbian and Yugoslav institutions remained in control. This is where the non-violent strategy began to develop, leading to the creation of Kosovo's parallel state:

Instead of trying to mount a violent insurrection to realise this independence, the party began to simulate it in the hope that, by force of demographic and other pressures, Kosovo would, one day, simply drop into Albanian hands like ripe fruit.⁴⁸

The parallel state was created on two levels. On the one hand, new political bodies were created, and on the other, practical measures were put into place in order to replace the loss of healthcare and educational provisions.⁴⁹ On a political level, the LDK created a new government structure. On 24 May 1992, elections were held for a new Kosovar parliament and to elect a president. The LDK won the election with 76.44% of the votes and Rugova was elected by 99.5% of those who voted, granting

⁴⁶ Clark, 2000, p.59

⁴⁷ Judah, 2002, p.61

⁴⁸ *ibid.* p.66

⁴⁹ *ibid.* p.67-8

Rugova and the LDK a measure of legitimacy and authority. Although more than eighteen parties contested the election, none disagreed over the issue of independence. Fourteen seats were left empty for the Serbs and Montenegrins.⁵⁰ Despite ignoring the election, the Serb authorities would not allow parliament to convene. Consequently, although parliament never met, thirteen commissions were set up in order to provide some policy guidance. Technically, a government comprising six ministers under Prime Minister Bujar Bukoshi and based in Slovenia until May 1992, when it moved to Bonn, had already been set up on 19 October 1991. Despite its exile, this government was more than an exercise in institution building or ‘gesture politics’, its most important role having been to collect taxes from the large Kosovar diaspora.⁵¹ According to *The Kosovo Report*, 90% of these taxes were spent on supporting the parallel education system while the remainder funded the LDK administration, cultural activities, sports and some health care.⁵² The parallel education system became an essential part of Albanian society, making a significant difference in the teaching of history, geography, music and language and further aiding the construction of incompatible notions of identity.⁵³ Other organizations were set up which also supported the parallel system. These included, but were not limited to, the Mother Theresa Society which was established in 1990 and provided aid and health care to Albanians who were afraid to use the Serb-dominated facilities; the Councils for Reconciliation which provided a kind of parallel justice system, media outlets, and a number of other NGOs which were concerned with culture and sport as well as organisations for young people and women such as the Kosovo Karate Association.⁵⁴

The argument that these non-violent political acts offered the international community opportunities to pursue alternative strategies does not remove all responsibility from the Kosovo Albanians. Clark offers a detailed analysis of ways in which the civil resistance movement could have developed in a more profitable and fulfilling way, in terms of being more open to the needs and interests of minorities, and encouraging active social, political and economic transformation. Instead, there was a tendency for the movement to stagnate as Rugova and the LDK assured the population

⁵⁰ *ibid.*

⁵¹ *ibid.* p.68-9

⁵² *The Kosovo Report*, p. 46

⁵³ Kostovicova, 2005, p.22-7

⁵⁴ *The Kosovo Report*, p.47; Clark, 2000, p.95-121

that help would come from outside.⁵⁵ In reality, Rugova's strategy to internationalise the conflict consistently met with failure and exclusion from decision-making processes. Thus, a critical view of external action is not intended to depoliticise the Kosovo Albanians, but rather to demonstrate the presence of non-violent resistance and dialogue-based activities which were ongoing in Kosovo and the extent to which this offered the international community (in the form of both states and non-state/civil society actors) possible ways in which to support or influence politics in Serbia and Kosovo prior to the outbreak of conflict.⁵⁶ Drawing on the example of the successful polio immunisation campaigns in 1996 and 1997, Clark supports this position when he argues that 'internationals wishing to support social development in Kosovo were in a strong position to negotiate inter-ethnic cooperation.'⁵⁷ This campaign brought together international agencies (WHO, UNICEF), state (Serbian) and parallel health structures (Mother Theresa Association). This in turn brought in mosques and churches and the media to aid in the mobilisation phase, as well as commitment from the Serbian police not to intervene. Such communicative opportunities were passed over in favour of a later, strategic approach in the form of military intervention.

The parallel state system allowed the LDK to deny the legitimacy of Belgrade institutions and to call for support from the international community. This brings us to the issue of the engagement of the international community prior to 1998, or as Sell remarks, the 'pattern of Western neglect that prevailed for most of the decade.'⁵⁸ This was a pattern of neglect expressed, in part, through a series of exclusionary practices.

Having declared independence, Kosovo struggled for recognition by the international community. Rugova was not invited to the July 1991 European Community Conference on Yugoslavia which ended the fighting in Slovenia and marked the beginning of Europe's efforts to broaden the search for a Yugoslav settlement. According to the Brioni Joint Declaration, the Kosovo Albanians had no choice but to remain within Serbia, given that it established that the principle of the right to self-determination was limited to Yugoslav "peoples". A request for

⁵⁵ Clark, 2000, p.128-141

⁵⁶ Dialogue activities for 'dialogue's sake' was attempted in a number of ways both by local individuals and groups, such as the Belgrade-based Women in Black, some Kosovo and FRY political parties, between the Belgrade and Prishtina Helsinki Committees, by LDK Youth, and by external organisations such as the Norwegian Nansen Peace Academy, Mens Sana, and the Open Society Fund/Soros. Clark, 2000, p.142-3

⁵⁷ *ibid.* p.170-1

⁵⁸ Sell, 2002, p.108

recognition by the ECCY in 1991 was refused, as were requests to the OSCE to be allowed to express their views.⁵⁹ At the same conference the EC chief negotiator excluded the issue of Kosovo altogether in his attempt to keep Milošević on board. Despite Kosovo's status as a constitutional entity under the 1974 Constitution, it was not invited to participate in the peace process.⁶⁰ In a move which firmly established the exclusion of Kosovo from the international agenda the conference defined Kosovo as an 'internal' problem for Yugoslavia, thus preventing it from facing further international scrutiny and involvement.⁶¹

At the London Conference of August 1992, the Kosovar delegation was not permitted to enter the chamber or to represent themselves.⁶² Rugova was invited to attend, but was not allowed to speak or participate in the proceedings in any way, having to watch the conference on closed-circuit television from an adjoining room.⁶³ Ironically, in the letter of invitation, Carrington remarks that 'We are thus making *strenuous* efforts to ensure that the views of the Kosovo Albanians are heard'.⁶⁴ This raises concerns over dubiously justified exclusions. At the conference a working group on Kosovo was established, but, at Milošević's insistence, it would only deal with issues on minority rights. The group produced a 'joint Serb-Albanian statement aimed at normalising the divided Kosovo educational system, but the agreement collapsed after the Serbs arrested the rector of the Albanian underground university.'⁶⁵ According to Weller, '[w]orse than the lack of progress on the education issue may have been that the mere existence of the Special Group gave the impression that the Kosovo problem was now being addressed in some way by an international forum'. No

⁵⁹ Letter from Dr Rugova to Lord Carrington, Peace Conference on Yugoslavia, 22 December 1991 where he requests that 'the Republic of Kosova be recognised as a sovereign and independent state.' Weller, 1999a, p.347,

⁶⁰ Bellamy, 2002b, p.22-4

⁶¹ *The Kosovo Report*, p.57

⁶² Sell, 2002, p.108

⁶³ Letter from Lord Carrington, Chairman, Conference on Yugoslavia to Dr I. Rugova, 17 August, 1992: 'As it will not, for practical and other reasons, be possible to grant your delegation access to the Conference chamber itself, the organisers will set up a 'Salle d'ecoute' to which the formal Conference proceedings will be relayed live.' Weller, 1999a, p.86; Interview with Rugova, from *La Question du Kosovo*, Entretiens réalisés par Marie-Françoise Allain et Xavier Galmiche, Paris, Fayard, 1994, p.170-71. It is interesting to note that in the context of this interview, Rugova uses this example to indicate that diplomatic progress was being made and that the Kosovars were better represented at international summits than previously.

⁶⁴ Letter from Lord Carrington to Rugova, emphasis added. Weller, 1999a, p.86

⁶⁵ Sell, 2002, p.109

agreement was actually reached until 1996 and nothing concrete ever emerged afterwards.⁶⁶ Mertus concurs that despite overwhelming evidence presented over a number of years from reliable sources that conflict in Kosovo was looming, international policymakers failed to treat Kosovo seriously.⁶⁷ The price of the working group on minority rights was the dismissal of the issue of Kosovo's legal status and any hope of inclusion for the Kosovo Albanians in the peace process.⁶⁸

Late 1991 saw the creation of the Badinter commission, created to resolve legal issues related to the collapse of Yugoslavia. Here, too, the issue of Kosovo was avoided: this time on questionable legal grounds.⁶⁹ Badinter limited the right of self-determination to the six Yugoslav republics on the grounds that they were sovereign, founding members of the federation. Eager to avoid possible consequences for further ethnic unrest in the USSR or in other European states, Badinter rejected:

pleas by Albanians that Kosovo's position as one of the eight federal units in Yugoslavia, as demonstrated by Kosovo's separate membership on the collective presidency and other Yugoslav institutions, entitled it to be considered for independence on the same basis as the six republics.⁷⁰

Given the opinion of the Badinter Commission, it is clear that the Kosovars in fact had a convincing case both for independence and, according to Bellamy, for inclusion in the peace process.⁷¹ It had been a federal entity under the 1974 constitution and had been directly represented in the federal institutions. Consequently, given the dissolution of the Federation, it should also emerge as an entity entitled to constitute itself as a state.⁷²

⁶⁶ St Egidio Education Agreement, 1 September 1996, Weller, 1999a, p.93

⁶⁷ Mertus, 2000: 'Reconsidering the Legality of Humanitarian Intervention: Lessons from Kosovo', *William and Mary Law Review*, 41, p.1743-4

⁶⁸ Bellamy, 2002b, p.31

⁶⁹ *ibid.* p.26-8; Bellamy, 2000, p.104; ICG report, *Intermediate Sovereignty as a Basis for Resolving the Kosovo Crisis*, 1998, p.25-35. This states that *uti possidetis* 'generally provides that an entity in legitimate possession of territory at the time of a dispute over ownership or at the time of the decolonization or dissolution of a state be entitled to retain and be granted permanent legal right to such territory and that in such circumstances the borders of the territory as they exist at such time should not be modified. In particular, the doctrine provides a valid basis for declaring that the borders of a Kosovo holding international status would be exactly the same as the internal borders established by the 1946 and 1974 constitutions.'

⁷⁰ Sell, 2002, p.109

⁷¹ Bellamy, 2002b, p.28

⁷² Weller, 1999a, p.76; see Opinion No. 1 of the Arbitration Commission on the former Yugoslavia, 11 January 1992, Weller, p.81; ICG Balkans Report No. 46, 9 November 1998, p.28-9; Richard Caplan, 1998: 'International Diplomacy and the crisis in Kosovo', *International Affairs*, 74 (4), p.748. The main reason for Kosovo's lack of republic status was the Yugoslav constitutional distinction which determined that nations, not nationalities, should have republic

However, many leading politicians maintained their insistence on the integrity of Yugoslavia, a theme which was to remain constant during the 1990s and which further confused matters in the face of their continuing support for Rugova and non-violent resistance.⁷³

Sell argues that a crucial mistake made by Rugova and the Kosovo Albanians, lay in believing that the support of the international community for the policy of non-violent resistance would transform into material results: 'since the Serbs would never voluntarily relinquish control of Kosovo, Rugova's strategy only made sense if the international community were willing to force the Serbs to reach an agreement on Kosovo acceptable to its majority Albanian inhabitants.'⁷⁴ If the international community's assessment indicated that non-violence by itself was unlikely to achieve anything – certainly not the Kosovar aim of independence - and if they were thus aware of the pointlessness of their own encouragement of the non-violent resistance strategy without substantive support, it is arguable that this encouragement of false hope played a role in the eventual shift from non-violence to violent resistance with the emergence of the KLA in 1998 as well as foreclosing possible alternative responses by the international community at a later date as the conflict developed. In the context of good international citizenship, support for the non-violent approach should not have been a matter of convenience, but required concrete support and dialogue in order to maintain alternatives and avoid the slide into violence.⁷⁵

The Albanian conviction that eventually the justice of their cause as a result of their non-violent resistance would be recognised was aided by the inconsistency of signals from the international community. The US Secretary of State, James Baker, came to Belgrade on 21 June 1991 to tell the leaders of the six republics, specifically Slovenia and Croatia, that the US would not recognise them if they tried to secede from Yugoslavia. He also told them, specifically Serbia, that the US would oppose any

status. This was a distinction which the EC and the international community used to its advantage to enable it to draw the line between legitimate statehood and secession.

⁷³ 'No one should misunderstand our position on the core issue involved. We support neither independence nor the maintenance of the status quo. [...] We support an enhanced status for Kosovo within the Federal Republic of Yugoslavia which a substantially greater degree of autonomy would bring and recognize that this must include meaningful self-administration.' Contact Group statement, 9 March 1998 meeting, S/1998/223, p.5

⁷⁴ Sell, 2002, p.92

⁷⁵ In reality, it must be recognised that the international community were opposed to independence, and paradoxically, although for different reasons, were as anxious as Milošević to avoid independence. Caplan, 1998, p.755

attempt to prevent secession by force. The EC concurred; seven months later, however, this policy was worthless, and the EC/EU led the world in recognising Croatia and Slovenia. Judah emphasises that we should not underestimate the importance of this radical policy reversal. From then on, Kosovars never believed that US or European policy was unchangeable when it declared that Kosovo did not have the right to independence because of its provincial status.⁷⁶

The acknowledgment of *The Kosovo Report* that had more attention and commitment been paid to Kosovo prior to the rise of the KLA then the war might have been avoided demonstrates the need for normatively justified critique relating to practices of exclusion and coercion.⁷⁷ In August 1992, CSCE Missions of Long Duration were sent to Kosovo and Vojvodina, however, Milošević refused to renew their visas and they were forced to leave in July 1993. Human rights violations were purportedly lower when the Missions were present and opportunities for dialogue existed and were recognised by the Mission in Kosovo.

The Dayton Conference in 1995 is perceived by many to be a key turning point in the run up to the conflict.⁷⁸ Intransigence emanating from Belgrade prevented any deal being arrived at regarding Kosovo, although the international community did little to counter this intransigence until 1998. In fact, Kosovo was ‘deliberately sidelined’ as a result of the desperation to stop the war in Bosnia-Herzegovina.⁷⁹ Milošević was seen as a key player, necessary to ensure the agreement of the Bosnian Serbs, and the negotiations would have been jeopardised by Kosovo’s inclusion. This assumption was not seriously tested by Lord Carrington, Lord Owen or Richard Holbrooke.⁸⁰ The result of this exclusion was to ‘indirectly legitimate Milošević’s role in Kosovo, and to send a clear signal to both Milošević and the Kosovar Albanians that Kosovo was definitely *off* the current international agenda.’⁸¹ This message had three serious consequences which ratcheted up the tension and the likelihood of war:

it gave the FRY a free hand in Kosovo; it demoralized and weakened the non-violent movement in Kosovo, which felt betrayed by the international

⁷⁶ Judah, 2002, p.76

⁷⁷ *The Kosovo Report*, p.56

⁷⁸ Carole Rogel, 2003: ‘Kosovo: Where It All Began’, *International Journal of Politics, Culture and Society*, 17(1); Christine Chinkin, 2000: ‘The State That Acts Alone: Bully, Good Samaritan or Iconoclast?’, *European Journal of International Studies*, 11(1), p.34

⁷⁹ *The Kosovo Report*, p.59

⁸⁰ Bellamy, 2002b, p.65

⁸¹ *The Kosovo Report*, p.59

community and began to doubt the effectiveness of its own tactics; and it led directly to a decisive surge of support among Kosovars for the path of violent resistance as the only politically realistic path to independence.⁸²

The continuing prevalent perception within the EU and the wider international community that Kosovo was an internal Yugoslav problem entrenched the lack of active international support for the non-violent strategy, compounding Rugova's marginalisation and arguably resulting in the increase of state violence against the Kosovar community.⁸³ Post-Dayton, it became clearer that the consensus that non-violence was the best way forward was beginning to fall apart. Factions advocating violence were emerging more strongly as Rugova began to be undermined.⁸⁴ Holbrooke is defensive about the failure to discuss it at Dayton: 'Kosovo would have happened anyway, and it is part of the mythology that Dayton was responsible and I don't believe it. What really drove this thing was Rugova's failure to produce results and the Serb crackdown.'⁸⁵ Others such as Hashim Thaçi and Judah disagree, arguing that:

unrecognised in the West at the time, Dayton was an extraordinary trauma for the Kosovo Albanians. And it was a trauma because it confirmed to them in the most dramatic and humiliating way that Rugova's policy of passive resistance had failed. And not only that, but that his idea that they would be rewarded for their 'good behaviour' by Western countries had been just plain wrong. While they had had an entity, which had played its part as a federal unit in the old Yugoslavia, they were now without rights while, in their view, the campaign of genocide led by Bosnian Serb leaders was being rewarded.'⁸⁶

According to *The Kosovo Report*, it was unlikely that the Dayton process would have arrived at a solution for Kosovo, although 'the earlier "hands off Kosovo" message of President Bush could have been reiterated; or Dayton could have been used as a forum to encourage FRY acceptance of an NGO presence in Kosovo – and even in the rest of Serbia.'⁸⁷ An additional problem not recognised by the international community while it continued to encourage the non-violent resistance movement was the continuing

⁸² *ibid.*

⁸³ Bellamy, 2002b, p.11

⁸⁴ Dana Allin, 2002: 'NATO's Balkan Interventions', *Adelphi Paper* 347, London, Oxford University Press, p.51

⁸⁵ Judah, 2002, p.124, citing Holbrooke

⁸⁶ *ibid.* p.125. See Hashim Thaçi: 'Kosova', from Buckley (ed.), 2000, p.190; Caplan, 1998, p.750

⁸⁷ *The Kosovo Report*, p.60

strain and difficulties of sustaining the parallel system in the long-term as a viable alternative functioning system. In November 1997, a State Department official told NGOs lobbying for support and aid that the US government “cannot support civil society because it would lead to secession.”⁸⁸ Once again the paradox of the international community’s approach is revealed. They preferred resistance to remain non-violent as this meant that they could encourage it without being required to act positively, despite the fact that the purpose of such non-violent resistance contravenes international law and could therefore never receive the approval of the international community.

The international community continued to give out mixed signals. While Milošević had been warned to stay away from Kosovo, he received repeated assurances that the integrity of Yugoslavia was paramount and that the status of Kosovo within the FRY was an internal matter. In December 1995, after Dayton, Rugova was told by the US administration that the US would insist Milošević begin a dialogue with the Albanians after the deployment of NATO troops to Bosnia. Furthermore, they would maintain sanctions until Kosovo’s autonomy was restored.⁸⁹ Once more nothing happened. In early 1996, the EU resumed political and economic relations with the FRY, which meant that it acknowledged Kosovo as part of Serbia. Those few voices calling for further international engagement in Kosovo were essentially ignored.⁹⁰ Although the leaders remained firmly attached to their demands, there were enough ‘signs of moderation on both sides of the ethnic divide to suggest that if Dayton had been promptly followed by a major, U.S.-led diplomatic offensive, it might not have been too late to broker a compromise settlement in Kosovo.’⁹¹ None of these ideas were taken up: for example, one option being considered by some Serb intellectuals suggested the partition of Kosovo with the predominantly Serb-populated northern part, together with areas around Serb monasteries and other historical sites, remaining part of Serbia, and the rest of Kosovo being allowed to go its own way.⁹² Other alternatives included Demaçi’s Balkania (Three Republic approach), and Agani’s plan for a

⁸⁸ *ibid.* p.61

⁸⁹ Sell, 2002, p.274

⁹⁰ *ibid.* p.275

⁹¹ *ibid.* See Stefan Troebst, 1998: *Conflict in Kosovo: Failure of Prevention? An Analytical Documentation 1992-1998*, European Centre for Minority Issues, Flensburg, Working Paper, No. 1, p.23-5

⁹² Sell, 2002, p.276

negotiated transition under a UN Protectorate.⁹³ The Transnational Foundation for Peace and Future Research proposed the United Nations Temporary Authority for a Negotiated Settlement (UNTANS) in 1996, which listed a number of imaginative procedural and dialogic suggestions as did the European Action Council for Peace in the Balkans.⁹⁴

The Kosovo Report highlights the failure to respond adequately at each stage of the developing conflict and discusses a number of moves that the international community might have made in order to try and prevent conflict. In an acknowledgement that at ‘each stage in the conflict, the diplomatic options narrowed’, the report comes to a similar empirical conclusion as will be suggested theoretically:

The decision not to deal seriously with the Kosovo issue in 1991 created obstacles to action in 1992-3. The decision not to confront the intransigence of Milosevic in 1993, and above all the neglect of Kosovo during the Dayton negotiations, contributed to the developments that were to escalate the conflict in 1996-7. The inadequacy of diplomatic efforts in the period 1997-8 was to culminate eventually with Rambouillet where the space for maneuver was extremely limited.⁹⁵

The report suggests that conflict prevention should have focused on establishing a presence on the ground to provide protection against human rights abuses, to support and facilitate parallel institutions, and to encourage dialogue. More effort should have been aimed at ensuring a strong international presence in Kosovo, improving conditions of everyday life and ‘fostering communication among Serbs and Albanians inside Kosovo’ and elsewhere. More could also have been done to support the initiatives of the parallel society. Universities, for example, in other nations did little to support the alternative educational system developed in the early 1990s.⁹⁶ The LDK was a willing diplomatic partner and open to forms of non-forceful pressure that might have been applied. Their commitment to non-violence provided ‘potential avenues of civilian international involvement that were less intrusive, and not as threatening to the sovereignty and security concerns of the FRY as an armed presence.’⁹⁷ While this does not deny that the LDK became increasingly inflexible and uncompromising in their demands for independence, by failing to take the demands of the non-violent movement

⁹³ Clark, 2000, p.162; Judah, 2002, p.95; Caplan, 1998, p.757

⁹⁴ Troebst, 1998, 87-89

⁹⁵ *The Kosovo Report*, p.62-3

⁹⁶ *ibid.*

⁹⁷ *ibid.* p.64

seriously at an early stage the international community sent out the signal that ‘violence produces results and is a more effective political strategy.’⁹⁸

Violence did not break out immediately after the shock of Dayton for the Kosovo Albanians, nor was Rugova undermined straight away. This was in part because the LDK controlled either directly or indirectly, most of the Albanian-language media.⁹⁹ Founded in 1993, the KLA was the armed wing of the LPK – a small political party called the Popular Movement for Kosovo. Support came from several sources: from those who were jailed after the 1981 demonstrations, former Albanian police officers who had been fired or arrested as the Serbs took over Kosovo and local elders and clan leaders - although initially firm supporters of the LDK, they became more sympathetic to armed resistance as discontent grew.¹⁰⁰

The political and social collapse of Albania in 1997 also helped to move the Kosovo Albanians closer to an armed resistance, leaving many arsenals unprotected which provided a supply of weapons to the KLA. The first significant armed actions did not take place until early 1996.¹⁰¹ On 14 February 1996, the KLA, still only consisting of approximately 150 men, issued communiqué 18 which stated that:

We let the occupiers from Belgrade know that our actions up until now are just first warnings ... Dialogue about withdrawing the military and police from the Republic of Kosova should start immediately. We call on powerful international centres such as the USA to recognise the independence of Kosova for which the Albanians have declared themselves in a referendum otherwise war is Kosova is inevitable.¹⁰²

In August 1997, events indicated a move away from non-violent resistance. Students in Priština began protesting at the failure of the authorities to implement the 1996 Rome agreement on education. In December 1998, the KLA issued their first public statement, which warned that the ‘Serb “occupiers” would face increasing resistance and – warning against continued Western reluctance to deal with the KLA – said the movement would accept no agreement on Kosovo’s status that it had not been a party to.’¹⁰³ Husanović links the radicalization of Kosovar Albanian politics and the resultant marginalization of alternative forms of community directly to the failure of the

⁹⁸ *ibid.*

⁹⁹ *ibid.* p.126

¹⁰⁰ Sell, 2002, p.278

¹⁰¹ *ibid.* p.279

¹⁰² Judah, 2002, p.131

¹⁰³ Sell, 2002, p.279

international community to take any notice of the non-violent strategy of Kosovar Albanians.¹⁰⁴

Reports by International Crisis Group indicate awareness that the KLA should have been recognised as one of the actors in Kosovo from mid-1998 onwards:

The only lasting solution is a political settlement reconciling legitimate Serb and ethnic Albanian interests in the province. [...] For a fruitful dialogue, it is critical to choose the right interlocutors. Whereas before the conflict had escalated into a war, most Kosovo Albanians were united behind Rugova's pacifism, the fighting is creating new political realities. Despite recent setbacks, the UCK [KLA] is gaining credibility and that credibility is likely to grow the longer the fighting drags on. Meanwhile, Rugova's position is increasingly weak. The time when international mediators could have looked to Rugova alone to deliver a solution on behalf of Kosovo's Albanians has passed.¹⁰⁵

The reality was increasingly that although Rugova's pacifist message was one which the international community wished to hear, he was becoming alienated from ordinary Kosovo Albanians.

Finally, diplomats were beginning to realise that, after years of warning about the imminence of conflict, this time it might be true. On 23 February 1998, Robert Gelbard, US special envoy to the region, visited Priština, criticising the violence of the Serbian police and then attacking the KLA: 'We condemn very strongly terrorist actions in Kosovo. The UÇK is, without any questions, a terrorist group.'¹⁰⁶ This was, Judah argues, a turning point: 'If the KLA were a terrorist group and the representative of the most powerful nation on earth said so, then there could be no objection to the Serbian police moving in to finish it off. No doubt unintentionally, the US had appeared to give Milošević a green light to act.'¹⁰⁷ The naming of the KLA as terrorists in this fashion was a mistake on the part of the international community and demonstrated a lack of understanding. Troebst argues that:

The international community's stereotypical repetition of the view that any solution to the Kosovo problem is thinkable only within the borders of the FRY – even of Serbia – was (and still is) an indirect support for Milosevic's interpretation of the conflict as an internal affair. Moreover, by excluding *a priori* the option of independence for Kosovo and by

¹⁰⁴ Husanović, from Booth (ed.) 2001, p.270

¹⁰⁵ ICG Balkans Report No. 41, 2 September 1998, p.15

¹⁰⁶ Judah, 2002, p.138

¹⁰⁷ *ibid.* Other Balkan observers such as Caplan, 1998, p.753-4; Daalder and O'Hanlon, 2000: *Winning Ugly: NATO's War to Save Kosovo*, Brookings Institution Press; Clark, and Weller also concur with this interpretation.

following Milosevic in labelling violent Albanian resistance to Belgrade's policy of oppression explicitly as 'terrorism', the West – primarily the US and the Contact Group - legitimised Serbian police brutality and thus paved the way to Drenica.¹⁰⁸

On 5 March 1998, the police attacked the Jashari compound in Donji Prekaz in the Drenica valley, killing 58 people, securing a martyr, Adem Jashari, for the KLA and serving as a catalyst for further violence.¹⁰⁹ Washington's response to the escalating crisis in Kosovo was 'complicated by an unwillingness to back its diplomatic efforts with armed force and by a lingering nostalgia that the conflict in Kosovo, like Bosnia, could be resolved by dealing with Milošević.'¹¹⁰ Diplomatic efforts were also crucially delayed by ongoing power struggles within the US administration.¹¹¹ In March, Rugova requested Holbrooke to take over from Gelbard and become a mediator 'without preconditions.' Eventually, in May, in the face of the deteriorating situation, Albright was persuaded to accept Holbrooke. Holbrooke's approach was to deal directly with Milošević in order to secure a deal. Holbrooke persuaded Milošević and Rugova to meet. However:

as a reward to Milosevic for meeting Rugova the United States prevailed on the Contact Group to relax the sanctions on foreign investment that it had painfully agreed to only a few days earlier. The U.S. move weakened Rugova's already crumbling position in Kosovo and also confused allies, with its apparent flip-flops between threats and rewards to Milosevic.¹¹²

On 11-12 June, NATO defence ministers ordered the organisation's military chiefs to prepare a range of options, should the use of force become necessary. On 12 June 1998, the Contact Group called for an immediate ceasefire and the 'withdrawal of security units used for civilian repression' from the province and demanded that the Kosovo Albanian leadership 'make clear its rejection of violence and acts of terrorism'.¹¹³ On 15 June 1998, NATO began an aerial exercise, Determined Falcon, which involved military flights over Albania and Macedonia in a show of force. According to Sell, 'General Naumann later assessed that Milošević "rightly concluded that the NATO threat was a bluff ... and finished his summer offensive."¹¹⁴ On 16

¹⁰⁸ Troebst, 1998, p.104

¹⁰⁹ Judah, 2002, p.140

¹¹⁰ Sell, 2002, p.281

¹¹¹ Judah, 2002, p.144

¹¹² Sell, 2002 p.283

¹¹³ *ibid.* p.165

¹¹⁴ Sell, 2002, p.287

June 1998, Milošević went to Moscow to meet President Yeltsin who used the visit to obtain Milošević's agreement to allow Russian, US and EU diplomatic observer missions in Kosovo (this was to become KDOM in July¹¹⁵). For Milošević this was all part of the game: 'Accepting the small missions with vague guidelines and no enforcement powers bought time and deflected the threat of more serious outside involvement.'¹¹⁶

During the summer of 1998, Ambassador Chris Hill, Holbrooke's deputy, tried to put together negotiations between the Serbs and Albanians. While Milošević continued to reject foreign mediation, the Albanians were divided amongst themselves both about objectives and who should represent them. The US began to meet discreetly with KLA representatives in June 1998, but continued to see Rugova as the chief negotiating partner, and, of vital importance, resisted including the KLA in the negotiating process.¹¹⁷ It has been argued that Western governments held back from condemning the Serbian attack in July because they wanted to 'see the UCK weakened *vis-à-vis* Rugova in any negotiations that took place with Milosevic'.¹¹⁸ Blerim Shala claims that it 'became apparent that Western civilization was siding with the Albanian position on the expulsion of the Serb regime from Kosova.'¹¹⁹ For the KLA and most Albanians this indicated support for independence. Not so for the US who considered the KLA 'guerrillas' and terrorists, and whose aim for Kosovo was limited to autonomy and security within the FRY.¹²⁰ As the humanitarian situation worsened, it became harder for the West to do nothing. Backing down was not an option without appearing humiliated after its hardline rhetoric. On 24 September 1998, the NAC approved the issuing of an 'Activation Warning' (Actwarn).

1.4 Legitimacy and Inclusiveness of the Holbrooke Agreement

The Holbrooke agreement offered another key opportunity for dialogue and for the initiation of negotiations between Serbs and Albanians. Once again, the focus on

¹¹⁵ Weller, 1999a, p.288

¹¹⁶ Sell, 2002, p.286

¹¹⁷ Madeleine Albright and Bill Woodward, 2003: *Madam Secretary – A Memoir*, UK, Macmillan, p.386

¹¹⁸ Wheeler, 2000, p.260; Tim Youngs, 1998: *Kosovo: The Diplomatic and Military Options*, House of Commons Library Research Paper 98/93, 27 October, p.11-12

¹¹⁹ Blerim Shala: 'Because Kosovars Are Western, There Can Be No Homeland without a State', from Buckley (ed.), 2000, p.186

¹²⁰ Albright, 2003, p.385

reaching agreement with Milošević led to the rapid exclusion of the Kosovo Albanians, precluding the possibility of full acceptance by the Kosovars of any terms agreed to by the Serbs. Holbrooke returned to Belgrade in October 1998 with two aims: to put in place a verification system on the ground in Kosovo to monitor Serb behaviour and to draw up an interim agreement between Serbs and Kosovo Albanians based on Hill's approach the previous month. The first draft was presented to Serbs and Albanians on 1 October. It attempted to avoid the issue of the status of Kosovo and focus on the assignment of powers to different levels of administration. Both sides reacted uneasily but did not reject it outright. For Kosovo, however, there was a significant problem. The draft allowed for power to be located not in Kosovan public institutions but in the individual communes or local districts. Consequently, Kosovo 'as an entity would not enjoy any significant element of legal personality [...] In deference to Serbia, the draft also contained very detailed provisions which, it was feared, would subject Kosovo to divisive [*sic*] ethnic politics.'¹²¹ The communes would retain significant powers of self-administration and could unite to form 'self administering regions comprising multiple communes'; this technically enabled those few Serb majority communes to form an ethnic Serb entity within Kosovo.¹²² Furthermore, another layer of authority was added in the form of 'national communities', in other words, all ethnic groups would enjoy additional rights regardless of whether or not they constituted an ethnic majority in a particular commune and would be granted additional institutions for self-administration and even courts. Kosovo was opposed to this concept, which was based on ethnic division rather than a multicultural society with equal rights for all. Serbs, however, saw it as a means to secure a separate status for themselves. Although the Assembly in Kosovo would enjoy fairly wide legislative competence, voting could be blocked by any national community. The FRY would retain power in relation to territorial integrity, a common market, monetary policy, defence and foreign policy and a federal police presence.¹²³

While Kosovo formulated its response to the first draft, however, the Holbrooke agreements were concluded without consultation with the Albanians. The unilateral 11-point statement issued by Serbia claiming to present the basis for a political settlement to be completed by 2 November, unlike the Hill draft, strengthened the element of

¹²¹ Weller, 1999a, p.349

¹²² *ibid.*

¹²³ *ibid.*

territorial integrity and sovereignty of the FRY, thus suggesting the continued subordination of Kosovo within the FRY.¹²⁴ Faced with the Holbrooke agreement, Kosovo issued its own fundamental principles for a settlement, by which time a more detailed Hill draft had emerged.¹²⁵ This draft ‘enhanced the status of Kosovo as a legal entity in its own right somewhat. [...] On the other hand, the provisions on communes and national communities, of essential concern to the FRY/Serbia, had also been further entrenched.’¹²⁶ Serbia reneged on its agreement to commit to the Hill plan on 2 November, thus throwing away an opportunity to achieve a settlement that might have been accepted by all parties.¹²⁷

To back up his diplomatic efforts, Holbrooke went with the threat that if Milošević did not end Serb forces’ offensive, then the West would respond with a phased air campaign.¹²⁸ The NAC approved a plan for phased air operations called ‘Allied Force’. General Short, who was with Holbrooke, sheds light on the structure and quality of the dialogue in such a way as to raise significant concerns relating to coercion, exclusion and inequality of participation. When the negotiations were at an impasse, Milošević and Holbrooke would ‘withdraw to a separate room’: ‘The rest of us would hear raised voices, occasionally a hand slapping the table, and they’d come back out with some level of agreement and we’d press on.’¹²⁹ On 12 October 1998, the NAC approved “activation orders” that allowed air strikes to begin in ninety-six hours, should there be no agreement. Holbrooke and Short believe that it was the threat of imminent force that persuaded Milošević to come to a deal on 12 October. An ultimatum of this kind was unprecedented as there was no Security Council resolution mandating military enforcement of its decisions.¹³⁰ The Holbrooke agreement consisted of Serbian agreement to scale down Serbian military and police presence to their pre-war levels and to begin serious negotiations with the Albanians. Two thousand monitors (the Kosovo Verification Mission) would come to Kosovo under the auspices of the OSCE, encouraging Albanian refugees to return home, and NATO would have the right to make aerial surveillance flights above the province to verify whether the authorities

¹²⁴ For the 11-point statement detailing the Yugoslav government’s interpretation of the Holbrooke agreement see S/1998/953

¹²⁵ Weller, 1999a, p.350, see Kosovo statement, 3 November 1998, p.369

¹²⁶ *ibid.*

¹²⁷ *ibid.*

¹²⁸ Sell, 2002, p.288

¹²⁹ Judah, 2002, p.186

¹³⁰ Although both UNSCR 1160 and 1199 were passed under Chapter VII.

were carrying out their commitments.¹³¹ It also began assembling a NATO ‘Extraction Force’ based in Macedonia. These troops acted as a safeguard for members of the KVM and as a covert threat. This does not mean, however, that anyone was seriously considering a NATO-led ground force for Kosovo.¹³²

Nonetheless, the October agreement contained serious flaws:

It was vague on the terms of the withdrawal of Serb forces from Kosovo, ambiguous about the verification authority of the monitors, and lacked any means of enforcement. The absence of any requirement for reciprocal actions by the KLA was a problem as well. Albanians did not participate in the October talks and the agreement included nothing on Kosovo’s political status – although U.S. officials told that media during the talks that Milosevic was ready to agree to a unilateral statement granting limited autonomy to ethnic Albanians in the areas of local government, schools, and policing, and promising a full review of the province’s status in three years’ time.¹³³

While the failure of the agreement may have improved the case for intervention later on as the available options were narrowed down, this was yet another missed opportunity to prevent the conflict escalating and the slide into a military and strategic mindset.

In addition to the lack of an enforcement mechanism, the other serious flaw in the Holbrooke Agreement was the absence of the KLA or the LDK. The exclusion of the Kosovo Albanians raises questions concerning the legitimacy of the agreement. As Weller notes, it is curious that no representative of Kosovo, elected or otherwise, was consulted about the terms of the agreement or invited to accede to it considering that the KVM was intended to support the establishment of a political settlement and therefore would assist in the building of political institutions in Kosovo.¹³⁴ Consequently, the KLA did not, unsurprisingly, consider themselves to be bound by it. For a deployment like the KVM to contribute towards preventing war, its arrival must be timely: ‘This mission was at least a year late and it was hastily assembled. Even upon its withdrawal after five months, it had reached only 67 per cent of its intended complement.’¹³⁵ Belgrade was entitled to retain control over the main roads and highways through permanent observation posts and special patrols. As the use of force was, to a degree, permitted, it seemed naïve of the international community to imagine that the FRY/Serb

¹³¹ Judah, 2002, p.186-7. Two separate agreements were signed on the 15 Oct and 16 Oct with NATO and the OSCE respectively.

¹³² *ibid.*

¹³³ Sell, 2002, p.289-90

¹³⁴ Weller, 19991, p.289

¹³⁵ Clark, 2000, p.179

forces would adhere strictly to the limits imposed on them and not use this to their advantage, quite possibly to provoke the KLA to retaliate against them in order to provide a pretext to react with force.

In January 1999, it was clear that the Holbrooke Agreement was disintegrating. On 15 January fighting broke out around the village of Račak and Serbian police entered the village. The final death toll in Račak was forty-five. Nine KLA soldiers were also found dead. The next day, William Walker, head of the KVM, immediately accused the Yugoslav authorities of responsibility.¹³⁶ Many argue that Račak was the trigger factor for the next stage – the use of force; although not the only atrocity, it was picked up by the international media. After Račak, Albright put together a new strategy ‘under which both sides would be presented with an ultimatum to accept by a certain date an interim deal that would establish Kosovo as an international protectorate with a NATO force on the ground to implement it.’¹³⁷ Albright felt that the situation was ‘emerging as a key test of American leadership and of the relevance and effectiveness of NATO.’¹³⁸ This was later to become a point of contention as critics argued that concern for a future role for NATO dictated the pace and direction of the talks rather than a desire to come to terms through dialogue.¹³⁹ Albright went on to say that alongside the celebrations for NATO’s fiftieth birthday, the Alliance would ‘look like fools proclaiming the Alliance’s readiness for the twenty-first century when we were unable to cope with a conflict that began in the fourteenth.’¹⁴⁰ This indicates a willingness to subscribe to certain representations of identity which was unhelpful in fully understanding the dynamics of the current conflict.

Serbs and Albanians were summoned to talk peace at a château in Rambouillet, southeast of Paris on 6 February 1999. The diplomatic half of Albright’s strategy required them to negotiate Kosovo’s future on the basis of draft proposals already worked out by Chris Hill. The other half of the strategy, supplied by the credible use of force, was supported by the threats announced by the NAC on 30 January 1999. The Serbs were told to conform to the commitments agreed with Holbrooke in October and to end their ‘excessive and disproportionate use of force’. In the absence of these steps being taken, ‘NATO is ready to take whatever measures are necessary [...] The

¹³⁶ Judah, 2002, p.193

¹³⁷ Sell, 2002, p.295

¹³⁸ Albright, 2003, p. 391

¹³⁹ Paul Robinson, 1999: ‘Ready to kill but not to die’, *International Journal*, 54(4)

¹⁴⁰ Albright, 2003, p391

Council has therefore agreed today that the NATO Secretary General may authorise air strikes against targets on FRY territory.’¹⁴¹ Western leaders had decided that a peace deal without a NATO-led force would never be implemented. Russia did not object to a peacekeeping force, in which it was certain to participate, as long as it was invited into Kosovo by the Yugoslav authorities.¹⁴² This was to become a matter of contention during the negotiations and was to impede agreement once more.

1.5 Conclusion

The divisive nature of Kosovo Albanian politics is rarely discussed at an international level, indicating either a lack of knowledge about the political realities or a desire not to have to address that which might change the understanding of the problem faced. Rugova also contributed to obstacles facing the possibilities of a genuine dialogue through failing to put together a negotiating team which was representative or to which he would listen and share power with.¹⁴³ The continuing preference of the international community for negotiating exclusively with Rugova exacerbated the situation as it meant that any likelihood of reaching a lasting political settlement was becoming more difficult, since any settlement reached by Rugova would not be acceptable on the ground in Kosovo. Isa Blumi makes a similar point when she argues that ‘Kosova’s problem grew out of control because Western policies relied on individuals who were alienated from their own populations, rather than engage the components of conflict.’¹⁴⁴ Although US mediators increasingly understood the power of the KLA, it was not until 1999 at the Rambouillet talks that they were drawn into any kind of multilateral dialogue. Meetings between the KLA and US mediators prior to Rambouillet were largely carried out with the aim of persuading the KLA to accept Rugova’s leadership in return for participation in talks.¹⁴⁵ This failure to recognise the realities on the ground, combined with a persistent labelling of the KLA as ‘terrorists’ did nothing to facilitate the construction of genuine talks.

Concerns over the structure of the talks between Milošević and Rugova in May 1998 were raised by the International Crisis Group who recognised that key to any

¹⁴¹ Judah, 2002, p.195

¹⁴² *ibid.* p.196

¹⁴³ ICG Report No. 41, p.11-12

¹⁴⁴ Blumi, 2002: ‘A Story of Mitigated Ambitions: Kosova’s Tortuous Path to Its Postwar Future’, *Alternatives: Turkish Journal of International Relations*, 1(4) p.3

¹⁴⁵ ICG Report No. 41, p.13

success is the framework in which talks take place.¹⁴⁶ The concessions granted to Milošević in order for these talks to take place served to jeopardise the future of negotiations over Kosovo's future. By agreeing to talk to Rugova, Milošević diverted the possibility of further economic sanctions being imposed by the Contact Group; such sanctions might have pressured him to enter into more serious negotiations over Kosovo. Furthermore, international pressure on Rugova to agree to the meeting which led him to drop the key Albanian demand for foreign mediation created more rifts among the Albanian leadership and thus weakened the Albanian negotiating position. So, despite the grand claims made for these talks between Milošević and Rugova, they were constructed on grounds that, having effectively reassured Milošević that further steps would not be taken against him and weakened the Albanians, made it almost certain that they would fail to be 'a step towards peace'. The role of US diplomats also further established divisions within domestic Kosovar politics as 'Holbrooke reportedly promised Rugova that the US government would lend him strong personal political support and would take steps to curtail the financial support his rivals in the KLA are receiving from Albanians living abroad.'¹⁴⁷ Rugova placed himself in the position, with the aid of the international community, where he had to distinguish himself from the KLA in some way, despite the similarity of their political aims: independence for Kosovo. Consequently, between Milošević's manoeuvrings and the international community, Rugova would either have had to abandon his call for independence, or openly support the KLA. Internal politics would not allow him to do either, so any attempt to create an effective negotiating team was, to all intents and purposes, being blocked by the actions of both internal and external actors.

It is clear that Kosovo Albanians were treated differently from other national groups in the former Yugoslavia and this approach ensured that they would not become a major international concern until 1998. It is the contention of this thesis that the international community's lack of recognition of the complexity of the conflict, reluctant engagement and frequent exclusionary practices, were not only a cause of the conflict which broke out in 1998, but also significantly narrowed the scope for more moderate solutions; fewer Albanians were prepared to accept anything less than full

¹⁴⁶ *Inventory of a Windfall: Milosevic's Gains from the Kosovo Dialogue*, ICG Yugoslavia report, no. 3, executive summary

¹⁴⁷ *ibid.* p.2

independence from 1998 onwards than might have been the case earlier.¹⁴⁸ The tendency of the international community was to ‘prescribe’ solutions and, unfortunately, ‘after the sabotage of the Carrington Plan, this degenerated further into an inconsistent series of deals according to who was willing to make war, with what strength and for what purposes.’¹⁴⁹ Although there were different emphases at times, the EU and the USA were agreed on their prescribed solution – autonomy within the FRY. Russia and the West decided that the Kosovo Albanians did not have the right to secede in self-defence in the face of state persecution, consequently, excluding:

what could have been the toughest sanction against the Milosevic regime, a political rather than an economic sanction: to suspend FRY’s claim to Kosovo. If FRY was unfit to govern Kosovo, then its claim to sovereignty could be suspended. Instead, the USA and the EU insisted on exactly the reverse – that Kosovo Albanians had to abandon their declared ‘independence’.¹⁵⁰

Judah argues that the conflict became perceived by Westerners as one of human rights, yet in reality it was a struggle between two peoples for control of the same piece of land. The incompatible claims of the Serbs and Albanians to the territory of Kosovo were grounded in ‘symbolic constructions of Kosovo as a homeland.’¹⁵¹ However, human rights have become a key factor in shaping contemporary international politics and the level of human rights abuses in Kosovo carried out by the Serbian authorities not only became a weapon for the Kosovars, but also the discourse around which the case for war against the Serbs was built. This preference for the human rights discourse hid the fact that the real issue at stake for many Kosovars was self-determination – an issue which NATO’s intervention did nothing to resolve and which the international community considered illegitimate.

In denying the possibility of internationalisation of the conflict, accepting Serbia’s claim to Kosovo, and refusing the Kosovo Albanians a place in the peace process, the international community directly contributed to Rugova’s marginalisation and the rise of the KLA. Bellamy indicates clearly that the conflict which broke out in

¹⁴⁸ This interpretation is also made by Caplan, 1998, p.746

¹⁴⁹ Clark, 2000, p.160

¹⁵⁰ *ibid*

¹⁵¹ Kostovicova, 2005, p.14. A look at Albanian literature and poetry indicates that the ‘natural features of the terrain became ‘poetic spaces’ when imbued with historical memories, myths and legends, as well as with the heroic deeds of brave ancestors, all of which were told and retold in the nationalist language.’ (p.15) For example, see Ali Podrimja, 2006: *A Split Stone: An Anthology of Albanian Poets for Kosova*, Prishtina, DÇJ Rozafa

1998 was not despite international efforts in Kosovo but because of them.¹⁵² In a similar argument, Stefan Troebst argues that:

The international community proved unable to develop a promising strategy of preventing the Kosovo conflict from escalating. To make things worse, it naively, yet unintentionally, contributed to such an escalation by prejudicing the outcome of Kosovo Albanian-Serbian negotiations on the future status of Kosovo, and by a rash condemnation of counter-violence to Belgrade's state terrorist-like oppression.¹⁵³

Moreover, in addition to a lack of coherence to the international community's policy, engagement, when it came, was often declaratory and after an escalation in the conflict.

Booth argues that there was:

ample opportunity to employ conflict prevention techniques: increased recognition and support could have been given to the Rugova approach; opposition groups to Milosevic in Belgrade could have been helped; much greater resources could have been allocated to the Organisation for Security and Development in Europe to help support and monitor the maintenance of minority rights; the Kosovo situation could have been placed high on the agenda at Dayton; a comprehensive stabilisation plan for the Balkans could have been attempted, and backed by serious economic resources (yet probably less than the eventual bill for the war and its long-term costs); and the Russians could have been consulted, used and integrated in the process of Balkan stabilisation fully and from the beginning.¹⁵⁴

Having indicated a number of areas of concern over the management of the Kosovo conflict by the international community, the question then arises, where might we look for alternative approaches which address issues such as exclusion, coercion and illegitimacy, which were identified in many of the major moments of international engagement. It is with these issues in mind that we now turn to concepts in international relations and critical theory in an attempt to develop a communicative framework which, on the one hand, offers justified grounds for critique and, on the other, a normative approach to dialogue.

¹⁵² Bellamy, 2002b, p.66

¹⁵³ Troebst, 1998, p.104

¹⁵⁴ Ken Booth, 1999: NATO's Republic Warnings from Kosovo', *Civil Wars*, 3(2), p.90

2. Evaluating Good International Citizenship

2.1 Introduction

As we have seen, Kosovo clearly represented a problem for the international community and that is, how should we act when faced with violence and ethnic conflict within states? There are a number of existing approaches, including good international citizenship, which have tried to offer possible solutions. The different notions of good international citizenship reflect, to a large degree, the varying normative positions adopted by states in relation to the issues raised by the concept of humanitarian intervention. These positions are informed by the debates surrounding cosmopolitanism and communitarianism. It will be suggested, however, that such approaches do not adequately address the concerns raised in Chapter 1 relating to the structure and quality of dialogue and subsequent legitimacy.

Defining and justifying inclusion and exclusion has always been a dominant theme within international studies and critical theory. The discussions between cosmopolitans and communitarians demonstrate how the related debates in philosophy, critical theory and international relations are united by their struggles with the tension between them. Torn between the desire for the critical power of universalism, yet hedged in by the grounded claims of the particular, neither approach, by itself, is sufficient to surmount this tension. This chapter will briefly explore the cosmopolitan and communitarian literatures which inform and locate the debates concerning good international citizenship. Existing understandings of good international citizenship focus on ways in which states can behave in a more ethical manner and be held accountable for their behaviour in international politics. This discussion will seek to evaluate existing notions of good international citizenship, setting out some of its limitations and indicating how the concept might be constructed as a more critical tool. Having raised many of the problems which obstructed constructive engagement by the international community in Kosovo in Chapter 1, this chapter marks the beginning of the theoretical framework at the core of this research which indicates ways in which theory underpinning contemporary practice acts to exacerbate repression in the forms of exclusion and coercion.

Through an engagement with cosmopolitan and communitarian approaches, this and the following chapters seek to develop a cosmopolitan-oriented concept of good international citizenship. This refers to neither institutional design/top-down¹ nor bottom-up approaches to cosmopolitanism, but rather an approach which recognises the particular, refuses to abstract beyond the realms of imaginable capacity and so looks for the universal in instances of particular dialogue through which moral norms may be justified and legitimated.

2.2 The Cosmopolitan and Communitarian debate

The tension between citizenship and humanity, particular and universal norms, is a thematic feature within the critical theory and international relations literature, suggesting a need for rethinking our approach to these issues. The cosmopolitan and communitarian literatures are both large and diverse, crossing a number of disciplines such as international relations, international law, sociology and political theory. It is, therefore, only possible here to sketch a brief outline of important issues and pathways directly relevant to this research. The starting point for this exploration is cosmopolitanism in international relations as a result of the focus on humanitarian intervention and state sovereignty indicated in the Introduction, but elements of cosmopolitanism in political theory and sociology have been drawn in to develop a more fluid understanding of cosmopolitan possibilities relating to ethics, identity, recognition and intersubjectivity. Cosmopolitans focus on the importance of individuals and a community of humankind, often seeking to establish some universally applicable principles and bypass or reduce the role of the state through a move to global institutions and a re-negotiation of sovereignty. Fine's definition of cosmopolitanism is a useful one with which to understand a critique of the concept:

[it] aims to reconstruct political life on the basis of an enlightened vision of peaceful relations between nation states, human rights shared by all world citizens, and a global legal order buttressed by a global civil society. It is at once a theoretical approach towards understanding the world, a diagnosis of the age in which we live, and a normative stance in favour of universalistic standards of moral judgement, international law and political action.²

¹ For example, Daniele Archibugi: 'Cosmopolitical Democracy', 'Demos and Cosmopolis', Archibugi (ed.) 2003, London, Verso; David Held and Daniele Archibugi, 1995: *Cosmopolitan Democracy*, Cambridge, Polity Press

² Robert Fine, 2003a: 'Taking the 'Ism' out of Cosmopolitanism: An Essay in Reconstruction', *European Journal of Social Theory*, 6(4) p.452

Communitarians, however, are unwilling to relinquish control of their own communities, and are not prepared to commit themselves to universal notions of morality, justice and law, arguing that such beliefs are culturally relative and can only be decided within a community. Consequently, communitarians such as Frost insist that the state is still morally, and normatively, relevant.³ Universal concepts of justice inevitably crash into this barrier, being asked where such external criteria derive their authority. Walzer argues strongly for the relativity of justice, claiming that '[j]ustice is rooted in the distinct understanding of places, honors, jobs, things of all sorts, that constitute a shared way of life. To override those understandings is (always) to act unjustly'.⁴ Human identity and socialisation processes are informed and constrained by the bounded nature of communities and so there are some loyalties which remain paramount and prevent us from becoming 'fully-fledged' citizens of the world.⁵

While most communitarians do not deny that societies have obligations towards one another, they remain convinced that most human beings are not as moved by notions of a 'common humanity' as they are by loyalties to their own communities. Those who argue that there are no special moral obligations to fellow-citizens that are not shared by the rest of humanity due to the arbitrary nature of the territorial construction of political communities fail to understand that territory itself may be arbitrary as may membership of a particular community, but, once established, that community forms a significant part of individual and collective identities.⁶ Parekh, therefore, looks to a global or cosmopolitan *orientation*, which recognises the value and reality of particular political communities, but also that we belong to a wider community of humankind, subsequently recognising both certain universal values and ethical diversity.⁷ There are some who might recognise communitarian attachments but who are not necessarily relativists when it comes to universal values; those, like Booth and Brown, who seek, albeit in different ways, to offer non-foundationalist justifications for

³ Mervyn Frost, 1996: *Ethics in International Relations: A Constitutive Theory*, Cambridge, Cambridge University Press

⁴ Michael Walzer, 1983: *Spheres of Justice*, Oxford, Blackwell Publishers, p.314

⁵ Robyn Eckersley: 'Communitarianism', from Andrew Dobson and Robyn Eckersley, (eds.) 2006: *Political Theory and the Ecological Challenge*, Cambridge, Cambridge University Press, p.93

⁶ Bhikhu Parekh, 2003: 'Cosmopolitanism and global citizenship', *Review of International Studies*, 29, p.9

⁷ *ibid.* p.12

a form of minimal universalism.⁸ Brown seeks to hold on to human rights whilst dispensing with their universal philosophical or foundational roots. He argues that rights only make sense in a particular community – an ‘ethical community’.⁹ He argues that it is ‘implausible to think that rights can be extracted from liberal polities, decontextualised and applied as a package worldwide.’¹⁰ In an attempt to transcend the relativist and the universal debates and to move away from the liberal fiction of universal human rights, he argues that:

Rights have no separate ontological status; they are a by-product of a particular kind of society, one in which the ‘state’ operates constitutionally under the rule of law, is separated from ‘civil society’ and the ‘family’, and in which private and public realms are, in principle, clearly demarcated. Societies in which human rights are respected are more civilised and secure than those in which they are not, but rights are a symptom of this civilisation and security, not a cause.¹¹

Although far from dismissing human rights or the valuable role they play in securing freedoms for people, Brown argues that they must be understood in a historical context and should not be granted an ontological status they do not have and that ignores the standpoint of those from other cultures. Recognising this arguably offers a greater credibility to the protection offered by rights than that offered by universal claims. Benhabib argues that the challenge suggested by Hegel, also drawn on by Brown, is to ‘envisage a universalistic moral point of view as situated within an ethical community.’¹² This has significant implications for a dialogically informed approach to the debate between the universal and the particular and draws in Brown’s concerns.

Etzioni offers an alternative solution to the tension between the universal and the particular: ‘A societal design that accords priority to universal rights over communal bonds and particularistic values but legitimates these bonds and values in areas not governed by rights provides such a synthesis’.¹³ Etzioni argues that increasingly basic normative positions are emerging transnationally as East and West learn from each

⁸ Ken Booth, (ed.) 2005: *Critical Security Studies and World Politics*, London, Lynne Rienner Publishers; Tim Dunne and Nicholas Wheeler, (eds.) 1999: *Human Rights in Global Politics*, Cambridge, Cambridge University Press

⁹ Chris Brown: ‘Universal human rights: a critique’, from Dunne, Wheeler, (eds.) 1999 p.104

¹⁰ *ibid.* p.111

¹¹ *ibid.* p.120

¹² Seyla Benhabib, 1992: *Situating the Self*, Cambridge, Polity Press, p.11

¹³ Amitai Etzioni, 2004: *From Empire to Community: A New Approach to International Relations*, New York, Palgrave, Macmillan, p.44

other, leading to a ‘level of normative commitment that might be called “a moral minimum”’.¹⁴

It is important to recognise that both universalism and relativism can become a tool of the powerful. Consequently, while there is a need to recognise the exclusionary nature of universal moral precepts as well as of the sovereign state, there is also a need for some sense of the cosmopolitan moral imperative, intended to protect individuals’ rights rather than national interests, to resonate in international practice. Here we begin to see certain principles intrinsic to good international citizenship emerging. In the case of national measures to ban hazardous work conditions, for example, Shue argues compellingly that:

national legislation to outlaw such practices does not go far enough unless it is accompanied by efforts to prohibit the export of ‘unsafe jobs to foreign parts’. To fail to bring the moral principle which is at issue within the state to bear upon the conduct of foreign policy is to allow one form of exploitation and unjustified exclusion to survive.¹⁵

Continuing exploitation and unjustified exclusion strengthens the argument that the principles of dialogue and the procedural ethics which inform them are key to good international citizenship; without this, outsiders are prevented from expressing or withholding their consent to such policies.

Communitarians are critical of the liberal (cosmopolitan) understanding of the relationship between the individual and the community. This critique is both ontological and normative. The liberal ontology of the self as:

asocial, detached and radically autonomous is seen as *incoherent*. Moreover, many of the normative prescriptions that flow from this framing of the self are seen as *undesirable* insofar as they neglect or undermine the importance of community belonging and communal responsibilities by emphasising ‘arms-length’, impersonal contractual obligations over familial and communal ones.¹⁶

Another, related, way of framing the cosmopolitan/communitarian debate which is pertinent to the theoretical construction of good international citizenship is to look at the ways in which each views the ‘other’. While cosmopolitans tend to privilege the abstract or ‘generalized’ other, communitarians tend to privilege the ‘concrete’ other.¹⁷

The generalized other focuses on the development of one of the pivotal ideas in Western

¹⁴ *ibid.* p.129

¹⁵ Linklater, 1992b, p.33

¹⁶ Eckersley, 2006, p.92

¹⁷ These terms are taken from Benhabib, 1992

political thought where each individual is a rational being entitled to the same rights and duties that we want to ascribe to ourselves. This effectively assumes that the ‘other’ has the same needs and desires as us, consequently removing the individual from his or her particular social and cultural context: ‘Our relation to the other is governed by the norms of *formal equality* and *reciprocity*’¹⁸ It is our commonality which is emphasised, not our differences. The standpoint of the concrete other, however, is concerned with the norms of ‘*equity* and *complementary reciprocity*: each is entitled to expect and to assume from the other forms of behaviour through which the other feels recognized and confirmed as a concrete, individual being with specific needs, talents and capacities.’¹⁹ This affirms individuality and perceives differences to be complementary rather than exclusive. Both have their purposes; without the generalized other we cannot define a moral point of view or lay claim to a theory of justice. Without the perspective of the concrete other, we cannot locate or contextualise such a theory. The two may interact to offer a more sophisticated space for dialogue on these issues, addressing issues raised in other terms by Etzioni, Booth and Brown.

While cosmopolitanism retains the potential to be assimilative in that preferring the ‘generalized’ other, it attempts to reduce all ‘concrete’ others to the same identity, the communitarian position seems to suggest that an ‘ethic of coexistence’ is all that is possible in international relations as far any conception of the ‘good life’ is concerned.²⁰ Shapcott usefully lists four categories, adapted from Todorov’s *Conquest of America*, which address the possibilities for self-other relations; a necessary factor when searching for justice. He argues that these categories can be used to critically assess different accounts of community and justice in international relations. The categories comprise annihilation, which involves the ‘complete physical or ideational destruction of the other’; assimilation, which ‘involves the other’s incorporation into one’s own world, but not as an equal, for it also involves the destruction or denial of important difference in the name of a greater similarity’; coexistence, which ‘involves toleration and neutrality but suggests no genuine engagement with the other’, and lastly, communication, which ‘suggests that it is possible to understand the other and to move towards an exchange of knowledge. It also suggests the possibility of agreement and a

¹⁸ *ibid.* p.159

¹⁹ *ibid.*

²⁰ Richard Shapcott, 2001: *Justice, Community and Dialogue in International Relations*, Cambridge, Cambridge University Press, p.34-5

reciprocity of subjectivity'.²¹ It is the last of these which will be the focus of the theoretical framework presented in this and following chapters.

Cosmopolitanism challenges the traditional divisions (political and legal), instituted at Westphalia, between the national and the international which permeates the realist paradigm in international relations. It refuses to accept that the international sphere is devoid of ethical values or that it must remain perpetually stuck in the anarchical void of realism. Similarly to Brown's argument which recognises the historical contingency of the human rights discourse, cosmopolitanism acknowledges that the notion of the sovereign state is 'itself a product of history and not a permanent feature of the human condition, that its origins are to be explained rather than its ontological status assumed'.²² Consequently, in its bid to address the global, it argues that nationalism is no longer normatively desirable as a means of social organization and that cosmopolitanism is thus the new logic for social integration.²³ This might assume the form of a postnational, transnational or global democracy.²⁴ It insists that national frameworks are no longer sufficient for addressing global risks that have no respect for sovereign, national boundaries, and that social networks now extend far beyond the boundaries of national societies. Cosmopolitans point towards developments in international law which began with the establishment of the Nuremberg Charter in 1945, later encompassed the Universal Declaration of Human Rights and the Genocide Conventions of 1947 and 1948 and, more recently, the International Tribunals for Rwanda and the Former Yugoslavia and the International Criminal Court. Without entering into a detailed discussion of the possible shortcomings of these developments, cosmopolitans argue that these moves towards global justice offer normative political implications and possibilities. They believe that 'these reforms are neither short-term nor merely contingent but visible expressions of deeper social processes and historical trends.'²⁵

Despite the variety of ways which have emerged in the attempt to reconcile the universal and the particular, to reconstruct cosmopolitanism in a way that does not

²¹ *ibid.* p.15

²² Fine, 2003a, p.453

²³ Robert Fine and Will Smith, 2003: 'Jürgen Habermas's Theory of Cosmopolitanism', *Constellations*, 10(4), p.469

²⁴ J. Habermas, 2001: 'Why Europe Needs a Constitution', *New Left Review*, 11, (September/October); *The Postnational Constellation: Political Essays*, Cambridge, Polity Press, 2001

²⁵ Fine, 2003a, p.456

allow it to become vulnerable to further homogenizing claims,²⁶ cosmopolitanism runs the risk of being perceived in the same light as it portrays internationalism. While internationalism is criticized in the language of Carr's 'harmony of interests' as a politics that allows some national interests to masquerade as universal whilst suppressing other interests, cosmopolitanism sets itself up as a genuinely universalistic outlook, capable of overcoming the narrow particularisms and abstract universalisms characteristic of political modernity. This raises the question of whether or not any form of cosmopolitanism can 'achieve neutrality between rival ethical traditions.'²⁷ The danger is that cosmopolitanism simply sets up a new set of interests and cultural assumptions claiming to be universal and capable of transcending previous dichotomies between the particular and the universal. Fine highlights the criticism raised by Hardt and Negri in *Empire* where they perceive the creation of a single, overwhelming Empire in the place of rival nations or empires. In this context, cosmopolitanism is criticized, not for its own criticism of nations becoming obsolete, but 'for its failure to see that that social transformation only intensifies the abstract, universal character of domination.'²⁸ Poststructuralists such as Devetak and Campbell argue that the notion of sovereignty and the modern sovereign state is problematic because it 'arbitrarily and contingently sets the limits of ethical responsibility and political action.'²⁹ The danger of universalism has been duly recognised by many who wish to retain a cosmopolitan orientation but yet, like Kant and Arendt, do not advocate a world government and are sensitive to the objections raised to a 'top-down' universalism, 'objections having to do mainly with a perceived neglect of situated differences, as well as of motivational resources.'³⁰

Recent writings on cosmopolitanism and communitarianism have indicated greater sensitivity towards the 'other', leading to a more nuanced and interrelated understanding of the debate which seeks to better understand how communities and individuals can relate to each other and bear responsibility for actions which negatively

²⁶ *ibid.* p.462; Cohen, J.(ed.) 1996: *For Love of Country: Debating the Limits of Patriotism - Martha C. Nussbaum with Respondents*, Boston, Beacon Press; Linklater, 1998

²⁷ Linklater, 2007: 'Distant Suffering and Cosmopolitan Obligations', *International Politics*. 44, p.20

²⁸ Fine, 2003a, p.464

²⁹ Shapcott, 2001, p.66

³⁰ Fred Dallmayr, 2003: 'Cosmopolitanism: Moral and Political', *Political Theory*, 31(3), p.422; Fine, 2006: 'Cosmopolitanism and violence: difficulties of judgement', *The British Journal of Sociology*, 57(1), p.56; Craig Calhoun, 2002: 'Imagining Solidarity: Cosmopolitanism, Constitutional Patriotism, and the Public Sphere', *Public Culture*, 14(1), p.157

affect others. Recent various attempts to negotiate these relationships have focused on the possibilities of harm and empathy as a source of ‘wider consciousness’.³¹ Neither cosmopolitanism nor communitarianism is sufficient to address issues of justice or difference in a world constituted by the dynamic of the universal and the particular. The universalism offered by a redefined version of good international citizenship is, significantly, not an abstract universalism, but rather one located in the universal practice of dialogue, in the acts of participation, inclusion, and reflexivity. It does not imply universal consensus on all issues. The concept of communication is at the heart of a refined understanding of good international citizenship, aiding in the construction of a process rather than an absolute standard or a final endpoint. It may be impossible and, arguably, undesirable to transcend this constant conflict between balancing the inclusive and the exclusive, the universal and the particular, requiring as it does continuous reassessment and contestation.

Butler’s approach to universalism expresses the caution articulated by Fine in relation to cosmopolitanism as she reminds us that the:

universal begins to become articulated precisely through challenges to its existing formulation, and this challenge emerges from those who are not covered by it, who have no entitlement to occupy the place of the “who,” but who nevertheless demand that the universal as such ought to be inclusive of them.³²

Far from being distinctly articulated, the universal is an open-ended ideal which has not been ‘adequately encoded by any given set of legal conventions.’³³ Adopting Bjola’s term, it is arguable that cosmopolitan claims are strengthened when adopted through practices of deliberative legitimacy. It is important briefly to set out the existing positions within the cosmopolitan and communitarian debate because good international citizenship assumes a particular place within these debates and is subject to related concerns. It highlights the reality of the state, yet offers tools with which to question its role; it represents certain kinds of relationships between communities and the practices and traditions that bind them. In its conservative form, it will be shown that it may preserve and privilege traditional interests while if conceived as a more innovative concept it can serve to challenge the status quo.

³¹ Dobson, Eckersley (eds.), 2006; Rorty: ‘On Human Rights: Rationality and Sentimentality’, Shute, Hurley (eds.) 1993, *On Human Rights*, New York, Basic Books; Linklater, 2006

³² Judith Butler: ‘Universality in Culture’, Cohen (ed.) 1996, p.49

³³ *ibid.* This articulation of universality fits with the distancing from Habermas’s (U) seen in Chapter 3.

Both cosmopolitans and communitarians will argue that issues of inclusion and exclusion are fundamental to our understanding of the construction of societies. For communitarians this is because not only do societies have to determine the rules governing membership, but the same issues reappear on the micro-level of everyday interaction within social institutions, ‘local and occupational groupings’, familial and other relations.³⁴ Although essentially grounded in the perspective of the nation-state as a major actor, the framework that will be constructed and presented in the following chapters seeks to foster a cosmopolitan and critical understanding of the notions of inclusion and exclusion and the implications of the nation-state for these issues. It seeks, therefore, to redefine the state as one actor among others. As Beck argues, ‘these oppositions – either “us” or “them,” either “in” or “out” – do not capture the reality of blurring boundaries between political, moral, and social communities and thus fail the ongoing experiment to create post-Westphalian transnational public spaces and citizens’.³⁵ It urges a move away from the system of inclusion and exclusion inherent in the ideology of the modern state. Adapting Beck’s argument concerning the legitimation of global inequalities, it can be argued that existing structural inequalities, characterized by ‘*non-reflexivity* and *non-reciprocity*’, within the institutions of the international community ‘preclude the acceptance of those whose acceptance is most needed: the poor, the humiliated, and the excluded’.³⁶

The following pages present a critical review of existing research concerning the concept of good international citizenship, noting how it has evolved and identifying some problems. Whilst good international citizenship is, ultimately, accepting of the state as a key actor, it should, it will be argued, challenge existing notions of inclusion and exclusion. Conventional notions of good international citizenship are already embedded in the cosmopolitan and communitarian literature, concerned as it is with mediating relations between different communities. However, it assumes, implicitly, that communities are state-based. As such, it reifies a particular set of relations and practices (both theoretically and empirically) which offers a means to perpetuate the interests of the most powerful communities/states. Having revisited the cosmopolitan and communitarian debates therefore, we can place good international citizenship

³⁴ Linklater, 1992b, p.82

³⁵ Ulrich Beck, 2003: ‘Toward a New Critical Theory with a Cosmopolitan Intent’, *Constellations*, 10 (4), p.454

³⁶ *ibid.* p.460

within a particular context and re-examine how these relations might be constructed more explicitly in context of critical theory and a dialogical approach.

2.3 The nature of Good International Citizenship

Good international citizenship originated with Gareth Evans, former Australian Foreign Minister³⁷ and has much to do with developing understandings of political community. In the existing international relations literature, it focuses on furthering normative ethical criteria for state interaction in a variety of areas. Although originally intended as a prescription for Australian foreign policy, the concept has been adopted by contemporary international relations scholars as offering a potential model for state behaviour within the international community. Senator Evans proposed that foreign policy should concern itself with and be motivated by issues such as preserving world order, encouraging global reform and honouring responsibilities and duties to aid the flourishing of mankind.³⁸ It is premised on the fundamental principle, originating with Vattel, that the state is required to place the ‘welfare of international society ahead of the relentless pursuit of its own national interests.’³⁹ Although Vattel did not see the same necessity for a society of states as he did for civil society, he nevertheless believed that an agreement between those of the same state did not mean that they could relinquish their duties towards the rest of the human race. What civil society does mean is that the state, and its rulers, must ‘fulfil the duties of humanity towards outsiders in all matters in which individuals are no longer at liberty to act’.⁴⁰ Whilst states are not expected to compromise their vital national and security interests in order to do so, Vattel goes on to say:

We know that, in general, duties toward self prevail over duties towards others; but this is only to be understood of duties which bear some proportion to one another . . . What idea should we have of a prince, or of a Nation, who would refuse to yield the smallest advantage in order to gain for the world the inestimable blessing of peace?⁴¹

Evans described good international citizenship not as the ‘foreign policy equivalent of boy scout good deeds’, but rather as a reflection of the ‘reality of

³⁷ Evans, 1989

³⁸ Linklater, 1992b, p.21

³⁹ *ibid.* p.28

⁴⁰ Andrew Linklater, 1990: *Men and Citizens in the Theory of International Relations*, 2nd edn. UK, Macmillan Press, p.82 (citing Vattel’s *The Law of Nations*)

⁴¹ *ibid.* p.85

international interdependence' and emerging global problems.⁴² Reflecting a theme that has been developed, challenged and built upon in later definitions of good international citizenship, Evans placed special emphasis on the importance of human rights which:

reflects a national – and a philosophical – interest in defending and extending international standards of human rights and the observance of international law. We are active in making responsible bilateral representations on human rights violations because we recognise that a right not defended is a right easily lost. In doing so we do not seek to prescribe cultural conformity or a specific form of government. We recognise that the advance of human rights and democracy will in some societies involve a creative blend of universal values and deeply rooted national traditions. Our objective is to affirm values which, in the United Nations Charter and elsewhere, have been recognised as *genuinely universal*, and which are at the core of our sense of human dignity.⁴³

For Evans, good international citizenship is an 'exercise in enlightened self-interest', an attempt to balance idealism and pragmatism, although he acknowledges that this balance will vary from issue to issue. This balance between idealism and pragmatism can also be seen as a blend of realism and idealism. Evans suggests that the 'dichotomy between realism and idealism is a false one. The issue is one of means and ends; tempering what we want with what we can deliver and at what cost – social, economic and political.'⁴⁴ For Evans it seems impossible to avoid being influenced by the harsh realities of Machiavellian realism whilst simultaneously suggesting that it is the 'nature of men and women who live by the precepts of democracy to believe that they can change the world for the better.'⁴⁵ For Evans, this policy of enlightened self-interest is best served through strengthening multilateralism and he acknowledges the importance of acting in ways that do not undermine the credibility of the language of good international citizenship – both at home and abroad. In a move that will be repeated at a theoretical level by Linklater, Evans does not distinguish between internal and external policies, arguing that the rules governing behaviour in the international sphere are no different from the rules governing other human behaviour. He also indicates a preference for consultation and cooperation as a means of resolving problems rather than resorting to confrontation. This proposition is one which will be developed both theoretically and practically in the discussion of the theoretical framework.

⁴² Evans, 1989, p.42

⁴³ *ibid.* p.43. emphasis added

⁴⁴ *ibid.* p.44

⁴⁵ *ibid.*

The interpretation of good international citizenship developed in response to existing understandings of the concept does not seek to provide a definitive answer to the question of how states should behave. Instead, focusing on situations of conflict, it provides a normative framework against which state behaviour can be analysed. Moving beyond existing understandings of the concept, such as those offered by international relations scholars Dunne, Wheeler and Linklater⁴⁶, it will be argued that they provide neither a sufficiently critical interpretation of legitimacy or agency, nor an analysis of the processes by which outcomes (i.e. military intervention) occur. It is important to note that the power of good international citizenship is primarily the criteria it provides with which to judge states at those times when they *claim* they are acting responsibly. It is clear that states will not always, if ever, implement ideal standards, therefore, good international citizenship should not be seen as a manifesto, but as means of supporting and guiding those who wish to hold states and their behaviour to account.

2.4 Good International Citizenship: Linklater's Evolution

A brief overview of good international citizenship indicates the degree of evolution it has undergone. It can be understood as an attempt in international relations to shift the debate beyond the stale arguments between realism and idealism. What began as a fairly conservative concept articulated by Linklater and influenced by Vattel, has emerged as a concept embracing largely solidarist values as reflected in the work of Wheeler⁴⁷ and Dunne. Although Linklater's early work focuses on cooperation between states and the importance of strengthening the rules and norms of the international order, it has evolved much further to challenge the international status quo in certain situations, engaging with critical theory to offer alternative paths along which to develop.

Linklater clearly addresses issues of inclusion and exclusion in his discussion of citizenship and his argument that analogous concepts of citizenship might be adopted in international relations. The increasing focus on and critique of different forms of exclusion occurring in debates over citizenship have significant implications for good international citizenship. Citizenship has challenged exclusion in domestic societies on

⁴⁶ Dunne, Wheeler, 1998; Linklater, 1992b

⁴⁷ Wheeler, 2000

a number of issues, such as class-based, ethnic and gender forms of exclusion, reflecting increased and better protected civil, political and social rights. The question raised then, is how far ‘does the development of citizenship within the state create the need for the development of new rights and duties in international relations?’⁴⁸ Some suggest that conditions within domestic politics are better suited than those found in international politics to a dialogical approach, due to the established institutions and legitimate procedures that ground authority as well as a clear lifeworld. International relations supposedly take place in the context of anarchy, with no established enforcement capabilities and are characterized by inequality and different lifeworlds. Refuting the conditions of anarchy opens up possibilities reflected in international institutions and international law which offer established procedures and the potential for legitimacy, even if this is markedly absent in many peoples’ eyes. Moreover, contemporary international politics relies progressively more on the process and content of arguments as much as on coercion and military power.

Evans’ policy contends that the advantaged have a responsibility to assist and provide aid towards those more vulnerable members of society. This duty towards society comes from the belief that human beings are inherently equal and therefore deserve equal respect and equal claims to the basic requirements of the good life. As Parekh argues:

our assistance is a response to their claims as human beings and is a matter of justice, not charity. We have no duty to sacrifice our lives or vital interests for the sake of others, though we may do so if we feel so inclined, but we do have a duty to make sacrifices of what is not vitally necessary to our well-being in order to help others secure the basic conditions of theirs.⁴⁹

Although Parekh is referring to citizenship at the domestic level, his argument sums up the starting point for good international citizenship. However, to what extent citizenship can be extrapolated to an international level in order to embrace all humankind is highly debatable, not least because citizenship usually refers to a ‘national’ identity, a bounded territory, a particularist and coherent community. Although it is not always based on nationality, it does indicate membership of a particular community which holds particular values and beliefs. Communitarians would argue that citizenship and its concomitant notions of rights and democracy are only

⁴⁸ Linklater, 1992b, p.25

⁴⁹ Parekh, 2003, p.6

possible at the level of the nation-state. Parekh tries to bridge this dilemma by arguing that when those countries which have a greater ability to cause harm and offer help respond appropriately, expectations also rise proportionately, acquiring 'moral legitimacy, set[ting] new moral and political norms, and giv[ing] rise to a new awareness of global obligations. As a result humankind is acquiring some of the broad features of a *political* community.'⁵⁰

Issues of inclusion and exclusion are important to analysing problems in good international citizenship which concern the way in which citizenship and boundaries are considered. The communicative framework that will be introduced allows us to examine more openly the construction of ideas of inclusion and exclusion from society, communities and dialogue, which is important in any consideration of justice and citizenship. Recognising the importance of national identity, as constructed through citizenship, it also allows us to recognise those who are excluded from common identities.⁵¹ Once again, cosmopolitan approaches highlight the tension between the universal and the particular: a universal community, by definition, suggests that despite apparent differences of identity, there 'exists an essential unity. Such a statement itself denies the possibility of truly radical difference'.⁵² Building an ethic of communication into practice at all levels in the international community is an attempt to accommodate this tension more effectively. Zygmunt Bauman underlines the need for this approach when he argues that '[i]t is exclusion, rather than the exploitation suggested a century and a half ago by Marx, that today underlies the most conspicuous cases of social polarization, of deepening inequality, and of rising volumes of human poverty, misery and humiliation.'⁵³ Linklater takes up this challenge, arguing that removing various modes of exclusion; political, economic or social, is central to his exposition of good international citizenship.

Modern ideas of citizenship have to some extent entrenched this division between citizenship and humanity as citizenship laws are 'linked with the objective of improving the arrangements of a specific society and with the goal of promoting its interests, often to the detriment of other societies.'⁵⁴ For some, it helps to articulate and

⁵⁰ *ibid.* p.11 Reflecting communitarian/cosmopolitan concerns, Parekh distinguishes between globally oriented citizenship and cosmopolitan citizenship, p.12

⁵¹ Seyla Benhabib, 2004: *The Rights of Others*, Cambridge, Cambridge University Press

⁵² Shapcott, 2001, p.2

⁵³ Zygmunt Bauman, 2004: *Identity*, Cambridge, Polity Press, p.81

⁵⁴ Linklater, 1992b, p.26

protect difference, imparting moral significance to national boundaries. However, conversely, modern citizenship has also lowered many barriers to the outside world, encouraging people to develop and feel comfortable with multiple layers of identity and citizenship as well as familiarising them with their rights. While some have argued that it is not possible to reconcile citizenship and humanity, others have argued that the state does not constitute the outer boundary of our moral and political obligations, and that ‘citizenship simply concretises the imprecise duties which all human beings owe one another’.⁵⁵

It is, then, arguably the principles of sovereignty and non-intervention which have become self-imposed limitations on our ability to implement these duties and responsibilities on an international scale. Overcoming this tension is crucial, Linklater argues, because although citizenship has served to dismantle many barriers, helping those more vulnerable to benefit and participate in society, ‘it has always been, as aliens and refugees well know, one of the principal forms of exclusion in social and political life’.⁵⁶ In this context, Linklater sees the need to develop the concept further, and, in our search for citizenship, to go ‘[h]igher to the world, lower to the locality’.⁵⁷ This is echoed by recent political theory which, in responding to recent critiques of exclusion, has referred to the ‘disaggregation of citizenship’ and has highlighted the need to look to ‘subnational as well as supranational spaces for democratic attachment and agency’.⁵⁸

Thus, Linklater’s argument is that good international citizenship offers the means to weaken the ‘exclusionary character of the modern state’ and to overcome ‘an ancient tension between the rights of citizens and duties to the rest of humanity’.⁵⁹ Aristotle, who was aware that ‘man’ and ‘citizen’ were potentially conflicting concepts:

regarded the failure to be ‘ashamed of behaving to others in ways which they would refuse to acknowledge as just, or even expedient, among themselves’ as evidence of moral deficiency. By claiming that foreign policy should be governed not simply by prudence and expediency, but by regard for what was ‘lawful’, Aristotle defended the sentiments peculiar to the good international citizen.⁶⁰

⁵⁵ *ibid.* p.25

⁵⁶ *ibid.* p.26

⁵⁷ *ibid.* p.26-7

⁵⁸ Benhabib, 2004, p.174

⁵⁹ Linklater, 1992b, p.27

⁶⁰ *ibid.* p.26

Good international citizenship must also concern itself with the economic sphere as, left unregulated, free trade policies can exacerbate disparities of wealth internally and between the rich and poor worlds: ‘They overwhelm and often destroy community life in traditional societies by prescribing only one path to economic development.’⁶¹ Concomitantly, Raymond Murphy has argued that ‘citizenship laws in the industrialised societies prevent the dilution of the benefits of industrialisation...through the exclusion of people born elsewhere.’⁶²

What, then, are the criteria that form Linklater’s definition of good international citizenship? First, he finds similarities with Bull’s analysis of international society in *The Anarchical Society*. These principles include upholding international law, the respecting of equal sovereignty of other states, diplomacy, trying to extend the level of consensus between states and the role of major powers assuming special obligations in relation to maintaining international order – in other words, great power responsibility. Linklater draws parallels between these rights and duties of states and the rights contingent upon national citizenship in the domestic sphere.⁶³ These principles imply that states have a duty to act as good citizens of international society and Linklater defines this by drawing on Vattel for whom the good international citizen is not required to ‘sacrifice its own national independence in the process, nor is it legally obliged to act in ways which will jeopardise its survival or endanger its vital national interests, but it is beholden to other states to place the survival of order before the satisfaction of minimal national advantages.’⁶⁴ More recent notions of multilateralism again highlight the belief that states, particularly great powers, ‘possess the international equivalent of civic obligations to advance the more general good.’⁶⁵ Consequently, one of Linklater’s key criteria is the preservation of the society of states.

Although realists provide one of the strongest critiques of good international citizenship, their influence is not unnoticeable. Drawing on Evans, Linklater, in his second criterion, argues that some realist themes form a legitimate element of any

⁶¹ Scott Burchill, from Burchill et al. *Theories of International Relations*, 2nd edn., USA, Palgrave, 2001 Chapter 2, p.65

⁶² Linklater, 1992b, p.25

⁶³ For example, the legal rights of the citizen are parallel to the legal concept of national sovereignty: ‘the supposition that national citizenship implies regard for the common good has its equivalent in arguments that the major powers have special obligations to maintain and enhance international order.’ Linklater, 1992b, p.29 (This requires the definition of common good to refer to order.)

⁶⁴ *ibid.* p.28-9

⁶⁵ *ibid.* p.29

account of good international citizenship. For example, despite his criticisms of utopianism in *The Twenty Years' Crisis*, Carr recognised that the concept of community might be extended outwards.⁶⁶ Morgenthau and Kissinger suggested that international order is best achieved by replacing adversarial relations with developing equal levels of security and insecurity between themselves, indicating the importance of collective responsibility for the maintenance of international order. However, Carr also recognised that the notion of collective responsibility may simply be a rhetorical device which allows powerful states to design policies intended to protect the *status quo* and further the interests of the powerful.⁶⁷

The third of Linklater's criteria is that states should 'permit the growth of sub-national and cosmopolitan loyalties which have been previously foreclosed'⁶⁸. This brings us back to the issue of redefining the boundaries of inclusion and exclusion, implying that states should allow, and indeed encourage, multiple forms of citizenship or identity. This relates to the varying dimensions of citizenship which exist in social and political life: 'in the relations between individuals and the state, in the bonds which link states together in an international society, and in the much looser realm consisting of ties between the individual and the rest of humanity.'⁶⁹

The fourth dimension of Linklater's definition draws heavily on the tradition of the English School.⁷⁰ English School theory focuses on rationalism as a *via media* between the extremes of realism and revolutionism and emphasises the interdependence of all three traditions in order to understand international relations.⁷¹ One of the precepts of rationalism is its attempt to control the use of force by states through the development of international law and international society, thus restraining states from acting solely to promote their own political interests through encouraging increasing cooperation between states. Wight contributed to the development of our understanding of the rationalist tradition through his historical and political analysis of what he called the 'Three Traditions': Realism, Rationalism and Revolutionism. The essence of Wight's work is that any truth about international politics had to be sought not in any

⁶⁶ E. H. Carr, 1941: *The Twenty Years' Crisis 1919-1939*, London, Macmillan, p.306

⁶⁷ *ibid.*

⁶⁸ Linklater, 1992b, p.31

⁶⁹ *ibid.* p.36

⁷⁰ Tim Dunne, 1998: *Inventing International Society: A History of the English School*, UK, Macmillan

⁷¹ Martin Wight, 1991: *International Theory: The Three Traditions*, Gabriele Wight and Brian Porter (eds.) London, Leicester University Press

single tradition, but in the debate between them. He argues that elements of all three traditions are present and active in international society, and that any attempt to describe international politics solely in terms of one tradition to the exclusion of the others is bound to fall down.

Wight developed the rationalist view in light of his interpretation of the work of Francisco Suarez who said that ‘although every state is a perfect community, yet it is none the less a member of a universal body or whole; this membership is the basis of international law.’⁷² This notion of being separate yet part of a greater whole is echoed by Vattel, an international lawyer, who, it is argued, rejected the actions of egocentric sovereign states, preferring instead the ‘principle of a natural society of free and independent states which each community is obliged to preserve and enhance.’⁷³

At an international level, Wight identifies three key tenets of the rationalist tradition: firstly, that ‘Every state has the right to regulate its own affairs freely, without intervention.’; secondly, that ‘No state has the right to establish government on principles of hostility to other governments and intervention is permissible against such a state.’; thirdly, that ‘Every state has the duty of accommodating its national interests, so far as possible, to those of other states.’⁷⁴ These precepts can find their parallels in the concept of good international citizenship. The rationalist position does not base its stance on an absolute moral standard as is done by utopians, instead remaining aware of the need for compromise in political action. Wight concludes his analysis of the three traditions by suggesting that ‘Rationalism was a civilizing factor, Revolutionism a vitalizing factor, and Realism a controlling disciplinary factor in international politics.’⁷⁵

Wight demonstrates where the distinction can be drawn between the Rationalist and the Revolutionist traditions by citing Vattel’s reaction to the notion of ‘civitas maxima’. Developed by Wolff, ‘civitas maxima’ was the idea that there was ‘a great society or super-state, of which individual states were citizens, and which could exercise authority over them.’⁷⁶ This provoked much debate, and Vattel, himself a Rationalist, distanced himself from this idea saying:

⁷² *ibid.* p.39

⁷³ Linklater, 1990 p.83 – citing Vattel

⁷⁴ Wight, 1991, p.132

⁷⁵ *ibid.* p.268

⁷⁶ *ibid.* p.41

I find the fiction of such a (great) republic neither reasonable nor well enough founded ... I recognize no other natural society among Nations than that which nature has set up among men in general. It is essential to every civil society that each member should yield certain of his rights to the general body, and that there should be some authority capable of giving commands, prescribing laws, and compelling those who refuse to obey. Such an idea is not to be thought of as between independent Nations.⁷⁷

The notion of a 'civitas maxima' suggests a concept of world justice which seeks to determine what is good or bad for world society as a whole, as it suggests a society to which all individuals belong and to which their interests should be subordinate.⁷⁸ This introduces problems with universal notions of justice, of how to address the issue of privileging dominant forms of justice and of how the common good can be codified.

The idea that analogies can be drawn between conditions at the international level and conditions at the domestic level as suggested by 'civitas maxima' is, according to Wight, an essential tenet of Revolutionist thought, and is one which is key to Linklater's definition of good international citizenship. Linklater argues that realism, rationalism, and cosmopolitanism all contribute towards the definition of good international citizenship. However, there is, as noted by Wight, a distinction between the rationalist defence of the international society of states and the cosmopolitan ideal of a global community of humankind. Rationalists have, generally, rejected the cosmopolitan argument, suggesting, in common with realists, that alternative visions of world order would be frustrated by the perpetual struggle for power and security. They also claimed that 'all cosmopolitan perspectives display culturally-specific moral priorities and falter when faced with the charge that all moral concepts are essentially contested ones.'⁷⁹ By highlighting the many critiques of ethical universalism and cosmopolitanism, Linklater walks a fine line between the pluralism of the rationalist tradition and the possibilities offered by a reflexive cosmopolitanism. It is important to note the influence of cosmopolitan thought on his definition of good international citizenship, arguing as he does that the:

cosmopolitan theme which is exhibited here adds force to the ideals of contract and discourse which stand at the centre of current arguments for ethical universalism. Exporting hazards conflicts with the principle of

⁷⁷ *ibid*, citing Vattel's *The Law of Nations*

⁷⁸ Hedley Bull, 1977: *The Anarchical Society: A Study of Order in World Politics*, London, The Macmillan Press Ltd. p.84

⁷⁹ Linklater, 1992b, p.31

self-determination which is common to liberalism and Marxism. It fails to give outsiders the opportunity either to express or to withhold their consent and it refuses to allow them the right (in Marx's words) to make their own history under conditions of their own choosing.⁸⁰

This argument is very important for the later evolution of good international citizenship, highlighting as it does, the concepts of discourse, consent, communication and legitimacy. Taking a step that will prove pivotal to later interpretations of good international citizenship, although he does not develop this theoretically within the current interpretation, Linklater argues that 'the legitimacy of practices of exclusion (in domestic politics and also in international relations) should be decided in the same way: by measures which seek the consent of the included and excluded alike.'⁸¹ In this way he seeks to transcend the dichotomy between order and justice; he refuses to forsake the importance of order, but grants justice a far more significant role than the rationalists do.

However, once again caught between rationalist pluralism and cosmopolitanism, he acknowledges the criticism that 'because states have competing definitions of who is excluded, the attempt to broaden good international citizenship so that it encompasses cosmopolitan aspirations is more likely to endanger rather than to promote international order.'⁸² With growing consensus, however, that human rights and justice should feature more prominently on the agenda, collective action to promote universal moral ideals becomes a means to enhance rather than threaten international order. These trends towards addressing concerns over justice and inclusion reflect what Habermas calls moral learning; 'the development of the understanding that various constraints on the life-chances of human beings are indefensible and must be lifted.'⁸³

In conclusion, Linklater states that:

advocacy of good international citizenship commits governments, at least in principle, to act in ways which will preserve the society of states and

⁸⁰ *ibid.* p.33.

⁸¹ *ibid.* p.34

⁸² *ibid.* The understanding of cosmopolitanism presented here might be considered to be solidarist as it still refers to inter-state relations rather than a more conventional understanding of cosmopolitanism which focuses on individuals and world society, potentially by-passing states. See Buzan, 2001 'The English School: an underexploited resource in IR', *Review of International Studies*, 27. The interpretation offered here is Linklater's at this point in the evolution of his argument: it may differ in later works. To clarify, I am not arguing that cosmopolitanism should be anchored in state relations. For Linklater on cosmopolitan citizenship, see 1998, p.211-212

⁸³ *ibid.* p.35

strengthen the community of humankind. Taken seriously, and invoked frequently over time, the concept sets out some basic moral criteria which can be used to judge and criticise the state's conduct of foreign policy.⁸⁴

Good international citizenship, as perceived by Linklater, embodies contrasting and yet complementary notions of great power responsibility and the need to move towards a less rigid, less hierarchical and power laden notion of responsibility and participation. Sovereignty becomes more flexible, different international norms may emerge, and we can detect moves towards discourse and consensus. This explains the rationalist preference for pluralism and the maintenance of international society, albeit with evolving arguments for the role and duties of those states who form a part of the society of states.

2.5 Good International Citizenship: defined and applied by Dunne and Wheeler

Dunne and Wheeler's interpretation of good international citizenship has developed Linklater's definition and has focused on specific strands within the original concept, namely, human rights and the consequent 'solidarist' or cosmopolitan shift. The definition offered here challenges the principles of sovereignty and non-intervention through the perspective of responsibility and human rights protection. Focusing on the pragmatism offered by the concept, they apply it to New Labour's foreign policy from 1997.

Dunne and Wheeler define good international citizenship as a viewpoint which 'argues for a mutual interdependence between the provision of national security, the strengthening of international order and the promotion of human rights'.⁸⁵ When these goals clash, Linklater argued that good international citizens are required "to put the welfare of international society ahead of the relentless pursuit of [their] own national interests ... to place the survival of order before the satisfaction of minimal national advantage".⁸⁶ Developing Linklater's argument further, they define the 'welfare' of international society as including respect for human rights. Thus, law-abiding 'good international citizens not only have to place order before the pursuit of narrow commercial and political advantage but are also required to forsake these advantages

⁸⁴ *ibid.* p.39

⁸⁵ Dunne, Wheeler, 1998, p.854

⁸⁶ *ibid.* p.855

where they conflict with human rights'.⁸⁷ Linklater locates this willingness to place constraints on self-interest as a result of the duty to promote the more general good within recent literature on citizenship which has firmly anchored notions of welfare rights as a pivotal aspect of contemporary citizenship and which has begun to explore the concept in context of international relations, and in Evans' original defence of good international citizenship.⁸⁸

It is the contention of this thesis that the argument that good international citizenship will transcend the realist/idealist divide by 'mapping out a third way which tames the element of brute power, and looks to the reconciliation of order and justice in world politics' sets out a position which does not critically analyse the definitions of order and justice or the power inequalities inherent in these ideas.⁸⁹ This is underlined when looking at the problems raised when major powers believe that a certain situation requires the use of force in order to maintain international peace and security, but are unable to secure a consensus for such action; a good international citizen, after all, is supposed to act multilaterally and to ensure that all actions to uphold the rules of international order are legitimized by the UN. Dunne and Wheeler's answer is that 'in exceptional cases good international citizens have a duty to use force even if this weakens the rule of law in the society of states'.⁹⁰ Dunne and Wheeler claim that in order to be judged a 'good international citizen', states and their leaders must recognize that they are 'burdened with the guardianship of human rights everywhere'.⁹¹ By advocating a solidarist interpretation of international society, they establish a perspective that not only no longer precludes, but actively advocates intervention in the affairs of other states on the grounds of human rights.

Dunne and Wheeler argue that the late Robin Cook, former British Foreign Secretary, drew on many of the ideas that Evans advocated a decade earlier concerning the role of foreign policy and its objectives in his 1997 Mission Statement setting out 'an ethical dimension' to New Labour's foreign policy.⁹² They suggest that Labour's ethical foreign policy is a departure from foreign policies of the past. However, what is

⁸⁷ *ibid.*

⁸⁸ Linklater, 1992b, p.22-3

⁸⁹ Dunne, Wheeler, 1998, p.856

⁹⁰ *ibid.* p.869

⁹¹ *ibid.* p.856, citing Bull

⁹² 'Robin Cook's speech on the government's ethical foreign policy' 12 May, 1997, Guardian Unlimited, <http://www.guardian.co.uk/ethical/article/0,2763,192031,00.html>

new about Labour's foreign policy is not the fact that it relies upon ethical or moral justifications, but that it explicitly states that it is acting within such an ethical framework and therefore asks to be judged accordingly. They rightly point out that those who use the language of good international citizenship abroad without practising it at home and in their foreign policy will be mistrusted and unable to maintain their influence within the international community. Clearly, this indicates that the language or discourse which is used is significant in and of itself, not least because it often provides governments with the legitimacy to act. If we assume that the power to act is 'fundamentally dependent on providing ethical justification [by virtue of the legitimacy and popular support it provides], then exposing a discrepancy between promise or justification and practice can provide an important incentive for states to align their practices with their words'.⁹³ It is this explicit recognition of the power of discourse and the justifications to act that it contains that lend good international citizenship in conjunction with an ethic of communication its critical power. Indeed, when analysing British foreign policy, Dunne and Wheeler reveal considerable discrepancies between Britain's claim to behave ethically abroad and its actions which are often more reminiscent of traditional realism.

More debatably, they conclude that those states 'who practice good governance at home are likely to behave in the same way abroad'.⁹⁴ One of the key challenges to liberal democratic peace theory is that states who behave peacefully and cooperate amongst themselves do not necessarily interact with non-liberal democratic states in the same way, often behaving in a more hostile, unilateral or aggressive fashion.⁹⁵ By making a state's place (its legitimacy and sovereignty) within the international community contingent upon its acceptance of human rights, Cook's policy focuses on the need for international scrutiny or censure of those states who fail to meet the requisite standards, without reflecting on our own historical role in creating inequalities and unstable situations.

Cook introduces the issue of dialogue to ethical foreign policy; particularly regarding the need to balance the competing values of security and human rights. An

⁹³ Karin Fierke: 'Constructing an ethical foreign policy: analysis and practice from below' in Smith and Light (eds.) 2001, p.132

⁹⁴ Dunne, Wheeler, 1998, p.856

⁹⁵ M. Doyle: 'Liberalism and World Politics Revisited' in Charles Kegley (ed.), 1995, *Controversies in International Relations Theory: Realism and the Neo-liberal Challenge*, New York, St. Martin's Press

example of this is China, where Cook argued that ‘more will be achieved through ‘dialogue’ than through public confrontation. A genuine ‘dialogue’ is not an occasion for lecturing or hectoring, as realist critics have contended; rather, it is an opportunity for an ‘open exchange of views’’.⁹⁶ Although dialogue is introduced, it is neither situated in a specific theoretical framework, nor is it indicated what kind of procedural ethics should inform dialogue. Dunne and Wheeler note that:

Cook requested the release of twelve dissidents, but only raised these cases at a junior level within the government. During a four-hour meeting with the Chinese foreign minister, Cook decided not to bring up any of the individual cases on his list, choosing instead to discuss human rights in general terms. Moreover, having said that he would provide a platform for the victims of human rights abuses, the Foreign Secretary declined to meet Wei Jingsheng [a human rights campaigner, imprisoned for 18 years] during his visit.⁹⁷

Clearly, Cook’s actions did not match expectations when he talked of dialogue. Arguably bowing to strategic and economic/trade interests, Cook did not make full use of the dialogical forum to make his views known on the human rights record of the Chinese government. This was justified in a number of ways, not least by suggesting that ‘China’s growing entanglement in the diplomacy of human rights provides important arguments for Western states seeking to hold China accountable to internationally agreed standards’.⁹⁸ Thus, failure to get tough now might lead to a more fruitful, if slower, process in the long-term. However, it is possible to read alternative agendas into Cook’s failure to live up to his promise. Not only does Britain consider itself to have vital security interests related to Asia-Pacific stability and a ‘duty of care to the six million residents of Hong Kong’, but China is also a permanent member of the United Nations Security Council.⁹⁹

Cook’s actions can be located within the broader debate about the moral responsibilities of good international citizens. Rather than rehearsing the familiar realist arguments, suffice to ask how far should states go to balance the claims between the security and welfare of their own citizens and those of humanity? Just as there is generally agreement that it is no longer acceptable for states to claim that it is of no

⁹⁶ Dunne, Wheeler, 1998, p.863

⁹⁷ *ibid.* p.864

⁹⁸ *ibid.* p.865

⁹⁹ Cook, Robin: ‘Foreign policy and human rights’, Foreign Affairs Committee, 6 January, 1998, p.53

concern to others how they treat their own citizens,¹⁰⁰ so there is little consensus as to what this implies in reality for the international community. Good international citizens, no matter how good their intentions, are faced by the dilemma that ‘the West needs China if there is to be any enforcement of international rules on the outside, but this precludes any possibility of *enforcing* the rules against China for its violation of human rights on the inside’.¹⁰¹ As Linklater indicated, this suggests that good international citizenship is grounded in power politics, recognising that power wielded irresponsibly can undermine order and that order is a precondition of other values such as justice and dialogue. However, the question that this pluralist perspective raises is whose order is it and whose preferences does it privilege? Despite the normative innovations of Linklater, Dunne and Wheeler, good international citizenship does not, by itself, have the tools which allow us to surmount this tension and it is for this reason that further dialogical innovations are necessary.

We have seen that good international citizenship places emphasis on cooperation and the importance of strengthening the rules and norms of the international order. However, while this perspective offers some potential for change through developing international institutions, notions of community and the human rights regime, it remains the perspective of the powerful as it allows dominant states to define what constitutes order and justice. It does not address the problem of selectivity, inherent in any conception of international society where power, bargaining influences, and national interest will always be important in deciding the agenda. This is demonstrated by the fact that Chinese human rights are not high on the agenda because they clash with the interests of great powers. Wheeler responds to the criticism of selectivity by citing the need for prudence which dictates different responses in different cases.¹⁰² Prudence, however, appears to be a double-edged sword; while indeed necessary to conducting affairs (it suggests that we recognise the limits of our capabilities and adopt a more long-term vision), it may also serve to provide a cloak to hide other strategic or national interests. Although this interpretation of good international citizenship considers strategic issues, it does not sufficiently consider the role which states might have played in the development of complex situations: for example, the perpetuation of inequalities

¹⁰⁰ *The Responsibility to Protect*, 2001

¹⁰¹ Dunne, Wheeler, 1998, p.865

¹⁰² Wheeler, 2000, p.48

through strategic, political or economic policies. Herring makes this point when he suggests that the problem of foreign policy ethics is one of ‘putting the world to rights’:

In other words, the problem is how to stop others doing things which violate our sense of right and wrong. Invisible is the way that Britain is a vigorous and systematic violator of the ethics professed in [Cook’s 1997] Mission Statement. [...T]he British government’s adoption of explicit ethical criteria should not blind us to the significance of its failure in many cases to live up to those criteria.¹⁰³

Wheeler has made a compelling case for good international citizens to be able to resort to unilateral force in the case of a ‘supreme humanitarian emergency’, perhaps when collective armed force is being blocked by the ‘unreasonable veto’ or self-interest of a major power within the Security Council.¹⁰⁴ However, a solidarist interpretation of good international citizenship which supports an emergent norm of humanitarian intervention does not indicate what kind of process legitimates the moral or legal values which offer justification for the use of force. Nor do the threshold criteria Wheeler lists meet the kind of procedural demands required of such a legitimating process by Habermasian discourse ethics.¹⁰⁵

Existing perspectives of good international citizenship assume universal standards and aspirations but fail to address ways in which those involved might have a say in the dialogue that constructs their lives. Dunne and Wheeler note the importance of dialogue, assuming that participants are prepared to engage in conversation and thus potentially alter their position, but when dialogue breaks down, they argue that good international citizenship requires alternative approaches, including force, to be considered rather than reflect upon the construction and nature of the process which led to the break down of dialogue. Human rights, often at the heart of justifications for intervention, offer a powerful means to enter into dialogue, but the construction of such dialogue is important. Habermasian ideas suggest that universal interests cannot be expressed without dialogue because such a consensus would be an expression of asymmetric power relations.¹⁰⁶ The human rights discourse throws up another problem when a more inclusive and culturally sensitive approach is advocated, simply because, by definition, it requires universalism. While, admittedly, dialogue is also a move

¹⁰³ Eric Herring, 1999: ‘Response to Mervyn Frost: The Systematic Violation of Ethical Norms in British Foreign Policy’, *Cambridge Review of International Affairs*, 12(2), p.81

¹⁰⁴ Wheeler, 2000

¹⁰⁵ *ibid.* p.33-51

¹⁰⁶ See Chapter 4

towards a form of universalism, it offers an alternative approach to negotiating boundaries and identities.

The argument here is not that the support for human rights offered by good international citizenship is undesirable, but rather that the advocacy of such policies requires a deeper level of reflexivity and a greater awareness of inclusive and exclusive practices inherent in current structures.¹⁰⁷ Linklater begins to address this when he argues that states not only have to abide by international law and organisations but that they have to challenge the exclusionary aspects of it. Thus, he argues, good international citizens should challenge the legitimacy of the UN Security Council veto, particularly when it is used irresponsibly. However, the danger here is that this challenge becomes a means to justify intervention in support of human rights rather than a reassessment of the international system.

2.6 Diverging conceptions and recurrent problems

In order to see how another interpretation of good international citizenship might be constructed, it is important to clarify two current and opposing conceptions of international society which maintain differing views as to how good international citizens should act. It should be noted that although both of these positions contain valid concerns and aspirations, they will be rejected as offering too little concern for the deliberative process by which such decisions are made and the consequent legitimacy that these decisions may lack. Although the latter position intends to discriminate between reasons for action offered from self-interest or from some higher cosmopolitan purpose, there is not enough theoretical clarity inherent in such a position to analyse such claims and to reflect upon possible communicative distortion.

Bull's identification of two different forms of solidarism in international society reflects existing theoretical conceptions of good international citizenship. The first concerns what he calls 'police action', 'where states exhibit solidarity in their response to law-breaking states which violate the cardinal rules and norms of the society of states.'¹⁰⁸ Bull suggests, in a move adopted by Linklater, that solidarist ideology calls

¹⁰⁷ For an example of what this might look like see Shapcott, 2001, p.224-232: Instead of asking are human rights universal in the abstract, we should ask (how) can we achieve universal human rights and which human rights might be capable of such a consensus? See also Parekh, from Dunne, Wheeler (eds.), 1999, p.139

¹⁰⁸ Wheeler, Dunne, 1996: 'Hedley Bull's pluralism of the intellect and solidarism of the will', *International Affairs*, 72, (1), p.95

for the needs of justice in a particular case to override alliances and political factions.¹⁰⁹ This is the collective security conception of solidarism which underpins the UN Charter and arises from the rationalist tradition in its focus on the concept of rights and duties among states and within a society of states. The second concerns a deeper level of responsibility and greater demands upon the collective will which is closer to the form of solidarism advocated by Wheeler and Dunne. Bull recognised that solidarism ‘might require a challenge to the non-intervention principle. On this reading of solidarism, state leaders are ‘burdened with the guardianship of human rights everywhere.’¹¹⁰ This type of solidarism places the rights and duties of individuals at its heart, as opposed to the pluralist preference for the limited rights and duties of states alone. This latter conception has its roots in cosmopolitanism and sees individuals as having rights and duties in a world society of humankind.

The first interpretation referred to above has also been called ‘statism’.¹¹¹ This conception of international society draws on the pluralist tradition of the English School and is keen to protect the traditional principles of sovereignty and non-intervention, warning of the dangers inherent in humanitarian intervention. It argues that the needs of international order in the face of ideological conflict require states to respect such principles. Its advocates remind us of the difficulties in constructing an agreed set of conditions, the violation of which might permit humanitarian intervention, suggesting that what constitutes sufficiently serious human rights violations is still uncertain. They also argue that there is no consensus over where the boundary between humanitarian war and military aggression lies. More importantly, they highlight the fact that intervention in the affairs of other states on humanitarian grounds sets dangerous precedents for those states who might wish to abuse this idea in order to extend their own power, premising their actions on humanitarian principles. Consequently, Linklater argues that from a statist perspective, aspiring good international citizens:

[including] emerging post-national and post-sovereign states [...], should respect the sovereignty of other powers even when they are committed to totalizing politics. Regard for sovereignty does not preclude diplomatic

¹⁰⁹ Hedley Bull: ‘The Grotian Conception of International Society’, from Butterfield and Wight (eds.) 1966: *Diplomatic Investigations, Essays in the Theory of International Relations*, London, George Allen & Unwin Ltd. p.63

¹¹⁰ *ibid.*

¹¹¹ Linklater: ‘The good international citizen and the crisis in Kosovo’ from Schnabel, Thakur (eds.) 2000: *Kosovo and the Challenge of Humanitarian Intervention*, New York, United Nations University Press, p.485

efforts to persuade societies to behave differently, or economic sanctions and embargoes in extreme cases, but it does rule out military force for humanitarian ends.¹¹²

In more recent work, Linklater has incorporated and developed the principle of harm into the concept of good international citizenship. He has clarified the principles for good international citizenship in a pluralist international society¹¹³, arguing that they are concerned ‘with creating and preserving international harm conventions which work to the advantage of the great powers.’¹¹⁴ These do not, however, protect non-sovereign communities such as indigenous peoples, protect individuals from harm in the case of human rights abuses which do not become a matter for the international society as a whole, nor protect smaller states from the vagaries of the balance of power aimed at preventing harm to the great powers.

Alternatively, there exists a more solidarist conception of international society which has been discussed earlier.¹¹⁵ This definition of a good international citizen

¹¹² *ibid.*

¹¹³ A comprehensive list of these principles includes, although is not limited to: ‘(1) states are the basic members of international society; (2) all societies have a right to a separate existence subject to the need to maintain the balance of power; (3) intervention in the internal affairs of member states to promote some vision of human decency or human justice is prohibited; (4) states should relinquish the goal of acquiring preponderant power in the international system; (5) the duty to cooperate to maintain an equilibrium of power is incumbent on all states; (6) diplomatic efforts to reconcile competing interests should proceed from the assumption that each state is the best judge of its own interests; (7) an ‘inclusive’ as opposed to ‘exclusive’ conception of the national interest should be pursued so that other states, and the society to which they belong, are not harmed for the sake of trivial national advantages; (8) because of their unique military capabilities the great powers should assume special responsibilities which are determined by mutual consent for preserving international order; (9) an essential purpose of an ‘inclusive’ foreign policy is to make changes to international society which will satisfy the legitimate interests of rising powers and new member states; (10) force is justified in self-defence and in response to states that seek preponderant power; and (11) proportionality in war should be respected along with the principle that defeated powers should be readmitted as equals into international society.’ Linklater, Suganami, 2006: *The English School of International Relations: A Contemporary Reassessment*, Cambridge, Cambridge University Press, p.237-240

¹¹⁴ *ibid.* p.240

¹¹⁵ A list of principles for a solidarist understanding of good international citizenship includes: ‘(1) individuals and the various communities and associations to which they belong are the fundamental members of international society; (2) unnecessary suffering and cruelty to individuals and their immediate associations should be avoided in the conduct of war; (3) pluralist commitments to sovereignty and sovereign immunity should be replaced by the notion of personal responsibility for infringements of the laws of war; (4) superior orders do not justify violations of humanitarian international law; (5) breaches of the laws of war should be punishable in domestic and international courts; (6) the sovereignty of the state is conditional on compliance with the international law of human rights; (7) sovereignty does not entitle states to be free from ‘the legitimate appraisal of their peers’ with respect to human rights; (8) states have

differs significantly, moving towards a sense of cosmopolitan justice. Solidarists claim that states have an obligation to protect the rights and interests of individuals who are seen as members of international society in their own right. While this challenges the traditional notion of state sovereignty, there appears to be increasingly less resistance to the idea that states are answerable to the world community for the treatment of individuals. Both interpretations of good international citizenship were articulated in the dialogue surrounding the conflict in Kosovo. NATO's argument, at least in part, borrowed from a cosmopolitan interpretation, seeking to protect the rights of individuals. However, given the problems encountered within this dialogue which shall be discussed in Chapter 5, good international citizenship, as a normative concept intended to hold states to account, is, in this interpretation, unable to move beyond existing power relations.

For some, the solidarist approach requires that good international citizens should consider that serious human rights violations should take precedence over state sovereignty, necessitating, under certain conditions, the use of force. From this standpoint, Linklater argues that as:

custodians of the global human rights culture they should take action to ensure that war criminals are prosecuted, and they should be prepared to reconfigure political systems that violate fundamental moral principles. Establishing international protectorates, partitioning societies, and promoting the establishment of federal or confederal arrangements are three possibilities available to the good international citizen.¹¹⁶

For many, this approach raises justifiable concerns, suggesting that some states may set themselves up as judge, jury and executioner, without having granted due respect or consultation to all parties involved. The debate between the pluralist and solidarist conceptions of good international citizenship turns on the differing value or priority placed on national, international or humanitarian responsibilities. Both positions reflect a lack of consensus over what it means to be a good international citizen when other societies, near or far, are being consumed by ethnic violence and human rights abuses.¹¹⁷ The simple fact that other societies may not conform to Western standards of

responsibilities as custodians of human rights everywhere; (9) individuals have the legal right of appeal to international courts of law when violations of human rights occur; and (10) regard for human rights requires respect for non-sovereign communities and requires the society of states to protect minority nations and indigenous peoples from unnecessary suffering.' Ibid. p.243-44

¹¹⁶ Linklater, 2000, p.485

¹¹⁷ *ibid.* p.487

political legitimacy is not an authorization for any particular course of action. One solution offered is that of *modified statism*. This includes measures such as the suspension of commerce, economic sanctions, and other forms of ‘non-violent pressure deigned to change the behaviour of unacceptable regimes.’¹¹⁸ Whilst this promotes collective action to support human rights, it does not go so far as to advocate military action, thus appearing attractive to many solidarists for whom the conundrum of this tension between human rights, sovereignty and humanitarian intervention rests uncomfortably and remains unresolved. However, modified statism is not unproblematic as it ‘may have the effect of supporting regime security at the cost of human security’, favouring the conventions of international society over the needs of people.¹¹⁹

In a move that responds to criticisms of good international citizenship Linklater concludes that:

although it is essential that good international citizens should respect existing international legal principles, it is also right that they should apply pressure to them in the name of cosmopolitan conventions whose time may have come. Good international citizens must challenge the status quo while avoiding recklessness, arbitrariness, and opportunism, but they must convince others of their case, their competence, and their motives.¹²⁰

The resolution of the tension that permeates the legal order and affects the balance between order and justice, citizenship and humanity, and sovereignty and human rights is one that Linklater regards as crucial for the good international citizen. He indicates that in order to arrive at such a new legal order, the burden of justifying change should rest on the shoulders of good international citizens while they argue for new decision-making procedures. As concerns the moral decision to intervene on the grounds of human rights atrocities, it is implied that not only are the moral credentials of the intervening powers at stake, but that the *force of world opinion* should play a role. There has previously been, however, no explicit suggestion as to the theoretical implications of these proposals, nor how this process might be constructed. In a later work, which draws on the critical approach developed in *The Transformation of Political Community*, Linklater elaborates on what such a process might entail.

¹¹⁸ *ibid.* p.488

¹¹⁹ *ibid.*

¹²⁰ *ibid.* p.493

Focusing on the harm principle as central to a cosmopolitan understanding of good international citizenship, he puts forward these conditions:

(1) to create transnational democratic legal and political institutions which give individuals and their associations the capacity to influence all decisions which may adversely affect them; (2) to devolve political power to ensure advances in the public recognition of cultural and linguistic differences; and (3) to reduce material inequalities and unequal life chances in order to create meaningful forms of citizenship in a regional polity'.¹²¹

This moves substantially further towards cosmopolitanism than the rationalist approach elucidated earlier.

The concept has met with criticism from many quarters, including accusations of conservatism, suggesting that it offers little potential for introducing radical developments in the ways in which international agreements are reached, implemented and policed, raising the question of 'whether or not Good International Citizenship can develop and react quickly enough to emerging global crises.'¹²² It broaches the issue of the state system as a 'global gangster'¹²³, 'perpetuating the dominance of the leading powers in the world and allowing them to avoid their responsibilities to the real citizens of the world – individual human beings.'¹²⁴ Early incarnations of good international citizenship face the charge of offering 'the appeal of a pragmatic politician's half-way house, rather than a radical challenge to our conceptualisations of international relations.'¹²⁵ Carr argues that '[t]he accepted standard of international morality in regard to the altruistic virtues appears to be that a state should indulge in them in so far as this is not seriously incompatible with its more important interests.'¹²⁶ Consequently, those nations which are more secure and wealthy can afford to behave more altruistically than those concerned over their security. This, therefore, provides the basis, such as it is, for the assumption of some major powers that their policies are morally more enlightened than those of other countries. Echoing Brown's critique of human rights, Bertrand Russell once said that '[e]thical notions are very seldom a cause,

¹²¹ Linklater, 2006, p.246. These points refer to the conduct of relations within Europe, but can also be considered within international politics.

¹²² *ibid.* p. 46

¹²³ *ibid.* p.47. The term 'global gangster' was coined by Ken Booth.

¹²⁴ *ibid.*

¹²⁵ John Williams: 'Good International Citizenship' from Nigel Dower, John Williams (eds.) 2002: *Global Citizenship: A Critical Reader*, Edinburgh, Edinburgh University Press, p.50

¹²⁶ Carr, 1939, p.202

but almost always an effect, a means of claiming universal legislative authority for our own preferences, not, as we fondly imagine, the actual ground of those preferences.’¹²⁷ However, good international citizenship places individuals on the international stage, emphasising their importance, their rights and their duties, consequently indicating a move away from the realist prioritising of state pre-eminence and the blatant disguise of vested interests. The conservative accusation is particularly relevant in cases where governments of developed countries are evidently unwilling to restrain the activities of transnational corporations, suggesting that the concept is actually about entrenching and legitimising existing locations and distributions of power.¹²⁸ Williams argues that:

the need, rooted in English School theory, to protect order-generating aspects of states-systemic practice out of fear of descending into the Hobbesian abyss of chaos may well hamstring Good International Citizenship in the face of non-state based challenges such as the environment and, perhaps to a lesser extent, development.¹²⁹

Williams also considers that the ability of the concept to provide direction and purpose to foreign policy ‘in a way which protects order but without ruling out justice or condemning it to an inevitable second place remains too restricted by the corset of established understandings of the states system to adequately address the global challenges we face.’¹³⁰ These two points focus on a potential weakness in the concept, particularly if it remains rooted in the conventional understanding of the states system. This raises the important question of how good international citizenship might be defined in terms of agency. The framework being developed here applies it on a state to state level as it will analyse the responses of the international community to conflict, and also because Habermas implicitly refers to a state model, but its core dialogic principles can be applied more broadly to other collective actors such as transnational communities, global civil society actors, and international governance organisations.¹³¹ Indeed, one of the criticisms of Dunne and Wheeler’s concept is that it does not critically question the role of the state.

¹²⁷ *ibid.* p.87

¹²⁸ Williams, 2002, p.47

¹²⁹ *ibid.*

¹³⁰ *ibid.*

¹³¹ I would argue that Linklater’s advocacy of multiple layers and types of political community and association supports such a wider definition of good international citizenship. See Chapter 6 for further discussion.

It is an attractive concept to many who endorse the society of states, because it seemingly allows emerging global issues such as the environment, human rights, terrorism and political freedom to be addressed in a more normative manner, but without requiring the prior dismantling of the states system. Although capable of responding in cases of extreme need or emergency, good international citizenship, perforce, sets the threshold high for any action taken, thus allowing the continuation of low-level, although possible wide-spread, abuses to continue ‘subject only to diplomatic appeals and commercial inconvenience.’¹³² However, good international citizenship can be interpreted in a much more radical fashion, so that it is not just about entrenching the established power of developed countries, but rather demanding new standards to be set where previously there were none, or extending existing inadequate provisions and involving developing countries. In conjunction with discourse ethics, it can be envisaged as the starting point for more radical interpretations of sovereignty, intervention and citizenship, despite the lack of a central authoritative governing institution or ‘Leviathan’ at the international level, transforming notions of identity, policy-making and consultation processes.

Unsurprisingly, good international citizenship has also met with criticism from realists. Power and security concerns must and will always remain paramount for states that exist in an anarchical system, so any attempt to inculcate good international citizenship into foreign policy is, in their opinion, likely to fail. Realism relies upon a state-centric approach based on national interest and expediency. They remain cynical about the values of multilateralism offered by good international citizenship, casting doubts as to the effectiveness of multilateral institutions when faced with powerful states pursuing perceived national interests regardless of international law or the resolutions of such institutions.

Mick Cox suggests that realists can be criticised for their failure to recognise how realism’s contribution to international stability preserves social and economic inequalities within and between societies.¹³³ Carr argues that consistent realism falls down because it fails to provide any grounds for purpose or meaningful action; ‘pure realism can offer us nothing but a naked struggle for power which makes any kind of international society impossible.’¹³⁴ For realists, states will always manipulate the

¹³² Williams, 2002, p.49

¹³³ Burchill, 2001, p.85

¹³⁴ Carr, 1939, p.118

language of human rights and internationalism to disguise selfish ends. International order is thus sought by achieving a balance of power and assigning certain responsibilities to great powers. In the same vein, we can suggest that both realists and those good international citizens grounded in the pluralist tradition reify the state and its practices, institutions, and mechanisms, making it that much harder for alternatives to be put into operation. It assumes that the state is the dominant actor within international relations and consequently supposes the state to represent a coherent and unified community. Increasingly, the state attempts to retain within its borders many different communities, identities, and interests. Alongside this, it establishes the contingent need for security and survival making it much harder to alter or escape such a mind-set. Jenny Edkins and Maja Zehfuss indicate how the ‘illusion of the sovereign state in an insecure and anarchic international system is sustained and how it might be challenged.’¹³⁵ They propose an alternative analysis of world politics; ‘one that did not replace politics with security or justice with order.’¹³⁶ In this light then, it becomes the separation of the domestic from the international that would require explanation rather than *vice versa*.

Carr himself was unable to surmount what Morgenthau calls the ‘immanence of power’, due to his own relativist and instrumental conception of morals¹³⁷ which stated that there was no independent validity to moral argument, but that international law and morality were simply tools of the ruling group and thus susceptible to manipulation in order to serve their own interests. However, this does not mean that the necessary moral starting-point cannot be arrived at. As Bull argues, ‘[t]he fact that moral principles may serve as the instrument of a dominant group within a society does not mean that they cannot also function so as to fulfil purposes recognized by the society as a whole.’¹³⁸ By acknowledging Bull’s point, we can then move on to expand this idea, linking such moral dilemmas and the increasing need for human security with the potential offered by discourse ethics. Dialogue and communicative action do not provide independent validity to moral argument, but they can, however, provide an intersubjective framework with which to assess the moral arguments offered.

¹³⁵ Edkins, Zehfuss, 2005: ‘Generalising the International’, *Review of International Studies*, 31(3), p.454

¹³⁶ *ibid.* p.455

¹³⁷ Hedley Bull: ‘*The Twenty Years Crisis*’ Thirty Years On’, from Alderson, Hurrell (eds.) 2000: *Hedley Bull and International Society*, UK, Macmillan Press, p.129

¹³⁸ *ibid.* p.130

2.7 Conclusion

Although good international citizenship as defined by Dunne and Wheeler means well by its aim to emancipate individuals who face repression by states, the process of emancipation may be corrupted by the very concept of statehood. Discourse theory allows us to recognise the centrality of power to international practice as ‘from colonialism to the Western domination of international institutions, structural power shapes the very possibility of meaningful dialogue’.¹³⁹ It is crucial that the process of legitimation is scrutinised; this is an essential part of the theoretical task for developing the criteria for good international citizenship.¹⁴⁰ This is acknowledged in Linklater’s recent additional criteria for good international citizens who are concerned to minimize harm done to members of vulnerable communities:

the good international citizen may believe there is a strong case for unilateral intervention, but doubts about legality require a global dialogue to ascertain whether states can agree that supreme humanitarian emergencies justify new principles of humanitarian intervention.¹⁴¹

Dialogue of this nature may, of course, result in consensus against institutionalising humanitarian intervention which solidarists would be bound to accept. Such a move would also be likely to indicate other ways, short of the use of force, in which good international citizenship could be implemented in order to reduce the presence of harm done to those most vulnerable. This paves the way for a closer consideration of the kind of dialogue capable of addressing not only the dilemma presented by humanitarian intervention but also which offers potential for the prevention of harm or conflict prior to its escalation to the point where the use of force becomes pertinent.

The ‘good’ in good international citizenship is currently, for Dunne and Wheeler, linked to the idea of protection for human rights and accepts that these operate within a framework that perpetuates a society of states. This is, I have argued, insufficient, in that it fails to consult those in whose name foreign policy is conducted, or in the case of humanitarian intervention, those it presupposes it will help. The emphasis upon human rights adds weight to the claims of ‘goodness’, yet it brings with it, largely undebated, the baggage of the human rights discourse.

¹³⁹ Marc Lynch, 2000: ‘The Dialogue of Civilisations and International Public Spheres’, *Millennium: Journal of International Studies*, 29(2), p.322-3

¹⁴⁰ Linklater, 1992b, p.34

¹⁴¹ Linklater, 2006, p.254

Good international citizenship does not require altruistic sacrifice on the part of states, but it does advocate a move towards reassessing the relationship between self and other. It indicates a level of responsibility and interdependence that is not sufficiently acknowledged by realist paradigms whilst not requiring the universal moral imperatives preferred by cosmopolitans. 'Good' is, in today's modern/post-modern political world, a loaded term, resplendent with political, imperial and cultural connotations. It is one, therefore, that should be used with care. Part of an already existing concept, it is offered here with caution and a desire to reflect upon what the 'good' might be and for whom. It does not assume that there is only one 'good'. Rather than suggest a teleological approach or an absolute standard of 'goodness', 'good' in this context is offered as an open-ended process. It refers to the dialogical criteria explained in the next chapter concerning process rather than substantive, explicit content or policy. It also raises the question, hinted at earlier, of the 'deterritorialisation of responsibility'. Although Linklater does not share many of Campbell's post-structuralist leanings, he would surely agree with Campbell's argument that 'notions of ethics and responsibility should not necessarily be linked to those who happen to share the arbitrarily demarcated boundaries of the territory of the sovereign state.'¹⁴² The theoretical implications for alterity, contestation and re-negotiation of boundaries, identity and inclusion will be addressed in the following chapter.

¹⁴² Shapcott, 2001, p.66

3. Theory: Dialogue as Normative Grounds and Object of Critique

3.1 Introduction

A number of problems have been highlighted in Chapters 1 and 2 in relation to the intervention in Kosovo which focus on practical issues of exclusion, illegitimate behaviour and coercion. Having discussed several approaches emerging from international relations paradigms and identified some limitations as regards their critical power and normative grounding, we now turn to critical theory in an attempt to develop evaluative criteria to identify and analyse problems in international practice such as those mentioned above. Habermas's critical theory, notably his discourse ethics, is particularly relevant for the attempt to operationalise a communicative approach to the difficulties encountered in the intervention debates for several reasons. Not only is communication and dialogue central to his theory, but he provides a philosophical grounding for it which secures it both a critical and normative orientation. Having developed strong normative justifications for the primacy of communication, Habermas also locates this firmly within the traditions of critical theory which seeks to retain a practical intent; in other words, a recognition of the importance of the relationship between theory and practice. Discourse ethics offers regulative criteria for dialogue, yet simultaneously encounters a number of difficulties. Following a discussion of discourse ethics this chapter reviews several critiques and debates surrounding discourse ethics, looking for ways to adapt or adjust the theory in ways which allow it to contribute towards the analysis of communicative practices in international relations.

The central argument advanced in this chapter is that dialogic principles can be developed to embrace alterity and difference to a greater extent than is allowed for by Habermas. By adopting Benhabib's preference for procedure, and Shapcott's emphasis on hermeneutics, it is intended to demonstrate that discourse ethics can be a more sensitive and reflexive practice, still with cosmopolitan intentions, than the Kantian universalism advocated by Habermas and Linklater. Drawing on a more critical awareness of the limitations of the cosmopolitan project as discussed in Chapter 2, it is less of a universal requirement than a cosmopolitan intent. Although Linklater advocates a 'thin cosmopolitanism' and highlights problems with the cosmopolitan project as it is currently conceived, focusing particularly on the problems of inclusion

and exclusion, his cooption of Habermas's discourse ethics and its implications needs to be analysed in more detail, given that it retains the tension apparent in discourse ethics between the goal of universal inclusion and a limitation on the forms of both legitimate speech and agency. Arguably, this in turn leads towards a thicker conception of cosmopolitanism than Linklater suggests.

There exist important links between the current cosmopolitan and communitarian debate within international relations and the debate over Habermas's distinction between the right and the good which tie these literatures together closely and more explicitly than is sometimes acknowledged. Critics of Habermas have drawn on the Hegelian-inspired communitarian position which claims that it is not possible to separate conceptions of justice from conceptions of the good life. Contrary to this position, cosmopolitans have found intellectual solace in Habermas's preference for a universal, often abstract, notion of justice. While these positions rightly raise a number of concerns, such groupings are often unhelpful in attempting to address pertinent problems in international politics such as inclusion and exclusion.

This chapter will lay out the key precepts of the Habermasian project necessary for the development of this research with its understanding of dialogue as both normative grounds and object of critique. It will address the distinction between the lifeworld and the system and the consequent distinction between communicative and strategic action; the presuppositions of argumentation; the ideal speech situation and discourse ethics, and the distinction between the moral and the ethical (the right and the good). We will then examine Linklater's application of Habermas and, in particular, discourse ethics, to his cosmopolitan project, identifying some areas of concern which will lead us to address some of the more significant critiques of Habermas, and Linklater's use of his work, providing a shift in focus towards a discourse ethics informed by a variety of 'other-sensitive' critiques and concentrating on hermeneutics, feminism, and the politics of alterity.

3.2 Ideal Speech as Normative Grounds

Forester suggests that the question underlying Habermas's project is how can we 'understand the social construction and management of political consent?'¹ He argues

¹ J. Forester (ed.) 1985: *Critical Theory and Public Life*, Cambridge, Massachusetts, MIT Press, p.xi

that Habermas perceives this question to be related to two key spheres of action: technical-instrumental (dealing with problems of control and the ordering of the object world) and moral-practical (dealing with problems of legitimacy and the solidarity of social relations).² This distinction is to inform all applications of Habermas's theory. Forester's definition of colonization of the lifeworld signals a preoccupation with the quality of communication in different spheres of interaction:

Habermas's notion of colonization is not a matter of voluntaristic action; it reflects the structural effects on people's ordinary lives of systemic developments: the increasing penetration of economic markets into previously nonmarket spheres and increasing concentrations of power in the form of private capital or within the bureaucratic labyrinth of the state. The catch-phrase *systematically distorted communication* has long suggested Habermas's dual concern with social structure and social action.³

The lifeworld, then, is concerned with communicative action; it is discursively coordinated, whereas the emergence of the system indicates a different kind of rationality operating through instrumental or strategic reason (derived from Enlightenment reason, scientific/logical positivism). The lifeworld is concerned with the symbolic reproduction of cultures, values, social relations and lived experiences: 'Everyday communicative practice is, as we have seen, embedded in a lifeworld context defined by cultural tradition, legitimate orders, and socialized individuals.'⁴ The system encompasses mechanisms such as the economy, the market and bureaucracy. The distinction between them is clear: the lifeworld is based on action oriented towards understanding, whereas the system is based on action oriented towards success.⁵

The relationship between the system and the lifeworld is developed in Habermas's *Theory of Communicative Action*, where the vulnerability of the lifeworld to encroachment by the system and the consequent rationalisation process is discussed.⁶ Habermas argues that when the system encroaches too far into areas of the lifeworld, then politics becomes distorted. Colonisation of the lifeworld means the systematization of the lifeworld. This recognition of power relations intrinsic to the concept of colonization broadens the range of lifeworld sites which can be analysed

² *ibid.*

³ *ibid.* p.xiii

⁴ Habermas, 1987: *Theory of Communicative Action*, Vol. 2, (trans. Thomas McCarthy), Cambridge, Polity Press, p.182

⁵ *ibid.* p.183-5

⁶ *ibid.* p.187

accordingly. Unlike earlier Frankfurt School theorists, Habermas does not pursue the path of pessimism. He believed that by developing communicative structures, the instrumentalisation of the lifeworld, and in particular, the public sphere, could be reversed, and instrumental rationality would be restricted to the domain of the system. Consequently, our main concern here will be that of communicative rationality. The distinction he draws between communicative action and strategic action is crucial in order to give discourse normative force.⁷ The reformulation of rationality along communicative lines is seen most clearly in the construction of his ideal speech situation. Although it would be a mistake to consider Habermas's notion of an ideal speech situation to be a concrete reality, it is, nonetheless, intended to serve as a critical tool. Without such a normative ideal, Habermas argues, it is impossible to critique current standards of communicative action or recognise distorted communication. Grounding communicative action on the fundamental notion of language and our intrinsic ability to form consensus through language, the telos of communicative rationality, Habermas develops his ideal speech situation in order to be able to distinguish genuine communication from false or pseudo-communication. He engages in a rational reconstruction of empirical communicative competences.⁸ To achieve this, it is necessary to consider what linguistic competences are possessed by ordinary speakers in order to communicate verbally with other participants. According to Bernstein, Habermas believes that 'communicative competence is not something we possess over and above our ability to speak a language; on the contrary, to understand language as such requires a theoretical comprehension of the kinds of understanding available through language.'⁹ Not all forms of language use are aimed towards mutual understanding (Habermas's definition of genuine communication), and these other, strategic, forms of language use, Habermas considers as 'parasitic upon speech oriented toward achieving genuine understanding.'¹⁰

This leads us to the question of what constitutes a 'consensual speech act'? What presuppositions exist which rely upon a background of meaning within the lifeworld? Habermas argues, similarly to Kant, that for morals to be universalisable they must express a 'general will'. Those norms which cannot be expressed as

⁷ Rasmussen, 1990, p.38

⁸ Universal/formal pragmatics

⁹ J. Bernstein, 1995: *Recovering Ethical Life: Jurgen Habermas and the future of Critical Theory*, New York, Routledge, p.48

¹⁰ *ibid.*

universal laws are invalid. There is an important divergence between Kant and Habermas in relation to the manner in which the justification and consequent legitimation of norms is arrived at. For Kant, the procedural test for universal applicability was decided monologically, through a private reasoning process which the individual engaged in with himself. So, whereas Kant's categorical imperative requires that an individual should not act in any way but that he or she could will such a maxim to become a universal law, Habermas's principle of discourse ethics (D) reflects his communicative turn, requiring that his principle of universalization, (U), cannot be answered satisfactorily by a single individual, but must take place within an intersubjective dialogue. This shift from a monological to a dialogical exercise is fundamental in order to continue to justify any notion of the normative cosmopolitan project in the face of challenges to it posed by poststructuralists, postmodernists, realists and communitarians (among others). Habermas adopts McCarthy's formulation of this shift which states that:

Rather than ascribing as valid to all others any maxim that I can will to be a universal law, I must submit my maxim to all others for purposes of discursively testing its claim to universality. The emphasis shifts from what each can will without contradiction to be a general law, to what all can will in agreement to be a universal norm.¹¹

This shift means that universalizability is now defined as an intersubjective procedure of argumentation; the aim is communicative agreement rather than the Kantian version which looked at what each individual rational moral agent could will to be a universal maxim for all without contradiction.¹²

For speech to be considered genuine communication, Habermas stipulates four validity claims linked to understanding and justifying a norm of action. These are: comprehensibility, truth, rightness and sincerity.¹³ The background consensus to which Habermas refers implies that the speaker implicitly makes these claims and that they can be justified if this were required. If, therefore, the validity of any of these claims were to be questioned, we could engage in a discourse which would allow us to reach

¹¹ Habermas, 1990: *Moral Consciousness and Communicative Action* (trans. by Christian Lenhardt and Shierry Weber Nicholsen), Cambridge, Polity Press, p.67

¹² Benhabib: 'Communicative Ethics and Current Controversies in Practical Philosophy', from Benhabib, Dallmayr (eds.) 1995: *The Communicative Ethics Controversy*, Massachusetts, MIT Press, p.336; Stephen White, 1988: *The recent work of Jürgen Habermas*, Cambridge, Cambridge University Press, p.49

¹³ William Outhwaite, 1994: *Habermas: A Critical Introduction*, Cambridge, Polity Press, p.40

consensus as to their validity. While we have already mentioned that Habermas does not suggest that the ideal speech situation should be realised, it is still more than just an ideal as we have to assume its possibility:

The very act of participating in a discourse, or attempting discursively to come to an agreement about the truth of a problematic statement or the correctness of a problematic norm, carries with it the supposition that a genuine agreement is possible. If we did not suppose that a justified consensus were possible and could in some way be distinguished from a false consensus, then the very meaning of discourse, indeed of speech, would be called into question.¹⁴

We should now return to look briefly at the validity claims in more detail. Comprehensibility requires that what is said is actually intelligible and understandable. The claim to sincerity requires that the speaker be honest in what he or she says and that we believe the speaker is being honest with us. Truth, according to Habermas, cannot be discursively redeemed by a direct comparison between statements and reality as advocated by correspondence theories of truth and Enlightenment reason. Rather, truth must be ‘defined in terms of a projected consensus’:

I am entitled to ascribe a predicate to an object if and only if any other person who could enter a discussion with me would ascribe the same predicate to the same object. ... The condition for the truth of statements is the potential agreement of everyone else.¹⁵

In a similar fashion to rightness, truth claims can only be redeemed by means of argumentation and a rational consensus. Rightness requires that what the speaker says, and consequently does, is right or appropriate in the light of existing values and norms; that there is a normative basis for the utterance.¹⁶ The claim to rightness, therefore, places us firmly on the grounds of normatively justified consensus. If challenged, this can only be achieved through communicative action oriented towards understanding and consensus. What happens when we cannot reach an agreement? Either we can shift towards a strategic or instrumental attitude, or we can break off communication altogether and resort to force. Habermas, however, offers an alternative to these scenarios, suggesting that we can enter into a different type of communicative interaction, where contested truth and rightness claims are ‘treated as hypotheses in need of thoroughgoing justification and defence.’ This opens up a new form of

¹⁴ Forester, 1985, p.xvi, citing Thomas McCarthy

¹⁵ Outhwaite, p.41, citing Habermas

¹⁶ Bernstein, 1995, p.49

reflective communication called ‘discourse’: ‘As opposed to ordinary communication (‘interaction’), the goal of discourse is systematically to examine and test problematic truth and normative claims in their own right.’¹⁷ It is intended to allow participants to reach a ‘rationally motivated consensus’ concerning controversial claims.¹⁸ Habermas’s argument concerning the presuppositions involved in speech acts – truth, sincerity, meaningful and right/justified – are compelling when one considers, for example, the concept of lying.¹⁹ Lying, as a social concept, would be meaningless if we did not assume that certain validity-claims were intrinsic to speech acts.

There are certain pragmatic rules which constitute an ideal speech situation or a discourse free from distorted communication which derive from Habermas’s principle of Universalization (U) and his principle of discourse ethics (D). Norms and values which are manifested in particular societies must, for Habermas, conform to (U) which states that:

Every valid norm has to fulfil the following condition: *All* affected can accept the consequences and the side-effects its *general* observance can be anticipated to have for the satisfaction of *everyone’s* interests (and these consequences are preferred to those of known alternative possibilities for regulation).²⁰

(U) cannot operate alone however, and requires the intersubjectivity afforded by principle (D) which states that:

Only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity *as participants in a practical discourse*.²¹

These principles can be broken down further into procedural elements. There are two conditions of ideal speech which Benhabib calls the symmetry condition and the reciprocity condition. The symmetry condition concerns speech acts while the reciprocity condition refers to existing action contexts.²² The symmetry condition refers to two rules for practical discourse:

first, each participant must have an equal chance to initiate and to continue communication; second, each must have an equal chance to make

¹⁷ *ibid.* p.50

¹⁸ Benhabib, 1986: *Critique, Norm and Utopia*, New York, Columbia University Press, p.284

¹⁹ Wyn Jones: ‘On Emancipation: Necessity, Capacity, and Concrete Utopias’, Booth, (ed.) 2005, p.224. See also Richard Bernstein, 1995, 52

²⁰ Habermas, 1990, p.65

²¹ *ibid.* p.66

²² Benhabib, 1986, p.285

assertions, recommendations, and explanations, and to challenge justifications.²³

The reciprocity condition refers to a set of relations that should exist between participants²⁴:

all must have equal chances as actors to express their wishes, feelings, and intentions; and fourth, the speakers must act *as if* in contexts of action there is an equal distribution of chances “to order and resist orders, to promise and to refuse, to be accountable for one’s conduct and to demand accountability from others.”²⁵

These ‘procedural rules express (D) and are those whereby (U) is achieved.’²⁶ Bernstein adds that ‘if argument is not to be constrained by the existing assumptions of any particular linguistic framework, then each must have the freedom to radicalize the discourse by moving it to higher levels of abstraction and reflection, which in turn may require the modification of the originally accepted conceptual framework.’²⁷ All participants must be motivated by the desire to reach a consensus about the truth of statements and the validity of norms and discourse should be free from coercion or constraint. The ideal speech situation also requires that the ‘force of the better argument prevails’. Habermas argues that these criteria are anticipated in every act of argumentation. The ideal speech situation effectively forms an ideal of fair communication, offering a position from which to evaluate social practices, and in particular, to assess the legitimacy of norms. In response to critics who argue that it is not possible to communicatively ground moral principles, Habermas responds compellingly that the ‘ethical skeptic’ will involve himself in a performative contradiction:

The proponent asserts the universal validity of the principle of universalization. [...T]he opponent concludes that attempts to ground the universal validity of principles are meaningless. This the opponent calls the principle of fallibilism. But the opponent will have involved himself in a performative contradiction if the proponent can show that in making his argument, he has to make assumptions that are inevitable in *any* argumentation game aiming at critical examination and that the propositional content of those assumptions contradicts the principle of fallibilism. This is in fact the case, since in putting forward his objection,

²³ *ibid.*

²⁴ Blaug, 1999, p.11

²⁵ Benhabib, 1986, p.285

²⁶ Blaug, 1999, p.11

²⁷ Bernstein, 1995, p.49

the opponent necessarily assumes the validity of at least those logical rules that are irreplaceable if we are to understand his argument as a refutation.²⁸

Despite discourse ethics being a universalistic moral theory, Habermas still accepts the fallibility of discursive practices. In other words, any agreement reached today concerning the validity of a claim does not mean that in the light of further information, reinterpreted needs or changing social conditions, agreement will still hold tomorrow. It may well be necessary to enter into discourse again.²⁹ In this sense, it is important to highlight once more that what Habermas is offering here is a set of ‘universally valid procedural criteria appropriate to judging the justness of proposed norms’, not the substantive content of those norms.³⁰

The emphasis in discourse ethics, which encapsulates the ideal speech situation, is on procedure. Habermas claims that the processes that constitute discourse ethics, as identified earlier, do not determine or ascertain any particular outcome. The outcome can only be determined by the participants themselves. Habermas argues that discourse ethics is concerned with both needs and wants, and the respective problems of inclusion and exclusion. As the ‘revision of values used to interpret needs and wants’ draws on intersubjectively shared traditions, this cannot be a decision taken monologically.³¹ Practical discourse is conceived as:

the *public* practice of a shared, reciprocal taking over of perspectives: everyone finds him- or herself required to take over the perspective of each other person, in order to test whether a ruling is also acceptable from the perspective of everyone else’s understanding of the world and of themselves.³²

For Habermas, the dialogical engagement is a process of both ‘making and finding’.³³ As new forms of suppression are revealed and stripped away, then new understandings can develop, based on the concepts of moral or normative learning and the discourse criterion that no-one may enter discourse with preconceptions as to what they might learn or from whom.

²⁸ Habermas, 1990, p.80-1

²⁹ Kenneth Baynes, 1992: *The Normative Grounds of Social Criticism: Kant, Rawls and Habermas*, Albany, State University of New York Press, p.114

³⁰ White, 1988, p.50

³¹ Habermas, 1990, p.68

³² Habermas in Peter Dews, 1992: *Autonomy and Solidarity: Interviews with Jürgen Habermas*, London, Verso (2nd end), p.251

³³ Bernstein, 1995, p.55

Interaction and learning are both important parts of Habermas's theory of communicative action. However, the reproduction of certain interactions does not necessarily constitute 'learning'. Forester suggests that if 'a policy encouraging oil exploration reproduces consumer-monopolist interactions on the market, consumers and suppliers may exchange signals, but little learning will take place.'³⁴ The information offered by the market is likely to be distorted and misrepresentative of "true costs of production" – a fact that the consumer will never learn as a participant in a monopoly-dominated interaction.'³⁵ The kinds of 'imperfect communication' that might be considered as interactions include bargaining, negotiation and arbitration. Ordinary communicative action concerns the 'recreation in everyday life of particular relations of belief-construction, consent-granting, trust-giving, and attention investment'³⁶; consequently whilst interactions can reproduce particular patterns of knowledge, awareness, trust and consent, they do not guarantee learning nor can they step outside of these interactions in order to challenge them. The question Forester raises here demonstrates the relevance of Habermas's theory of communicative action to everyday practice; how are we able to distinguish between true social, political and economic learning and manipulation and deliberate distortion? While ordinary communicative action is also based on the aforementioned validity claims, discourse ethics provides the theoretical tools with which to test these claims without the threat of coercion or constraint. The ability to identify social, political or economic constraints on discourse offers access to a powerful account of political legitimacy.

Habermas's distinction between the 'right' and the 'good' is particularly evident in his theory of communicative action. The subject of much debate, it is necessary to refer briefly to this distinction in order to place the following arguments and reconstruction of discourse ethics in context. This clarification is required because discourse ethics is primarily concerned with justice rather than addressing questions of the good or happiness. Ferrara's explanation of Habermas's tripartite model of discourse is helpful in untangling the distinction between the right and the good. These three types relate to Habermas's notion of the three different types of world: objective, social, and subjective. Respective types of discourse are pragmatic, ethical and moral,

³⁴ Forester: 'The Policy Analysis – Critical Theory Affair: Wildavsky and Habermas as Bedfellows?', Forester (ed.), 1985, p.265

³⁵ *ibid.*

³⁶ *ibid.* p.267

and they ‘address different understandings of the same paradigmatic practical question: ‘What should I do?’’,³⁷ Pragmatic discourses approach the question from the perspective of strategic or instrumental action, so seeks to find the ‘best way of attaining what is *useful*.’³⁸ Ethical discourses approach the question from the ‘perspective of a life-project oriented to one’s own *good*.’³⁹ Moral discourses are those which take place when the actions of an individual begin to ‘violate the interests of others and to lead to conflicts which stand in need of a consensual regulation.’⁴⁰ The individual now has to determine whether everyone else would also agree on the choice of a particular course of action.

Habermas adheres to this distinction despite criticisms because he intends his theory to be limited; he does not wish it to become the means of dictating how people should live their lives in concrete situations. The ‘good’ refers to subjective and identity-forming issues. It refers to aesthetics, tastes and preferences. Religion is a pertinent example; it belongs to the ‘good’ because it is based on faith and not grounded in reason. For Habermas, the ‘good’ lays out a sphere of autonomy where individuals cannot be told how to live or what to believe. The ‘moral’ however, is based on normative claims of rightness. It deals with ‘*moral* questions, which can in principle be decided rationally in terms of criteria of *justice* or the universalizability of interests.’⁴¹ Such questions are those which have a greater impact on the social intersubjective world and are those which result in binding decisions. Redeemed in ‘discourse’ through reasons, such issues are subject to the ‘force of the better argument’. In response to critics such as Gilligan who argues that this distinction privileges certain orientations over others (e.g. formalism and justice over the ethics of care and responsibility), Habermas acknowledges that it is problematic. However, he argues that the question of the:

context-specific application of universal norms should not be confused with the question of their justification. Since moral norms do not contain their own rules of application, acting on the basis of moral insight requires the additional competence of hermeneutic prudence, or in Kantian terminology, reflective judgement.⁴²

³⁷ Alessandro Ferrara, 1999: *Justice and Judgement*, London, Sage Publications, p.43

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ Habermas, 1990, p. 178

⁴² *ibid.* p.179-80

The distinction Habermas draws between justification and application, allows, for him at any rate, the satisfaction of both types of demands. Effectively, this distinction states that we cannot apply the same kind of judgement to individual ways of life as we can to a specific norm.⁴³ We cannot, Habermas argues, expect a generally valid answer when we ask what is good for me, or good for them. Instead, only the question ‘what is *equally good for all?*’ can be impartially assessed, referring to those ‘action-related conflicts which can be resolved with reference to a generalizable interest; those which are questions of justice.’⁴⁴ Fishkin implies a question to Rawls that we might well imply to Habermas: if ‘we were each to import our own particular conceptions of the good into the original position, the basis for any unanimous agreement would have been lost.’⁴⁵ It is not that ethical questions are less important, simply that they can only be judged from the perspective of the particular. Such a distinction erects certain limitations around Habermas’s theory, limitations which are both useful, as in the retention of self-determination and autonomy⁴⁶, and problematic, as with Gilligan’s argument that it privileges certain ways of thinking/being over others, or the idea that we can ever know what is ‘moral’ or ‘equally good for all’.

Benhabib draws a distinction between universalizability as a procedure for testing maxims and for generating them. In so doing, she argues that communicative ethics is a powerful tool when considered as a ‘procedure for testing the intersubjective validity of moral principles and norms of action’, however, as ‘a procedure for *generating* valid principles of action, the model of moral conversation is a necessary but insufficient test case that requires, in any given instance, adequate contextualization’.⁴⁷

Habermas’s work on discourse and communicative action seeks to locate emancipation in processes of argumentation and consensus. It is an appropriate means with which to both challenge and contribute to the concept of good international citizenship because it offers the conditions under which agents can address the key question in international relations: how should we respond to a variety of intersocietal,

⁴³ Habermas also argues that ‘in modernity, the plurality of individual life-projects and collective life forms cannot be prejudged philosophically, because ways of living are handed over to the responsibility of socialized individuals themselves, and can only be assessed from the standpoint of a participant, the element which can convince *everyone* is narrowed down to the *procedure* of rational will-formation itself.’ Dews (ed.), 1992, p.248

⁴⁴ Habermas in Dews, 1992, p.248-9; Habermas, *Theory of Communicative Action*, Vol. 1, p.73

⁴⁵ James Fishkin, 1992: *The Dialogue of Justice: Towards A Self-Reflective Society*, New Haven, Yale University Press, p.84

⁴⁶ Robert Wolff, 1970: *In Defense of Anarchism*, New York, Harper & Row Publishers, p23-7

⁴⁷ Benhabib, from Benhabib, Dallmayr (eds.) 1995, p.341

interethnic or interstate conflicts? A dialogical approach encourages individuals/groups as members of societies to negotiate their needs and interests without harming each other by granting everyone equal access to and equal voice in decision-making procedures that may affect them. I concur with Forester's argument which, like Habermas more recently, steps back from the concept of an 'ideal speech situation'. Although acknowledging that communication is always imperfect and not a goal to be realized concretely, 'deviations from the formal idealization might still be usefully identified and assessed'.⁴⁸ By understanding and acknowledging the power of discourse, and by adopting Habermas's distinction between communicative and strategic action, we are able to use this to analyse how dialogue plays a role in conflict and inequality.

Habermas offers us a powerful critical and evaluative tool with his ideal speech situation. Such an ideal of complete participation allows us to examine the legitimacy of real moments of participation. In addition, because the validity claims transcend any particular context, justifications are less easily distorted in order to legitimise certain particular interests. Habermas's distinction between the moral and the ethical ensures that the theory is self-limiting, preventing discourse from regulating the sphere of the ethical as well. Discourse ethics offer regulative criteria which allow us to separate the procedural from the substantive, suggesting that it is more concerned with 'the method of justifying moral principles than with the substantive content of those principles'.⁴⁹

3.3 Discourse Ethics and International Relations

Linklater provides one of the most comprehensive attempts to elaborate a form of cosmopolitanism deeply influenced by Habermasian discourse ethics. Linklater's project is unapologetically cosmopolitan and universalist; however, he engages in a rethinking of the cosmopolitan project in order address the problem of 'difference' in international relations. He talks of a triple transformation of political community which is concerned with creating and enhancing social relations which are more 'universalistic, less unequal and more sensitive to cultural difference.'⁵⁰ His vision of a cosmopolitan community which is sensitive to the construction of communities and how this may systematize problems of inclusion and exclusion is not blind to the totalising

⁴⁸ Forester, 1985, p.xv

⁴⁹ Richard Devetak: 'Critical Theory', Burchill et al. 2001, p.173

⁵⁰ Linklater, 1998, p.7

potential of universalism. Rebuilding the critical project in the light of Kant and Marx, recognising and reworking the weaknesses in their respective theories, requires a shift towards more inclusive communication communities which creates space for dialogue between radically different individuals and communities. Thus, he is concerned to make the case for a 'thin cosmopolitanism', a cosmopolitanism which is accepting of difference, and argues that Habermas's discourse ethics offers the potential to address problems raised by both the cosmopolitan and communitarian literatures. Linklater's critical theory-inspired notion of emancipation requires that the cosmopolitan community be constituted discursively. He attempts to expand the values of the *polis* into the international sphere, whilst simultaneously striking a balance between universalism and particularism principally through the discursive dimension drawn from Habermas.

Linklater identifies two versions of the discourse position. The thick version holds that all individuals are equally entitled to live in societies which recognise an equal right to representation. This effectively implies that all societies should evolve towards liberal democracies.⁵¹ The thin version, the version being developed in this thesis, takes the position that all individuals have a right to be consulted about decisions made outside their society which have adverse effects on them.⁵² This raises a number of problems: how do we know in advance who will be affected, what the specific consequences of a norm might be, or how we can include the all-affected into processes of practical discourse. The inclusion of all who may be affected is related to the notion of competence. Who may be considered a competent actor? Dahl addresses both the issue of 'all those who may be affected' and competence as two sides of the same coin when he discusses the idea of contingent citizenship, whether it be based on history or competence. Dahl argues that 'all adults should be included, subject only to such exceptions as may fail to satisfy the presumption of personal autonomy. [Thus,] *The demos must include all adult members of the association except transients and persons proved to be mentally defective.*'⁵³ This argument pays insufficient attention to the power relations implied by this conceptualisation as the issue is surely not precisely

⁵¹ Linklater, 2005: 'Dialogic Politics and the Civilising Process', *Review of International Studies*, 31(1), p.144

⁵² *ibid.*

⁵³ Robert Dahl, 1989: *Democracy and Its Critics*, New Haven, Yale University Press, p.120-131.

who is able to participate as Dahl indicates⁵⁴, but rather *how* the notion of ‘affected interests’ is defined and by whom.⁵⁵

The ‘thin’ version preferred by Linklater does not require that principles of liberal democracy be imposed upon unwilling communities, thus avoiding accusations of ignoring cultural differences and unwarranted interference. Linklater acknowledges that ‘the discourse theory of morality does not have universal validity. Efforts to globalise the perspective may withhold recognition from ethical points of view found in non-liberal societies.’⁵⁶ The more minimalist position requires that members of a society ‘should be less concerned with passing normative judgement on domestic practices elsewhere than with investigating the ways in which their actions destroy, frustrate, demean or in other ways harm other peoples.’⁵⁷ In a move that is similar to Benhabib’s concept of ‘democratic iterations’, Linklater argues that dialogic frameworks offer the means to allow those who have been excluded from discourse or the decision-making processes to be included or to influence the discourse.⁵⁸ His concern lies in engaging those who may have been systematically excluded from dialogue and therefore have been unable to voice their own interests or how they may have been harmed by particular social policies or practices. He argues that this requirement to engage with those who have been excluded is implicit in the ideals of citizenship.

Linklater suggests that Habermas:

universalise[s] ideas about consent and dialogue which are intrinsic to citizenship in the domestic domain, enlarge the meaning of citizenship by conferring rights of participation on every member of the species, and maintain that every individual is obliged to widen the sphere of moral responsibility to embrace the entire species.⁵⁹

Criticism that good international citizenship is simply yet another attempt to impose Western ideas of governance is ameliorated by developing it in concert with the notion

⁵⁴ *ibid.* p.129

⁵⁵ Parekh, 2003, p.5

⁵⁶ Linklater, 2005, p.143

⁵⁷ *ibid.*

⁵⁸ *ibid.* p.145; Benhabib, 2004, Judith Butler in Cohen (ed.), 1996, and Fine, 2003a

⁵⁹ Linklater, 1992b, p.32. In the context of the aim of this research, it is preferable to see Habermas’s pragmatic rules of fairness not as an individual right or entitlement to inclusion which its link with citizenship might suggest, but rather as focused on the conditions of legitimacy of the discourse: thus the onus is then on the institutions of democracy/international community to find ways to include individuals if they and their justifications for action wish to be legitimate. See Blaug, 1999, p.45-6

of discourse ethics which argues that all individuals should have the right to be consulted about decisions which may adversely affect them. Without this notion of potential consent, then decisions cannot be made legitimately. The thin version of discourse does not require conformity to the dominant perspective, but rather requires that ‘all individuals have a right to be consulted about decisions made outside their society which disadvantage them.’⁶⁰ As dialogue and consent gradually replace domination and force as determining factors in international relations, then, Linklater argues, we can move towards an approximation of the normative ideal of a universal communication community.

Linklater is one of an increasing number of scholars who have attempted to explore what communication and ‘good conversation’ might mean in international relations. He argues that Habermas’s discourse ethics is appropriate for “post-Westphalian” forms of community in which radically different agents ‘are equally free to express their moral claims, able to explore the prospects for solving their moral differences and capable of reaching an appropriate compromise in the absence of consensus’.⁶¹ Linklater draws on Habermas’s work, particularly that of discourse ethics, for several reasons. It enables him to develop critical international theory; to ‘contribute to the philosophical defence of moral universalism’; and to develop his concept of cosmopolitan community.⁶² Discourse ethics is particularly apt because it offers both procedure to govern just conversation, and a normative and philosophical justification for discourse as a means. However, several problems have been highlighted in relation to Linklater’s attempt to construct a dialogic cosmopolitanism which attempts to respond to critiques of the homogenising power of universalism, suggesting that the thin universalism he advocates may not be as thin as he claims.

3.4 Adapting Discourse Ethics

Despite Linklater’s intention to establish a ‘thin’ cosmopolitanism, he is unable to avoid some of the same critiques to which Habermas has been subjected. Ironically, Haacke suggests that Linklater enacts various strategic moves in order to establish a transformative effect on international politics. Such strategic acts (common to many

⁶⁰ Linklater, 2005, p.144

⁶¹ Linklater, 1998, p.92

⁶² Richard Shapcott, 2002: ‘Cosmopolitan Conversations: Justice, Dialogue, and the Cosmopolitan Project’, *Global Society*, 16(3), p.224

forms of cosmopolitanism), Haacke claims, include the granting of international or global citizenship to individuals as well as the opening of regional supranational institutions to outsiders.⁶³ Arguably, these do not fall within the Habermasian project to develop procedural frameworks for discourse. As Haacke points out, it is difficult to see how such moves would command legitimacy unless they are established through a practical discourse and not established strategically. Dryzek similarly declares that ‘critical theory renounces instrumental manipulation of social conditions – even in pursuit of manifestly desirable ends.’⁶⁴

Returning to Linklater’s ‘thin universalism’ and his definition of the procedures of dialogue, he states that these include the convention that ‘no person and no moral position can be excluded from dialogue in advance, and the realisation that authentic dialogue requires a particular moral psychology.’⁶⁵ By matching his position so closely to Habermas’s discourse ethics, he becomes vulnerable to Hopgood’s charge that it ‘presumes people are at least minimally liberal (other-regarding, egalitarian) in the first place.’ Hopgood goes further and argues that the ‘very act of establishing a universal communication community of equals in reality clashes with any number of existing social and cultural norms.’⁶⁶ Linklater tries to ameliorate this by acknowledging the potential for a universal communication community to be Western and thus ethnocentric, and claims that ‘most cultures recognise that the differences between insiders and outsiders are not always decisive.’⁶⁷ Furthermore, some ‘notion of answerability to others, and some sense of an obligation to engage outsiders in dialogue about matters which concern them deeply, may not be universally accepted but they are widely supported across the world nonetheless.’⁶⁸

Hopgood’s argument is developed further by Shapcott who argues that Habermas’s model, and Linklater’s, is potentially exclusionary or assimilative. Recognising that a universal communication community is likely to be an impossible goal because a ‘universal community, one that in principle includes all members of the

⁶³ J. Haacke: ‘Theory and Praxis in International Relations: Habermas, Self-Reflection, Rational Argumentation’ 1996, *Millennium: Journal of International Studies*, 25(2), p.279

⁶⁴ John Dryzek, 1987: ‘Discursive Designs: Critical Theory and Political Institutions’, *American Journal of Political Science*, 31, p.664-5

⁶⁵ Shapcott, 2002, p.224

⁶⁶ Stephen Hopgood: ‘Reading the Small Print in Global Civil Society: The Inexorable Hegemony of the Liberal Self’, 2000, *Millennium: Journal of International Studies*, 29(1), p.10

⁶⁷ Linklater, 1998, p.101

⁶⁸ *ibid.* p.102

species, must, by virtue of being a community, exclude or deny important differences amongst its members', Shapcott nonetheless argues that communicative models offer a better resolution than other frameworks to the tension between community, inclusion and difference identified within the cosmopolitan and communitarian debates.⁶⁹ Shapcott raises two fundamental problems with the conception of dialogic communities within the cosmopolitan project as advocated by Habermas and Linklater, arguing that it is 'potentially exclusionary of radical difference in at least two ways; in relation to the topics of conversation and to the conception of agency required for just conversation.'⁷⁰ Shapcott articulates these two main problems in context of what Hutchings calls the Kantian paradox of 'limitation and legislation'. This refers to the way in which it simultaneously 'legitimizes and encourages freedom of speech, while arguing that only certain speech is legitimate'.⁷¹

Linklater advocates a universal and unconstrained dialogue of equals in which 'no person and no moral position can be excluded from dialogue in advance'.⁷² This dialogue however, must take a certain form. The implementation of dialogue in accordance with discourse ethics requires that people must be willing to enter into dialogue and to be motivated by finding consensus; no position can be excluded in advance and people must be willing to be guided by the force of the better argument. Dialogue requires that there be no pre-determination of the outcome and that all members of the dialogue should be open to each others' perspectives and able to reflect upon their own embedded positions. Such dialogue implies that 'there is no certainty about who will learn from whom.'⁷³ These characteristics form what Habermas calls a 'post-conventional morality', a term derived from Kohlberg's stages of development which distinguish three levels of moral consciousness:

⁶⁹ Shapcott, 2002, p.223

Although Habermas offers a theory with universal intentions, some argue that his discourse ethics is informed by a specific German, and continental, philosophy and politics, thus falling prey to the particular and re-creating the tension between the universal and the particular. Habermas himself would acknowledge the German roots of his thought, although he argues that his horizons have broadened somewhat. Dews, 1992, p.148; Danilo Zolo, 2002: *Invoking Humanity: war, law and global order*, New York, Continuum, p.81

⁷⁰ Shapcott, 2002, p.223. The consensus required by the telos of (U) means that conversation is restricted primarily to the 'right' (p.106).

⁷¹ *ibid.* p.224, citing Hutchings

⁷² Linklater, 1996: 'Citizenship and Sovereignty in the Post-Westphalian State', *European Journal of International Relations*, 2(1), p.86

⁷³ *ibid.* p.86

the pre-conventional level, on which only the consequences of actions are judged, the conventional level, on which the orientation to norms and the intentional violation of them are already judged, and finally the post-conventional level, on which norms themselves are judged in light of principles.⁷⁴

Habermas's own definition of post-conventional morality is also useful to set out in terms of the discussion that will follow:

The concept of the capacity to act that develops at the post-conventional stage of interaction makes it clear that moral action is a case of normatively regulated action in which the actor is oriented toward reflectively tested claims to validity. Intrinsic to moral action is the claim that the settling of action conflicts is based on justified reasoning alone. Moral action is action guided by moral insight. [...] Only at the post-conventional stage is the social world uncoupled from the stream of cultural givens.⁷⁵

For Habermas, such a standpoint is necessary in order to learn how to conduct social life in a consensual manner. Linklater places this perspective in context of International Relations and contrasts it with pre-conventional and conventional standpoints:

Pre-conventional morality exists when actors obey norms because they fear that non-compliance will be sanctioned by a higher authority; conventional norms are observed because actors are loyal to a specific social group; post-conventional morality occurs when actors stand back from authority structures and group membership and ask whether they are complying with principles which have *universal validity* ... Post-conventionalism demonstrates a capacity for ethical reflexivity in which agents recognise that moral codes are malleable social products rather than immutable conventions to which they must submit.⁷⁶

This brings us to Shapcott's primary concern, raised already by Hopgood, which is that the 'Habermasian understanding of the conditions of universal moral dialogue are unnecessarily restrictive at the level of agency.' For Habermas, a post-conventional moral perspective requires a commitment to universal discourse. Post-conventional ethics 'requires a reflective orientation towards the forms of unjust exclusion which subjects have created in the process of pursuing interests and protecting valued differences' and the inclusion in dialogue of those who have been excluded.⁷⁷ This requires a particular conception of agency in order to be able to participate and suggests

⁷⁴ Habermas, *TCA*, Vol. 2, p.174. For Kohlberg's specific stages of development see White, 1988, p.66-8. The three stages reflect different levels of reflexivity.

⁷⁵ Habermas, 1990, p.162

⁷⁶ Shapcott, 2002, p.226-7, citing Linklater

⁷⁷ Linklater, 2005, p.20

that only those who are able to ‘conform to a specific ideal of reason’ are able to participate in dialogue which, therefore, remains potentially exclusionary.⁷⁸ This excludes those who may conform to a pre-conventional or conventional consciousness and therefore favour traditional social practices and conceptions of the good life from participating in reasoned discussion. It also implies that those who inhabit conventional or pre-conventional consciousness are immature and need to be freed from such moralities in order to be able to engage in conversation, consequently endorsing an evolutionary, teleological and developmental account of human agency.⁷⁹ In response to the question of post-conventional morality, Habermas notes that in the failure to identify a shared good, the formal features of the shared situation of deliberation offers a way out of the ‘modern dilemma, since the participants have lost their metaphysical guarantees and must so to speak derive their normative orientations from themselves alone.’⁸⁰

Benhabib also acknowledges that discourse ethics presupposes and privileges a ‘secular, universalist reflexive culture in which debate, articulation, and contention about value questions as well as conceptions of justice and the good have become a way of life’.⁸¹ If we recall Shapcott’s argument that justice also occurs at the level of identity and recognition, then in this context, the self-other relation is only equal insofar as ‘all have developed the same consciousness.’⁸² There is then, clearly a sense of hierarchy implicit in Habermas’s account of agency. This exclusion, or assimilation, is arguably aggravated by the goal of critical theory being emancipation, if as is suggested by Shapcott, emancipation is not the goal but the prerequisite of dialogue.⁸³ Shapcott argues that:

despite his efforts to emphasise the openness of conversation, Linklater does not appear to have succeeded in adopting the inclusive dimension of discourse ethics (D) without simultaneously endorsing the legislative aspects that accompany the *telos* of U. Most importantly, Linklater’s formulation, like Habermas’s, does not rest at defining universalism in relation to the inclusion alone but extends it to the process of the validation of norms.⁸⁴

⁷⁸ *ibid.* p.227

⁷⁹ Shapcott, 2001, p.119

⁸⁰ J. Habermas, 1998: *The Inclusion of the Other*, Cronin, Ciaran, De Grieff, Pablo (eds.), Cambridge, Massachusetts, MIT Press, p.41

⁸¹ Benhabib, 1992, p.42

⁸² Shapcott, 2002, p.230

⁸³ *ibid.* p.231

⁸⁴ *ibid.* p.232

In addition to these objections, critics have raised another important objection concerning Habermas's and Linklater's emphasis on the principle (U) which takes us closer to the concern raised over the potential range of topics of conversation. Critics argue that (U) has greater implications for substantive content than Habermas acknowledges and so it is necessary to reject Habermas's aim to seek to define the 'standpoint from which moral questions can be judged impartially', recognising that it may be both impossible and undesirable to find such an Archimedean perspective.

Benhabib addresses the problem of the implications raised by (U) in a way which, she claims, allows us to avoid the charges of 'dogmatism and/or circularity'.⁸⁵ Emphasising the procedural aspects of discourse ethics which are evident from Habermas's insistence that content can only be determined by the participants, thus preventing the theoretical pre-selection of any specific institutional arrangement or political model, Benhabib seeks to reformulate universalism as an 'interactive subjective procedure of argumentation' which encourages reversibility.⁸⁶ She puts forward two principles to support her formulation: first, the principle of universal moral respect, and secondly, the principle of egalitarian reciprocity. The former requires that we 'recognize the right of all beings capable of speech and action to be participants in the moral conversation', while the latter requires that within conversations everyone has the 'same symmetrical rights to various speech acts, to initiate new topics, to ask for reflection about the presuppositions of the conversation'.⁸⁷ Key to Benhabib's argument is the notion of respect for others which, she argues, develops from processes of communicative socialization. In order to defend her argument from claims of circularity or dogmatism, she argues that 'the presuppositions of the moral conversation can be questioned from within the conversation itself, they are placed within the purview of argumentation'.⁸⁸

Although Habermas implies awareness of historical contingency, the notion of the universal normative 'ought' becomes problematic and homogenizing. Benhabib concurs that Habermas has gone too far by 'insisting that the purpose of universalizability procedures in ethics must be the uncovering or discovering of some

⁸⁵ Benhabib, 1992, p.29

⁸⁶ *ibid.* p.28

⁸⁷ *ibid.* p.29

⁸⁸ *ibid.* p.32

“general interest” to which all could consent’.⁸⁹ Instead, she argues, (D), which states that only those norms that meet, or could meet, with the approval of all concerned in their capacity as participants in a practical discourse can claim to be valid, is sufficient, in conjunction with those rules of argument governing discourse which she has summarized as the principles of universal moral respect and egalitarian reciprocity, to serve as the only universalizability test.⁹⁰ One of the key differences between Benhabib and Habermas is the role they attribute to consent. While for Habermas, (U) guarantees consent, Benhabib is unsatisfied by this prospect, arguing that the:

core intuition behind modern universalizability procedures is not that everybody could or would agree to the same set of principles, but that these principles have been adopted as a result of a procedure, whether of moral reasoning or of public debate, which we are ready to deem “reasonable and fair.”⁹¹

If we are willing to adopt Benhabib’s version of communicative ethics, then we are free to place a firmer emphasis on the role of procedure as fairness rather than implying a need for consent. She argues that consent should not be interpreted as an end-goal, but rather as a ‘process for the cooperative generation of truth and validity’.⁹² As has been mentioned, it is unlikely that we either could or would want to specify the ‘general interest’, however, discourse ethics, when focusing on process, offers the means to reveal the ‘exclusion and silencing of *certain kinds* of interests.’ At stake, therefore, is ‘the uncovering of those partial interests which represent themselves as if they were general’, thus exposing certain kinds of discourses which claim greater legitimacy than others.⁹³ This leads us to move away from a strict interpretation of discourse ethics, drawing upon its procedural ethics while combining them with a broader approach to practical communication. It moves away from the necessity for universal consensus, towards an emphasis on universal participation. The emphasis placed on procedure is important for developing either applications of discourse ethics or for integrating a more dialogical understanding of politics, legitimacy and decision-making within the international sphere.

Feminist critical theorists have highlighted another crucial critique which affects both who is included and the topic of conversation, arguing that gender bias and gender

⁸⁹ *ibid.* p.9

⁹⁰ *ibid.* p.37

⁹¹ *ibid.* p.37

⁹² Benhabib, from Benhabib, Dallmayr, (eds.), 1995, p.345

⁹³ Benhabib, 1992, p.48

blindness is implicit in Habermas's discourse ethics. Hutchings argues forcefully that Habermas's 'account of the lifeworld/system distinction and the role of the public sphere in modernity does little to challenge the liberal private/public distinction.'⁹⁴ Additionally, Habermas appears to 'endorse a conception of the human subject which embodies the rationalist bias of the Western philosophical tradition of which feminists have been consistently critical. This bias relies on a binary logic in which the feminine is denigrated as the 'other' of reason'.⁹⁵ Benhabib also addresses this issue arguing that Habermas's theory relegates women's perspectives of moral life to the private sphere: 'the restriction of the moral domain to questions of justice [...] result in the privatization of women's experience and lead to epistemological blindness toward the concrete other.'⁹⁶ It is worth briefly exploring the different ways in which this distinction is considered to operate. Gilligan's critique of Kohlberg's account of moral development highlighted the fact that men and women may often speak in different voices. Her argument was that by associating the higher stages of moral consciousness with more abstract principles of justice, this privileges an 'objective' or impartial view of the public sphere which is free from the distorting influence of the particular or the private and grants superiority to abstract notions whilst paying little attention to the ethic of care and responsibility.⁹⁷ The ethic of care, largely considered to be the domain of women, instead focuses on the development:

of individual family members rather than on the consistent compliance with generalisable principles. A highly developed hermeneutic grasp of personal character and social context – the very considerations which an abstract morality of justice deliberately ignores – is one of the main constitutive features of the ethic of care and responsibility.⁹⁸

Although Habermas places greater importance on the morality of justice because of its universal nature, and the consequent need to transcend the particular, this by itself, is insufficient. Instead, many feminists have argued that 'the morality of justice and the ethic of care and responsibility are complementary moralities: they should both feature

⁹⁴ Kimberly Hutchings, 2005: 'Speaking and hearing: Habermasian discourse ethics, feminism and IR', *Review of International Studies*, 31, p.156; Nancy Fraser, 1985: 'What's Critical about Critical Theory? The Case of Habermas and Gender', *New German Critique*, 35

⁹⁵ *ibid.*

⁹⁶ Benhabib, 1992, p.164

⁹⁷ Linklater, 1998, p.68

⁹⁸ *ibid.* p.68-9

prominently in a just society.’⁹⁹ Taking up this criticism, Shapcott argues that the preference for justice to the exclusion of an ‘affective’ dimension is restrictive and exclusive ‘precisely because it rules out certain topics and concerns, which can justifiably be considered moral, from the conversation pre-discursively.’¹⁰⁰ Consequently, the content of what is considered acceptable dialogue has already been decided prior to any engagement with others.

Removing (U) from the equation also allows us to address this problem, since it is possible that conversation might be opened up with a broader focus that is more inclusive of difference and which seeks to engage with the other rather than form a universal consensus.¹⁰¹ Young highlights this potential when she discusses the transformation that the communicative process can produce in the opinions of participants and thus the potential to avoid either the exclusiveness or homogeneity of (U). If we assume that:

communicative interaction means encountering differences of meaning, social position, or need that I do not share and identify with, then we can better describe how that interaction transforms my preferences. [...E]ach position is aware that it does not comprehend the perspective of the others differently located, in the sense that it cannot be assimilated into one’s own. There is thus something to be learned from the other perspectives as they communicate their meanings and perspectives, precisely because the perspectives are beyond one another and not reducible to a common good.¹⁰²

Drawing on Benhabib’s terms, this allows us to better recognise concrete identities.

Echoing earlier arguments and developing the notion of ‘different voices’, Young claims that the tendency to restrict democratic deliberation to argument carries ‘implicit cultural biases that can lead to exclusions in practice. Its assumption that unity is either a starting point or goal of democratic discussion, moreover, may also have exclusionary consequences.’¹⁰³ She notes, in line with advocates of discourse ethics, that deliberative democracy promotes a ‘conception of reason over power in politics.’¹⁰⁴

⁹⁹ *ibid.* p.69

¹⁰⁰ Shapcott, 2002, p.229

¹⁰¹ For a good general discussion see Mojca Pajnik, 2006: ‘Feminist Reflections on Habermas’s Communicative Action’, *European Journal of Social Theory*, 9(3)

¹⁰² Iris Marion Young: ‘Communication and the Other: Beyond Deliberative Democracy’, from Seyla Benhabib (ed.) 1996, *Democracy and Difference: Contesting the boundaries of the political*, Princeton, Princeton University Press, p.127. See connections with discussion of hermeneutics on p.115-118

¹⁰³ *ibid.* p.122

¹⁰⁴ *ibid.*

However, the deliberative model of communication which we are most familiar with and which is implicitly referred to in the literature is derived from Western institutional contexts – scientific debate, parliaments, courts etc – ruling institutions, which have been predominantly male, white and upper class. Thus, Young’s criticism is significant as she adds that the ‘norms of deliberation are culturally specific and often operate as forms of power that silence or devalue the speech of some people.’¹⁰⁵ Some contexts privilege certain speaking styles over others; for example, contestatory, assertive and confrontational styles are privileged in parliaments and courts over tentative, informative, conciliatory, emotional or explorative styles. Consequently, Young is right when she remarks that such formal situations often privilege the right to speak or the authority of the well-educated white, middle-class man, rather than other groups in society whose voice may not conform to the established requirements and formal rules of speech. As a result, if other groups do speak, they may do so in a way which is classed as ‘disruptive’.¹⁰⁶ This refers us back to Bernstein’s observation that the conditions necessary for an ideal speech situation are social and material rather than linguistic. Here it becomes evident that they are both. Young’s point has obvious links to those made by Benhabib and Hutchings concerning the relegation of the ‘feminine’ to the private sphere when she states that:

[t]he norms of deliberation also privilege speech that is dispassionate and disembodied. They tend to presuppose an opposition between mind and body, reason and emotion. They tend falsely to identify objectivity with calm and absence of emotional expression. Thus expressions of anger, hurt, and passionate concern discount the claims and reasons they accompany.¹⁰⁷

A more sensitised approach to communication and the ways in which communication can operate to exclude alternative forms of speech is particularly important when considering dialogue arising out of conflict situations where it is likely that anger, hurt and passionate concern may dominate communication, but do not necessarily make that communication any less valuable. The ethical-political possibilities resulting from interconnections between different levels of discourse relating to both an ethic of care and an ethic of justice are illustrated by Elshtain’s analysis of the case of the Mothers of the Plaza de Mayos in Argentina:

¹⁰⁵ *ibid.* p.123; Crawford, 2002, p.416

¹⁰⁶ Young, 1996, p.124

¹⁰⁷ *ibid.*

The language [the Mothers] spoke was double: the language of a mother's loss and the language of human rights, moving from intensely particular, yet universally recognized, imperatives of love and terror, to what has become a universal and potent political discourse.¹⁰⁸

In addition, communicative competence as understood to be the ability to reason as well as to produce grammatically correct sentences, may exclude the very young, the mentally ill or those in too much physical or emotional pain to participate effectively.¹⁰⁹ Young inhabits similar ground to Benhabib as she argues that the conditions for a communicative democracy are much thinner than those of shared understandings or the goal of finding common goods. The conditions required by a communicative democracy – significant interdependence, formally equal respect, and agreed-on procedures – have much in common with Benhabib's notion of conversation as procedure and her principles of egalitarian reciprocity and universal moral respect.

Linklater raises several problematic critiques of Habermas's discourse theory, including Mouffe's assertion that 'Habermas cannot defend the claim that the discourse theory of morality is only concerned with the procedures which agents should follow and not with advocating any substantive way of life. Her argument is that those procedures already privilege a particular vision of the good society.'¹¹⁰ In a similar vein, Rustin argues that 'Habermas has formulated a discourse ethic that is clearly situated within the liberal-democratic and state-centred-experience'.¹¹¹ Effectively, when applied to non-liberal democratic countries, discourse ethics may be incomprehensible. This implies notions of assimilation rather than the aim of democratic will-formation and universal consensus-building that Habermas might have intended. To some extent, reflecting Young's comments, this critique can be mitigated by drawing on the hermeneutics of Gadamer.

Philosophical hermeneutics bears much in common with discourse ethics, yet it provides an alternative model which allows us to avoid some of the assimilatory potential inherent in discourse ethics. It also conceives understanding as a

¹⁰⁸ White, 1991, p.112 – citing Elshtain

¹⁰⁹ Crawford, 2002, p.416

¹¹⁰ Linklater, 2005, p.145

¹¹¹ Charles Rustin, 1999: 'Habermas, Discourse Ethics and International Justice', *Alternatives*, 24, p.185. However, Rustin argues that Linklater's attempt to use Habermas's work as the philosophical foundation for the transformation of political community is misguided as Habermas's work is 'essentially concerned with the improvement of democratic society at the domestic level.' p.188

communicative act, ‘between equal but differently situated agents, in which self and other achieve recognition through dialogue.’¹¹² The emphasis on understanding here, however, is not on the need for universal consensus, but rather on the experience of a new or different truth claim:

this does not mean that when we listen to someone or read a book we must forget all our fore-ground meanings concerning the content and all our own ideas. All that is asked is that we remain open to the meaning of the other person or text. But this openness always includes our situating the other meaning in relation to the whole of our own meanings or ourselves in relation to it.¹¹³

As Gadamer indicates that understanding is in fact interpretation and occurs through language, he also emphasises the primacy of dialogue.¹¹⁴ All interpretation and understanding take place within the ‘‘tradition’ or horizon of consciousness constituted by the linguistic and historical tradition of the interpreter: the webs of meaning in which and through which we experience the world and which are the conditions of possibility of understanding.’¹¹⁵ While philosophical hermeneutics begins from the premise of situated agents and particular norms, it does not limit understanding to the boundaries of a particular community in the same way as communitarianism. Conversation is not limited, because, being ‘finite and situated beings we must engage in conversation in order to learn.’¹¹⁶ Gadamer stressed that ‘understanding is always the fusion of these horizons supposedly existing by themselves’, from which the prejudices of others are not simply obstacles to our understanding, but also a possible means towards it.¹¹⁷ Habermas captures the concept when he argues that ‘hermeneutics, then, accord[s] a higher position to acting and speaking than to knowing.’¹¹⁸

The ‘fusion’ that Gadamer refers to is not assimilatory, but rather:

captures the idea that the individual horizons come to occupy the same place, while not necessarily losing their particular perspective. Understanding involves a fusion in the sense that it does not involve either the annihilation or assimilation of existing positions but rather their coming to inhabit a shared perspective.¹¹⁹

¹¹² Shapcott, 2001, p.131

¹¹³ Hans-Georg Gadamer, 1991: *Truth and Method*, (2nd edn.) New York, Continuum, p.268

¹¹⁴ *ibid.* p.307, p.384

¹¹⁵ Shapcott, 2001, p.136

¹¹⁶ *ibid.* p.138

¹¹⁷ Gadamer, 1991, p.306

¹¹⁸ Habermas, 1990, p.9

¹¹⁹ Shapcott, 2002, p.234

According to philosophical hermeneutics, a conversation is not motivated by an exchange of information or by seeking information for strategic or instrumental purposes. It is, instead, “a process of coming to an understanding” in regards to the subject (*sache*) of conversation.’¹²⁰ Shapcott argues that it shares similar characteristics to discourse ethics in the expectation that conversation will be oriented towards understanding and truth in terms of what the other has to say concerning the subject. With a genuine understanding of another’s perspective, then the potential for the development of a new perspective as a result of the dialogic encounter emerges, thus bringing about a ‘transformation of our own horizon, that is to say we are changed by the conversation.’¹²¹ It is this ability to perceive the other’s perspective that its advocates argue offers a more inclusive and non-assimilatory approach to self-other relations. Both parties may possess truth, but they recognise that it is a different truth. Both sides become listeners and communicators, perceiving each other as equals and yet also different. This implies, similarly to discourse ethics, an inclination to learn from what the other is saying.

Where Gadamerian hermeneutics might diverge from Habermas’s discourse ethics concerns the end result of the conversation. The purpose of a hermeneutic conversation, according to Shapcott, ‘is not the eradication of difference in agreement, but instead the understanding of identity and difference through what is common: language.’¹²² While Habermas, like Gadamer, distinguishes between moral and strategic conversation, highlights the possibility of moral learning and the lack of certainty of the outcome, and does not intend that the conversation should be ‘won’ by one side or the other, he still indicates that there should be universal consensus. For Gadamer, the ‘*Sache* (subject) is always a particular thing, text, interpretation, topic. Thus, truth is always particular, situated and in reference to some subject.’¹²³ Consequently, agreement on the scale implied by Habermas’s principle (U), (i.e. only universalizable statements, therefore very few norms would be validated) cannot demonstrate the same sensitivity towards alterity and understanding that hermeneutics offers.

¹²⁰ *ibid.* p.235

¹²¹ *ibid.* It does not mean that our knowledge or perspectives become the same.

¹²² *ibid.* p.236

¹²³ Shapcott, 2001, p.141

Returning to the issue of agency already raised by Benhabib and Shapcott, we can see that hermeneutics provides another critique of Habermas's discourse ethics. Whereas Habermas gives preference to, indeed even requires, a post-conventional capacity for moral reasoning, hermeneutics 'sees reason and understanding through dialogue as a capacity of *any* linguistically constituted agent', not in association with particular stages of development or consciousness.¹²⁴ For some, this is the assimilatory moment of philosophical hermeneutics; however, it arguably reduces it considerably. This means that language and understanding do not become exclusionary criteria, but rather start from the premise that all humans are linguistically constituted and therefore inherently capable of understanding and conversation. For Gadamer, reason is a property of tradition, it does not stand in opposition to tradition and prejudice as often implied by Enlightenment thinkers. If reason existed prior to the Enlightenment and cannot be separated from the context from which it comes, then it is reasonable to suggest that reason also operated within the traditions against which the Enlightenment set itself up and which it sought to replace with reason.¹²⁵ If the ability to reason and reflect, to transform understanding in response to conversations with others, are properties of understanding which we possess as linguistically constituted agents, then Habermas's assignation of these qualities to post-conventional agents is shown to be unnecessarily restrictive. It is important to note here that the term 'reason' is not used in exactly the same way within these approaches:

Gadamer is not arguing that the capacity for thinking universally and post-traditionally in Habermasian terms is a product of all who possesses language. He is arguing that reason should be understood as the capacity of reflection and change; this does not have to be equated with the capacity to be ruled by the unforced force of the better argument, to be "rationalised" in Habermas's terms.¹²⁶

If the *telos* of conversation for discourse ethics is consensus between post-conventional agents regarding universalisable principles, then for philosophical hermeneutics the purpose of conversation is simply that of hermeneutic understanding. In this way we avoid the notion of impartiality required by cosmopolitanism whilst recognising that such a claim to theoretical impartiality 'obscures real particularity'.¹²⁷ An important consequence of the hermeneutic argument is that 'it can relieve the

¹²⁴ *ibid.* p.237

¹²⁵ Gadamer, 1999, p. 277-281

¹²⁶ Shapcott, 2002, p.239

¹²⁷ Shapcott, 2001, p.38

cosmopolitan project of the emancipatory task of seeking to create a realm of similarly constituted agents.’¹²⁸ Moreover, it no longer maintains the clear-cut distinction between the ‘right’ and the ‘good’, arguing that both are required to engage fully with others and that there is no need to remove the private from the purview of dialogue. By removing the requirement that dialogue can only address questions of ‘right’ and topics that can consequently be universalised, there is a much broader and more inclusive conception of conversation and engagement between participants. Here, we see echoes of Benhabib’s argument that the procedure of conversation alone is sufficient. However, it is important not to lose sight of Habermas’s intention when he restricted his theory to the moral realm; we do not want the ‘good’ to be dictated, rather a greater understanding of the relationship between the good and the right both within particular contexts and a universal framework. Habermas’s criteria for ‘fair’ conversation offer a critical tool which hermeneutics does not otherwise have. It is, once again, (U) which should be dropped in order to benefit from the critical implications of Habermas’s discourse ethics whilst utilising it in a more radically inclusive manner.

Habermas’s critique of hermeneutics notes the problem of ‘linguistic idealism’.¹²⁹ This refers to the neglect by hermeneutics of the fact that language is not just a means of communication with which to mediate and interpret our experiences, but also:

a medium of domination and social power; it serves to legitimate relations of organized force. Insofar as the legitimations do not articulate the power relations whose institutionalization they make possible, insofar as these relations merely manifest themselves in the legitimations, language is also ideological.¹³⁰

Bernstein argues that Habermas perceives three idealizations of ordinary language with a hermeneutic approach: firstly, by ‘overestimating the degree of consistency and comprehensibility it possess; secondly, by assuming there to be a greater potential for communication in a given context than is usually present; and thirdly, by presuming a degree of agreement (consensus) among speakers which is almost never exemplified.’¹³¹ Habermas argues that these combine to prevent a critical enough stance being taken and thus prevent the possibility of distinguishing between true communication and pseudo-

¹²⁸ Shapcott, 2002, p.240

¹²⁹ Outhwaite, 1994, p.25

¹³⁰ Bernstein, 1995, p.45

¹³¹ *ibid.*

communication or recognising systematically distorted communication. If, ‘in the face of covert domination, social groups or whole societies have adapted to distorted forms of communication, hermeneutics would hence be in danger of preserving the status quo, rather than helping to achieve emancipation.’¹³² What we require in such situations then, in order to retain the sensitivity towards understanding offered by hermeneutics, without falling prey to its ‘blind spots’ is a ‘depth hermeneutic’. What this means is that the agent’s self-interpretation and interpretation of others is placed into the context of social relations and agents are able to reflect upon this context. Social relations are considered to operate ‘like a natural force upon [agents] (but behind their backs),’ distorting their communicative actions.¹³³ The depth-hermeneutic in this context is Habermas’s analysis of the operation of technological rationality in modern politics and it serves to make causes of distorted communicative visible, placing the individual or a collective:

in a position to remove the source of the distortion, and so to give voice to the inhibited meanings. The point of such analyses, then, is to allow for the abolition of the quasi-causal mechanisms they detect, to allow repressed meanings, interests, and desires to be formed and communicated.¹³⁴

For Habermas, we can only distinguish between a genuine and a false consensus if we presuppose the possibility of the ideal speech situation; understanding needs to be linked to the idealising presuppositions of speech. Rasmussen suggests that, in essence, discourse ethics is an “ethics of suspicion”, that it is suspicious of reliance on tradition for determining moral categories. Even traditions such as liberal democracies, which have provided a basis for the principles of political discourse, have to be looked at with suspicion.¹³⁵

Linklater has accepted some of the critiques of discourse ethics, particularly those of Benhabib and others who have suggested that discourse ethics requires a hermeneutic perspective. He also goes to greater pains than Habermas to emphasise the inclusive nature of a cosmopolitan community. A form of thin cosmopolitanism

¹³² Haacke, 1996, p.75; Habermas, 1974, p.10: ‘critical sociology guards itself against reducing the meaning complexes objectified within social systems to the contents of cultural tradition. Critical of ideology, it asks what lies behind the consensus, presented as a fact, that supports the dominant tradition of the time, and does so with a view to the relations of power surreptitiously incorporated in the symbolic structures of the systems of speech and action.’

¹³³ Haacke, 1996, p.75

¹³⁴ *ibid.*

¹³⁵ Rasmussen, 1990, p.62

precludes loyalty to only one sovereign: in ‘recognising the diversity of social bonds and moral ties, a thin cosmopolitan ethos seeks to multiply the types and levels of political community; recognising the community of humanity at the same time as it recognises regional, national and subnational political associations.’¹³⁶ Connolly also takes up these arguments, commenting that convergence might give ground ‘to the pursuit of multiple connections of respect across persisting differences’.¹³⁷ He distinguishes between concentric pluralism (family, friends, community, state, world) and network pluralism. Concentric pluralism allows boundaries to be established more easily than a network form which may serve to prevent general gravitation towards uniformity. This has similarities to the revival of the neo-medieval idea suggested many years earlier by Bull and Carr.¹³⁸ Placing dialogue and consent at the heart of good international citizenship refutes any assertions of fixed moral hierarchies.

This raises the question of what the implications of the above critiques of Linklater and Habermas are for the definition of citizenship within the concept of good international citizenship. On the one hand, a hermeneutic understanding of discourse implies an understanding of difference in international practice, so it is pluralist (on the pluralist-solidarist scale where pluralism acknowledges a tolerance of difference). In contrast, a cosmopolitan notion of discourse implies a hope of consensus; a recognition or hope of something more than understanding. The revised notion of good international citizenship refers to the core notion of the kind of dialogue required and seeks to draw on both of these traditions. The difference between Linklater’s concept and the concept presented here is the process by which we might *hope* to arrive at consensus - for Linklater, it is limited by the exclusive implications of Habermasian dialogue, whereas a hermeneutically informed dialogue may still hope for consensus, but does so on a different, more inclusive basis. So a hermeneutically informed understanding of discourse forms part of an alternate concept of citizenship. In terms of international practice, this has implications for both inter-state relations and state-non-state relations. Our engagement with the ‘other’ is not motivated by an intent to create or realise a particular form of agency or community, but by a responsibility towards them. This notion is particularly appealing for rethinking the question of responsibility

¹³⁶ Devetak, 2001, p.172

¹³⁷ William Connolly, 2001: ‘Cross-State Citizen Networks: A Response to Dallmayr’, *Millennium: Journal of International Studies*, 30(2), p.351

¹³⁸ Bull, 1977, Carr, 1939

in connection to contemporary conflicts such as Bosnia and Kosovo because it claims that there is no circumstance under which we could declare that it was not our concern.¹³⁹

Bearing in mind Habermas's goal of enlarging human freedom, discourse ethics makes no assumptions about human freedom having a finite goal. While some restraints on human freedom may be discovered and removed, there may always be additional restraints which remain unseen at any particular point in human history.¹⁴⁰ The same argument can be applied to dialogue, which must accept the importance of historicity (the belief that no conceptual system is likely to be true for all time) and the realisation that ethical neutrality is impossible.¹⁴¹ This awareness that there is no pre-determined finite goal for dialogue demonstrates the need for 'constant attention to the danger that a particular world-view will be preferred and others marginalised by every effort to characterise ideal discourse. This is essential given the postmodern claim that no form of non-coercive deliberation may ever succeed in removing all traces of power.'¹⁴²

A pertinent example of dialogue in relation to conflict is the Truth and Reconciliation Commission in Rwanda, following the genocide. Parlevliet rightly notes that our desire to seek the truth is paradoxical as it seems to indicate that one, non-controversial, truth can be established in the face of conflicting versions of the past which all claim to be valid.¹⁴³ While it is tempting to wander down the road to relativism:

If what is considered true would be completely conditioned by one's subjective preferences and the particular context in which one finds oneself, it would not be possible to pass judgement on anyone else's view, nor on any past period.¹⁴⁴

Clearly, however, we still value some notion of the truth, particularly in context of gross human rights violations and conflict. Normative legislative developments indicate our conviction that passing judgement on some actions is both legitimate and desirable.

¹³⁹ Campbell, 1998, p.176

¹⁴⁰ Linklater, 2005, p.143

¹⁴¹ *ibid.* p.148

¹⁴² *ibid.* p.148-9

¹⁴³ Michelle Parlevliet, 1998: 'Considering Truth. Dealing with a Legacy of Gross Human Rights Violations', *Netherlands Quarterly of Human Rights*, 16(2), p.5

¹⁴⁴ *ibid.* p.8

Both Rorty's pragmatism and Habermas can help us in this situation as they emphasise the importance of argumentative practice:

while it may not be possible to specify truth in any detail, it is possible to point to conditions in which a search for the truth will most likely be successful.¹⁴⁵

Thus, the emphasis is placed on intersubjectivity. In addition, Habermas offers us procedures by which this type of argumentative practice can be implemented and which allows us to judge certain actions. The equality implied by Habermas's discourse ethics ensures that no one interpretation of events is privileged over any other:

A definition of the situation by another party that prima facie diverges from one's own presents a problem of a peculiar sort; for in cooperative processes of interpretation no participant has a monopoly on correct interpretation. For both parties the interpretive task consists in incorporating the other's interpretation of the situation into one's own in such a way that in the revised version "his" external world and "my" external world can – against the background of "our" lifeworld – be relativized in relation to "the" world, and the divergent situation definitions can be brought to coincide sufficiently.¹⁴⁶

This search for consensus may appear problematic because it requires converging understandings of events. However, hermeneutics, as mentioned already, offers us a means to temper this interpretive process whilst at the same time retaining Habermas's emphasis on procedures for discourse which allows us to pass judgement and legislate without falling prey to total relativism.

A dialogical process such as that encountered through truth and reconciliation practices may change the terms of the framework in which knowledge is constructed and in which dialogue takes place. To be legitimate, Bellamy argues, such practices must highlight the need for as wide a sphere as possible for dialogue, show an awareness and respect for the fallibility of past decisions and dominant forms of knowledge as well as acknowledging the possibility of their revision, and must prioritise adherence to democracy.¹⁴⁷ Such a process draws us back to Young's acknowledgement of the value of different types of speech/communication. While such a change in the way in which knowledge is constructed may have far-reaching consequences, the discourse approach to morality is not only relevant to those who

¹⁴⁵ *ibid.* p.11-12

¹⁴⁶ Habermas, *TCA*, Vol.1, p.100

¹⁴⁷ Alex Bellamy, 2002a: 'Pragmatic Solidarism and the Dilemmas of Humanitarian Intervention', *Millennium: Journal of International Studies*, 31(3), p. 489

already enjoy liberal security and stability. It can also be one way in which members of divided communities can negotiate agreed narratives and shared principles which do justice for those who have been affected by structures, policies and decisions which have caused unnecessary suffering.

Shapcott suggests that the communicative approach which rejects the cosmopolitan/communitarian divide in International Relations allows us to shift the basis of our understanding of justice. Rather than being understood simply in distributive terms, there has been a shift towards understanding justice in terms of culture, identity and recognition:

Justice understood as recognition embodies the assumption that inequality occurs not only in the realm of material well-being but equally in the realm of identities. It suggests that justice should refer to a more complete and inclusive account of well-being to include external recognition of identity. Justice as recognition conceives ethical questions in terms of how to do justice to those who are marginalised or excluded because of their different identities or because they are seen as “other”.¹⁴⁸

What Shapcott does with this argument is to make us question the boundaries between inclusion and exclusion and how those are decided.¹⁴⁹ By engaging someone in a different position from yourself, you have to move outside the established language games or strategies of your own context and are forced to redefine yourself and your own moral position *vis-à-vis* the other.¹⁵⁰ The act of dialogue makes it much harder to dehumanise the enemy in a manner necessary to retain support for conflict.¹⁵¹ In order to move beyond the rules of the shared context and introduce alternatives, it is necessary to rename the Other, to engage in dialogue *as if* the situation were *already* different.¹⁵² This foray into dialogue requires a reappraisal of the relevant concepts and the shared rules governing these concepts. Once the notion that the language of force is the only option has been moved away from, it becomes much harder to justify the use of force to domestic publics. Practices such as state sovereignty and concomitant perceptions of identity have prevented effective communication, particularly when ‘other’ identities

¹⁴⁸ Shapcott, 2002, p.221-222

¹⁴⁹ Whilst dialogue and discourse ethics have been adopted as a means to address issues of recognition and cultural division within critical theory and, increasingly, within international relations, it is not unproblematic, for example, as might be seen through a closer analysis of dialogue projects such as the TRC, although this will not be discussed here.

¹⁵⁰ Fierke, 2001, p.37

¹⁵¹ Fierke describes conversations with a Bosniac who also spoke of his preference for dialogue over force, and the likelihood of its greater long-term effectiveness. 2001, p.139-40

¹⁵² *ibid.* p.136-7

are perceived to be inferior and different. Language as used within the international community is both shared and contested as Bellamy notes:

[t]he very term ‘humanitarian intervention’ is made possible by an international regime of truth that constructs the limits of appropriate knowledge by reference to the boundaries of sovereignty. In a pluralist world of states, we talk about the intervention problem in terms of the human rights versus sovereignty schism not because it represents how the world actually is, but because we find it a useful way of making sense of the order of things.¹⁵³

Echoing Gadamer’s hermeneutics, Dallmayr looks at what such dialogue might entail when he claims that ‘genuine dialogue or consensus requires a reciprocity of understanding, in the sense that it is not only up to others (‘them’) to understand ‘our’ perspective, but it is equally up to ‘us’ to grasp things from ‘their’ perspective’.¹⁵⁴ Although it is debatable to what extent he has managed this tension, where Habermas’s argument is most convincing is when he attempts to address the tension between the claims to objective knowledge and contextualism by arguing that ‘the validity claimed for propositions and norms ‘transcends spaces and times’; but in each case the claim ‘is raised here and now, in a specific context, and accepted or rejected with concrete implications for social interaction’’.¹⁵⁵ Indeed, Habermas is aware that ‘cultural values are always components of intersubjectively shared traditions, the revision of the values used to interpret needs and wants cannot be a matter for individuals to handle monologically’.¹⁵⁶

Benhabib develops this idea theoretically through the notion of ‘democratic iteration’ which involves:

complex processes of public argument, deliberation, and exchange through which universalist rights claims and principles are contested and contextualized, invoked and revoked, posited and positioned, throughout legal and political institutions, as well as in the associations of civil society.¹⁵⁷

Democratic iterations may change established understandings and transform what is accepted as the ‘valid or established view of an authoritative precedent’.¹⁵⁸

¹⁵³ Bellamy, 2002a, p.486

¹⁵⁴ Fred Dallmayr, 2001: ‘Conversation Across Boundaries: Political Theory and Global Diversity’, *Millennium: Journal of International Studies*, 30(2), p.340-1

¹⁵⁵ *ibid.* See Chapter 5 for discussion of discourses of justification and application

¹⁵⁶ Habermas, 1990, p.68

¹⁵⁷ Benhabib, 2004, p.179

¹⁵⁸ *ibid.* p.180

Benhabib locates these iterations within a 'jurisgenerative politics' which refers to the iterative acts through which 'a democratic people that considers itself bound by certain guiding norms and principles reappropriates and reinterprets these, thus showing itself to be not only the *subject* but also the *author of the laws*'. Such a politics opens up a 'space of interpretation and intervention between transcendent norms and the will of democratic majorities.'¹⁵⁹ This strengthens the role of dialogue and implies a degree of fluidity within the ethical values that we protect, offering a means to constantly re-assess and re-constitute the tension between the universal and the particular and between inclusion and exclusion. A discourse approach must ensure that 'marginal voices and subordinated cultures' can be as equally heard as those of the dominant culture.¹⁶⁰ The logic of the dialogic approach suggested by Benhabib indicates that those who are excluded may be included through the reflexivity required by democratic iterations.

Dialogue refers to a process of reciprocal critique and a willingness to engage in dialogue without any certainty about who will learn from whom. Linklater defends the need to act dialogically when he defends himself against Elshtain's criticism that the 'cosmopolitanism which runs through [*The Transformation of Political Community*] has little connection with the real needs of the most vulnerable members of humanity who require practical assistance rather than advances in cosmopolitanism or movement towards a universal communication community'.¹⁶¹ Linklater argues that humanitarian aid or conflict management without dialogue with those who are suffering has its own problems. What Habermas brings to this approach is an insistence that we are able to assess the legitimacy of communicative claims and that we are aware of and can analyse, the problems of distinguishing a true or false consensus or manipulated agreements from truly consensual ones. When modified with a focus on procedure and hermeneutics, some of problems faced by a universalist discourse ethics may perhaps be surmounted.

In his support of Benhabib's relaxation of universal consensus, Shapcott argues that this allows the goal of conversation to be oriented towards other tasks such as 'community building and solidarity, without denying its role in dispute resolution or in

¹⁵⁹ *ibid.* p.181

¹⁶⁰ Linklater, 2004

¹⁶¹ Jean Bethke Elshtain, 1999: 'Really Existing Communities', from the Forum on 'The Transformation of Political Community', *Review of International Studies*, 25, p.171

the pursuit of universally agreeable norms.’¹⁶² In this way Shapcott highlights some of the potential areas of application for a more developed understanding of dialogue, one which addresses the problems of inclusion and exclusion whilst maintaining the power of critique offered by Habermas’s procedural emphasis and wider philosophical defence of normative justification and legitimation through communicative processes.

It seems that good international citizenship acts as a bridge between rationalism and discourse ethics. While rationalism remains state-based, rejecting the emergence of a world state or cosmopolitan society, and discourse ethics provides the means to transcend the traditional conception of political community, good international citizenship provides the framework with which developing notions of consensus, legitimacy and discourse can challenge the intentions and motives of state action, thus acknowledging the realities of power inequalities and interests whilst refuting the necessity of accepting this as the status quo. It is here that Linklater’s dialogic cosmopolitanism is so important, as it shares with other poststructuralist writers in international relations, such as Walker, Campbell and Ashley, a commitment to ‘the critique of structures and beliefs which obstruct open dialogue.’¹⁶³ Despite some of the problems his project encounters, it is a powerful vision which argues for a more inclusive global community, not least because it entails a separation of the ethical community from the modern state in order to recognise the plurality of concrete ‘others’ and to prevent modes of exclusion being erected which derive from the structures of the modern, sovereign state. The concern that Linklater shares with critical theorists and post-structuralists alike is to develop more ‘rigorous tests of the legitimacy of inclusive and exclusive practices.’¹⁶⁴ It is this aim that informs the development of evaluative criteria in the following chapter. Intended to address these concerns identified within international practice, the evaluative criteria not only build on the theoretical debates discussed so far, drawing on and adapting relevant theoretical critiques, but also encounter a number of problems in the relationship between theory and practice which have been raised thus far in a theoretical context.

¹⁶² Shapcott, 2002, p.232

¹⁶³ Linklater, 1996, p.87

¹⁶⁴ Linklater, 1992b, p.81

4. Developing Evaluative Criteria

4.1 Introduction

This chapter is the point at which we make the shift from theory to practice. It charts the development of this attempt to formulate a set of evaluative criteria, termed ‘communicative imperatives’, and fruitfully apply them to practices in international relations. The communicative imperatives derive from a number of general principles emerging from and justified by the theory. Having explored a variety of theoretical interventions in the debates surrounding Habermas’s discourse ethics and the issues raised by the intervention in Kosovo, the development of operational criteria indicate ways in which the theory has been adapted, incorporating a number of key critiques, in order to find ways to address these contemporary concerns. It is useful to reiterate the understanding of discourse ethics which motivates its application to questions of conflict and intervention: discourse ethics requires that controversies over the validity of contested norms should be settled through argumentative processes which serve to decide upon the legitimacy of the norm in question.

Approaches to evaluating humanitarian intervention in international relations generally focus on developing pragmatic threshold criteria. Particular examples of such frameworks will be explored briefly in order to identify some of the problems with this approach and to indicate how these differ from the current framework. Two other applications of Habermasian discourse ethics in international relations will also be examined, namely the concepts of interpretive communities (Johnstone) and deliberative legitimacy (Bjola), in order to clarify existing applications of theory to practice and to demonstrate how they may contribute to the current framework.

Certain problems were raised in Chapter 1 in relation to two facets of the legitimacy of decisions surrounding Kosovo: procedural legitimacy and the operationalization of those decisions. Having developed these issues both thematically and philosophically in Chapters 2 and 3, the communicative imperatives formulated here build on the approaches to evaluative criteria of Beetham and Alexy. They serve to offer indications as to ways in which dialogue may take place with the intention of addressing problems such as inclusion and exclusion, legitimation and the politics of equality and recognition. They are by no means exhaustive, nor are they intended to be

infallible or prescriptive. While the communicative imperatives may also be applicable (with appropriate alterations) for assessing dialogue at a domestic level and between non-state actors, they are structured here with a recognition of the role of states in international relations and with a dual purpose: firstly, they are intended to serve as a critical tool to analyse and critique dialogue and the construction of dialogue and secondly, to offer a normative approach to dialogue in the context of conflict resolution. It is important for any theoretical model to be aware of its limitations and, offering a number of theoretical clarifications and insights into the problems of moving from theory to practice, this chapter will develop some practical implications of the philosophical grounding of dialogue in international relations offered in Chapters 2 and 3. It is suggested that in navigating these difficulties we focus upon the relationship between reflective capabilities and understandings of communicative fairness.

4.2 Threshold criteria for humanitarian intervention

Cosmopolitan and similarly-inclined theorists have addressed the ambivalence of competing norms intrinsic to contemporary humanitarian intervention by specifying, in a variety of ways, a set of formal criteria for the justification, authorization and conduct of military force.¹ It is worth briefly noting four versions of relevant threshold criteria put forward, partly in connection with Kosovo, which would effectively institutionalise humanitarian intervention in one way or another: those of the Independent International Commission on Kosovo (IICK, 2000); the ‘Responsibility to Protect’ doctrine put forward by the Report of the International Commission on Intervention and State Sovereignty (2001); Nicholas Wheeler, and Neta Crawford. These allow us to highlight certain methodological and political problems with such an approach and to demonstrate certain similarities between Crawford’s approach and the one adopted in this research.

The IICK’s framework of principles consists of two parts. First, those threshold principles which must be satisfied in order for any claim of humanitarian intervention to be legitimate and second, a series of ‘contextual principles’ which ‘enhance or diminish the *degree* of legitimacy possessed by forceful intervention.’² There are three threshold principles indicated by the Commission. The first comprises two valid trigger factors

¹ Fine, 2006

² *The Kosovo Report*, p.193

for humanitarian intervention: ‘severe violations of international human rights or humanitarian law on a sustained basis’ and the ‘subjection of a civilian society to great suffering and risk due to the “failure” of their state, which entails the breakdown of governance at the level of the territorial sovereign state.’ The second principle is that the ‘overriding aim of all phases of the intervention involving the threat and the use of force must be the direct protection of the victimized population.’ The third principle is that the ‘method of intervention must be reasonably calculated to end the humanitarian catastrophe as rapidly as possible, and must specifically take measures to protect all civilians, to avoid collateral damage to civilian society, and to preclude any secondary punitive or retaliatory action against the target governments.’³

The principles developed for military intervention by the ‘responsibility to protect’ doctrine reflect certain similarities to the above guidelines. It draws heavily on just war theory to construct its four main principles which are: 1) the just cause threshold (large scale loss of life, or large scale ethnic cleansing), 2) the precautionary principles (right intention, last resort, proportional means, and reasonable prospects), 3) right authority, and 4) operational principles (clear objectives and mandate, common military approach, appropriate rules of engagement, acceptance of gradualism in the application of force, maximum coordination with humanitarian organizations, and acceptance that force protection cannot become the main objective).⁴ It has worked to place these principles within a more developed conceptual context than that indicated by the IICK.⁵ Firstly, the debate concerning the ‘right to intervene’ which has traditionally characterised the humanitarian intervention debate, has become a ‘responsibility’ to protect those at risk, and its perspective is not that of the prospective interveners, but rather those on whose behalf we claim to act. Secondly, it was argued that in the absence of the state’s will or ability to protect its citizens, then a secondary responsibility to protect falls on the wider international community.⁶ Thirdly, it makes clear that the ‘responsibility to protect’ was about more than military intervention and covered three broad strands of action and obligation: 1) the responsibility to prevent

³ *ibid.* p.193-4

⁴ *The Responsibility to Protect*, 2001, p.xii-xiii

⁵ Ramesh Thakur, 2002: ‘Intervention, Sovereignty and the Responsibility to Protect: Experiences from ICISS’, *Security Dialogue*, 33(3)

⁶ Gareth Evans, 2006: ‘Crimes against humanity: overcoming indifference’, *Journal of Genocide Research*, 8(3), p.333

situations arising by addressing the root causes and direct causes of conflict and other man-made crises, 2) the responsibility to react, and 3) the responsibility to rebuild.⁷

Wheeler proposes a slightly different interpretation of the minimum criteria required by interventions in order to qualify as humanitarian. Briefly, he claims that these are: supreme humanitarian emergency, necessity or last resort, proportionality, and a positive humanitarian outcome. Wheeler's solidarist argument indicates that in the instance of a supreme humanitarian emergency, state leaders should accept the risk of casualties in order to end human rights abuses.⁸ Noticeable by its absence is the requirement of positive humanitarian motive. Wheeler argues, contrary to conventional wisdom, that the primacy of humanitarian motives is not necessary for an intervention to qualify as humanitarian. It is only when either the motives or the means employed served to undermine a positive humanitarian outcome that the intervention may no longer be counted as humanitarian.⁹

Crawford's guidelines for humanitarian intervention are interesting because they stress a discourse ethical procedure and come closest to the framework discussed so far:

The procedural aim must be to conduct a discourse with all potential actors who will then develop an approach to deciding questions of humanitarian intervention. The substantive aim would be to establish general procedures for avoiding humanitarian crises and, when necessary, conducting humanitarian interventions.¹⁰

This is significant because she highlights the need to develop means of avoiding humanitarian crises as well as for managing them. The convention she has in mind should be sufficiently flexible to meet a variety of cases, but would look at such questions as who can legitimately call for humanitarian intervention; who should be authorized to carry out intervention and what means are acceptable; what constitutes a humanitarian intervention; what are the limits of humanitarian intervention, and what kind of humanitarian crises demand an international response.¹¹ As Crawford points out, it is precisely because humanitarian intervention violates discourse ethical principles that a discourse ethical practice must be used to decide when force can or must be used. Without such a dialogue, humanitarian interventions may come to

⁷ *ibid.* p.xi

⁸ Wheeler, 2000, p.50

⁹ *ibid.* p.38; Taylor Seybolt, 2007: *Humanitarian Military Intervention: The Conditions for Success and Failure*, SIPRI, New York, Oxford University Press

¹⁰ Crawford, 2002, p.431

¹¹ *ibid.* p.431-2

resemble colonial practices. By emphasising the need for broad and inclusive participation in any conversation that shapes the guidelines for humanitarian intervention, Crawford demonstrates the link between a discourse ethical approach and the principles espoused in the current interpretation of good international citizenship which places discourse at its core:

Dialogue could help actors see the consequences of their actions, in the long chain of events, which help create humanitarian crises (such as great powers sending arms to authoritarian regimes to promote the “interests” of the great power), and help actors avoid, prevent, or halt those actions. Avoiding the crises that lead to humanitarian interventions – by being attentive to the ways that external actors are setting the groundwork for crises or failing to act to discourage early abuse – would clearly be better than intervening after the fact.¹²

There is an increasing body of literature which focuses on the gap between legitimacy and legality and Crawford suggests that interventions might be granted greater legitimacy (and under a Convention, greater legality) if the ‘entire international community were part of the discourse that leads to a convention on humanitarian intervention.’¹³

The notion of sovereignty as responsibility instituted by *The Responsibility to Protect* doctrine articulates standards for intervention, but in an attempt to provide answers it does not sufficiently address the need for the legitimacy of process. While Wheeler acknowledges that these criteria must be applied on a case by case basis, there is no indication as to the legitimacy of the process which is burdened with making these decisions. It does not suggest who might be included in this process, or how the process might deal with complex situations where there is no clear means to assign blame or victim status and it neither looks for nor is able to recognise coercion or distortion within the legitimating process. One concern is that these frameworks do not tend to question the assumption that a right (or duty) of intervention implies a right to use force. Iris Marion Young raised such a concern when she argued in regard to Kosovo that, drawing on Arendt, there is a distinction between justifying violence and claiming that it is legitimate. She argued that ‘violence can never be legitimate, in the sense that its use can be thought to follow from principles and procedures of law. Violence can

¹² *ibid.* p.433

¹³ *ibid.*

nevertheless sometimes be justified.’¹⁴ It is the process by which the latter takes place that we shall focus on rather than the larger debate concerning the institutionalisation of humanitarian intervention and the use of force. Whilst it is acceptable to argue that we should not make success the defining test of legitimacy, as this would suggest that we can only judge the ‘legitimacy of an intervention motivated by humanitarian reasons only with the benefit of hindsight’¹⁵, along with Bjola it is also argued that the process by which the decision to intervene is arrived at is also key to its legitimacy. Both deliberative process and consequences are crucial to establishing legitimacy.

The ongoing search for legitimating criteria to institutionalise intervention in international law faces certain problems. Such criteria may simply provide a basis for reasserting and legitimising the rights of the interveners which are likely to be those of the most powerful states. Alternatively, the argument for non-intervention and sovereignty can also be interpreted as legitimising the interests of the powerful and reaffirming the status quo. Formal criteria do not address the problem of the effectiveness of force, or the problem that each situation is different and reflects a different set of needs and interests, nor allow sufficient space for critical re-evaluation (fallibility) or dialogue. Rightly raising the issue that those actors involved in the dialogues envisaged by the frameworks discussed above are primarily the intervenors, Bellamy argues that there appears to be:

little basis in pragmatic epistemology for claims that link the legitimacy of force to a set of criteria that are removed from lived experiences about the efficacy of armed intervention. Moreover, it is important to bear in mind that the Socratic demand that we collect as many experiences as possible when constructing ‘good’ knowledge means that the experiences of the intervenors should not be prioritised, as they appear to be in the move to establish legitimising criteria. We also need to ask the victims, perpetrators, and bystanders about the instrumental usefulness and moral purposes of such acts.¹⁶

This argument goes to the heart of a communicative politics, suggesting that it is not a matter of prescribing or prohibiting the use of humanitarian intervention, but that it should be constructed and questioned communicatively and openly, following principles developed thus far in these chapters. It emphasises the need for process, based on dialogue, to be taken into consideration as well as content and outcome.

¹⁴ Iris Marion Young: ‘Violence against power: Critical thoughts on military intervention’, from Chatterjee, Scheid (eds.), 2003, p.253

¹⁵ Wheeler, 2000, p.40

¹⁶ Bellamy, 2002, p.484

4.3 Trial runs

4.3.1 Ian Johnstone's approach

In this section we shall explore alternative attempts to apply discourse ethics or discursive political models to international relations. The concept of 'interpretive communities' was previously a device employed in literary interpretation by Stanley Fish and has been adapted for the purposes of international politics. Johnstone contends that legal arguments as justificatory discourse have an influence on decision-making processes within the Security Council and has explicitly drawn on Habermasian ideas in order to develop his thesis in relation to NATO's intervention in Kosovo. It is, therefore, worthwhile to explore whether his application of Habermas, albeit somewhat different to the present attempt, may contribute to this research.

When we examine the processes by which decisions to intervene are arrived at, it is helpful to consider themes of dialogue such as international law or humanitarian intervention in light of Johnstone's notion of an 'interpretive community'.¹⁷ Interpretive authority, Johnstone argues, 'resides in neither the text nor the reader individually, but with the community of professionals engaged in the enterprise of treaty interpretation and implementation.'¹⁸ While this collective, professional, interpretive approach diverges from previously mentioned hermeneutic approaches (e.g. that which is perceived by the individual), there are elements of similarity in that interpretive communities draw on accepted conventions, traditions and practices within a known social horizon, albeit through the lens of a particular issue. Interpretive communities are produced by repeated and frequent communicative actions which produce the kind of 'common lifeworld' that Johnstone perceives in the Security Council. Risse defines a common lifeworld as 'a supply of collective interpretations [actors have] of the world and of themselves, as provided by language, a common history, or culture.'¹⁹ The common world that Johnstone refers to is one that 'does not simply come out of the shared beliefs and attitudes of its inhabitants but in fact generates those beliefs and attitudes through common participation.'²⁰ Although the depth to which a common

¹⁷ Johnstone, 2003; Johnstone, 1991: 'Treaty Interpretation: The Authority of Interpretive Communities', *Michigan Journal of International Law*, 12

¹⁸ Johnstone, 1991, p.372

¹⁹ Thomas Risse, 2000: 'Let's Argue!: Communicative Action in World Politics', *International Organization*, 54(1), p.10, citing Habermas, *TCA*, vol. 2

²⁰ Johnstone, 1991, p.386

lifeworld exists in international relations is debatable, the UN does operate according to a set of conventions, practices and shared understandings, particularly on issues such as human rights and trade, leading to the understanding that the presuppositions for argumentative rationality, including a common lifeworld and 'the mutual recognition of speakers in a non-hierarchical relationship' are more common in international relations than is commonly thought.²¹ Not only do institutions serve as information-rich environments, but they also provide a normative framework which structures interactions.²² Johnstone argues that whilst the normative framework was not sufficiently developed to produce a single 'right' answer in the case of Kosovo, it was enough to distinguish between good arguments and bad arguments.²³

Interpretive communities are linked to a complex combination of strategic and discursive arguing which is recognised as an intersubjective practice; to persuade others that our own position is justified we often follow certain norms, for example language rules, which enable our interaction. Johnstone argues that governments, due to the nature of the interpretive communities they find themselves in, are forced to justify their positions in terms other than those of self-interest. However, this does not mean that strategic self-interest may not be driving their actions, but rather that the interpretive community has provided it with an appropriate language and terminology with which to cloak its real strategic interests and motives. In response to this criticism, Johnstone quotes Elster's argument referring to the 'civilizing force of hypocrisy': 'even if impartial arguments are used hypocritically, they often lead to concessions to the general interest and more equitable outcomes from the debate'.²⁴ The power of argumentation which takes place within interpretive communities serves, therefore, as a mediating force between the collective interest and self-interest: even when arguments are made for strategic reasons, the constraints within which they must be seen to operate have a moderating effect. Johnstone argues that the rhetorical acceptance of a legal norm eventually persuades governments to match their words with deeds as they are then debating its application to particular instances rather than its validity. Risse also argues that argumentative 'self-entrapment', whilst not an ideal speech situation as governments have not necessarily entered the discourse voluntarily so the discourse is

²¹ Risse, 2000, p.33

²² *ibid.*

²³ Johnstone, 2003, p.460

²⁴ *ibid.* p.454

not free from international pressures or sanctions, is still indicative of genuine argumentative rationality as both sides 'accept each other as valid interlocutors, try to establish some common definition of the human rights situation, and agree on the norms guiding the situation.'²⁵

The concept of an 'interpretive community' seems to be a double-edged sword however, as legitimation through such dialogic themes can constrain and shape 'the exercise of military power, both as to the initiation and manner of its use'.²⁶ Hutchings makes this point in a slightly different way in her consideration of the dominance of liberal vocabulary in international institutions and the extent to which, for Spivak, it underlines:

the degree to which equality of exchange between those she identifies as the global 'subalterns' and hegemonic actors, such as metropolitan feminists working in the INGOs of global civil society, is impossible. The difficulties of dialogue are exacerbated not simply by differences in power but by the degree of exclusiveness and the inextricability from power relations of the language through which attempts at dialogue are conducted.²⁷

Consequently, the concept of an 'interpretive community' should be perceived more critically. It is undoubtedly important to be aware of the different justificatory discourses offered by states to support their actions within a commonly accepted framework; yet without an awareness of the power relations inherent within such an interpretive community, we achieve little more than the continuation of such power relations, thus losing any transformative potential offered by such a tool. This is similar to Habermas's critique of hermeneutics for its lack of a critical dimension.²⁸

Whilst the influential presence of legal argumentation in interpretive communities impels states to justify their actions in accordance with law, once a decision has been taken states may fear to challenge or criticize it as they are unwilling to be seen as failing to comply with international law. This means that the interpretive discursive community may not have the power to criticize the actions of its own members even if they disagree with them, thus changing the parameters of the discourse. As Johnstone says, although without this interpretation, interpretive communities are 'composed of the participants in a field of practice who set the

²⁵ Risse, 2000, p.32

²⁶ Barkawi: 'Air Power and the Liberal Politics of War', from Booth (ed.), 2001, p.310

²⁷ Hutchings, 2005, p.164

²⁸ Robert Holub, 1991: *Jürgen Habermas: Critic in the Public Sphere*, London, Routledge, p.66

parameters of what constitutes reasoned argumentation for that practice.’²⁹ Thus, challenges to what is, effectively, the status quo remains difficult as ‘sustained insistence’ on an interpretation considered ‘wrong’, in that it cannot be reconciled with the conventions and practices of the relevant interpretive communities, is ‘symptomatic of a breakdown in the relationship or a dissolution of the community.’³⁰ This perpetuates exclusionary practices and reflects criticisms uttered by critical theorists in relation to Habermas’s discourse theory in which he is criticised for limiting both agency and topic of conversations.³¹ Interpretive communities no longer seem to be as non-hierarchical nor as open to participation or inclusion as first perceived. Instead, they appear insular and closed off from critical reflection or outside influences and rejecting of those interactions which do not ‘fit’ the accepted practices of the community.

This criticism of what, on closer inspection, appears to be rather a conservative approach, resonates with aspects of the criteria for good international citizenship and an ethic of communication which require the potential to engage with and to change the nature of discursive parameters where necessary. Wolin argues that ‘[d]emocracy was born in transgressive acts, for the demos could not participate in power without shattering the class, status, and value systems by which it was excluded.’³² This seems an appropriate analogy to apply to the development of greater discursive freedom along critical theoretical lines. It is by transgressing those obstacles which prevent greater dialogical inclusion that discourse may approximate more closely those criteria offered by Habermas.

To conclude, interpretive communities are of limited use to this research. Similarly to Crawford, Johnstone’s work is intended to support the move to formulate a set of considerations (not hard and fast criteria) to be used as guidelines in future decisions on humanitarian interventions. Although they offer a useful means with which to understand the arguments offered by actors as justificatory discourse which operates under certain conditions, interpretive communities are insufficiently open or reflexive in relation to their own construction or the means by which they may be

²⁹ Johnstone, 2003, p.439

³⁰ Johnstone, 1991, p.385

³¹ See Chapter 3

³² Sheldon Wolin, 1994: ‘Fugitive Democracy’, *Constellations*, 1(1), p.17

manipulated by more powerful actors to serve a particular purpose to meet the requirements of this research.

4.3.2 Corneliu Bjola's approach

One further concept informs the application of the theoretical framework in this research. Bjola has also explicitly drawn on Habermasian ideas to develop his concept of deliberative legitimacy in the case of Kosovo in a way which is closer to this research than that of Johnstone's approach. While it will be explored in more depth in Chapter 5, we must briefly explore its relevant theoretical components. Bjola argues that the:

legal provisions of the United Nations Charter offer imprecise and insufficient criteria for discriminating properly between legitimate vs illegitimate uses of force. The conflation of the concept of the legitimacy of the use of force with what is lawful, as agreed upon by a small number of major international actors, overlooks those situations in which legal standards are rendered instruments of political deception and manipulation in the hands of the most powerful actors.³³

This demonstrates a more critical approach to the use of legal argumentation than is indicated in Johnstone's argument. The need to clarify the relationship between legality and legitimacy - otherwise described as the gap 'between a strict legal positivism and a common sense of moral justice'³⁴ - in context of the use of force was also picked up in the Independent Commission on Kosovo's report.³⁵ If, as Bjola suggests, legitimacy represents the 'moral and legal platform on which political authority is constructed and harnessed in international politics', then clearly legitimacy is fundamental to any normative justification of political action.³⁶ Recognising the importance of the structure of the talks themselves, Bjola argues that the simple adoption of a UNSC resolution, and the consequent assumption of legitimacy for military action, does not question the manner in which this consensus is reached.

With this in mind, Bjola draws upon Habermas's theory of communicative action to inform his concept of 'deliberative legitimacy' which can be defined as 'the appropriateness of the manner in which consensus about the decision to use force is

³³ Bjola, 2005, p.266

³⁴ Thomas Franck: 'Interpretation and change in the law of humanitarian intervention', Holgreffe, Keohane (eds.), 2003, p.216

³⁵ *The Kosovo Report*, p.10

³⁶ Bjola, 2005, p.267

attained.’³⁷ He perceives a deliberative dimension to be necessary in addition to the legal component intrinsic to the concept of the legitimate use of force. The question he asks is whether those who argue in favour of military interventions:

try to reach a reasoned consensus on the need for the use of force, or do they just engage in power games based on credible threats, intimidation or rhetorical exchanges with no visible intention to achieve argumentative consensus with the other members of the international community on the definition of the situation and on the course of action?³⁸

This question informs a key aspect of our later analysis of the decision-making process surrounding Kosovo. Bjola states three conditions under which deliberative legitimacy can be validated:

- The facts on the basis of which decisions about the use of force are taken are truthful and complete as informed by the best evidence available.
- All interested parties must be allowed to participate in the argumentative discourse, and all participants should have equal rights concerning making an argument or challenging a validity claim.
- The participating actors show genuine interest in using argumentative reasoning for reaching consensus on the use of force.³⁹

Like others, Bjola recognises the common lifeworld within international institutional settings such as the UN which operate on a basis of a ‘dense and tested network of collective understandings, rules and diplomatic norms’.⁴⁰ Bjola, however, also clearly acknowledges the ‘various power asymmetries’ between actors which *control access* to the deliberative process as well as affecting the ‘weight’ of the arguments presented.⁴¹ With the increasing contestation of the definition and scope of application for existing international law, of which Kosovo is a prime example, there is a greater need for closer scrutiny of the procedures by which decisions are made and the conditions under which discourse takes place. Communicative action therefore, can

³⁷ *ibid.*

³⁸ *ibid.*

³⁹ *ibid.* p.280: ‘The first condition is required for denying actors opportunities to engage in acts of political manipulation and deception with respect to the legal aspects of the intervention. The second provision serves to reduce, as much as possible, the influence of power relationships, coercion, or intimidation during the deliberative process. The third condition is important for making sure that the decision to use force is taken based on the most compelling (legal) arguments available.’

⁴⁰ *ibid.* p.279

⁴¹ *ibid.* p.277-8, emphasis added

address these issues in ways unavailable to strategic or instrumental action, and can allow actors to make well-informed decisions based on coercion- or domination-free discourse. In a clarification of his argument which rests on procedure and clearly emphasises the strong Habermasian influence, Bjola argues that deliberative legitimacy 'represents the platform on the basis of which the points of contention between actors' justifications to use force can be ascertained and validated.'⁴² The conditions that he sets as requirements for deliberative legitimacy, derived from Habermasian discourse ethics, are reflected in the communicative imperatives set out below. His application can be distinguished from the one presented in this research in two ways. The communicative imperatives are more comprehensive, drawing more extensively on the tradition of critical theory and on Habermas in particular. They also differ in terms of the target of application. Both Bjola and Johnstone focus on legal aspects of their discursive analyses. Bjola's criteria explore the problem of the conflation of legitimate and lawful use of force, and the contemporary legal ambiguity surrounding Kosovo. This research focuses more specifically on the construction of the communicative imperatives, the process of dialogue, and actual dialogues through which decisions to intervene were taken, thus looking to see what can be learnt from a communicative ethics approach to the practical, and morally problematic, question of intervention.

⁴² *ibid.* p.279

4.4 Formulating the Communicative Imperatives⁴³

The ‘adaptations’ or limitations to discourse ethics discussed in 3.4 now need to be addressed in a way which allows us to draw closer to practice and empirical analysis. Thus, prior to articulating the communicative imperatives it is helpful to reiterate in more practical contexts some of the key themes developed from the theory and reflected in the imperatives. It is hoped that the theoretical framework developed here will provide some means of recognising communicative distortion through revealing moments of illegitimacy. If we accept that the UNSC is a forum for deliberation for many divisive issues in world politics, then it is increasingly important that some ability to recognise aspects of illegitimacy within its decision-making procedures is available. Through our reconstruction of discourse ethics we have seen that there is a relationship between assessing legitimacy and the ability to be reflexive or to recognise fallibility. In other words, when political practices can survive the criteria that will be defined later, then they can be accepted as forming the basic political structures of that particular society, so long as they continue to meet the requisite conditions and it is in this caveat that reflexivity is significant. A legitimate political practice or consensus can only remain legitimate if two factors are present: first, there should exist a continuing openness to criticism and secondly, the possibility of further debate leading to a new consensus or practice. In light of the previous critiques of Habermas, it is worth reiterating that in order to retain the practical use of this understanding of

⁴³ See also Risse’s (2000) articulation of criteria for recognising an arguing situation in international politics, p.18-19: 1) ‘By carefully examining the communicative utterances of speakers it should be possible to establish whether the conditions are present for argumentative rationality in terms of nonhierarchy. Communicative situations where actors point to their rank or status to make an “argument” do not qualify as a discourse. 2) Discursive rationality requires argumentative consistency. Actors changing their arguments depending on the audience with which they are dealing probably engage in rhetorical behavior. 3) Assuming that the materially more powerful actors do not necessarily have the better arguments, an arguing situation should disproportionately empower the weaker actors who have less material resources at their disposal. [...] 4) Argumentative rationality can be investigated particularly well in situations where instrumental interests of actors (material or ideational) are stacked against the arguments being made. If actors change their mind in a communicative process, even though their instrumental interests would suggest otherwise, we have probably observed a process of persuasion. 5) Whether actors engage in dialogue and argumentation or not should be particularly obvious in situations in which they are accused of violating certain norms of appropriate behavior to which they have previously agreed. Do they dismiss such accusations as irrelevant or engage in some self-serving rhetoric? Or do they start justifying their behavior, give reasons for their action, or even apologize?’

Similar approaches have been articulated by Fishkin, 1992, p.124; Davy Janssen and Raphaël Kies, 2005: ‘Online Forums and Deliberative Democracy’, *Acta Politica*, 40, p.317-335

dialogue, the notion of consensus need only be procedural. It may, for example, be a consensus specifying agreement on how to disagree, but also, given those disagreements, how each side must be given an appropriate hearing to resolve disputes.⁴⁴

Let us return to the need for reflexivity and the link between this and forms of coercion or manipulation. There are different kinds of coercion and manipulation that may prevent or control access to dialogue and it is important to consider some of these. Some forms of coercion may be more or less overt while others remain covert; some may be linguistic while others may be more material. Fishkin offers an example of practices which involve the systematic exclusion of some racial or ethnic group through discrimination. Empirically, it is unlikely that such a practice would satisfy the condition of consensus as this would require support from those excluded as well those included. But, it is possible that such a consensus might be achieved through repressive means. The repression necessary to maintain such a consensus would violate the requirements of liberty for a self-reflective society. If, however, the subordinate group remains quiescent, obviating any need for overt acts of repression by the dominant group, then clearly this also violates the conditions for legitimacy as it no longer gives ‘unimpeded and effective voice to the interests across every significant cleavage in the society.’⁴⁵ Boréus, in her concept of discursive discrimination⁴⁶, extends the notion of coercion as exclusion through her distinction between the exclusion of voices and invisibility making.⁴⁷ The former occurs when a group of people is excluded from participating in debates which affect them. This type of exclusion is a matter of degree: the voices of a particular group may be totally absent from any manifestations of a particular discourse which fail to refer to or elicit their opinion or their perception of their own interests; the opinions of the group may be referred to but no more; or, on a higher level of inclusion, representatives may take part in the debate on their own initiative and, as much as possible in public discourse, on their own terms.⁴⁸ The latter

⁴⁴ Fishkin, 1992, p.127

⁴⁵ *ibid.* p.134

⁴⁶ Kristina Boréus, 2006: ‘Discursive Discrimination: A Typology’, *European Journal of Social Theory*, 9(3). She defines discursive discrimination as discrimination carried out through the use of language (p.405) and distinguishes between four main forms: 1) negative other-presentation; 2) exclusion; 3) proposals pointing towards non-linguistic unfavourable treatment; and 4) discriminatory objectification (p.409).

⁴⁷ Boréus, 2006, p.413

⁴⁸ *ibid.* p.414

type, invisibility making, refers not to the voiced opinions of a group being excluded, but to the consistent exclusion within multiple discourses of ‘references to and images of group members.’⁴⁹

When voices are silenced, forcibly or otherwise, the conditions for legitimacy are not present: ‘The fact that the practice might conceivably be so successful that it robs the subordinate group of any desire to voice its interests is only an indication of how dramatically our conditions are violated.’⁵⁰ Once again, we return to Benhabib’s ‘interactive universalism’ which may be articulated in this context as ‘what is necessary for equal consideration of one’s claims or interests in the public dialogue’.⁵¹ By equal consideration, Fishkin means that:

they are treated as deserving equal consideration on their merits; they are not discounted because of the identities of the people involved (either in voicing the claim or in applying it). It is publicly accepted – by both speakers and listeners – that such claims deserve the same serious hearing given to the interests of other groups.⁵²

Here, Fishkin not only recognises potential means of coercion or manipulation, but also the importance of identity and recognition. Boréus supports this link between discrimination/coercion, inclusion, and the importance of recognition as she argues that under-representation, inherent in the notion of invisibility making, constitutes unfavourable treatment and has social and political implications. This is because there seems to be a ‘strong social and psychological need to be seen: it is a kind of recognition and confirmation. To be made invisible can be seen as unfavourable treatment, since it frustrates that need.’⁵³

Honneth provides further theoretical justification for the importance of recognition to justice and morality.⁵⁴ As Shapcott reminded us, justice requires more than merely the fair distribution of material goods. Claims concerning recognition, inclusion, exclusion, and harm, imply normative judgements about the legitimacy of social arrangements. Honneth seeks to develop characterizations which must be formal or abstract enough to avoid simply representing concrete interpretations of the good life,

⁴⁹ *ibid.* p.415

⁵⁰ Fishkin, 1992, p.134

⁵¹ Fishkin, 1992, p.137

⁵² *ibid.* p.138

⁵³ Boréus, 2006, p.415

⁵⁴ Axel Honneth, 1995: *The Struggle for Recognition: The Moral Grammar of Social Conflicts*, (trans. Joel Anderson), Cambridge, Polity Press

whilst, at the same time, must ‘have sufficient substantive content to be of more help than Kantian references to individual autonomy in discovering the conditions for self-realization.’⁵⁵ Honneth also captures the need for fallibility when he argues that the ‘character of intersubjective prerequisites for self-realization becomes visible only under the historical conditions of the present, which in *every case has already opened the prospect of further normative development* regarding relations of recognition.’⁵⁶

Honneth’s work on recognition is important for two main reasons. First, it adds another element to the case for a reconstructed discourse ethics which is sensitive to difference, and second, it allows us to develop a clearer understanding of inclusion and exclusion and the implications of this for the individual. If human self-realization is the end for recognition, then self-realization is enabled by three conditions, or patterns of recognition: self-confidence, self-respect, and self-esteem, or otherwise referred to as love (‘relations of love and friendship’), rights (‘legally institutionalized relations of universal respect for the autonomy and dignity of persons’) and solidarity (‘networks of solidarity and shared values within which the particular worth of the individual members of a community can be acknowledged’) respectively.⁵⁷ These are neither ‘purely beliefs about oneself nor emotional states, but involve a dynamic process in which individuals come to experience themselves as having a certain status, be it as a focus of concern, a responsible agent, or a valued contributor to shared projects.’⁵⁸ These aspects of a positive relation-to-self are gained through the experience of recognition which can only be acquired through interaction with others. If denied this recognition due to exclusion from social groups, legal rights or status, then the individual faces a form of coercion which prevents recognition or identity-formation. Should a person or groups of persons be ‘systematically denied certain rights [...], this would imply that he or she is not being accorded the same degree of moral responsibility as other members of society.’⁵⁹ To develop the link between recognition and the harm principle intrinsic to Linklater’s later concept of good international citizenship, Linklater observes that ‘indifference harms the self-respect of the vulnerable by forcing them to conclude that they have no claims against communities

⁵⁵ *ibid.* p.173

⁵⁶ *ibid.* p.175, emphasis added

⁵⁷ *ibid.* p.xii

⁵⁸ *ibid.*

⁵⁹ *ibid.* p.133; Charles Taylor, 1994: ‘The Politics of Recognition’, Taylor, Gutman (eds.) *Multiculturalism*, Princeton, Princeton University Press

which can alleviate their misery without much cost to themselves.’⁶⁰ Denial and the resulting hurt or harm rests, however, as indeed does mutual esteem, on the perceived existence of a shared, or intersubjective, interpretation of normative expectations and values within a society which amount to recognition and enable self-realization. This intersubjective awareness of values and moral expectations may be arrived at through a discursive process.

Saward’s acknowledgement that, ‘Defining democracy is a political act; the assumptions involved must be justified explicitly and convincingly to be of real value’⁶¹, indicates that the establishment of any theoretical framework derives from a particular political perspective and can never be value free. He goes on to argue that, ‘What is needed is a definition of democracy which is not forged in theoretical isolation, but which is embedded in a theory which justifies and clarifies the concept of democracy as part of the process of definition.’⁶² If attempting to define democracy is political, then it is also a political act to argue in favour of a communicative as opposed to strategic rationality, and as such needs to be justified. Here, we are drawn back to the debate between the cosmopolitan and communitarian literature concerning our ability to justify certain positions. Being able to separate the procedural from the substantive goes some way to acknowledging the communitarian or relativist argument that universal substantives may be unacceptable. It indicates that one viewpoint is not inherently superior to any other. However, taken to the extreme this runs the danger of falling into absolute relativism which precludes the construction of *any* normative model. In view of previous discussions, there are strong arguments to support the claim that some of these problems may be circumscribed by a more context-sensitive and procedural approach.

Both Beetham and Saward emphasise that it is not enough to base a critical assessment of democracy on existing practices or institutions as this offers no way to address the crucial question: how can these practices be made more democratic? ⁶³ However, a purely abstract theoretical approach does not aid us in the quest to apply theory to practice. Parallels can be drawn between Saward and Beetham’s approach to auditing democracy and the construction and application of a model of good

⁶⁰ Linklater, Suganami, 2006, p.252-3

⁶¹ Michael Saward: ‘Democratic Theory and Indices of Democratization’, from Beetham (ed.), 1994: *Defining and Measuring Democracy*, SAGE Publications, London, p.7

⁶² *ibid.*

⁶³ David Beetham, 1993: *Auditing Democracy in Britain*, London, The Charter 88 Trust, p.6

international citizenship which holds a concept of discourse ethics at its core. Beetham suggests each indice within the audit represents a continuum rather than a black and white alternative,⁶⁴ although he acknowledges that the idea of a continuum neither in itself determines what a 'good' democratic standard or benchmark should be nor where the beginning and end-point of that continuum should be situated.⁶⁵ Beetham also suggests, in line with the concept of reflective judgement, that when it comes to measuring such criteria, it is 'preferable to leave such assessments in the form of qualitative judgements, in which the difference points of strength and weakness can be identified.'⁶⁶ On this matter, this research concurs with Beetham, and has no intention of engaging in an attempt to measure quantitatively the quality of discourse.⁶⁷

The closest that Habermas comes to drawing up any form of criteria for dialogue is developed from his presuppositions of argumentation and Alexy's subsequent formulation of pragmatic rules for discourse which Habermas has accepted:

1. Every subject with the competence to speak and act is allowed to take part in a discourse.
2. a. Everyone is allowed to question any assertion whatever.
b. Everyone is allowed to introduce any assertion whatever into the discourse.
c. Everyone is allowed to express his attitudes, desires, and needs.
3. No speaker may be prevented, by internal or external coercion, from exercising his rights as laid down in [1] and [2].⁶⁸
 - 1.1 No speaker may contradict himself.
 - 1.2 Every speaker who applies predicate *F* to object *A* must be prepared to apply *F* to all other objects resembling *A* in all relevant aspects.
 - 1.3 Different speakers may not use the same expression with different meanings.⁶⁹

⁶⁴ Beetham: 'Key Principles and Indices for a Democratic Audit', Beetham, (ed.), 1994, p.32: http://www.democraticaudit.co.uk/auditing_democracy/guideframework.php

⁶⁵ *ibid.* This also fits with Butler's definition of universalism, Cohen (ed.), 1996

⁶⁶ *ibid.* p.33

⁶⁷ contra Marco Steenbergen *et al.* 2003: 'Measuring Political Deliberation: A Discourse Quality Index', *Comparative European Politics*, 1

⁶⁸ Habermas, 1990, p.88; Robert Alexy, 1989: *A Theory of Legal Argumentation*, (trans. Ruth Adler and Neil MacCormick), Oxford, Clarendon Press, p.193

⁶⁹ Habermas, 1990, p.87; Alexy, 1989, p.188

Alexy notes that these criteria should be treated openly and as being fallible. He adds that they may, in practical discourses, only be approximately satisfied. Moreover, he indicates their two-fold use: first, as an '*instrument of criticism* of unjustifiable limitations of the rights and opportunities of discourse-partners'; second, 'they define an ideal which can be approached through practice and organizational arrangements.'⁷⁰ It is precisely this dual approach of critique and normative development that the framework presented here seeks to offer. Bearing in mind, however, our exploration of attempts to sensitize the practice of dialogue and discourse ethics, to back off from Habermas's universalist moral account of behaviour, we want to consider moving away from Alexy's formulation of 'rules' for discourse towards a less rigid object.

The communicative imperatives presented here follow a similar approach to Beetham's democratic audit and bring together a range of theoretical interventions in debates on a communicative ethics approach. Although termed 'communicative imperatives', they are only imperative in the sense that they are normative; they are not equivalent to rules of conduct or institutionalised practices. Instead, they are practices which allow us to analyse institutionalised practices and which offer normatively-oriented guidelines for 'fair' communication.⁷¹ The qualities that form the communicative imperatives are not all-or-nothing, but will occur to different degrees in dialogue. In order to examine the particular instances of communication during the debates over Kosovo where they will be tested, these communicative imperatives are themselves the basis for a number of questions developed to allow the operationalization of these imperatives in the analysis of dialogue. These do not indicate isolated concepts; the questions may at times relate to more than one imperative, nor is the order of the questions an indicator of their relative importance. Grounded within a critical theoretical perspective, the communicative imperatives effectively build on the principles developed by, among others, Linklater, the specific criteria articulated in the works of Bjola and Alexy and can be considered as 'norms of evaluation internal to that political practice'⁷², if the political practice in question is the dialogue through which legitimacy is claimed.

⁷⁰ Alexy, 1989, p.194

⁷¹ Coupled with discourse ethics, it is Habermas's colonisation thesis, grounded in the distinction between communicative and strategic rationality, which secures the critical power of the communicative imperatives.

⁷² Fishkin, 1992, p.123

The Communicative Imperatives:

1. Maximising inclusion
2. Minimizing coercion
3. Maximising dialogue over violence
4. Maximising diversity
5. Coherence
6. Reflexivity
7. Recognition

1. Maximising inclusion

- Who is consulted? (Communities of interests, communities of place)
- Do smaller actors have an equal effective opportunity to participate and to be heard?
- Are non-state actors consulted?
- Can any interested party participate with equal rights?
- To what degree do participants in the dialogue have the ability to initiate discourse on any issue pertinent to the discussion? Or, conversely, how fixed are the parameters of the dialogue?
- How are actors included? (e.g. as observers, participants, how often are they consulted?)
- Are the interests of absent actors represented?

2. Minimizing coercion

- To what extent is there evidence of effective persuasion?
- Are there signs of cooperative behaviour which transcend short-term self interest?
- Can we identify instances of systematic compulsion, threat, coercion (direct or indirect), ideology or manipulation within dialogue?
- Is there an equal means of control over decision-making procedures, the agenda, and decisions?

3. Maximising dialogue over violence

- If there is failure to reach agreement, what happens? Do states supplant the rules of communication with the rules of war? (e.g. breaking off communication and resorting to force, or adopting a strategic or manipulative attitude towards the other.)
- Do states enter into a different sort of communicative interaction where those norms and truth claims which are contested and problematic are treated as hypotheses requiring justification and defence?
- Are alternatives to strategic action discussed within the dialogue?
- Is strategic (military) action acknowledged and justified?

4. Maximising diversity

- To what degree do public sphere opinion-forming media (e.g. the media) reflect and support official government (/TNCs) policy as opposed to serving as an independent vehicle for discourse and the expression of differences?
- Are dominant discourses reinforced through the use of interpretive communities (legal or humanitarian)?
- Are there noticeable polarisations of identity?
- Which is given preference in the dialogue: hermeneutic understanding or universal consensus?

5. Coherence

- Are the same norms always offered in argument or do evolving norms gain acceptance?
- Do participating actors show genuine interest in using argumentative reasoning for reaching consensus on the use of force?
- Is there coherence between the actions of states and their words?
- To what extent do actors present consistent arguments?

6. Reflexivity

- Is there any indication of reflexivity concerning the construction of negotiations?
- Is there acknowledgement of error?
- Do states recognise or acknowledge their own explicit or implicit historical involvement in conflict environments?

- Are compromises reached? If so, are the relevant trade-offs acknowledged and discursively redeemed?

7. Recognition

- Are certain values/identities publicly set up as the 'right'?
- Do actors seek to understand other perspectives or do they stick rigidly to their own viewpoint?
- Do participants in dialogue acknowledge their situated positions?
- Do different types of voice/speech receive equal opportunities to participate and be heard?

4.5 On using the Communicative Imperatives: Problems between theory and practice

As already indicated, there is a long roll-call of theorists who have lamented the apparent disjuncture between Habermasian theory and practice. The difficulties of constructing a Habermasian politics and the dangers of conflating the distinction (which Habermas insists upon) between normative grounds for legitimation and institutional design are well documented.⁷³ At a theoretical level, discourse must be left as open and as inclusive as possible. It is only within practical discourses which reflect these conditions that boundaries to interpretations can be drawn.

This research does not look to move onto the dubious grounds of institutional design, seeking instead to find a way of utilising the critical tools that Habermas has provided through the notion of communicative action in order to respond to some of the contemporary requirements of international politics in the face of contested legitimacy, structural inequalities and accusations of a democratic deficit. Perhaps inevitably, when we consider the theoretical tools and the empirical focus of this research, questions of ideal democratic practices, institutional arrangements and substantive political goods arise despite awareness of the pitfalls of too literal a translation or transposition from theory to practice, or what Wellmer has called a 'short-cut'.⁷⁴ The idea of a short-cut is the attempt to 'overextend theory, to move too quickly from normative to empirical

⁷³ Blaug, 1999, Dryzek, 1987, Wellmer: 'Practical Philosophy and the Theory of Society: On the Problem of the Normative Foundations of a Critical Social Science' from Benhabib, Dallmayr (eds.), 1995; Benhabib, 1992

⁷⁴ Cited in Blaug, 1999, p.65

matters and thus to be excessively utopian in one's institutional designs.'⁷⁵ However, as indicated, it is not institutional design that this research has in mind, but the critical evaluation of existing practices: an aim with which Habermas would concur.

The theoretical framework offered in this research reflects the practical intentions of critical theory in three ways. Firstly, it identifies a set of issues and structures which operate as mechanisms of repression and domination.⁷⁶ The communicative imperatives which serve as the practical face of a theoretical framework offer an understanding of the presence and function of these mechanisms; in other words, they serve to reveal illegitimacy. Secondly, this has an educative role as it reveals illegitimate practice to social actors, specifically, those actors whose interests are affected by decisions taken within a community or society. Fay argues that one of the key links between theory and practice is the educative role of critical theory. This means that the theory is not used by an expert in order to impose policy in order to manipulate social conditions to reach a particular pre-determined goal, but rather 'to enlighten the social actors so that, coming to see themselves and their social situation in a new way, they themselves can decide to alter the conditions which they find repressive.'⁷⁷ In other words, the theory has a transformative effect on the consciousness of actors of their understanding of their own positions and the constraints affecting these positions.⁷⁸

Thirdly, the framework offers a means of social change or emancipation in the tradition of critical theory through the possibility of acting as a catalyst for change which remains situated and dialogic. Such change cannot be implemented as a set of external or abstract laws, or imposed, as the nature of critical theory demands that it is interpretative and intersubjective. For this reason, Fay argues that a critical social theory 'is not divorced from social practice in the sense of being set over and against it as a blueprint to be followed: here, the objects of the theory actually become subjects of it, which is to say, they help to fashion it by their own choices and actions, and by their responses to it.'⁷⁹ This is an important conceptual perspective because a static blueprint does not allow for communication or reflexivity which in critical theory remains an

⁷⁵ *ibid.*

⁷⁶ Brian Fay, 1975: *Social Theory and Political Practice*, London, George Allen & Unwin Ltd, 1975, p.104

⁷⁷ *ibid.* p.103

⁷⁸ Manin, 1987, p.354

⁷⁹ Fay, 1975, p.109

intersubjective and continuous process. Fay strongly defends the intrinsic and constitutive link between critical theory and practice, calling for recognition of the ‘self-conscious integration of theory and practice’ as critical theory’s central core⁸⁰, and it is in this sense that this framework seeks to be understood, despite the problems which haunt our theoretical exploration of Habermas and his theory of communicative action.

Any normative theoretical approach incurs the danger of becoming prescriptive when attempts are made to apply it in practice. E. H. Carr captured the utopian dilemma when he said that:

[t]he human will will continue to seek an escape from the logical consequences of realism in the vision of an international order which, as soon as it crystallises itself into concrete political form, becomes tainted with self-interest and hypocrisy, and must once more be attacked with the instruments of realism.⁸¹

Effectively, once an ideal has been institutionalised it ceases to be an ideal and instead becomes the expression of vested interests. While Carr suggests this is due to the incompatibility of power and morality, Blaug argues that the difficulties faced by the application of theory to practice are related to the ‘profound ambivalence regarding the relation of meta-theory to substantive political questions.’⁸² Blaug suggests that critical theorists are faced with a problem that is inherent in any theoretical account which attempts to address the issue of universalist ethics;

[w]anting to provide images of emancipation yet at the same time fearing the coercive power of utopianism, they are left to squeeze themselves into the middle ground, where their knowledge of the consequences of utopianism prevents them from acting and where their awareness of the suffering in the world only serves to make them miserable.⁸³

In response to charges that critical theory in general and Habermas in particular, runs the risk of moving into authoritarian territory, Fay argues for the distinction between the instrumentalist potential in critical theory and the instrumentalism intrinsic to positivist models of social science. Fay frames his understanding of the relationship between critical theory and practice firmly within an intersubjective communicative model which goes a long way to remove the authoritarian strains visible in other models: ‘according to the critical model there must exist a constant critical interchange

⁸⁰ *ibid.*

⁸¹ Carr, 1939, p.118

⁸² Ricardo Blaug, 1997: ‘Between Fear and Disappointment: Critical, Empirical and Political Uses of Habermas’, *Political Studies*, 45(1), p.112

⁸³ *ibid.*

between the policy expert and the actors who will be affected by his decisions.’⁸⁴ Not only must they be consulted in the first instance, but they must continue to be consulted as policy effectiveness can only be judged by the social actors concerned.⁸⁵ While some, like Dryzek⁸⁶ and Harald Müller, have argued that international regimes themselves constitute ‘incipient discursive designs’ because they are considered to ‘promote cooperative behaviour that transcends ‘short-run self-interest’, I would argue caution, in conjunction with Haacke, as the case is not so simple.⁸⁷ This is not simply because of the fear of imposing repressive utopian blueprints, although this is quite rightly a serious concern, but rather because it brings us to a slightly different concern.⁸⁸

Deitelhoff and Müller have argued that:

Institutions also serve to create interaction settings approximating the ideal speech situation. Institutions, which are characterised by densely and largely non-hierarchical settings, help foster trust and empathy between participants and establish equal rights of participation. The formal right of sovereignty and formal negotiation setting prevent the success of brute power in negotiations.⁸⁹

Leaving aside the empirical questions concerning institutions these comments raise, Haacke accurately notes that the pertinent question is not whether international regimes promote cooperation, but whether ‘the rules and decision-making procedures underpinning cooperative processes are themselves derivative of prior bargaining or argumentation processes.’⁹⁰ This brings us to my argument that there are two elements to a dialogical critique of decisions concerning conflict. The first concerns ‘talks about talks’; are the institutions and decision-making procedures themselves subject to the communicative imperatives intended to promote distortion- and domination-free discourse? Is there any process of reflexivity which considers the structural implications of institutions and the consequent power relations for discourse? The second element refers to the discourse itself which should also be considered in accordance with the communicative imperatives in order to engage with it critically.

⁸⁴ Fay, 1975, p.106

⁸⁵ *ibid.* p.106-7

⁸⁶ Dryzek, 1987

⁸⁷ Haacke, 1996, p.287

⁸⁸ Dryzek, 1987, p.664-5, p.657: Dryzek writes that ‘a fear of foisting institutions and practices on already-oppressed groups by outsiders who cannot know these groups’ true interests makes critical theorists reluctant to go into specifics’. See Blaug, 1999, p.69-73

⁸⁹ Nicole Deitelhoff and Harald Müller, 2005: ‘Theoretical paradise – empirically lost? Arguing with Habermas’, *Review of International Studies*, 31, p.173

⁹⁰ Haacke, 1996, p.287

Implicit in Fay's conception of critical theory is the distinction between procedure and substantive content that Habermas is keen to make explicit in order to limit the use of theory and prevent its use in a more prescriptive and authoritarian manner. The transformation of consciousness necessary for social change cannot be dictated from above in a vanguardist fashion, but must originate with the participants of dialogue themselves. Any move to alter structural constraints, institutional composition or institutional practices must develop with the approval of the participants themselves. The framework can only offer guidelines which might allow dialogue to be constructed in a manner approximating Habermas's ideal notion of speech, but this cannot be imposed, only offered as a regulative ideal with the intention of removing certain of the injustices and unfair procedures revealed by a close inspection of current practice.

This framework is intended to reveal illegitimate practice rather than measure the extent of legitimacy present in decisions, not least because of the ever-present problem of measurement. How does one measure a degree of legitimacy? Without wishing to resort to more objective, social scientific methods of measurement, it is necessary to find another approach to the empirical material. As has been acknowledged by Deitelhoff and Müller,⁹¹ it is not necessarily possible in practice to distinguish clearly between different types of communication. However, we may develop that problem a stage further and suggest that neither is it always possible, or for Habermas, desirable, to assign a normative value to different types of actual communication, for example, when strategic action is used for communicative ends. Theoretically, communication is not Habermasian if an actor has been manipulated into dialogue through coercion or pressure; in other words, the ends do not justify the means. Practicalities indicate that we will never find a situation which maps onto Habermas's theoretical model perfectly and so we must find procedurally acceptable trade-offs which allow us to act without losing all normative grounding. To return to our example of strategically induced communicative action, this might be an example where it can be justified if such a trade-off is acknowledged by the participants and redeemed discursively.

The same problem arises when we address the notion of inclusion. If we follow Habermas, then participation in deliberation should extend to all those who are affected, however, in practice, this is never reflected in actual dialogue. Instead, then, we must

⁹¹ Deitelhoff, Müller, 2005, p.176

look for ways in which we might conceive procedures to be as fair as possible and to remain as close as possible to the deliberative core of the normative ideal. This brings us back to the idea of trade-offs and the definition of affected interests. Dahl's solution to this dilemma, although empirically useful, is not sufficient as it does not address the issue of how the notion of 'affected interests' is defined and by whom.⁹² If we accept the necessity of trading-off levels of inclusion for practical purposes such as efficiency, then the question is not whether we have excluded those within Dahl's definition, but how we defend these exclusions and who has decided who should be excluded. Thus, it helps to use this framework negatively to look for illegitimacy rather than to use it affirmatively to identify legitimacy.⁹³

By seeking to apply principles of discourse to international politics, we encounter yet another form of the universal/particular tension present within the differing demands that decisions at an international level are required to fulfil. While dialogue encourages interpretive reason which Saward defines as 'the acceptance of the inevitability of pluralism and 'the undecidability and inconclusiveness of all interpretation'', order (and action) within the international system calls for legislative reason which involves the 'philosopher's untrammelled 'licence to judge' and to impose'.⁹⁴ Bauman captures this dilemma when he says that interpretive reason 'is engaged in dialogue where legislative reason strives for soliloquy'.⁹⁵ Reus-Smit demonstrates how history has seen both approaches from the ancient Greek city-states which evolved a discursive norm of justice to the legislative conception of justice sustaining the sovereignty of modern states.⁹⁶

In tandem with the theoretical difficulties of Habermas's universalism raised in Chapter 3 are the problems incurred in the moment of application. Habermas is well aware of Hegel's powerful critique of Kantian ethics which focused on Kant's ability to abstract from the particular.⁹⁷ One such issue is how a general law may be applied to a particular situation. The ability to determine the appropriate application of a universal

⁹² See Chapter 4, p.101

⁹³ See Clark's (2005) definition of legitimacy, Introduction, p.14

⁹⁴ Michael Saward, 2003: 'Enacting Democracy', *Political Studies*, 51, p.161

⁹⁵ *ibid.* citing Bauman

⁹⁶ Christian Reus-Smit, 1997: 'The Constitutional Structure of International Society and the Nature of Fundamental Institutions', *International Organization*, 51(4), p.568

⁹⁷ Habermas, 1990, p.195-6

law implies that ‘some sort of judging faculty is required’.⁹⁸ In light of this, Habermas has offered a distinction between Kantian morality and his own:

Kant restricted morality as a whole to Rousseau’s perspective of the lawgiver, who considers how a certain material can be regulated in the common interest of all citizens, and thus from the standpoint of universalizability. In this way the problematic of application disappears from view.⁹⁹

Habermas recognises that:

Practical reason cannot bring itself into force merely through foundational discourses alone. In the process of grounding norms practical reason expresses itself in the principle of universalization, whereas in the application of norms it appears in the form of a principle of appropriateness.¹⁰⁰

However, Habermas does not make a substantial leap towards relativism with this acknowledgement, as he argues that even in discourses of application, ‘we must rely on grounds which are valid not only for you or me, but in principle for everyone.’ A procedure which requires sensitivity to context does not need to be ‘itself context-dependent and lead to context-dependent results.’¹⁰¹

In addition to the critique of abstraction offered by Benhabib, Gilligan and others, Habermas’s concept of justice implies that our moral motivation is drawn from reason rather than from moral feelings. Nevertheless, Habermas acknowledges the role of moral feelings in constituting moral phenomena as ‘feelings provide the basis for our *perception* of something as a moral issue.’¹⁰² Moral feelings also provide the basis for the judgement of individual cases (application of moral norms), as they ‘build the experiential basis for our first intuitive judgements’, for example, ‘pain and the sense of injury for our reproaches against another person who has harmed us’.¹⁰³ Lastly, they also serve to aid in the grounding of moral norms through discourse as:

Empathy, [...] the capacity to transport oneself by means of feeling across cultural distance into alien and *prima facie* incomprehensible life conditions, patterns of reaction, and interpretive perspectives – is an

⁹⁸ Blaug, 1999, p.13

⁹⁹ Habermas in Dews, 1992, p. 251

¹⁰⁰ *ibid.*

¹⁰¹ *ibid.* p.267

¹⁰² *ibid.* p.269

¹⁰³ *ibid.*

emotional precondition for the ideal taking over of roles, which requires each person to adopt the standpoint of all the others.¹⁰⁴

By focusing on procedure over content, Habermas deliberately maintains a space for dialogue between participants which is the only way to determine content.¹⁰⁵ It is by creating such a space that he is able to retain the distinction between the right and the good and attempt to balance the scales between Kant and Hegel:

Where Hegel criticized Kant for his abstraction, indeterminacy in regard to outcomes, inability to generate morality, and for the insufficiency of the moral law alone, Habermas accepts his theory be limited to a procedural test and asserts the importance of processes of socialization in the generation of norms and in the practical discourses to test their validity.¹⁰⁶

We can not simply transfer the principles of discourse ethics to ‘reality’, even if we were all to agree on what that ‘reality’ should be, but the practical intentions of Habermas’s theory should be conceived along ‘critical-hermeneutic lines’:

Normative theory should help us understand our social world, to penetrate beyond its mere appearances and reveal its hidden structures. Theory should change minds, train eyes, exert a pressure on our intuitions, and help us reclaim our individual and collective authorship of the social world; thus moving us closer to living the lives we wish to live.¹⁰⁷

Like Habermas, Klaus Günther has argued that we should perceive the discourse of justification as separate from that of the discourse of application and that both are needed in order to apply norms to actual contexts. Wellmer critiques this separation however, on several grounds, one of which being that:

Only in cases where we are concerned with authoritatively given norms, as in law, can we meaningfully distinguish between justification and application; whereas in morality, which does not have norm-giving authority, everyone is directly confronted with the situation and must act with moral sense, so that moral discourse and moral judgement belong together here’.¹⁰⁸

It is sufficient to say here that this distinction is only necessary if one accepts Habermas’s definition of (U) in order to justify a norm. If we accept that Habermas’s discourse ethics might be made more context sensitive through the processes advocated

¹⁰⁴ *ibid.* This is different from the version of hermeneutic understanding elaborated in Chapter 3. See Linklater’s (2007) discussion of empathy.

¹⁰⁵ *ibid.* p.167-8

¹⁰⁶ Blaug, 1999, p.16

¹⁰⁷ *ibid.* p.36

¹⁰⁸ Klaus Günther, 1993: *The Sense of Appropriateness: Application Discourses in Morality and Law*, (trans. John Farrell), New York, State University of New York Press, p.51

by Benhabib, Gadamer, Gilligan, Wellmer, MacIntyre¹⁰⁹ and others, then this separation of justification and application is no longer necessary as the ‘situational appropriateness’ can be developed through different understandings of dialogue and judgement.

The problem then becomes one of situated judgement. If we look at the way in which judgement appears in a Habermasian context and then move towards a more reflective understanding of judgement, it enables us to frame the manner in which the communicative imperatives may be interpreted. As noted in Chapter 3, Habermas’s strong emphasis on consensus and universalizability renders judgement determinant and impartial, thus failing to recognise real differences between individuals.¹¹⁰ Another criticism of the Habermasian conception of judgement concerns the possibility of achieving consensus in collective deliberation:

Whether this threatened impossibility is due to the increasing multiplicity of value-perspectives in modern societies or to the quite extraordinary cognitive capacities seemingly required of participants in order to make valid collective judgements, this kind of criticism accuses Habermasian accounts of judgement of being hopelessly unrealistic.¹¹¹

Blaug refers to the difficulties of meeting the requirements of (U), particularly when confronted with conflicting norms and the need to justify exceptions as “cognitive overload”.¹¹² As we have seen, although abandoning (U) threatens to withdraw our critical leverage, it still leaves us with the validity of the process, with the ideal of procedural fairness. Benhabib argues that by rejecting (U) we can consider the validity of moral judgement in terms of the presuppositions of fairness. By retaining the inescapable presuppositions of argumentation, we retain a cognitive aspect of judgement and thus validity can be communicatively defended.¹¹³

¹⁰⁹ MacIntyre argues that there is no such separate category as applied ethics: ‘Moral rules exist only in and through their range of applications [...]. The conception of morality articulated in this account of moral rules is one according to which moralities are social phenomena, each of which has its own peculiar history of growth and change, [...]. But the conception of morality which both generates and underpins the dominant contemporary conception of applied ethics is one according to which morality, not moralities, provides the subject-matter for ethics and according to which morality has at its core a set of timeless principles or rules.’ Alasdair MacIntyre, 1984: ‘Does Applied Ethics Rest on a Mistake?’, *The Monist*, Vol.67, p.508

¹¹⁰ Blaug, 1999, p.89-90

¹¹¹ *ibid.* p.92

¹¹² *ibid.* Refers to two meanings of “cognitive”: 1) the ability of the human intellect to process information, and, 2) the ability to rationally defend one’s arguments.

¹¹³ Blaug, 1999, p.102-3

We can clarify what judgement might mean in this context by looking at reflective judgement and Arendt's notion of 'enlarged thinking'. Reflective judgement was developed as part of Kant's work on aesthetics and is a type of judgement wherein the universal is looked for in the particular. In Kant's doctrine, Arendt discovered a 'procedure for ascertaining intersubjective validity in the public realm. This kind of intersubjective validity clearly transcended the expression of simple preference while falling short of the a priori and certain validity demanded by Kantian reason.'¹¹⁴ Intersubjective validity, according to Arendt, means the idea that common consent must be won or 'wooed' and is not simply provided by a shared background of understandings. In Arendt's words, this enlarged way of thinking is defined as follows:

I form an opinion by considering a given issue from different viewpoints, by making present to my mind the standpoints of those who are absent; that is, I represent them. This process of representation does not blindly adopt the actual views of those who stand somewhere else, and hence look upon the world from a different perspective; this is a question neither of empathy, as though I tried to be or to feel like somebody else, nor of counting noses and joining a majority but of being and thinking in my own identity where actually I am not. The more people's standpoints I have present in my mind while I am pondering a given issue, and the better I can imagine how I would feel and think if I were in their place, the stronger will be my capacity for representative thinking and the more valid my final conclusions, my opinion.¹¹⁵

This formulation of enlarged thinking as the basis for judgement indicates the need for capacities such as imagination – imagining what it would be like to be somewhere else – and the subsequent requirement for the exercise of imagination, disinterestedness, in other words, 'the liberation from one's own private interests'.¹¹⁶

This shift in the understanding of judgement might be viewed as the move from Kant's precept, "Act in such a way that the maxim of your actions can always be a universal law of nature" to Arendt's reformulation, "Act in such a way that the maxim of your actions takes into account the perspective of everyone else in such a way that you would be in a position to 'woo their consent'."¹¹⁷ This brings us closer to the hermeneutic and context-sensitive approach to dialogue discussed in Chapter 3. In other words, consent is still required, but it is no longer the consent required by

¹¹⁴ Benhabib, 1992, p.132 (citing Arendt)

¹¹⁵ Ronald Beiner (ed.) 1982: 'Hannah Arendt on Judging, from Hannah Arendt', *Lectures on Kant's Political Philosophy*, Sussex, The Harvester Press Limited, p.107 (citing Arendt)

¹¹⁶ *ibid.* (citing Arendt)

¹¹⁷ Benhabib, 1992, p.136

Habermas's (U). In line with the interpretation of discourse ethics presented thus far, Benhabib argues that:

to "think from the perspective of everyone else" is to know "how to listen" to what the other is saying, or when the voices of others are absent, to imagine to oneself a conversation with the other as my dialogue partner. "Enlarged thought" is best realized through a dialogic or discursive ethic.¹¹⁸

This brings us to the question of what the universal is which is being looked for within the instance of the particular. Following the lines of argument presented thus far, we arrive at the notion of communicative fairness. When we question the validity of a judgement, we are, in fact, questioning 'its procedure for communicative fairness'. As Blaug writes, we are reformulating 'judgement in terms of a reflective discourse of application whereby the presuppositions of argumentation, or communicative fairness, [are] sought for in ethically patterned ways.'¹¹⁹ Fishkin also indicates that questions concerning political practice and legitimacy must be settled '*contextually*: they must be settled within the confines of ongoing practices.'¹²⁰ To put this in the context of Gadamerian hermeneutics:

[w]hat is decisive is not [Kantian] "knowledge of the general," but the appropriate interpretation of the "demand present in the situation" where an ethical choice must be made. We gain access to the demands of the situation only by proceeding from our own empirical, ethical-political conditionedness, and not from the self-determination of reason in an intelligible sphere.¹²¹

It is widely acknowledged that decision-making procedures and institutional arrangements must be examined for their relative fairness, they must be as fair as we can make them. This, Blaug argues, is the same as saying 'they should be as fair as we are here and now able to *see*. Such judgements are reflective, for they inspect particulars for their exemplification of the ideal of communicative fairness.'¹²² However, this actual judgement by participants of validity or comparative validity is akin to recognising 'family resemblances between fair and unfair procedures'¹²³ rather

¹¹⁸ *ibid.* p.137

¹¹⁹ Blaug, 1999, p.107

¹²⁰ Fishkin, 1992, p.133

¹²¹ Günther, 1993, p.183. Hence the problems which arise with Habermas's separation of the right and the good.

¹²² Blaug, 1999, p.111, emphasis added; Ferrara, 2007: 'Political' Cosmopolitanism and Judgement', *European Journal of Social Theory*, 10(1)

¹²³ Blaug, 1999, p.111

than a direct comparison with Habermas's ideal of undistorted communication which would inevitably indicate a failure to meet the required standards. It is an appropriate means with which to approach a conflict such as Kosovo where the way in which the problem is described is 'both crucial and contentious'¹²⁴ and where we confront what appear to be either conflicting established norms or exceptions to norms and must find some way to assess the legitimacy of competing claims.

The nature of judgements in international politics (and decision-making procedures at all levels) require that some form of compromise or trade-off must be reached in order to retain the practical application of such an approach, either as a response to the existing plurality of views and values, or as a response to the need for efficiency and effectiveness. Within the approach formulated above, this may simply be that 'there must be reasons for the provisional closure of a discourse [or limiting the potential participants], and that these reasons must themselves be discursively redeemable.'¹²⁵ Despite the need for compromise or trade-offs, there must still remain sufficient provision for political actors to participate meaningfully in order to prevent calling into question the legitimacy of actors, institutions or decisions.

4.6 Conclusion

Although discourse ethics can enable awareness of the power inequalities inherent in the structure of the United Nations, and particularly those concerning dialogue, it cannot by definition, remove the notion of the nation-state altogether from the construction of the framework. Our perception of abuses of power within the United Nations, or examples of manipulation of interests in the favour of the powerful elite, do not indicate that they are anomalies, but rather to be expected given the nature of the composition and structure of the institution. As Schattschneider remarks, it is fair to suggest that an organization like the UN has developed some kind of political bias because 'organization is itself a mobilization of bias in preparation for action.'¹²⁶ The

¹²⁴ *ibid.*

¹²⁵ Blaug, 1999, p.115; Linklater, 2007, p.23

¹²⁶ E. Schattschneider, 1975: *The Semisovereign People*, Illinois, The Dryden Press, p.30. Although Schattschneider's analysis is focused on pressure groups within the US domestic system, certain parallels may be drawn within the international system. The clear presence of state interests and other, non-state, interests which partly make up the central bodies of the UN, indicate that there exists a 'bias in favor of the exploitation of some conflicts and the suppression of others because *organization is the mobilization of bias*' (p.69). In other words, he argues that these interests are, by their nature, exclusionary of other interests, and they are

UN, for example, legitimises undemocratic behaviour by the exercise of the veto.¹²⁷ In addition, there is little distinction in the international arena between the executive and the judiciary; in domestic politics, this would be unacceptable and subject to accusations of corruption. The use of force, sanctioned under Chapter VII of the UN Charter is restricted to the elite members of the Security Council, particularly the permanent five. Such distortions and their effects clearly depend upon where you stand within both the individual debates and the system. A discourse ethical approach not only enables us to recognise power differences, but to reduce power differentials through being able to challenge arguments and validity claims.¹²⁸ Such inequalities highlight one of the limitations of this framework; in its appropriation of good international citizenship, it remains at least partially state-based and is unable to avoid the tensions intrinsic to the international system being grounded in the nation-state. Such problems are not just empirical, but, as Beck has shown, systemic: ‘The comparative analyses of societies, international relations, political theory, and a significant part of history and jurisprudence all essentially function on the basis of methodological nationalism.’¹²⁹

Habermas is well aware of the limitations of theory; while he confirms that his theory can offer a valid, normative, ground for social criticism, he is also clear that the theoretical principles which constitute discourse ethics are insufficient, by themselves, to determine what is morally right or wrong. It has been suggested that interpreting Habermas’s theoretical principles from the perspective of enlarged thinking and reflective judgement, we are better able to respond to context-sensitive concerns raised by many critics. Taking into consideration the concerns of hermeneutics, feminism and other exclusionary factors, we have a procedural concept of discourse ethics that no longer has universalizable interests at its core, but rather operates on the understanding that conversation and judgement grounded in communicative fairness is sufficient.

the interests of (social and economic) elites and not, as advocates of group theories suggest, representative of a universal community (p.33-5).

¹²⁷ This may depend on how high the standards for democratic behaviour are, but this judgement is justified when considering notions of deliberative or participatory democracy. For a good discussion of different standards of democracy and consequent conditions of legitimacy, see Wolff, 1970, p.27-33.

¹²⁸ Crawford, 2002, p.417. Although we do not need discourse ethics to recognise the power differentials that exist around the permanent five in the UNSC, it does allow us to theoretically ground the subsequent critique and attempt to reduce such power differentials.

¹²⁹ Beck, 2003, p.454, 2002, p.51: ‘Both states and societies are imagined and located within the *dichotomy of national and international*, which so far has been the foundation of the dominant ontology of politics and political theory.’

With the aim of building bridges between critical theory and international relations, we have explored the benefits and limitations of previous attempts to apply Habermas's discourse ethics to international relations and explored many of the problems raised when considering the application of theory to practice.

We have, then, a set of communicative imperatives located at the core of good international citizenship which situates it within a critical theoretical framework as well as indicating what kind of procedural ethics should inform dialogue. By opening up the content, future and fallibility of good international citizenship and making it reliant upon discourse, it attempts to, following Linklater, prevent it from becoming a concept hamstrung by the need for order as suggested by Williams and unable to effectively address those issues which most challenge both the theory of international relations and relations within world politics. On the grounds that a revised understanding of good international citizenship places commitment to inclusion, dialogue, fairness and legitimacy over that of great power responsibility for order, it is then, part of the duty of a good international citizen to respond reflexively and to act communicatively in its relations with states and non-state actors. Such a theoretical perspective seeks to foster spaces for deliberation and negotiation which offer political alternatives to strategic action in situations of conflict which are precluded by the traditional paradigms offered by international relations; it is with this in mind that we now turn to the case of Kosovo to explore what the critical interpretive power of the communicative imperatives can tell us about unfair procedure and communication.

A number of concerns have been raised so far which indicate difficulties faced not only by any attempt to operationalise Habermasian discourse ethics, but also specific difficulties in an application of the current theoretical framework to the object of analysis - intervention in Kosovo - which is both broad and complex. These difficulties will be carried over into Chapter 5 where we seek to operationalise the communicative imperatives, focusing on the public communicative practices during the Kosovo conflict.

5. Testing the Communicative Imperatives: Debating Kosovo in 1998-1999

5.1 Introduction

Although, as already mentioned, there were dialogic opportunities before 1998, the focus for the application of the communicative imperatives will be the deliberations which took place over the Kosovo conflict within the UN Security Council (March 1998-June 1999) and at the Rambouillet negotiations in February 1999 prior to the use of force. The discursive practices which took place at these times are particularly relevant for a communicative ethics approach for several reasons. Kosovo took place at a time when the principle and nature of humanitarian intervention was highly contested and understandings of legitimacy and legality were shifting. At the same time, the moral and legal justifications, both prior to and during NATO's intervention, formed the basis of claims to legitimacy for action yet met with significant resistance from a number of sources in the public sphere. The controversy over the public justifications indicates the need for further analysis of the communicative practices underpinning the claims of legitimacy for military intervention.

The ability to identify different forms of constraints on practical discourse offers access to a powerful account of legitimacy. Having interpreted Habermas's model of discourse as a principle of legitimacy rather than a concrete institutional design, we are still able to recognise that practical political dialogues and debates take place under a variety of conditions and constraints. The framework developed from Habermasian ideas offers possible criteria for deciding which constraints are legitimate and which are not.¹ Another way of constructing the link between the communicative imperatives and legitimacy is to use Clark's distinction between legitimacy as recognition or membership - the construction of legitimate order which focuses on notions of community, citizenship and participation; and the legitimacy of rules which focuses on procedures, democratic deficit, consent and accountability. The communicative imperatives seek to address both of Clark's aspects of legitimacy, indeed, suggest that they cannot be conceived of separately.² It is with these criteria in mind that we now

¹ Stephen White, 1980: 'Reason and Authority in Habermas: A Critique of the Critics', *The American Political Science Review*, 74(4), p.1010

² Ian Clark, 2003: 'Legitimacy in a global order', *Review of International Studies*, 29

turn to the discursive practices surrounding Kosovo in order to see what the communicative imperatives can tell us about unfair practices.

The different versions of good international citizenship presented in Chapter 2 indicate that these accounts would have, and indeed have, analysed the situation in Kosovo somewhat differently than the analysis offered here. Apparent in Dunne and Wheeler's work, as well as in some of Linklater's, is the perception that good international citizens are clearly states, albeit whose focus must incorporate individual human rights. To summarise, either good international citizens would have supported military intervention in Kosovo as a solidarist action to support human rights, or they would have prioritised regard for agreed norms of international law and therefore would have been unwilling to act without UN Security Council authorisation. For those of a solidarist persuasion, particularly those who remain uncomfortable with using force in contravention of international law, arguments have been voiced in favour of developing a new legality for humanitarian wars which would challenge the status quo, notably the problematic veto within the UN Security Council. Without entering into this debate in great detail, it seems necessary briefly to indicate how the approach of this research addresses the issue of Kosovo in ways that traditional notions of good international citizenship do not. The framework offered here presents specific criteria which are firmly grounded in theory and tell us more than the moral or ethical guidelines for behaviour offered by good international citizenship. The development of the theory in the form of communicative imperatives gives us specific targets concerning process that can be used to 'read' practice and reveal illegitimacy. Moreover, a revised concept of good international citizenship, which has at its core concepts of dialogue and reflexivity, might suggest multiple actors in response to questions of agency rather than the traditionally dominant role of the state.

We begin with a discussion of Habermas's own position on the intervention in Kosovo. This indicates a number of ways in which his interpretation of Kosovo diverges from that presented here. Consequently, in line with the interpretation of discourse ethics presented thus far, it demonstrates ways in which we can move beyond this with the communicative imperatives and explore the dialogue surrounding Kosovo in more depth. This chapter seeks to test the communicative imperatives through an exploration of the dialogues within the Security Council debates surrounding Resolutions 1160, 1199, 1203, 1239 and 1244 and the discussions at Rambouillet.

While the main focus is on the dialogue within the Security Council, there are a number of supplementary points developed in relation to the Rambouillet negotiations in order to better demonstrate the use of the communicative imperatives. The following section offers a critique of Bjola's analysis of the conflict in order to explain why his use of Habermas's theory of communicative action is insufficient for the claims it purports to fulfil. In conclusion, we will consider what has been revealed through the use of this framework as well as the limitations of the framework in this particular context.

5.2 Beyond Habermas

We cannot write about NATO's intervention in Kosovo using a framework derived, at least in part, from Habermas, without discussing his reflections on the war in Kosovo. Habermas was in favour of the intervention in Kosovo, and his views were put forward most clearly in an article published in *Die Zeit* in April 1999, later translated and published in English. Although the article is written in the context of contemporary German politics, we can glean much about Habermas's contemporary, cosmopolitan world perspective. Habermas sees an opportunity in the intervention in Kosovo to move away from the classical conception of international law for sovereign states towards the development of cosmopolitan law and a world civil society: 'Direct membership in an association of global citizens would protect the citizens of an individual state against the arbitrariness of his or her own government as well.'³ Advocating a 'legal pacifist' approach, he identifies the absence of a 'proper institutionalisation of cosmopolitan law' as responsible for the gap between 'the legitimacy and the effectiveness of peacekeeping and peacemaking interventions.'⁴ The legal ambiguity of the situation in Kosovo, aided by the weak global institutionalisation of human rights, is where Habermas locates the concerns over legitimacy and morality provoked by NATO's intervention. He argues that the moral legitimacy on which NATO had no choice but to base their actions, considering that the Security Council was blocked, is problematic because it relied on norms for which 'no effective and universally recognized instances assure their application and enforcement.'⁵ It might be suggested that the UN Security Council dialogue addresses issues of the 'right' – moral norms which affect the interests

³ Habermas, 1999: 'Bestiality and humanity: a war on the border between law and morality', *Constellations*, 6(3), p.264

⁴ *ibid.* p.269. By legal pacifism, Habermas refers to the construction of peace through the strengthening of international institutions and the universalisation of law along Kantian lines.

⁵ *ibid.*

of others. But, as a result, in the context of intervention, it also tries to dictate the good – in terms of a substantive outcome – which is, perhaps, inevitable in the context of humanitarian intervention and the discourse of humanitarianism from which such evolving practices have emerged, demonstrating the difficulties of maintaining this distinction.

However, it may equally be argued that Habermas is guilty of a strategic move in his own normative thinking similar to that described by Haacke in relation to Linklater's work on cosmopolitanism. This move begs the question of whether or not there really is sufficient common understanding and communication within a world 'public sphere' to support such a move. Where does the authority for such a move come from? This move is clearest when he argues that only if human rights become part of a 'global democratic legal order, as have basic human rights in our national constitutions, will we be able to work from the assumption that on the global level the addressees of these rights can simultaneously understand themselves as their authors.'⁶ He does not address the question of which sources we might address ourselves to in order to find such a world-wide consensus, nor the process by which such a consensus might legitimately be formed. Habermas succinctly analyses the flaws within the current system, but his solution seems purely normative rather than critical:

When they authorize themselves to act militarily, even nineteen indisputably democratic states remain partisan. They are making use of interpretative and decision-making powers to which only independent institutions would be entitled if things were already properly in order today; to that extent their actions are paternalistic. There are good moral grounds for this. Whoever acts with an awareness of the inevitability of a transitory paternalism, however, is also aware that the force he exercises still lacks the quality of a compulsory legal action legitimated by a democratic civil society of global citizens. Moral norms appealing to our better judgement may not be enforced in the same fashion as established legal norms.⁷

Despite the advocacy of an approach which has less critical purchase than we are accustomed to, Habermas has perhaps rightly suggested that we need to institutionalise these (moral) normative claims to rightness in order for intervention to be legitimate and so remove sources of 'disquiet'. If so, then the notion of humanitarian intervention is defunct in current structural and legal circumstances because we are caught between the promise (if that is what it is) of a cosmopolitan legal

⁶ *ibid.* p.270

⁷ *ibid.*

order, and the critical realism of classical international law. The statist bias and foundation of the United Nations, particularly the Security Council, serve to keep this paradox static, as it is hard to envisage member states convening to institutionalise such a cosmopolitan order.

One of the reasons for disquiet that Habermas rightly raises in regard to Kosovo is that it represents ‘a strategy of negotiations that left no alternative to armed attack.’⁸ Among the most important and disquieting complications of armed intervention in Kosovo in the name of humanitarianism he notes are doubts about the appropriateness of the military means in use:

Every incident of “collateral damage”, every train that goes down with a bombed Danube bridge, every tractor laden with Kosovo Albanian refugees, every Serbian settlement, every civil target that is unintentionally hit by a stray bomb, does not highlight just another contingency of war, but a suffering, which “our” intervention has on its conscience.⁹

Although Habermas argues that the causal links locating responsibility for human rights violations firmly with Milošević cannot be denied, the threads of responsibility become entangled once military intervention and all its implications takes place under the guise of humanitarianism. As a realist like Schmitt would argue, it is the human rights discourse itself that causes what was a natural struggle between nations to ‘degenerate into a hopeless “fight against evil”.’¹⁰

Habermas is somewhat scathing about this view and argues that nation states are not restricted by moves towards a world community. Rather, reversing Schmitt’s causality, it is through the erosion of nation states through civil wars and ethnic conflicts within states that calls for intervention have emerged. Kosovo, for Habermas, demonstrates that ‘universalist justifications do not by necessity always function as a veil for the particularity of undeclared interests.’¹¹ In a move which this research seeks to refute, although not necessarily for the same reasons Habermas raises here, he argues that ‘[w]hat a hermeneutics of suspicion levels against the attack on Yugoslavia is pretty lightweight’:

For politicians who have little scope in domestic affairs, due to the globalisation of economies, a noisy show of strength in foreign affairs might offer some chance to improve their profile. But neither the motive

⁸ *ibid.* p.265

⁹ *ibid.* p.266

¹⁰ *ibid.* p.267

¹¹ *ibid.* p.268

of extending and securing the sphere of influence attributed to the United States, nor the motivation of finding a role attributed to NATO, nor even the motive attributed to “fortress Europe”, of a precautionary defence against immigration movements, explain the decision to engage in such a weighty, risky and costly operation.¹²

It may be that Habermas dismisses these rather realist reasons for action too lightly and makes too big a claim for universalist justifications. This is, at least in part perhaps, a reflection of his rather ambitious opinions of the normative foundations for states’ actions. Although much of Zolo’s analysis of Kosovo may be regarded as questionable, he also makes this point, arguing that Habermas does not ‘balk at lending NATO’s political and military leadership the motivations and ends of his own personal cosmopolitan philosophy and theory of the moral universality of human rights.’¹³ Despite Habermas’s support for NATO’s adoption of the role of human rights protector in the absence of more established legal mechanisms¹⁴, and his ambitions for a ‘fully institutionalised cosmopolitan condition’, he recognises that self-legitimation and self-empowerment by NATO member states should not become the rule. In this acknowledgement, there is significant room for a critical examination of the legitimating process and decisions made concerning, in Chomsky’s terms, military humanism¹⁵, without necessarily subscribing to Habermas’s broader perspective of the global condition.

5.3 The imperatives applied: what can they tell us about unfair procedure?

5.3.1 Maximising inclusion

Linklater argues that good international citizens must offer justification for failing to comply with existing arrangements if they look for new forms of decision-making when humanitarian crises occur.¹⁶ This is similar to the argument that exclusions from dialogue require justification. This argument can be justified on a number of grounds. First, it is important to remember the reason for which Habermas’s

¹² *ibid.*

¹³ Zolo, 2002, p.80

¹⁴ William Smith, 2007: ‘Anticipating a Cosmopolitan Future: The Case of Humanitarian Military Intervention’, *International Politics*, 44, p.79

¹⁵ Noam Chomsky, 1999: *The New Military Humanism: Lessons from Kosovo*, London, Pluto Press

¹⁶ Linklater, 2000

communicative ethics differs fundamentally from the Kantian categorical imperative for deciding the standard of right. As Kantian ethics remains a monological process, universal laws could be willed in a manner which excludes consultation with those most affected. For Habermas, the standard of right is:

derived from the intersubjective structure of discursive communication in which each who is affected by a proposed norm has the opportunity to participate; to exclude someone thus affected is to render one's normative validity claim immediately suspect.¹⁷

Here we see that 'right does not derive simply from agreements between interest-bearing individuals, rather it derives from the relation of intersubjectivity. Hence, the significance of participation in communicative ethics follows from the recognition each subject is due when validity claims are addressed to him.'¹⁸ This rules out the acceptance of strategically oriented agreements in order to protect particular interests, and requires not only participation in a practical discourse, but also the recognition of individuals or groups when validity claims, such as truth or normative rightness, are decided which affect them in order for dialogue to retain legitimacy. Under the communicative imperative of inclusion there are a number of questions which are designed to reveal elements of illegitimacy within practical dialogue. These questions relate to the 'who' and the 'how' of inclusion which we shall now examine.

The proceedings within the Security Council were driven largely by the Contact Group and the resolutions agreed upon reflect, to a large extent, the demands and statements of the Group. The Contact Group consisted of France, the Russian Federation, the UK, USA, Germany and Italy. Four of these six countries are permanent members of the Security Council and therefore have the right of veto on decisions taken within this forum. The combination of their permanent status within the Security Council and their membership of the Contact Group indicate that these countries were able to participate in the dialogue and influence the framing of the resolution to a greater extent than other states. This signifies that some actors were thus granted a degree of access to dialogue unavailable to others. It also reveals a preference for consultation within a particular community of interest such as that made up of

¹⁷ White, 1980, p.1015

¹⁸ *ibid.*

established, Western, and sovereign powers.¹⁹ This preference is further reinforced by the procedures for participation in the Security Council; the transcript of the meeting at which Resolution 1160 was voted on states that interested countries who are not members of the Security Council have a right to participate in the discussion but not to vote and only to speak after the vote has taken place.²⁰ This denies to such actors the opportunity for effective participation.

Furthermore, remaining on the 'who' of inclusion, the legitimacy of the decisions taken within the Security Council may be questioned by the absence of inclusion of either elected representatives of the Kosovo Albanians or the KLA. This is particularly important given the opportunities afforded to the Federal Republic of Yugoslavia (via both written and spoken statements) and the Republic of Serbia (via submitted statements) to participate and be heard.²¹ This reinforces the privileged status of sovereign powers; due to its lack of statehood, Kosovo Albanian representatives were denied equal opportunity to speak and to be heard, despite the degree to which decisions taken would affect their interests and their future ability to participate. There is no attempt to justify the exclusion of such a key actor from the dialogue, although if pressed, it is likely that the international community would have defended their actions by arguing that they were talking to the Kosovo Albanians, albeit not within the UN forum, and that it is not accepted policy to talk to terrorists, which is how the KLA were defined both by Serbia and the international community. However, there are two responses to this: firstly, the rise of the KLA has to be situated in the context of Kosovo Albanian politics and the involvement of the international community in wider Balkan conflicts in conjunction with their earlier refusals to address Kosovo Albanian concerns; secondly, the international community did eventually talk to the KLA, first behind the scenes as they recognised the likelihood of prolonged conflict if no agreement could be reached and then at Rambouillet in an attempt to tie in all Kosovar factions to an

¹⁹ I recognise that labelling the Russian Federation in this way may be an issue of contention, but for the purposes of pointing out the relations and locations of power in this context it is sufficient.

²⁰ S/PV.3868

²¹ This is despite the fact that at this point the FRY had no seat at the UN. It was, however, permitted to maintain the permanent mission of the SFRY to the UN and officials were accredited as representatives of the SFRY mission, and therefore able to circulate documents, participate in the work of UN committees and attend Security Council meetings as observers. Sean Murphy, 2000: 'Contemporary Practice of the United States relating to International Law', *American Journal of International Law*, vol. 94(4), p.677-8

agreement. Consequently, it could be argued that their public exclusion is somewhat difficult to justify.

Prior to Rambouillet there was also a distinction in the treatment of and validity granted to Rugova and the KLA as official, high-level talks were only held with Rugova. Although this seems a legitimate distinction, at first glance, between an elected representative and a non-elected armed group, this distorts the reality of Kosovar politics and, rightly or wrongly, excluded the KLA from talks. The misunderstanding of Kosovo Albanian politics here is crucial as a better understanding and recognition of the actors involved would have indicated that no agreement emerging from dialogue solely with Rugova would have met with acceptance in Kosovo and therefore ended the conflict. This issue is addressed in an OSCE report which states that:

Representatives of the KLA believe that the political parties should accept the existence and importance of the armed organization and that none of the parties represents the KLA. Neither do they recognize the leadership of Ibrahim Rugova. The KLA further rules out the possibility of declaring a ceasefire should the talks resume without them being accepted as one of the negotiating parties.²²

The KLA, at least, recognised the need for their inclusion in further talks, to be able to participate equally and be recognised in the context of the validity claims being decided. Despite this, we should be cautious in attributing to them a more reflexive or open approach to communication, as they were also motivated by strategic interests, namely achieving independence.

There were also pertinent issues concerning inclusion and participation at a local level within the groups constructed by Rugova to participate in dialogue at a regional or international level which went unmentioned at the level of international dialogue. According to an ICG report, the group of 15 organised by Rugova in spring 1998 to participate in talks included a number of prominent and diverse ethnic Albanian opinion-makers. According to testimony given to ICG, Rugova did not intend to consult with or listen to anyone from that group. Members complained that 'meetings were often humiliating and, worse still, unproductive.'²³ Not only were the conditions for fair communication questionable at an international level, but neither were they

²² S/1998/712, Annex 1

²³ *Kosovo's Long Hot Summer*, 1998, p.11-12

present at a local level, a factor which greatly compounds the complexity of political and communicative distortion.

The refusal to include the KLA, a non-state actor, in negotiations, but to only label them as terrorists, thus denying them the right to participate or be heard, reflects the structural inequalities inherent in state-centric Security Council practices and a type of discursive discrimination, the exclusion of voices, identified by Boréus. Boréus argues that if voices are silenced, either through force or by other means, then the conditions for legitimacy are not present. If this is the case, then it raises concerns about the legitimacy of social arrangements and the structural exclusion of non-state actors within formal deliberative fora. This exclusion not only violates the inescapable presuppositions of argument, but closes off any possibility of 'enlarged thinking' in terms of understanding the perspective of the other within dialogue, a requirement for genuine communication.

At the same time as clearly delineating the boundaries of inclusion, all of the UNSC resolutions call for all parties to enter 'without preconditions' into a meaningful dialogue on political status issues: the 'how' of dialogue. Other phrases included demanding the initiation of 'genuine dialogue between the Serb authorities and the ethnic Albanians'²⁴, and the need for the Kosovo Albanian team to be 'fully representative of their community in order to speak authoritatively.'²⁵ As mentioned, it seems that this could only have taken place outside the forum provided by the UNSC as the Kosovo Albanians had no effective means of participation there. Whilst the later negotiations at Rambouillet were the most substantive of those held over Kosovo there were significant differences in the attitudes of the parties towards engaging in dialogue conducive to compromise. While the Kosovo delegation submitted detailed comments on the formal documents presented to it, eleven days passed before the Serb/Yugoslav delegation submitted any written comments. During this time, Kosovo's own submissions had not received any feedback. Hill's visit to Belgrade, considered by the Kosovars at least as having been responsible for breaking the Yugoslav/Serb silence, also indicates a degree of inequality in favour of the Serbs in terms of effective opportunity to participate and influence outcomes, as well as giving the lie to the

²⁴ S/1998/223

²⁵ S/1998/657

statement concerning the status of the participants in the Serbian delegation.²⁶ This raised concerns regarding the sincerity of both the Contact Group representatives and the Serbs for the Kosovar Albanians. Following the Yugoslav/Serb submission, a revised draft was produced by the negotiators, which not only reintroduced the issue of the legal status of Kosovo (a key condition of the Kosovar agreement to come to Rambouillet was that Kosovo's legal status would not be determined), but also introduced a number of proposals responding to Milošević's demands, including a second chamber which further entrenched the concept of national communities and a veto mechanism for all national communities which would have effectively paralysed legislative action in Kosovo.²⁷ In the attempt to ensure that the Serbs would sign, some argue that significant compromises and attention were granted the Serb delegation, thus skewing the effective opportunity of the Kosovo Albanians to guide the development of the settlement.²⁸ The Kosovo delegation questioned the fairness of a process which rewarded the Serbs for their obstruction of the talks.²⁹

This draft was submitted to the parties who were invited to consider this the final version: in other words, initiating further dialogue on issues would not be welcomed.³⁰ The Kosovo delegation considered this new draft, substantially different in key aspects and favourable to the Serbs, as unacceptable and as evidence of exclusion:

If the consent of the delegation of Kosova is sought, the unilateral changes imposed, apparently as a result of talks outside of the Conference, must be reversed. There cannot be a process of obtaining concessions from the Kosova delegation first, through the process of regular proximity talks which this delegation has constructively supported from the first day of the conference, and of then imposing a second set of unacceptable concessions as a result of separate negotiations between the Contact Group and Belgrade in which the Kosova delegation has no involvement.³¹

²⁶ Press Briefing by the three negotiators, Rambouillet, 9 February 1999, Weller, 1999a, p.428. Ambassador Petritsch: 'Both sides have sent politically competent people in regard to the negotiating process-experts. So I believe both sides have sent their best people.'

²⁷ Weller, 1999a, p.403. See Interim Agreement for Peace and Self-Government in Kosovo, 2nd Draft, 18 February, 1999, Weller, 1999(a), p.434-441

²⁸ Marc Weller, 1999b: 'The Rambouillet conference on Kosovo', *International Affairs*, 72(2), p.250

²⁹ Letter from Delegation of Kosova to Contact Group Negotiators, Rambouillet, 17 February 1999, Weller, 1999a, p.433

³⁰ Press Briefing by the Contact Group Negotiators, 18 February 1999, Weller, 1999a, p.441

³¹ Kosova Delegation Statement on New Proposal for a Settlement, 18 February 1999, Weller, 1999a, p.444-5

The Holbrooke agreement, endorsed by the Security Council in Resolution 1203, also reflects an absence of the understanding of the need to include all relevant parties. The KLA were not party to the negotiations, and therefore did not consider themselves to be bound by the agreement. This act of exclusion was to have significant consequences for the success of the agreement, a factor seemingly ignored by the international community, and certainly not presented as problematic. Not only did the Holbrooke agreement exclude any representation for the Kosovar Albanians, but the basic principles of the agreement failed to recognise Albanian grievances whilst reaffirming conventional norms of territorial integrity and sovereignty in relation to the FRY.³²

A key meeting took place on 8 October 1998, in a VIP lounge at Heathrow Airport. It was a crucial meeting for determining a shift in policy towards permitting the use of military force as well as determining the balance between strategic and communicative action. The meeting brought together former British Foreign Secretary, the late Robin Cook, Hubert Védrine, his French counterpart, Klaus Kinkel, the German foreign minister, Albright, Holbrooke, Igor Ivanov, the Russian foreign minister, as well as representatives of the OSCE, the Austrians in their capacity as current EU chairmen, and other ministers and aides. However, the decision was taken to reduce the number of people present to include only foreign ministers and a few other key actors.³³ The question was the use of force and the need – or not – for a Security Council mandate. This raises concerns when considered in context of inclusion. Not only is it clearly a deliberately exclusionary meeting; consulting only key (Western/Contact Group) figures firmly closes the door to other interested parties and locates control over the decision-making procedures and the agenda firmly in the hands of the powerful few, but neither the interests of the Albanians or Serbs are directly represented and there is little indication of reflexivity concerning whether or not this is an appropriate forum in which to decide such a crucial question. As it was not a public meeting, it is difficult to ascertain exactly what was said, although Judah reports that:

³² ‘The leader of the Albanian community in Kosovo expressed the view that the agreement signed in Belgrade [Holbrooke agreement] contained many weak points that could cause disappointment in the Albanian community. He also voiced disappointment that no representatives of the Albanian community from Kosovo had been a party to the negotiations.’ S/1998/1068

³³ Judah, 2002, p.183

Ivanov said: 'If you take it to the UN, we'll veto it. If you don't we'll just denounce you.' Kinkel says he wants to take it to the Security Council, as do the British and French. Madeleine and I [Holbrooke] say: 'That's insane!' So, Kinkel says: 'Let's have another stab at it.' But Ivanov says: 'Fine, we'll veto it.' And Kinkel asks again and Ivanov says: 'I just told you Klaus, we'll veto it ...' He says: 'If you don't we'll just make a lot of noise ...'³⁴

Even if the decision to exclude relevant parties had been justified in terms of efficiency, this clearly adopts a strategic and manipulative attitude both to dialogue and the need for inclusion and fair deliberation to achieve legitimacy; it successfully prevents further public dialogue and allows strategic action to dominate while remaining unacknowledged and unjustified in a public forum such as the UN Security Council or General Assembly.

Later decisions taken concerning the basis for a political settlement after the failure of the Rambouillet negotiations lay largely with the G-8 countries.³⁵ Although this was accepted by the Security Council under the terms of Resolution 1239³⁶, there remained a number of countries unsatisfied with the terms of the resolution, although unwilling to block it altogether. China's remark, although arguably reflecting its concerns over the maintenance of its own power through its exclusion from the G-8, is nonetheless valid: 'We cannot accept that the Council has prejudged those principles in its draft resolution without first deliberating on them'.³⁷ The talks which finally ended the war were based on two elements. First, the G-8 principles, and second, the trilateral talks of Ahtisaari (EU), Chernomyrdin (Russia), and Talbott (USA), with Milošević. However, rather than negotiations on an acceptable agreement for Serbs and Kosovo Albanians, the trilateral talks were focused on trying to find an acceptable agreement for the US, Russia, and Milošević. The UN role was more or less limited to passing Resolution 1244 and was deliberately marginalised by the Americans out of fear that its inclusion would weaken NATO's position in negotiations.³⁸ There was no inclusion of Kosovar representatives within any of these dialogue fora; they were excluded from the UN, the G-8 and the trilateral talks.

³⁴ *ibid.* This also relates to the communicative imperative of maximising dialogue over violence as it indicates the propensity for strategic action over communicative action when there is no consensus. It also demonstrates the extent to which dialogue is used simply to present positions rather than engage in a communicative rationality; this is in itself a form of strategic action.

³⁵ The G-8 countries are Russia, UK, USA, France, Italy, Germany, Canada and Japan.

³⁶ S/RES/1239, 14 May 1999

³⁷ S/PV.4003

³⁸ Norris, 2005, p.86

Although this use of theory cannot ascertain that the KLA, for example, should have been included in dialogue, it can tell us that their exclusion, when unjustified, has implications for the legitimacy of decisions taken which concern them. Dryzek makes this point when he states that ‘communicatively rationalized discourse requires only that there be no barriers to competent participation.’³⁹ The significant exclusions identified pose barriers to competent participation, and in turn, affect the quality of intersubjective relations. They also suggest that agreements were struck and positions maintained as a result of interest-bearing states which contradicts Habermas’s formulation of the standard of right.

5.3.2 Minimising coercion

If we accept the grounds for the communicative imperative of inclusion, then it is only a small step to accepting that included parties should be able to participate free from a variety of constraints. It is the presence of relevant constraints that this section seeks to identify.

There are a number of examples of different kinds of constraints specific to this dialogue. On the Serbian side, the ongoing refusal to accept any outside mediation⁴⁰ and the continuing presence of security forces within Kosovo, coupled with various attempts to control or manipulate dialogue were sources of constraints. Evidence from an OSCE report suggests that the Serbian Government’s decision to hold a referendum, on the suggestion of President Milošević, on the question of accepting or rejecting “the participation of foreign representatives in the settlement of the problem of Kosovo and Metohija” was a diversionary and inflammatory tactic, favouring rhetoric rather than a genuine attempt at communicative engagement.⁴¹ Evidence from an EU report indicates that the FRY were deliberately failing to meet the requirements put in place by Resolution 1160 concerning participation and representation in the dialogue in order to make progress on a political settlement of the conflict whilst outwardly seeming to be willing to initiate dialogue and thus able to blame the Kosovar Albanians for the failure of dialogue to actually take place.⁴² Moreover, the EU report notes that, ‘although the

³⁹ Dryzek, 1990: *Discursive Democracy*, Cambridge, Cambridge University Press, p.72

⁴⁰ Daalder, O’Hanlon, 2000, p.39

⁴¹ S/1998/361, Annex II

⁴² The requirement on beginning a dialogue contained in Res. 1160 is explicitly directed at the Government of the FRY. In reality, any such invitation consistently originated with the Serbian Government, with only the inclusion of a Federal representative which does not meet the

Serbian authorities have insisted that the dialogue can take place without preconditions, the stipulation that a solution must be found within the Republic of Serbia (rather than leaving this question open) amounts to the establishment of a precondition.⁴³ Whilst this raises the question as to how different this precondition is from the affirmation of FRY sovereignty repeatedly declared by the international community, it does seem as if the statement of intent on the part of the FRY/Serbia to initiate genuine dialogue is not matched by its actions which appear as obstacles to dialogue or which seek to manipulate dialogue to suit its own ends.

Another key issue to consider is the terms in which the need for dialogue is presented by the international community. The Contact Group statement agreed at a meeting in Bonn on 25 March, 1998, called for both sides to enter into an 'unconditional dialogue'⁴⁴ 'without preconditions'⁴⁵ and without a 'pre-determined outcome'.⁴⁶ Repeated calls for a dialogue 'without preconditions' appear in the statements of many member states at the UNSC meeting of 31 March.⁴⁷ Yet, at the same time, the Contact Group formulated what must amount to a kind of prejudgement:

Without prejudging what the result may be, we base the principles for a solution to the Kosovo problem on the territorial integrity of the Federal Republic of Yugoslavia and on OSCE standards, the Helsinki principles, and the Charter of the United Nations. Such a solution must also take into account the rights of the Kosovar Albanians and all those who live in Kosovo.⁴⁸

The United Kingdom emphasises the point made by the Contact Group and other states by declaring that it 'does not support separatism or independence in Kosovo.'⁴⁹ The German statement also serves to emphasise the consensus on this point:

to enter without preconditions into a meaningful dialogue, including on political status issues. Without prejudging what the result may be, the resolution supports an enhanced status for Kosovo within the Federal Republic of Yugoslavia, with a substantially greater degree of autonomy

Security Council requirement. S/1998/361, Annex I. See FRY/Serbian statements of 13 and 14 March 1998, Weller, 1999a p.351

⁴³ S/1998/361, Secretary-General's report, Annex 1.

⁴⁴ S/1998/272

⁴⁵ S/1998/223

⁴⁶ S/1998/272

⁴⁷ In the context of advocating dialogue, even at this early stage in the international proceedings, it is worth bearing in mind a point raised by Gambia in the Security Council meeting: 'The use of force, more often than not, further exacerbates a problem and produces compliance based on a fragile foundation.' S/PV.3868, p.14

⁴⁸ S/1998/272

⁴⁹ S.PV/3868, p.12

and meaningful self-administration. Such a solution would by no means impair the sovereignty or the territorial integrity of the Federal Republic of Yugoslavia.⁵⁰

Despite appearing to tick the right boxes, such preconditions and judgements are a form of constraint on dialogue. The dialogue in which these judgements are being voiced is not one which clearly attempts to ‘persuade’ others of the normative rightness of their arguments, but instead, draws on the discourses of international law and humanitarianism to state that this position must indeed be the solution. Moreover, they reveal situated preferences for an end solution, without due respect for the dialogic process, implying procedural and substantive forms of communicative distortion. Although not openly voiced by many, the issue of preconditions was one recognised by some non-governmental actors, including the European Action Council for Peace in the Balkans, who stated that:

The international community should not burden the process by promoting the option it prefers – enhanced autonomy – since this option is rejected by both sides. The parties themselves should define the permanent status of Kosovo. International promotion of any specific option will also hamper the principle of ‘no preconditions’ in negotiations. Thus, the international community should aim to start the process, not define the final outcome.⁵¹

Similar pre-conditions underlay Rambouillet as the fundamental principles on which the talks were based were present in all key communications by Contact Group states and so were fairly clear.⁵² Despite Robin Cook’s representation of the framework document as being one which had enjoyed widespread consultation by all relevant parties as a result of Hill’s shuttle diplomacy over several months, it had not been derived from direct dialogue between the parties, having been drawn up by the international mediators. Unmentioned is that both sides had already rejected the Hill

⁵⁰ S.PV/3868, p.20

⁵¹ Troebst, 1998, p.92-93, citing European Action Council for Peace in the Balkans and the Public International Law and Policy Group of the Carnegie Endowment for International Peace: *Kosovo: From crisis to a permanent solution*, Amsterdam, Washington, D.C., 1 November 1997, p.14. This supports the question I have raised concerning appropriate agency in such conditions.

⁵² Contact Group Non-negotiable Principles/Basic Elements, 30 January 1999, Weller, 1999a, p.417. To recap, these include: peaceful solution through dialogue; interim agreement: a mechanism for a final settlement after an interim period of three years; territorial integrity of the FRY; international involvement and full co-operation by the parties on implementation; high degree of self-governance in Kosovo; establishment of national community structures.

draft and elements of the basic approach which underpinned it.⁵³ In this light, it seems difficult to perceive any negotiation or settlement based on the Hill document without a sense of the presence of coercion.

As early as 11-12 June, despite the ongoing calls for dialogue, NATO defence ministers took steps to prepare for the use of force and to increase the perception of threat felt by the FRY/Serb authorities.⁵⁴ This approach overlaps with elements of the imperative of maximising dialogue over violence, in light of which this behaviour shows that the rules of war do not entirely supplant those of communication on this occasion, but are used strategically to coerce agreement. This notion of communication influenced by strategic action or dialogue is present throughout official dialogue over Kosovo. It is apparent in a number of speeches by key states within UN Security Council meetings.⁵⁵ It is impossible to judge whether or not, by itself, this is an acceptable form of communicative action because it is only one part of a very complex set of interactions. In this dialogue it is an approach grounded in the established practices of coercive diplomacy and international law. When taken in conjunction with other impediments to legitimacy, however, it may be seen as a constraint on dialogue.

Discussed already in terms of its exclusionary foundations, the Holbrooke agreement must now be considered as an agreement reached on the basis of coercive factors. The agreement was reached in the context of NATO authorities having voted on October 13 to authorize air strikes if security forces were not withdrawn from Kosovo within 96 hours.⁵⁶ Despite the agreement, NATO:

decided to maintain the activation order for the limited air response on the understanding that execution would be subject to a further Council decision and assessments that the Federal Republic of Yugoslavia was not in substantial compliance with Security Council resolution 1199 (1998).⁵⁷

The implication is that decision on the use of force will lie with the NAC and not the UNSC. The absence of discussion of alternative positions such as had been voiced by

⁵³ Response of Kosovo to Views Adopted by the Contact Group, 30 January 1999, Weller, 1999a, p.417

⁵⁴ Statement by NATO Secretary General on Exercise "Determined Falcon", 13 June 1998

⁵⁵ For example, the UK representative's speech: S/PV.3930, NATO statements and approval of the Activation Warning, 24 September 1998

⁵⁶ *The Kosovo Report*, 2000, p.76; Catherine Guicherd, 1999: 'International Law and the War in Kosovo', *Survival*, 41(2), p.26

⁵⁷ S/1998/1068, Annex II

the Kosovars in response to Hill's plan in September indicates a form of silencing.⁵⁸ The Holbrooke agreement demonstrates that the cooperation on the part of the Serbs did not indicate a commitment to transcending their short-term interests. Signing the Holbrooke agreement was a means to an end for the Serbs; it allowed them to prevent the imposition of sanctions or the use of force by the international community without requiring that they make any major concessions to the Kosovo Albanians.⁵⁹

NATO systematically threatened the use of force during the negotiations at Rambouillet. An NAC statement issued on 30 January 1999, states that 'it stands ready to act and rules out no option to ensure full respect by both sides in Kosovo for the requirements of the international community [...] by compelling compliance with the demands of the international community'. Furthermore, this threat was reinforced by the NAC's agreement for the NATO Secretary-General to authorise air strikes on FRY territory.⁶⁰ NATO's actions highlight the distinction between political support for a Security Council/Contact Group decision and using force to obtain compliance with that decision.⁶¹ Russia argued in the Security Council that the threat of force was detrimental to negotiations, warning of the 'harmful consequences of this action [...] for the prospects of a settlement of the Kosovo situation and for safeguarding security in the Balkans'.⁶² In light of the long-term consequences for dialogue and a lasting settlement for Kosovo, Russia's position bears witness to two important points concerning the role of coercion in negotiations in terms of the procedural fairness of the talks and the consequences.

⁵⁸ This refers to the informal understanding reached between the parties about a three-year stabilization and normalization period to allow for the re-establishment of democratic institutions, after which period new approaches could be envisaged. The plan avoided the issue of the status of Kosovo and focussed on 'a pragmatic assignment of powers to different levels of administration.' Public power was not to be located in Kosovar institutions however, but in individual communes and national communities (based on ethnicity) which was considered highly undesirable by the Kosovars. However, while Kosovo was formulating its response to the initial draft, the Holbrooke agreements were concluded. This document, unlike the Hill document, included a specific provision concerning the territorial integrity and sovereignty of the FRY and was reached unilaterally. See Weller, 1999a, p.349-350

⁵⁹ Daalder, O'Hanlon, 2000, p.47-50

⁶⁰ Statement by the NAC on Kosovo, 30 January 1999, Weller, 1999a, p.416. Article 2(4) of the UN Charter prohibits not only the use of force, but also the threat of the use of force.

⁶¹ Joint Press Conference by the Two Co-Chairmen, Rambouillet, 23 February, 1999, Weller, 1999a, p.47. Cook states that the 'NATO decisions taken after the "October package" remain in effect, and NATO preparations are more advanced than they were last October.'

⁶² S/PV.3988, 3988th Security Council meeting, 24 March 1999

The threat of force maintained by NATO must also be looked at in terms of its efficacy. Belgrade refused to sign the Rambouillet agreement, so its decision cannot have rested entirely on the threat. Whether or not this was a mistaken judgement on Milošević's part is another issue; he questioned the political resolve and unity of NATO and was aware of the plans for a graduated plan of air strikes and the unlikelihood of ground troops.⁶³ Despite, or perhaps because of, the threat of force, however, Weller argues that the negotiations were 'actually conducted in a way which made very significant concessions to Yugoslavia, in order to obtain consent relatively freely given.'⁶⁴ The position for Kosovo was somewhat different. The threat of force amounted to an indirect threat rather than overt military strikes against the KLA. Far more damaging to the Kosovar cause than the threat of military strikes was the threat of political disengagement if they refused to sign at Rambouillet. The presence of political coercion as well as military, was a double-edged sword. As the weaker party, participation at Rambouillet was necessary, yet potentially might have produced an agreement inconsistent with the Kosovar demands and thus unenforceable in reality. The strategic bargain was made quite clear by Albright: without their agreement, NATO would not be in a position to act. Her spokesman, James Rubin, stated that:

if one is to apply the military pressure on the Serbs that is necessary to get them to agree or that is the only way to get them to agree, that we need to work from the Kosovo Albanian yes, in order for Secretary General Solana to draw the appropriate conclusions. And so I think she explained very forcefully that reality.⁶⁵

In order to be communicatively fair, there should be equal means of control over the decision-making procedures, the agenda, and decisions. The dominance of the Contact Group (and Holbrooke) in the decision-making process indicates that this was not the case either within the Security Council or at Rambouillet. Resolutions passed in the Security Council generally reflected provisions put forward by the Contact Group at varying points. Moreover, despite being passed under Chapter VII of the UN Charter, it appeared as if control over the agenda and decisions was, to a degree, handed back by the Security Council to the Contact Group. Although this might be justifiable in terms of the need for efficiency or limited resources, it must also be considered in the light of

⁶³ Norris, 2005, p.2

⁶⁴ Weller, 1999a, p.398

⁶⁵ James Rubin, Press Briefing on the Kosovo peace talks, Rambouillet, 21 February 1999, Weller, 1999a, p.451-2

the overall picture presented, taking into account an understanding of the presence of coercion and the examples of exclusion. Whilst the Contact Group's efforts were largely met with support from the Security Council, this does not negate the fact that the dominance of the Contact Group both in negotiations with the FRY and later with the Albanians and in the move to allow NATO to use force without a mandate from the Security Council suggests a systemic practice which can repress communicative potential, for example, by bypassing the UN.

The Contact Group statement on 29 January set in progress the Rambouillet Conference. However, the statement outlining the construction of the talks indicates that control over the procedures, agenda, and final decisions lay with the Contact Group rather than the UN or the parties themselves.⁶⁶ Weller's summary of the procedural elements supports this:

The rules of the conference provided for the tabling of detailed elements of a settlement based on the Non-negotiable principles. The Contact Group drafts would stand, unless either party could persuade its negotiators that a change would be required in order to better implement a specific provision, or if both sides agreed on a change. The inequality in formulating the Non-negotiable principle would therefore be directly injected into the conference proceedings through drafts based upon them, which could not be easily deviated from.⁶⁷

Further evidence of manipulation within dialogue lies with the Contact Group, as they indicate that the framework already set out 'meets the legitimate aspirations of the Kosovo Albanians', thus determining effectively what may be considered as a legitimate aspiration or otherwise.⁶⁸ Again, we see subtle control over the agenda as other aspirations that the Kosovo Albanians may have are ruled out prior to dialogue as unacceptable or illegitimate in the face of preferences voiced by the dominant states within the international community. The failure of coercion to deliver an agreement indicates the oversimplification of the approach adopted by the Contact Group towards Kosovo and the concealment of a number of disagreements between states. It also locates the real elements of dissent on the level of international norms regarding self-determination/secession of non-colonial peoples, territorial integrity, non-intervention

⁶⁶ S/1999/96 – '(e) Agreed that the participants should work to conclude negotiations within seven days. The negotiators should then report to Contact Group Ministers, who will assess whether the progress made justifies a further period of less than one week to bring the negotiations to a successful conclusion.'

⁶⁷ Weller, 1999a, p.400

⁶⁸ S/1999/96

vs the legitimacy of the use of force in favour of humanitarian need and human rights and the role of international actors – states and other regional groupings such as the EU, NATO and the OSCE.

5.3.3 Maximising dialogue over violence

The stated emphasis on dialogue contrasts fairly significantly with the actions taken to promote democratic dialogue and the eventual resort to military force by the international community. The statement of 12 June clarifies the position held by the Contact Group concerning the use of force as it notes that: ‘Ministers repeated that no solution to the problems of Kosovo can be found through violence.’⁶⁹ Moreover, they continue to condemn Belgrade’s ‘massive and disproportionate use of force’, insist that the ‘Kosovo Albanian leadership [must] make clear its rejection of violence and acts of terrorism.’⁷⁰ It is not then, the use of force *per se*, which is being condemned here, but rather the use of force by those party to the conflict. It does not rule out the possibility of a legitimate use of force by a third party in order to protect or defend particular responsibilities, rights or values. By condemning the violent methods adopted by the KLA on behalf of the Kosovo Albanian community, however, the Contact Group fails to understand its own role in the development of the crisis, or the conditions under which the KLA developed. It also places Rugova in a position which is uncongenial to further dialogue as it requires him either to abandon his political aim in order to retain the favour of the international community, or to reject the blinkered perspective of the international community and to support the KLA. This is not a position calculated to aid the establishment of effective and legitimate dialogue over continuing violence.

There is a lot of material which indicates the uncontested presence of self-interested strategic communication. While, on the one hand, the Secretary-General’s report refers to the deterioration of the situation, the violation of human rights and international humanitarian law by the Belgrade authorities, the Serb representative insists that this approach ‘conceals the true nature of the hostilities: the terrorist attacks of Albanian separatists’. The operations of the security forces are seen as being ‘in accordance with their legal authority, aimed at protecting citizens and their property.’⁷¹ Just because this issue is constituted through dialogue and debate does not guarantee

⁶⁹ S/1998/567

⁷⁰ S/1998/567

⁷¹ S/1998/757

any degree of reflexivity concerning validity claims. There is little attempt to understand the perspectives of others and there are distinct differences between the uses of certain terms and the interpretation of actions which are not problematised or subject to discussion. Arguably, the Serbian approach is strategic, as their interpretation justifies the continued oppression of the Albanians and puts them in the right to claim continuing sovereignty over Kosovo. This interpretation and the rhetoric which supports it distort the reality of continuing actions on the ground. While it is claimed that the Governments of Serbia and the FRY are 'determined to solve the problems in Kosovo and Metohija peacefully, through dialogue and with respect for the integrity of Serbia and the Federal Republic of Yugoslavia and with full guarantees of equal human rights to all citizens and ethnic communities living in the province'⁷², this is not consistent with the Secretary-General's report noting 'the sharp escalation of violence and the reported use of excessive force by security forces against civilians as part of the government operations against the KLA'.⁷³ Despite the contrasting positions put forward concerning events in Kosovo, there is little engagement with the validity claims raised by opposing opinions and Serbian justifications for military action.

The position of the Russian Federation seems largely determined by strategic interests although is dressed up as normative concern. Its rejection of the use of force is justified on normative grounds, albeit the somewhat conventional discourse of international order⁷⁴. China's position is rather more contentious as it:

appreciate[s] the position of the Government of the Federal Republic of Yugoslavia regarding settling the Kosovo issue through unconditional dialogue. The situation in the Kosovo region is now stabilizing. There is no large-scale armed conflict, still less any escalation of the conflict. The Government of the Federal Republic of Yugoslavia has also taken a series of positive measures to encourage the refugees to return home and provide facilities for humanitarian relief work.⁷⁵

⁷² S/1998/757

⁷³ S/1998/712

⁷⁴ S/PV.3930: 'the use of unilateral measures of force in order to settle this conflict is fraught with the risk of destabilizing the Balkan region and of all of Europe and would have long-term adverse consequences for the international system, which relies on the central role of the United Nations.'

⁷⁵ S/PV.3930

Not only does this contradict findings in the Secretary-General's reports of 4 September 1998⁷⁶ and 3 October 1998⁷⁷, but it demonstrates an apparent willingness to take the FRY's words at face value rather than critically assessing them against the reality on the ground. Granted it does not require any theoretically justified criteria to discern that China's position concerning minority rights is motivated by self-interest, but the purpose in drawing attention to this form of strategic action is that the transcripts of the Security Council meetings indicate that there is little or no public contestation of blatantly contradictory statements raising validity claims as put forward by members. While sincerity can only be established within interaction as in time it will be clear 'whether the other side is "in truth or honestly" participating or is only pretending to engage in communicative action and is in fact behaving strategically'⁷⁸, neither do we see a move towards a different form of communicative interaction where truth and rightness claims are treated as hypotheses requiring justification and defence. The communicative interaction seen here, therefore, lacks many of the characteristics of a communicative rationality.

Alternative constructions of the controversial military implementation agreement⁷⁹ at Rambouillet which might have averted NATO action were not discussed, therefore questioning the legitimacy claimed by NATO. When questioned about flexibility concerning the implementation agreement and whether there might be a middle ground whereby the force might be composed in a way more conducive to agreement, James Rubin made it very clear, at least publicly, that this would not be the case – the construction of the implementation agreement was not up for discussion at this point:

⁷⁶ S/1998/834: the report refers to increasing numbers of refugees and internally displaced people, continuing human rights abuses, inadequate security conditions for returnees and the continuing destruction of homes.

⁷⁷ S/1998/912: 'During the reporting period, fighting in Kosovo continued unabated. [...] In the week following the adoption, on 23 September 1998, of resolution 1199 (1998), the forces in fact intensified their operations, launching another offensive in the Drenica region and in the Suva Reka-Stimlje-Urosevac triangle. Those operations have reportedly resulted in the displacement of some 20,000 additional people. [...] Fighting continued on 28 and 29 September, contrary to the statement of the Serbian Prime Minister, Mr Marjanovic, on 28 September, that anti-insurgency operations in Kosovo had been completed and that peace reigned in Kosovo.'

⁷⁸ Habermas, 1974, p.18

⁷⁹ Zolo, 2002, p.30; Pilger, 1999: 'Revealed: the amazing Nato plan, tabled at Rambouillet, to occupy Yugoslavia', *Newstatesman*, 17 May, Bellamy 2000, p.48; Richard Miller: 'Respectable oppressors, hypocritical liberators: morality, intervention, and reality', Chatterjee and Scheid (eds.) 2003, p.242

NATO has worked on a military implementation plan and I have not heard anybody talking about making substantial adjustments in that implementation plan.⁸⁰

The late briefing of the parties on the implementation agreement and the lack of negotiation over it prevented the parties from being able to discuss the way the agreement would be implemented in practice with NATO representatives and others. Weller argues convincingly that this presented a number of obstacles to the signing of an agreement and precipitated the use of force which might have been avoidable had another approach been adopted:

As the annex provided for the demilitarisation of the KLA, it could not have come as a surprise to the negotiators that some reassurances as to the implications of this concept would have to be given to a delegation which was effectively dominated by the KLA and a political party close to it [LBD]. Similarly, the negotiators lost the opportunity to explain certain provisions to the FRY/Serb side, which were later presented as evidence of entirely unacceptable demands of the part of the Contact Group, or rather NATO.⁸¹

Furthermore, this led to the need for the March talks in Paris to focus on the implementation agreement in order to prevent the talks breaking down altogether as significant elements had not been discussed at Rambouillet. This demonstrates a lack of reflexivity concerning the best possible construction of the talks, both practically and procedurally, as well as a failure to recognise the key interests of the parties.

Overall, this suggests that the only participants who had the ability to initiate dialogue on issues pertinent to the discussion, although possibly outside extant parameters were those who had most control over the decisions. Consequently, participants with less influence, such as non-Contact Group members of the Security Council, or those who were unable to participate at all, found that the parameters of the dialogue were fairly fixed. Few attempts were made to address these inequalities by the Contact Group members themselves in an attempt to create better conditions for the possibility of dialogue over violence.

⁸⁰ Department of State Spokesman Briefing on Kosovo peace talks, Rambouillet, 20 February 1999, Weller, 1999a, p.447; James Rubin, US Press Briefing, Rambouillet, 20 February 1999

⁸¹ Weller, 1999a, p.403

5.3.4 Maximising diversity

The elements identified in this section are intended to illustrate ways in which the potential for the expression of diversity were ruled out of the dialogue. Without engaging in an in-depth examination of the media coverage of Kosovo and the intervention which is not possible within the scope of this thesis, the elements which form this communicative imperative cannot be fully developed. Nonetheless, the extent to which the media represents an independent vehicle for discourse and the expression of differences within an intervening state remains important. Moreover, its role in terms of agenda setting and the framing or priming of issues is a central aspect of a model for communicative politics recently presented by Habermas which, he argues, can retain a critical empirical thrust.⁸² The power of the media is located in the selection and processing of ‘politically relevant content’ and thus they ‘intervene in both the formation of public opinions and the distribution of influential interests.’⁸³ Despite Habermas’s somewhat debatable assessment of the positive role played by the media in contemporary society, he nevertheless indicates the presence of power relations which act to constrain the ability of the media to form an independent and self-regulating system. His claim that structural distortion is evident in the contemporary nature of the media has been a long-running theme throughout his work, particularly in connection with the relationship between theory and practice.

As regards the independence of the media and in terms of critical purchase, Habermas distinguishes between an ‘incomplete differentiation of the media system from its environments on the one hand and, on the other, a temporary interference with the independence of a media system that has already reached the level of self-regulation.’⁸⁴ Despite the seemingly more minor nature of temporary interference, Habermas draws upon the manipulation of the American public by the US government’s communications management before and after the Iraq war in 2003. What is important, however, is not the framing of 9/11 by President Bush as the trigger for a ‘war on terrorism’, but the ‘absence of any counterframing. A responsible press would have provided the popular media with more reliable news and alternative interpretations

⁸² Habermas, 2006: ‘Political Communication in Media Society: Does Democracy Still Enjoy an Epistemic Dimension? The Impact of Normative Theory on Empirical Research’, *Communication Theory*, 16

⁸³ *ibid.* p.419

⁸⁴ *ibid.* p.420

through channels of an intermedia agenda setting.’⁸⁵ Consequently, while it is not possible to examine closely the way in which the media may have been influenced or co-opted by governments to reflect and support official policy, there was sufficient controversy over the intervention by NATO to suggest a need to look closely at the role of the media and their support, or dissent, for the use of force.⁸⁶

In an interesting assessment of the role of the media, Marina Blagojević draws attention to the need to apply this critical logic not just to the Western media and their role in creating favourable conditions for NATO’s intervention, but also to the role of the media in Serbia and Kosovo over an extended period of time. In a fairly balanced and highly critical discussion, Blagojević draws a number of connections between the presentation of information through a particular interpretative framework, the construction of national identity, and ethnic and political conflict. Drawing on examples of specific mechanisms used by the media, this analysis raises issues also contained within the communicative imperative of recognition and, more generally, supports the argument that the construction and reproduction of particular discursive themes served to facilitate ethnic conflict.⁸⁷

The preference for consensus rather than hermeneutic understanding appears to be intrinsic to international structures and practice. Consent or consensus is given preference in contemporary practice because it is understood to be a necessary prelude for action. Hermeneutic understanding seems to fit poorly with the current structures of international relations, where interests must be protected even in the battle to construct

⁸⁵ *ibid.* p.421

⁸⁶ Herring, 2001, p.239-40. Critical discussion of these issues can be found in a wide range of literature, including, Daya Kishan Thussu, 2000: ‘Legitimizing ‘Humanitarian Intervention’? CNN, NATO and the Kosovo crisis’, *European Journal of Communication*, 15 (3); Hammond, Herman, 2000 (eds.); Peter Goff, (ed.) 1999: *The Kosovo News and Propaganda War*, Austria, International Press Institute; Indymedia and Media Lens (e.g. <http://www.indymedia.org.uk/en/2004/03/288316.html>) A common critical view is that the media machine constructed by NATO to sell the war presented it in a highly distorted fashion, ensuring that the press briefings presented the ‘bombing campaign in a sanitised, euphemistic fashion, as if there could be no civilian blood spilt or fear induced. [...] It is difficult not to conclude that the alliance used stories – which it knew were not adequately corroborated and were often coming from sources with a vested interest in intensifying the conflict – to justify the bombings to an unconvinced public.’ (Goff, p.15)

⁸⁷ Marina Blagojević: ‘War on Kosovo: A Victory for the Media?’, Bieber, Daskalovski (eds.), 2003, p.166-183. Mechanisms referred to include: reduction and simplification of the explanation; counting on ignorance; the power of victimization; producing stereotypes; prejudices and hatred; factual distortion; the destruction of meaning; hierarchization of the victims; omission of certain topics from discussion which might complicate or bring different perspectives to understanding the conflict; the destruction of empathy, and construction of a new moralism.

agreed-upon norms for action, and where states remain the dominant actor. While states clearly maintain their national identity, there is a polarisation within the current construct of international society between those states lining up behind a 'humanitarian' identity as a justification or reason for action norms, and those preferring to be identified with the precepts of international order. Tony Blair's speech in the House of Commons immediately prior to the start of the bombing demonstrates clearly the types of discourse being utilised to justify and legitimate the intervention:

We must act: to save thousands of innocent men, women and children from humanitarian catastrophe, from death, barbarism and ethnic cleansing by a brutal dictatorship; to save the stability of the Balkan region, where we know chaos can engulf all of Europe.⁸⁸

Foremost, there was consensus on the humanitarian need of the situation, even if legal consensus was far less clear.⁸⁹ Costa Rica's statement in October 1998, with interesting echoes of Habermas's reflections on Kosovo, demonstrates the legitimating function of humanitarian language:

What we have here is a moral and ethical imperative for the international community. Inasmuch as this moral objective leaves no room for doubt, and in that an international presence in Kosovo would take on a high moral character, Costa Rica would never fail to lend its support to a multilateral action aimed at such a noble purpose. [...] we would like to state some of our misgivings, which are of a legal nature [...]. A goal such as this one, which is ethically and morally unquestionable, deserves to be achieved by means of international law.⁹⁰

There are clear references to humanitarian and Balkanisation discourses, as well as the construction of the enemy 'other'. The language used by the US and British leaders, among others, became increasingly polarised prior to NATO's intervention, as Albright and others attempted to create a more or less unambiguous picture of good and evil; the innocent Kosovars and the evil, brutal Serbian dictator. Blair described the bombing as a 'battle between good and evil; between civilisation and barbarity; between democracy and dictatorship'.⁹¹ When the language of humanitarianism is used, it requires the construction of an 'other'. Barkawi makes this point, arguing that by identifying

⁸⁸ Statement by the Prime Minister, Tony Blair, in the House of Commons, Tuesday, 23 March 1999, Weller, 1999a, p.495

⁸⁹ Guicherd, 1999, p.28

⁹⁰ S/PV.3937. There are many examples of such language in the Security Council meetings on 24 March, 1999, S/PV.3988; 14 May 1999, S/PV.4003

⁹¹ *Sunday Telegraph*, 4 April 1999. See Hammond, 2000: 'Reporting "Humanitarian" Warfare: propaganda, moralism and NATO's Kosovo war', *Journalism Studies*, 1(3)

oneself as ‘humanitarian’, one strips others of their humanity, thereby legitimating the exercise of often extreme violence against them. This was reflected in NATO’s representation of the situation as a ‘clear-cut case of a brutal repressor tormenting defenceless victims.’⁹² Herring concurs with David Campbell that for ‘humanitarianism to be truly human and not dehumanizing, suffering must be put in historical and political context so that the extent of the responsibility of actors claiming humanitarian motives is identified.’⁹³ The context and complex politics of Kosovo demonstrate that it is less easy to distinguish black from white than is perhaps suggested by those in favour of humanitarian war; consequently, drawing a distinction between friend and enemy ‘rules out or sidelines dialogue in favour of a stark and ineluctable antithesis.’⁹⁴ Consensus better suits this construction than hermeneutics which attempts to break down such barriers. Given the lack of direct and ‘fair’ dialogue, the location of control over the agenda, and the dissatisfaction of both parties with the text at Rambouillet, it is difficult to see how any real understanding of the ‘other’s’ position might have been able to develop. Similarly, the emphasis placed on agreement to a settlement regardless of the unresolved larger issues (and the awareness of these unresolved matters) indicates the international community’s preference for consensus.

5.3.5 Coherence

The absence of coherence between actors’ statements and their actions is important because it is relevant for understanding claims to sincerity and their communicative or strategic orientation. Similarly, understanding the argumentative process by which norms evolve or new norms emerge can tell us something about the legitimacy of the process and the norm in question. With regard to the communicative imperative of coherence, there are a number of issues which need to be raised in relation to different actors. It is suggested that consensus has implications for coherence, particularly in terms of the consistency between actions and words when action is taken in the name of the ‘international community’.

The Federal Republic of Yugoslavia was consistent in the arguments it presented on at least three points:

⁹² Goff (ed.), 1999, p.17

⁹³ Eric Herring.: ‘From Rambouillet to the Kosovo Accords’, Booth, (ed.) 2001, p.240

⁹⁴ Dallmayr, 2001, p.4

- 1) The right of the FRY to oppose terrorism⁹⁵;
- 2) The rejection of attempts to internationalize Kosovo⁹⁶;
- 3) The rejection of independence for Kosovo.⁹⁷

Clear consensus existed on the need to preserve existing territorial borders, including the Ministers of Foreign Affairs of countries of south-eastern Europe⁹⁸ and the Contact Group, who made their position concerning the sovereignty of the FRY abundantly clear:

No one should misunderstand our position on the core issue involved. We support neither independence nor the maintenance of the status quo.⁹⁹

There is also consensus among the Contact Group (with the exception of the Russian Federation) and among other members of the UNSC concerning several positions:

- 1) The situation is a threat to international peace and security¹⁰⁰;
- 2) Respect for territorial integrity of the FRY;
- 3) Further violence might lead to the destabilization of the region (including mass refugee flows);
- 4) The situation presents a humanitarian tragedy, as evidenced by a mounting death toll; the unacceptability of human rights violations, even to counter terrorism; and references to previous humanitarian tragedies in the Balkans – the ‘never again’ syndrome.

There are, as a reflection of the consensus on these positions, coherent appeals to legal, humanitarian and strategic arguments visible in the speeches of Japan, Costa Rica, Sweden, Brazil, Slovenia, the UK, the USA, the EU, Germany, Italy, Turkey, Hungary, Poland, Greece, Croatia, and Bosnia & Herzegovina. This indicates a degree of legitimacy for such arguments, although this consensus must be seen in the context of the constraints and exclusions described so far. On the surface, then, we can see a fairly strong degree of coherence in the arguments presented by a variety of actors. However,

⁹⁵ S/1998/229. See also S/1998/240 - ‘the recent actions of police forces of the Republic of Serbia in Kosovo and Metohija have been carried out exclusively in the function of combating terrorism’, and S/1998/285.

⁹⁶ S/1998/285

⁹⁷ S/1998/250, S/1998/361, Annex 1

⁹⁸ S/1998/234

⁹⁹ S/1998/223, Contact Group statement, London, 9 March, 1998. This was to be echoed repeatedly during the course of the conflict by a number of states, including, very publicly, the United States (see Press Conference by Richard Holbrooke and William Walker, 29 October 1998, from Weller, 1999(a) p. 295). See also S/1998/272

¹⁰⁰ S/1998/246

it is by being able to analyse the consistency between the actions of states and their words, that we are able to be more critical of the dialogue.

The FRY/Serb position, although outwardly coherent and consistent, reveals certain inconsistencies when we try to reconcile actions and words. They refer constantly to the need to engage in positive dialogue; that all citizens in Serbia (and Kosovo) are equal, irrespective of nationality/ethnicity; that all national minorities enjoy full cultural autonomy; that the government of Serbia distinguishes between terrorists (legitimate targets) and members of national minorities; and that the government seeks to promote a tolerant, multi-ethnic and democratic state. Yet these positions are fundamentally at odds with their actions in Kosovo, and provide a misleading picture of what is taking place. For example, the FRY representative states that:

Under the constitution and laws, all of them are granted the same civil and human rights: to their language, culture, media and religion; to elect and to be elected; and to participate in genuine political processes, from self-rule to republican and federal parliaments.¹⁰¹

This might be contradicted with evidence from Turkey's statement:

The dangers inherent in the situation in Kosovo have been visible since at least 1989, when the acquired rights of autonomy and self-administration of the people of Kosovo were suddenly abrogated. Moreover, the economic hardships and deprivation faced by the people of Kosovo following the disintegration of the Socialist Federal Republic of Yugoslavia put unbearable strain on their endurance. The restrictions on the right of education also added fuel to the feeling of deep resentment, as, over the years, children have been deprived of adequate education.¹⁰²

Furthermore, the FRY claims, somewhat surprisingly, that, 'There are no armed conflicts in Kosovo and Metohija.'¹⁰³ This creates problems with the validity claims of truth and sincerity raised by the FRY. Legitimising the use of force implies, at least, that there is some form of consensus as to the truth of actors' utterances and their relation to reality. Even if we accept that it is not sufficient to make a direct comparison between statements and reality but, as Habermas argues, that truth must be defined in terms of a 'projected consensus'¹⁰⁴, justifiable doubts are raised given the limited consensus as to the reality of the situation. This in turn brings into question sincerity claims as the gap between other information sources, our own consensus (if there is

¹⁰¹ S/PV.3868, p.15

¹⁰² S/PV.3868, p.21

¹⁰³ S/PV.3868, p.17

¹⁰⁴ Outhwaite, 1994, p.41

one) and the claims of the FRY jeopardise our belief that the speaker is being honest with us. Consequently, this returns us to issues raised by the imperative of maximising dialogue over violence; our lack of faith in the speakers' sincerity should leave us with two options: to move to a discourse form of communication where the aim is 'systematically to examine and test problematic truth and normative claims in their own right'¹⁰⁵; or to recognise a strategic and instrumental attitude and resort to force. However, the international community does neither of these. It accepts the FRY's claims and continues trying to broker a settlement without recognising the degree to which communication has been distorted.

It is useful to juxtapose two situations in the light of the actions of the international community in order to attempt to understand how easy it is to misconstrue both actions and words, particularly when the coherence and consistency of both can be questioned. First, Rugova met Annan on 2 June 1998 and was assured that the international community would not leave the situation as it was in Kosovo, although with no clear indication as to what this might mean for the future of the Kosovars.¹⁰⁶ Contrast this with Judah's record of a conversation with a KLA commander at a checkpoint in Kosovo who is reported as saying that they were not interested in talks. 'When asked whether or not he should be as the Americans insisted that Kosovo could not be independent, he replied with impeccable logic: 'And they said that none of the six republics of former Yugoslavia could be independent either,'. 'They'll come round.''¹⁰⁷ Given the overall level of inconsistency between the actions and words of the international community during the 1990s towards the former Yugoslavia, it is not surprising that it was widely believed among Kosovo Albanians that attitudes towards Kosovo's status would also change.

Consequently, as we have seen, although there is coherence in the arguments *presented* by the Serbs and the international community within the UNSC, much of which centres on the need for dialogue, there is a lack of coherence between the stated aim of dialogue without preconditions and the dialogue that was initiated. It was also far from clear that Rambouillet represented a coherent settlement: the 'non-negotiable principles were irreconcilable, the civilian and military annexes on implementation were not presented to the parties until the last moment' and both parties were presented

¹⁰⁵ Bernstein, 1995, p.49

¹⁰⁶ S/1998/470

¹⁰⁷ Judah, 2002, p.156

with concessions which excluded the political concerns of the other delegation.¹⁰⁸ Following the end of the war, a lack of coherence was still present in the position adopted by the international community as it seemed that ‘the goals of both parties were (and continue to be) effectively nurtured and nullified simultaneously.’¹⁰⁹ While the territorial integrity of the FRY was reaffirmed, the ongoing legal ambiguity concerning the status of Kosovo and the preparation by UNMIK of Kosovo and its institutions for substantial self-government and autonomy indirectly supported many Kosovo Albanians’ continuing aim for independence. The ‘uncertainty surrounding the intent of the agreement continues to engender conflict on an intercommunal level in Kosovo, and has arguably contributed to ongoing insecurity in the region.’¹¹⁰

While there was a degree of consensus present in the decision to use force in Kosovo within the Security Council, as is arguably shown by the refusal to support the draft resolution tabled by Russia on 26 March 1999¹¹¹, a rejection of Russia’s position cannot carry the same weight as a positive affirmation of NATO’s action. Much of the language in which refusals to condemn NATO’s actions by supporting Russia were couched resorted to exceptional humanitarian necessity and an absence of alternative ways with which to deal with Milošević and the ongoing human rights violations in Kosovo. Indeed, there was insufficient initial consensus to allow the problem to be dealt with by the Security Council and there were a number of other UN member states which expressed ongoing disagreement with NATO’s actions.¹¹² Consequently, there was little suggestion that substantial agreement existed concerning an evolving norm of humanitarian intervention which presupposes a right to intervene militarily without the authorization of the Security Council.¹¹³ The difficulty in maintaining consensus during what become known as a ‘war by committee’ indicated the differing political agendas of states as well as different determination of states to use force in such circumstances. While Britain and America maintained support for military intervention, domestic

¹⁰⁸ Dauphinee, in Bieber and Daskalovski (eds.), 2003, p,107

¹⁰⁹ *ibid.* p.111

¹¹⁰ *ibid.* p.112. The legal ambiguity sustained by over 7 years of international administration has perpetuated and entrenched the irreconcilable positions held by both Kosovo Albanians and Serbs.

¹¹¹ S/1999/328

¹¹² S/PV.4003

¹¹³ S/PV.3988; S/PV.3989; Hugh Walker, 2005: ‘The Case of Kosovo’, *Civil Wars*, 7(1). This question in relation to Kosovo is, by itself, the subject of a voluminous literature and will not be discussed further here. For example, see Guicherd, 1999, Charney, 1999, Falk, 1999

politics and foreign policy in Germany, France and Italy, let alone Russia, were by no means either clear-cut or wholeheartedly supportive.¹¹⁴

5.3.6 Reflexivity

The construction of the negotiation of the dialogue demanded by the international community between the Serbs and Kosovars has received little overt attention. It remains important, however, as a means by which the educational orientation of critical theory with practical intent is manifested. We can glean something of the attitudes towards this matter from a variety of statements. In the OSCE report of 20 April, we are once again faced with the problem of the contradiction between the call for genuine dialogue, and the preconditions for dialogue asserted by various actors:

A delegation from Belgrade travelled to Pristina on several occasions declaring a readiness to begin a dialogue. The Kosovar Albanians declined to participate because there was no agreement on a framework and procedure for the talks. Moreover, this invitation for dialogue was issued by the Serbian Government in their Pristina offices and with the requirement that the question of the status of Kosovo be discussed only in the framework of the Republic of Serbia. This has been interpreted by the Albanian side as a precondition. At the same time, the request of the Kosovar Albanians and the international community to allow participation of an outside representative or representatives has been rejected by Belgrade. In spite of these factors, the Kosovar Albanians have formed a 15-member advisory team to prepare a platform for the talks as well as a 4-member group to participate in the talks once they begin.¹¹⁵

As was discussed under the imperative of maximising inclusion, there were internal problems amongst the conflicting parties which affected the negotiations. Just as the communicative relations among leading Kosovars were not as black and white as they were supposed by the international community, neither were those of the Serbs. While Rugova showed little desire to share power locally, and by so doing open up input on procedural and substantive aspects of the various dialogues, there were some Serbs who remained capable of reflexivity concerning their position towards dialogue. One such was Artemije, the Serb Orthodox Bishop of Prizren and Raška, who made a

¹¹⁴ See Agüera, 2001, p.122-3; Umberto Morelli: 'Italy: The Reluctant Ally', in Weymouth, Henig (eds.) 2001: *The Kosovo Crisis: The last American war in Europe?*, London, Pearson Education Limited, p.60. Germany, Russia and Italy, at different points, requested a pause in the bombing.

¹¹⁵ S/1998/361, Annex II

statement which is extraordinary in light of the perceptions of dialogue held by other actors involved:

After the massacre in Drenica, the chances of a dialogue as a way of resolving the problem have been missed. Now what remains is what the gentlemen in Belgrade have chosen – the loss of Kosovo, just like that of Krajina, in war. War in Kosovo would mean the definite loss of Kosovo. War would give the international community an excuse to get involved and in that case the Serbian army and police would be forced to withdraw as occupation forces. [...] We do not need mediators, people who impose solutions, but representatives who would listen to both sides in the Serbian-Albanian dialogue and inform the international community. They would not be an obstacle but are necessary. Serbia is not capable of offering a healthy dialogue without someone from outside.¹¹⁶

Although the Holbrooke agreement, endorsed in UNSCR 1203, has already been mentioned in connection with other communicative imperatives, it is worth reiterating that this dialogue showed little awareness of the procedural need for trade-offs to maintain the legitimacy of the discourse. Not only was there no public attempt to discursively redeem the procedural shortcomings of the negotiations, but neither was there an attempt to engage the affected, and excluded, parties in order to justify and defend them. The absence of acknowledged and redeemed trade-offs is significant not because such trade-offs are impossible, but because their validity lies in the manner of their justification. Such trade-offs cannot impede the ability of participants to engage in and arrive at future political judgements. The exclusion of the Kosovo Albanians from these negotiations without their agreement affected their ability to make relevant political judgements and potentially affected their future ability to preserve the necessary conditions for their participation.

The use of proximity talks at Rambouillet instead of direct talks may have been a more likely means through which to arrive at an agreement, but not necessarily a more effective means of achieving peace as it does not offer the parties a chance to explore contested understandings of events or to understand the legitimacy behind the actions of the other. Consequently, the enforcement of the settlement is likely to be more difficult as the agreement is founded on a threat of force and coercion rather than reflecting genuine persuasion and understanding. These conditions do not allow for compromises

¹¹⁶ Judah, 2002, p.160. It is worth mentioning that Bishop Artemije's views are decidedly Serbian as to his position concerning Kosovo's status, but it is his pro-talks approach that is important in this context. Artemije's position is represented in the same way in the ICG report, *Kosovo Spring*, p.33

to be reached and discursively redeemed between parties, as they are only achieved through a negotiator and cannot therefore serve to address the sentiments of hostility between the parties.¹¹⁷

Moreover, there is little questioning of these approaches:

We consider that the Contact Group approach and the documents being tabled to the parties, provide the basis for the interim political settlement.

We therefore expect both parties to use the few remaining days to:

- agree very rapidly on the Contact Group's detailed proposals for self-government in Kosovo which have now been under negotiation for a week.
- accept the implementation arrangements needed to establish this self government, including the development of a local police force, and measures to end the military confrontation in Kosovo.¹¹⁸

This lack of reflexivity on the one hand, can be contrasted with the awareness, on the other, of the international community's prior involvement in the Balkans. This awareness of historical involvement tends, in the collective memory of the Contact Group and UN Security Council, to go only as far back as the early 1990s; a far cry from the collective memory of Kosovo Albanians who see the involvement of what is now known as the international community go as far back as the Treaty of Berlin in 1878.¹¹⁹ Indeed, it is the desire to avoid a repetition of the Bosnian war which served to motivate and justify military intervention in Kosovo. Despite a recognition of wider Balkan involvement, there is little explicit reference to or reflexivity concerning earlier refusals to address the problems in Kosovo.

5.3.7 Recognition

Recognition of actors, their situated and particular perspectives is important for a conflict such as Kosovo. However, as indicated, in response to a diversity of conflicting political and ideological aims, there were a number of particular values and identities set up as the 'right' which gave preference to consensus rather than hermeneutic

¹¹⁷ Press Briefing by the Contact Group Negotiators, 18 February 1999. Hill: 'What happens is you get comments from one side, you go in another room and you get comments from the other side. You try to incorporate the more sensible of the comments, and then you bring out a new draft and, lo and behold, they look and they say, "Where did this come from?" Well, it obviously came from the other side and they don't like that. And then they say, "Well, what happened to our idea?" and you say "Sorry, the other side couldn't allow that in there and neither could we.''

¹¹⁸ Chairman's conclusions, Contact Group Meeting, Paris, 14 February 1999, Weller, 1999a, p.431

¹¹⁹ Conversations with Kosovo Albanians, Kosovo, May 2006

understanding. These have to do with the discourses of international law, statehood, humanitarianism and human rights, principles of sovereignty and non-intervention. It is partly as a consequence of these dominant discourses that certain other exclusions and constraints identified were placed on dialogue where some voices had a greater opportunity to be heard than others. One such example is that, almost unanimously, member states of the Security Council referred to the role of the KLA within the conflict as an example of terrorism, in line with the position taken by the FRY/Serbia. It is only in the statement of Slovenia that we see a more considered discussion of this concept and whether it is accurate to apply it to the conflict in Kosovo.¹²⁰ Slovenia states:

In this context, I wish to refer to a specific question that requires attention at this stage, namely, the issue of terrorism and the danger of political misuse of the word “terrorism”. There is a clear need to avoid the trap set by those who use the label of terrorism for reasons of political convenience and without proper factual foundation. [...] there are forms of struggle that, albeit undesirable, are not terrorism and ought not to be labelled as such.¹²¹

The refusal of members within the UNSC to question the labelling of KLA operations as ‘terrorism’ not only strengthened the position of the Yugoslav authorities, but also removed any incentive that the KLA might have had to reconsider its activities or limit its targets to military objectives as it indicated that they would not be accepted as an important actor. Such an approach failed to understand the complexity of the situation in Kosovo, the circumstances surrounding the rise of the KLA, and the relationship between the KLA and FRY/Serb forces, who incidentally, were not publicly accused of state-sponsored terrorism, despite the numerous occasions of violence against Kosovar Albanian civilians and the issue of ethnic cleansing. When the military actions of FRY/Serb forces against ethnic Albanian villages were condemned by the international community, it was in the language of ‘large scale police actions’.¹²² The labelling of the KLA as terrorists began early on and was clearly stated by Albright on 9 March 1998: ‘The authorities in Serbia will try to blur the picture by claiming their actions are a legitimate response to a terrorist threat. We do not deny that they face such a threat.’¹²³

¹²⁰ S/PV.3868

¹²¹ S/PV.3868

¹²² Weller, 1999a, p.221

¹²³ Statement by Madeleine Albright at the Contact Group Ministerial on Kosovo, London, 9 March, 1998, at <http://secretary.state.gov/www/statements/1998/980309.html>

The public statements of the FRY also shed light on the imperative of recognition, as it demonstrates quite clearly the difference not only between the way that the Serbs perceive the current problem in Kosovo and its perception by other actors, but also an intrinsic difference between the way that the Serbs and Kosovar Albanians perceive their own history. As discussed in Chapter 1, Kosovo is undisputedly, in the minds of both Serbs and Albanians, important territory, and plays a significant role in the construction of their respective identities. While only the Serb perception is portrayed within the Security Council debates due to the absence of a Kosovar Albanian voice, this position contrasts with one that is representative of many Kosovar Albanians and is voiced by one of the most famous contemporary Albanian authors, Ismail Kadaré. The FRY/Serbia states that:

Kosovo and Metohija is a Serbian province that has always been, and is today, an integral part of the Republic of Serbia. That territory has never been part of any other State. It is the cradle of the Serbian State, one of the oldest European States, the birthplace of Serbian culture and civilization.¹²⁴

This may be contrasted with Kadaré's words:

If we glance at what is written on Kosovo, we note that the majority of writers start the introduction with a legend, a myth: that Kosovo historically belonged to Serbia. Kosovo, the birthplace of Serbia. Kosovo, Serbia's Jerusalem. Kosovo, ancient Serbian territory on which the Albanians appeared later.¹²⁵

Kadaré goes on to write that 'It is the distortion of history which has fomented this crime in the Balkans'¹²⁶; 'No serious historian, no reliable historical source indicates that the Serbs were the first inhabitants of Kosovo, and the Albanians the latecomers. It is exactly the opposite: the Albanians have always been there, the Slavs only arrived afterwards.'¹²⁷ Neither Serb nor Kosovo Albanian demonstrates a significant attempt within limited dialogues to understand the perspectives of the other, nor indeed

¹²⁴ S/PV.3868, p.15

¹²⁵ 'Si l'on jette un coup d'œil à ce qui s'écrit sur le Kosovo, on constate que la plupart des auteurs reprennent en introduction une légende, un mythe : l'appartenance historique du Kosovo à la Serbie. Le Kosovo, berceau de la Serbie. Le Kosovo, Jérusalem serbe. Le Kosovo, vieille terre serbe sur laquelle les Albanais sont adventices.' *La Question du Kosovo*, 1994, p.17. *All translations are the author's own.*

¹²⁶ *ibid.* p.18: 'C'est en défigurant l'Histoire que l'on a fomenté ce crime dans les Balkans.'

¹²⁷ *ibid.* 'Aucun historien sérieux, aucune source historique fiable n'admet que les Serbes aient été les premiers occupants du Kosovo, et les Albanais des adventices. C'est exactement le contraire: les Albanais ont toujours été là, les Slaves ne sont arrivés qu'ensuite.'

indicates awareness of their own explicit or implicit involvement in the political construction of this conflict and identity crisis.¹²⁸

In terms of facilitating further dialogue, encouraging ‘the force of the better argument’, the position adopted by the international community does not help to break down barriers between identity or opposing perspectives. A statement issued on behalf of the Security Council in August 1998 is worth mentioning for several reasons.¹²⁹ By affirming the sovereignty and territorial integrity of the FRY, the international community simultaneously refuses to recognise the demands of the Kosovo Albanians whilst portraying them as victims of a humanitarian tragedy and affirming that they will be not be left unaided. This reaffirms traditional legal and humanitarian discourses but without constructively furthering communicative potential by adopting and encouraging a more reflexive position.

When we look at the extent to which parties engaged in argumentative reasoning or effective persuasion, it becomes clear that all parties have, despite claims to the contrary, prejudged the outcome of any dialogue on the issue of Kosovo’s status. The presentation of ‘positions’ is not consistent with the argumentative reasoning or persuasion of a communicative rationality. For Serbs, Kosovo must remain in Serbia, and for Kosovars, Kosovo must become independent. Despite attempts at dialogue, the position of the Kosovo Albanians also hardened as a result of continuing attacks by Serb forces during the summer of 1998.

There is a fundamental dilemma faced by the international community in trying to satisfy two incompatible positions. No political solution can be reached while the international community simultaneously supports the sovereignty and territorial integrity of the FRY, and the human and political rights of the Kosovar Albanians so long as the actors involved all want more than the international community can give without moving away from established norms and practices of international relations.¹³⁰ Any such shift requires that the international community acknowledges that it supports one side’s claim over the other’s which therefore implies that a sense of legitimacy inheres in a particular set of moral beliefs or claims. This position is complicated by the strengthening perception of the Serbs as the perpetrators and the Kosovo Albanians as the victims in order to develop support and justification for military action, whilst

¹²⁸ Kostovicova, 2005, Clark, 2000, and Mertus, 1999

¹²⁹ S/PV.3918

¹³⁰ A similar point is made by Allin, 2002, p.51

arguing that intervention can only take place on the grounds of human rights, not in support of the Kosovo Albanian demand for independence. This intractable and complex situation might be ameliorated by adopting a more communicative rationality, where incompatible positions might be influenced by innovative communicative proposals and greater openness and reflexivity.¹³¹

5.4 A critique of Bjola's application of theory to practice

In the light of the above application of the communicative imperatives, what can we now make of Bjola's analysis? One of the key concerns raised by the communicative imperatives in my analysis is the degree to which all parties enjoyed equal opportunities to participate in the argumentative discourses that preceded the adoption of the UN Security Council resolutions. Bjola argues that the deliberative context preceding the intervention in Kosovo was:

fairly balanced. Each side experienced basically no difficulties in presenting and defending their positions. While the US, UK and France were determined to stop Milosevic from inflicting further harm on the Kosovar Albanians, the other two permanent members of the Security Council, Russia and China, expressed strong reservations about military intervention in what they viewed as the 'internal affairs' of the FRY. The Yugoslav representatives were able also not only to present and defend their arguments directly in front of the UN Security Council, but they also benefited from having their position taken up and defended vigorously by the Russian ambassador to the UN.¹³²

The picture presented here by Bjola, however, is somewhat incomplete. The representation within the Security Council was largely one-sided as concerns the actors directly involved in the conflict, as the Kosovar Albanians had no voice. Moreover, that their interests were ably and accurately represented by the US, UK and France is questionable when considering these countries previous engagement, or lack of it, over the Kosovo issue, their preference for retaining the territorial integrity of the FRY and their labelling of the KLA as terrorists. Even controversial moves to protect the Kosovars through intervention were taken to end the repression by the Serbs with a fairly conventional endpoint in mind. Bjola also overlooks the fact that the control of the decisions lay largely with members of the Contact Group; while he raises this with

¹³¹ See Dryzek's argument in favour of a communicative rationality to better address complex social problems. Dryzek, 1990, ch.3

¹³² Bjola, 2005, p.289

his discussion of the deliberative context, he does not acknowledge the communicative distortion that this might impose on discussions, or that dissenting views from the non-permanent member states were largely ignored if we consider the final outcome. The question then becomes one which will be addressed in the conclusion: is this because their arguments genuinely failed to be as persuasive, or because the power balance within the Security Council, weighted in favour of the major powers/Contact Group/Permanent 5, distorted the communicative process?

Bjola also addresses the issue of argumentative reasoning, the willingness of actors to change their beliefs in order to reach consensus about the decision to use force. This means that actors should not follow their individual goals through strategic or rhetorical action, but by actively listening to the arguments of others, and ‘by coordinating their action plans based on the ‘best argument’ available.’¹³³ Bjola notes that the communicative framework demarcating the debate preceding NATO intervention was controversial and contested, although he indicates no concern over the lack of contestation of controversial validity claims raised by certain parties within the UN dialogue. Bjola’s conclusion is interesting; he acknowledges that ‘the field of exchanges and interactions between the parties [meaning the Serbs and Kosovars, but also extending to Russia and China] was overwhelmingly dominated by strategic considerations and rhetorical actions’, yet argues that the ‘proponents of the intervention, the US, UK and France, were apparently the only side making genuine efforts to move beyond an instrumental logic of action, and to take into account the interests of the other actors as well’.¹³⁴ The table below indicates Bjola’s conclusions concerning the deliberative standards of the use of force.¹³⁵

¹³³ *ibid.* p.290

¹³⁴ *ibid.* p.291

¹³⁵ *ibid.* p.292—the table is modified slightly as it originally included Bjola’s conclusions concerning the war in Iraq which are not relevant for these purposes.

	Kosovo
Accuracy of the justifications invoked	High
Deliberative context	Balanced
Interest in argumentative reasoning	
Pro-intervention	High
Against-intervention	Low
Assessment	Legitimate

While it is true that these countries did, initially, push for unconditional dialogue and diplomacy over violence, did engage Russia and China in an attempt to forge consensus, did call for an end to violence on both sides and did set up the talks at Rambouillet, their *modus operandi* is not free from criticism. There was little, if any reflexivity over the structure or procedures guiding the talks prior to Rambouillet, nor does Bjola consider the oft-cited argument that Rambouillet was in itself an example of strategic action whereby the talks were slanted in such a way as to offer no chance of a political settlement, hence ensuring that NATO would have to intervene. He refers to the strategic action of Russia at Rambouillet, but makes no mention of contested and strategic behaviour on the part of other Contact Group members or even the structure of the talks themselves. Although Russia, China and the FRY might rightly be accused of strategic or rhetorical action, their positions, as recorded in the reports of the Secretary-General and the OSCE, were not directly challenged and the other members of the Contact Group were reluctant to reason more openly about the validity of the arguments presented by other member states. Bjola's argument is weakened by a lack of empirical analysis to support his claim that deliberative legitimacy was present during dialogue within the UN. Pertinent political, legal and humanitarian arguments were presented by Russia and other countries who were ambivalent about the use of force such as Malaysia, Namibia, Gabon, Belarus, India, and Cuba¹³⁶, yet these seemingly had little if any impact on the argumentative reasoning of the UK, US and France. The crucial point is not whether these arguments were made for strategic purposes or even whether

¹³⁶ Cuba's statement voices a strong opposition to current global power relations, and in this case states that: 'Following a series of distressing and highly manipulative political events, prolonged armed clashes, and complex – and hardly transparent – negotiations on the question of Kosovo, [NATO] finally launched its heralded brutal air attacks...' S/PV.3989

the arguments were legitimate, but whether justifications were offered for not engaging with them.

Furthermore, although Bjola argues that, from the outset, the international community tried to ‘strike a balance between the claims of the two belligerent parties’, he provides no analysis as to the content and implications for each side of the political settlements constructed. Such an analysis might indicate, given the respective situational positions of the Serbs and Kosovar Albanians, that these settlements favoured certain sides, notably the Serbs in the sense that their territorial integrity was not threatened. Moreover, he states that the talks at Rambouillet indicate that other options were exhausted prior to the use of force, but he does not acknowledge the earlier repeated exclusions of the Kosovo Albanians from dialogue at this level and the consequences of this for dialogue. Interestingly, Bjola does not address the degree of internal legitimacy enjoyed by state leaders, and whether or not internal processes regulating their own rise to power and consequent legitimacy has any effect on their claims to valid speech at the international level. While their internal legitimacy may not prevent them from the opportunity to be included within dialogue that affects their people’s interests, on whose behalf they claim to speak, it does offer an additional layer of possible challenges to validity claims when engaging in dialogue at an international level.¹³⁷

Despite its shortcomings, Bjola’s framework does target the relevant question, and it is worth repeating here:

[D]o the promoters of military interventions try to reach a reasoned consensus on the need for the use of force, or do they just engage in power games based on credible threats, intimidation or rhetorical exchanges with no visible intention to achieve argumentative consensus with the other members of the international community on the definition of the situation and on the course of action?¹³⁸

Bjola recognises the flaws intrinsic to the decision-making and enforcement procedures of the UN Security Council and these are appropriate for further analysis based on a communicative framework in order to ‘see through the veil of inconsistencies and political manipulation of the Charter provisions, and in doing so, to provide a clear basis

¹³⁷ This question will not be addressed here either, but it is a point which has implications for democratic and deliberative legitimacy.

¹³⁸ Bjola, 2005, p.267

for distinguishing between legitimate vs illegitimate uses of force.¹³⁹ Despite good arguments for the appropriateness of communicative action in IR, Bjola neither acknowledges nor explicitly addresses methodological or theoretical problems such as the limits to theory or the difficulties involved in constructing and applying a Habermasian framework to problems in international relations. As a result the theoretical model presented here is not as sophisticated as it could be and is unable to deliver an empirical analysis which is as critical or detailed as the theory might allow.

5.5 Learning from the Communicative Imperatives

A number of constraints and exclusions have been identified in the course of this analysis. These centre on the exclusion of key participants, the location of control over the agenda and therefore the possible parameters of the dialogue, an absence of justificatory discourses regarding contested norms and courses of action, an absence of coherence between the actions and words of states, an absence of procedural reflexivity and the privileging of certain actors and positions over others without offering justifications, not least through the unmistakable presence of preconditions. While the focus on dialogue within the Security Council and at Rambouillet excludes other communicative fora where important communication may have taken place, this is justified by its public accessibility and accountability as well as by the practical constraints of this research. While all dialogic and intersubjective interactions are highly complex and influenced by a significant number of factors, the copious number of potentially affective conditions and motivations at the international level make it difficult to interpret practice in as sophisticated manner as the theory discussed in 3.4 and 4.4 suggests.

We need now to develop an awareness of the limitations we encounter when applying these criteria to a concrete situation. The degree of overlap between the communicative imperatives concerning the issues drawn from the material makes it difficult at times to provide a succinct and separate analysis of each communicative imperative; they all concern different facets of a larger problem of legitimacy. Even though the aspects of illegitimacy raised indicate fairly general points, they suggest issues which might be broached by future participants if legitimacy is also conceived of in communicative terms.

¹³⁹ *ibid.* p.274-5

This framework does not seek to legitimate particular dialogues, or indeed to demonstrate exactly how speech may be made legitimate, but rather to illuminate the inequalities and illegitimacy of dialogue which purports to be justified and legitimate.¹⁴⁰ Neither is it a question of passing judgement on the specific decisions of states concerning humanitarian intervention in Kosovo, but rather of demonstrating their shortcomings in terms of legitimacy by virtue of the constraints and exclusions present. In other words, it reflects Wellmer's argument that the formal criteria cannot be applied independent of an understanding and judgement of particular discourses.¹⁴¹ Not all elements will apply to all dialogues, so, as Wellmer notes, the use of any criteria must reflect the particular character of the dialogue. It is not possible to translate the terms of the criteria directly onto the target material. The material may tell us certain things about dialogue without directly answering the question posed. It might, therefore, be appropriate to consider the communicative imperatives as offering a critical interpretative power in relation to practice rather than referring to them as an application of theory to practice. In this light, the theoretical framework offers a means by which some of these constraints and exclusions may be recognised and removed, but not a blueprint for an ideal speech situation. The burden is on those who wish to be recognised as legitimate actors to ensure that constraints and exclusions are addressed. However, in the absence of greater consciousness by actors of this need, then this method of critique against a normative background offers a means of raising awareness of the kinds of legitimacy which such decisions required.

We will further develop these limitations in Chapter 6, however, there remain several points to be raised concerning the relationship between the communicative imperatives and the conflict in Kosovo. A question raised by the identification of constraints upon dialogue which produces decisions claiming to be legitimate and justified is as follows: do the arguments of actors who have been excluded or unable to influence proceedings genuinely fail to be persuasive, or is this a result of the power balance within the Security Council which is weighted in favour of the major powers and has consequently distorted the communicative process? Given the absence of some key actors from negotiations, the lack of genuine communicative interaction regarding

¹⁴⁰ Blaug suggests that one of the strengths of discourse ethics is its potential to illustrate the entropic quality of legitimacy of institutions and, consequently, to challenge the claims to legitimacy of the state. Blaug, 1999, p.119-122

¹⁴¹ Wellmer, 1995, p.323

contested norms and truth claims within the Security Council and the dominance of the Contact Group states in setting out both procedural and substantive content for a number of dialogues, the latter seems to be the case in this particular context.

The exclusion of certain actors prevents our knowing whether or not a rational consensus might have been achieved through the persuasive force of the better argument; consequently, whether there might have been better arguments or not is something that we cannot know. The conflicting concerns present in dialogue relating to humanitarian intervention reflects dominant paradigms concerning realist and liberal conceptions of power and the relation of states to each other, as well as their responsibility towards others.¹⁴² However, in the face of claims to universal legitimacy and acceptance of emerging norms of humanitarian intervention within organisations such as the UN, it remains necessary to look at the fairness of communicative procedures and whether we can identify constraints on dialogue, in part, arguably, as a result of the dominance of certain discourses and structures. This is not to say that such organizations or hierarchies of influence are unacceptable, nor to deny the inevitable presence of ‘interests’ in influencing discourse and actions, but merely to suggest that their legitimacy must be open to question when these factors affect the interests of others. Having noted that instrumental rationality and strategic action pervade the sphere of international action, it is important to indicate that this analysis is not suggesting that communicative rationality can or should replace strategic action totally, but rather that there is a place for both, and that the dominance of strategic action may have repercussions for legitimacy when examined from a discursive democratic perspective.

With dialogue as the object of critique, the majority of focus has been on the process leading up to NATO’s intervention. There are, however, three points to be noted by looking at the consequences of the use of force in light of a communicative framework.¹⁴³ First, the question raised is whether or not strategic action opened up or closed off further avenues for dialogue. If, as is suggested, the means used by NATO,

¹⁴² This is not to suggest that these are the only paradigms which influence practice in international relations, only that they remain two of the most important ones.

¹⁴³ Although we could continue testing the communicative imperatives by analysing events after Rambouillet, including NATO’s intervention, the consequences of military force and the further engagement by the UN, individual states, NGO’s and NATO after the use of force, the tests carried out in this chapter are sufficient to demonstrate the critical interpretive power of the communicative imperatives.

including high altitude bombing (including the use of cluster bombs and depleted uranium), no ground troops, a force protection doctrine guided by national, not humanitarian, interests, and a targeting strategy which effectively treated all Serbs as combatants, closed off further dialogue and did not necessarily match the humanitarian claims made in order to justify its intervention, then its legitimacy must be called into question.¹⁴⁴ Secondly, as Mandelbaum indicates, there is a serious lack of coherence in NATO's policy as the organisation:

intervened in a civil war and defeated one side, but embraced the position of the party it had defeated on the issue over which the war had been fought. This made the war, as a deliberate act of policy, a perfect failure. The humanitarian goal NATO sought – the prevention of suffering – was not achieved by the bombing; the political goal the air campaign made possible and the Albanian Kosovars favored – independence – NATO not only did not seek but actively opposed.¹⁴⁵

Thirdly, there is an important link between humanitarian claims made to justify military action and the non-humanitarian ends which emerged from NATO's actions. The impact of consequences on perceptions of legitimacy is partly captured in the framework through the need for coherence between the words and actions of states.¹⁴⁶ Young supports this critique, arguing that it is very difficult to claim that the war did more good or prevented more harm than it caused, a judgement supported by Arendt's argument that '[v]iolence can destroy power; it is utterly incapable of creating it.'¹⁴⁷ Certainly, if power is understood as cooperation, the ability to act in concert to establish collective ends (for example, effective self-government), then Arendt may have been right to suggest that violence is capable of destroying power. There is little sense of collective action, consent and consensus in community governance and neither Serbian nor Kosovan institutions have fully recovered their capacity since the war.¹⁴⁸

¹⁴⁴ Clark, (2005, p.191) recognises that consensus, a necessary but insufficient ingredient for legitimacy, is a matter of voluntary agreement which encompasses ends and means.

¹⁴⁵ Mandelbaum, 1999, p.5

¹⁴⁶ SACEUR, General Clark, said in relation to NATO's bombing that "It was not designed as a means of blocking Serb ethnic cleansing. It was not designed as a way of waging war against the Serb and MUP [Ministry of Interior] forces in Kosovo in any way. There was never any intent to do that." Cited by Herring, Booth, ed. (2001), p.231

¹⁴⁷ Hannah Arendt, 1970: *On Violence*, USA, Harcourt Brace Jovanovich Publishers, p.44, 56

¹⁴⁸ For a consideration of the consequences and lessons of NATO's actions, see Mccgwire, 2000; Booth, 1999; Mandelbaum, 1999; Layne, 1999, Carpenter, 2000

6. Evaluating Theory and Practice

6.1 Assessing the Communicative Imperatives

As we have discovered, although moral arguments permeate international politics, such arguments do not necessarily follow discourse ethical principles and a number of problems arise when we seek to consider this relationship. Despite undeniable problems with applying normative theory to practice, Habermas's project of communicative action is driven with the practical intent of rescuing communicative reason from the encroachment of instrumental reason, thus the very notion of communicative action and the presuppositions of argumentation have obvious implications for any understanding of deliberative democracy, legitimacy, or communicatively oriented interactions. It is these implications which have motivated our theoretical exploration, development and application to practice.

Communicative action and dialogue have been presented as an intrinsic part of a revised notion of good international citizenship and as part of a generalizable framework able to assess the processes by which legitimation is claimed and justifications offered in conflict situations. Communicative action as a concept has become broader than it originally stands in Habermasian thought. Adopting the moves of other critical theorists, communication is not restricted to the rational, abstract model situated firmly in the ethics of justice. Instead, communication no longer conceives the emotional, imaginative, expressive or other forms of verbal communication to be necessarily irrational, and therefore unworthy of attention. Instead, adopting moves towards context sensitive discourse as advocated, albeit in different ways, by thinkers such as Arendt, Benhabib, Wellmer, Gadamer, Shapcott, and Young, offers potential for improving real communicative practices in contemporary politics.

In response to the question first asked in the Introduction – is a discursive approach to decision-making procedures in conflict situations able to help us assess the legitimacy of decisions to use force - to what extent are the communicative imperatives an effective tool for revealing constraints and moments of illegitimacy in dialogue? Inclusion, in all its guises, is a common theme to the communicative imperatives and has illuminated a number of areas of concern for deliberative legitimacy in the case of Kosovo. Inclusion becomes more than an abstract requirement of discourse ethics and embraces different types of particularisms and expressive behaviours. It is not that

Habermas's theory is deliberately exclusive: his rejection of the monological categorical imperative, insistence on intersubjectivity and his conception of discourses of application, along with the conditions of the ideal speech situation, all indicate otherwise. Critics, however, have highlighted the need to move beyond the formalism of Habermas's discourse ethics and concept of rationality. This aspect of inclusion is particularly important when considered alongside the implications for issues of recognition and identity, where it becomes apparent when we consider that formal rules and institutions, recognising the rights and relevance of minority groups and recognising their right to be actively heard, do not necessarily produce the actual (empirical) public and political recognition of these groups and their voices.¹⁴⁹ Inclusion not only refers to participation, diversity and difference, but also to empowering the excluded. It is not defined *a priori*, but is an ongoing process, whose limits are articulated precisely through challenges to its existing formulation which emerge from those who are excluded and who nevertheless wish for equal recognition. That said, decision-making procedures cannot be open to an infinite number of viewpoints; closure must be reached at some point. There are many practical reasons for limited inclusion of participants or particular interests which cannot be ignored in an attempt to come closer to a communicative ideal. Thus, the emphasis on procedure in this framework seeks to draw our attention to *how* closure is determined and *who* is consequently excluded, revealing, in the case of Kosovo, a pattern of power inequalities and the absence of justification for the exclusion of actors.

The analysis offered in Chapter 5 has attempted to demonstrate some of the limits of theorising when critical theoretical concepts are extended into the realm of international practice, not least, the appropriate balance between strategic and communicative action. The normative potential for increased legitimacy and the alternative to traditional understandings of power and interests that is offered by this framework has not been rejected for being unable to achieve clear ends; an aim which theory should not seek to fulfil anyway. It argues that the accepted standards of communication should presuppose the norm, for example, of inclusion; it is the exclusion sought by actors which must be interrogated and justified. The clashes between concepts of the ideal and evidence of the real are not grounds for abandoning normative reasoning or critique of extant practices, but rather are grounds for

¹⁴⁹ Pajnik, 2006, p.393

transforming our understanding of how we conceive and judge existing practices. Consequently, due to the presence of structural and communicative distortion, undisclosed as a result of a lack of reflectivity by state actors and coupled with practical concerns over the composition of the Security Council, the argument being made here is that consensus alone within the Security Council is a necessary but insufficient measure to grant legitimacy to decisions to use force. A detailed analysis reveals inadequate procedures and unacknowledged constraints present throughout the negotiations process surrounding Kosovo and cannot, therefore, support the claim that there was no alternative other than the use of military force and the subsequent methods adopted by NATO in order to respond to the humanitarian situation in Kosovo.

Additional limitations related to the inability of the empirical focus of analysis to take into account all of the communicative imperatives contained in the broad theoretical framework, particularly the criteria relating to *Maximising diversity*. Rather than invalidating this theoretical framework, however, it indicates the potential for application to different foci. The interactions within the Security Council and at Rambouillet were unable to provide sufficient data for all criteria offered by the communicative imperatives, suggesting that further evidence might be gathered by examining different empirical foci such as the role of the media, development and cohesion of foreign policy-making at a national level, the impact of non-state actors on national and international policy formulation, and inter-state relationships. The communicative imperatives may still retain validity in different types of discourses, but a degree of sensitivity is required to assess the appropriateness of the tool being applied to a particular conflict and, within that, a particular empirical focus. Despite this, there is still significant evidence to support the applicability of a communicative approach to international politics and conflict resolution. As Booth argues:

It is not now possible to know whether conflict prevention measures would have worked, only that opportunities were missed. Because we know the end of the story, it is tempting to assume that it had to be, but we know from other situations that different choices can result in different outcomes.¹⁵⁰

Faced with normative theory and the abstract notion of ideal communication offered by Habermas, the juxtaposition of theory and empirical practice in international relations struggles to assimilate these concepts with the radically different presentation

¹⁵⁰ Booth (ed.), 2001, p.321

of arguments in practice. For example, state representatives at the UN Security Council put forward their ‘position’ on a particular issue, but this does not entail contestation of challenging ‘positions’. The closest that practice comes to emulating the move in discourse ethics from ordinary communicative interaction to a more abstract contestation of norms and truth claims is the variance of positions within the international law and humanitarian discourses. Yet, as has been highlighted, conflicting claims and representations of the truth are not necessarily challenged and discussed. The debate within the UNSC was not seen to be a reflexive process concerning the means of discourse but was concerned only with the desirability of particular ends which often reflected the preferred positions of member states. Although this may be translated as a debate over both values and the validity of ‘universal’ norms, such as the desirability of a norm of humanitarian intervention, there is little consideration given to the quality of the communicative interaction taking place or its relationship to normative communicative ideals. This linguistic difficulty then, in itself, tells us something of the approach to communicative standards adopted by participants within international practice and the inadequate perception of the link between communicative standards and the legitimacy of decisions.¹⁵¹

The communicative imperatives are an effective tool in that they were clearly able to offer guidance concerning the illegitimacy of particular practices of exclusion. They were also able to reveal specific practices which were coercive, notably pertaining to the control over the decision-making processes and agendas exerted by particular states. They highlighted the dominance of strategic action within a supposedly communicative forum such as the Security Council and indicated that this also affected the kind of communication which took place, as, for example, in the case of an absence of effective persuasion. Levels of coherence could be ascertained by examining both the dialogue and actions of actors and revealed a number of inconsistencies which at times led to communication operating under a series of misapprehensions. General themes appertaining to the quality of the dialogue, such as any reflexive tendencies and the ability or willingness of actors to engage in dialogue more conducive to recognition, hermeneutic understanding and the genuine justification of contested norms, were also able to be identified – albeit largely through their absence. These conclusions suggest that rather than reifying the role of the state and sovereign models of power, dialogue

¹⁵¹ Deitelhoff and Muller (2005) acknowledge the difficulties in trying to distinguish between different types of empirical dialogue: they often appear simultaneously and cannot be separated.

might also need to include non-state actors in a variety of forms, including NGOs, domestic political opposition groups, and, in this context, arguably, the KLA.¹⁵² The ability to reveal exclusions challenges the vested interests of those whose position is based on the status quo, and suggests possibilities for empirical and deliberative ‘break-outs’.

6.2 Strategy and morality in international politics.

The dilemma posed by the appropriate role for and degree of strategic power in a model which favours communicative action is a troubling one. Faced by the impossibility, and undesirability, of precluding strategic action from international politics, this research suggests that the real problem is not the presence of strategic action, but its role in relation to communicative action. Habermas did not seek to prohibit strategic, or instrumental, rationalities from reality; rather he sought to limit it to particular spheres which pertained to his distinction between the system and the lifeworld. However, recent moves by critical theorists in relation to Kosovo have complicated this issue. In Apel’s reflections on Kosovo, for example, he acknowledges the revival of ‘manifest uncertainty’ over the question of a ‘hierarchical order in the relationship between ethics, law and strategic rationality.’¹⁵³ Herein, as I understand it, lies Apel’s solution to the problem of power and strategic action in international relations:

This morality of history-related responsibility, [...o]n the one hand, [...] demands a maximization of problem-solving through discourses (and fair negotiations, whose rules must be a priori prescribed by discourses); on the other hand, however, sometimes in those unavoidable situations where discursive-communicative procedures of problem-solution are not possible because one of the potential partners is not prepared to cooperate, the morality of history-related responsibility possibly needs to take over the risk of using force against force; but this, to be sure, only under the regulative idea of simultaneously preparing for the future those conditions (especially institutions of law) that make communicative-discursive procedures of problem-solving possible.¹⁵⁴

¹⁵² For an interesting discussion on who we should talk to, see Michael Vatikiotis: ‘Let’s talk to religious radicals, too’, Centre for Humanitarian Dialogue, International Herald Tribune, November 27, 2006

¹⁵³ Karl-Otto Apel, 2001: ‘On the Relationship Between Ethics, International Law and Politico-Military Strategy in Our Time’, *European Journal of Social Theory*, 4(1), p.30

¹⁵⁴ *ibid.* p.35

This indicates that any solution to the dichotomy between power and morality in international relations requires us to commit to some form of substantive normative conclusion which might have to be brought about strategically. This is, as elaborated in Chapter 5, similar to the approach favoured by Habermas with his preference for the institutionalisation of cosmopolitan law. There is, perhaps, an irreconcilable difference at times between the sophisticated, other-sensitive approach offered by critical theory, and the action needs of international politics as currently structured. In other words, it is not possible to remain sitting on the fence indefinitely when faced with the contrary positions of real actors who, quite simply, may prefer violence to talking.¹⁵⁵ This indicates the inevitable triumph of strategic action even when used for normative ends, and so this project loses something of the critical edge it has tried so hard to keep when faced with the need for concrete solutions. One approach to this problem is to acknowledge Dryzek's argument concerning the relationship between strategic and communicative rationalities. They are able to, indeed must, coexist; the question is how we arrive at the correct balance. It is suggested in Chapter 5 that the relationship becomes unbalanced when strategic action is dominant and impedes the legitimacy which may be derived from communicative action. The framework presented here has attempted to show that communicative practices should always retain the capacity to question strategic action where it appears.

This dilemma is also tackled by those with post-structuralist leanings in a way which reflects the concerns raised by critical theorists for theory or practical organisation undertaken without a reflexive element. Campbell argues in this vein: 'no political theorisation, prior to its materialisation, can legislate for politics (at least while retaining a sense of the paradox of politics rather than effecting an authoritarian position)'.¹⁵⁶ Similarly against the imposition of specific rules, Bulley argues that instituting a program would choose a 'conditional hospitality over the unconditional', by which he means that the ontological 'at-home' would be further institutionalised and entrenched in the minds of diplomats, politicians, academics and citizens, preventing negotiation or dialogue between the ontological and the non-

¹⁵⁵ Shapcott also recognises this relationship between strategic and communicative action, 2001, p.236

¹⁵⁶ David Campbell, 1998b: 'Why Fight: Humanitarianism, Principles and Post-Structuralism', *Millennium: Journal of International Studies* 27(3), p.513

ontopological.¹⁵⁷ This problem of institutionalisation is indeed the dilemma faced by critical theory when we seek to transpose it into practice. The Derridean approach adopted by Bulley is to avoid the offering of concrete solutions, but to wait for the opportunity to ‘change things, to think differently, to invent’ ‘in the moment’. This approach means that it is not possible to demonstrate how this kind of negotiation might occur, or even if it will.¹⁵⁸ This places those in the ‘here and now’ in a somewhat difficult position.¹⁵⁹ While the conception of dialogue offered in this research is not primarily situated in the post-structuralist literature and so cannot fully address the concerns it raises, one important point is raised within this literature which is pertinent to an alternative understanding of Kosovo, legitimacy and communication, and that is Campbell’s notion of ontopology.¹⁶⁰

What importance does an ontopological or non-ontopological approach to Kosovo hold for this research?¹⁶¹ The notion of ontopology is singularly relevant to the situation in Kosovo as the site of contested ethnic and nationalist narratives and Campbell’s and Bulley’s approaches to it offer a means to support and develop some conclusions arising out of earlier analysis. Briefly, the problem does not simply concern the reactions of the international community, although they do play a role, but also has to do with the approach of the Kosovar Albanians and Serbs themselves. While it may be that the link between identity and territory has been constructed and manipulated to serve political ends, it is nonetheless still the case that this is also the contemporary self-perception of many (although by no means all) Serbs and Albanians. Most importantly, it is also the perspective which is entrenched primarily through the contemporary political rhetoric of their respective political leaderships to the extent that

¹⁵⁷ Dan Bulley, 2006: ‘Negotiating ethics: Campbell, ontopology and hospitality’, *Review of International Studies*, 32(4), p.658. Ontopology ‘describes a form of identity which links its essence to a place, normally defined in territorial terms.’ Bulley, p.646

¹⁵⁸ Bulley is not using negotiation simply in terms of dialogue, but in the Derridean sense of resisting closure, of shuttling between different positions; it is not dialectic in the sense that there is any easy resolution of two positions in a third, but a negotiation between two incompatible imperatives which retain something of their normative purity. It bears some similarity to Gadamer’s fusion of horizons: a position whereby individuals maintain their own perspective whilst listening and understanding the other’s perspective.

¹⁵⁹ For a helpful description of this tension see White, 1991, p.21, 28

¹⁶⁰ Campbell, 1998a

¹⁶¹ This has *not* been an attempt to apply Derridean principles to a deconstruction of the various narratives surrounding Kosovo and the intervention.

non-ontological views are rarely allowed free expression, even if voiced, in the public sphere.¹⁶²

This perspective is perpetuated not only by the peoples themselves and the politics and myths constructed around the conflict and their own roles in it, but also in the actions of the international community as, indicated throughout this thesis, the preferred approach to the conflict by the international community has been that of territorial integrity.

Just as we must look at Kosovo in context and not as a series of isolated events, so we cannot look at the responses of the international community in isolation. If Kosovo is seen in light of the Dayton Accords, for example, and we acknowledge Campbell's interpretation of Dayton which is that it entrenched and legitimised ethnic cleansing because it was unable to approach the problem without ontological assumptions, we see that this is an ongoing perspective with relation to conflict in the Balkans and that 'political possibilities [and correspondingly, dialogic opportunities] have been limited by the alignment between territory and identity, state and nation'.¹⁶³

Kosovo demonstrated that the actions of the international community were not only insufficient to enable an appropriate response to the conflict, but that they were complicit in the conduct of the war:

because inscribing the boundaries that make the installation of the nationalist imaginary possible requires the expulsion from the resultant "domestic" space of all that comes to be regarded as alien, foreign and dangerous. The nationalist imaginary thus demands a violent relationship with the other.'¹⁶⁴

The primacy of statehood, sovereignty and non-intervention, in conflict with the strengthening human rights regime, notions of responsibility and humanitarianism, not only place us in a situation characterised by incompatible imperatives, but also serve to limit the political alternatives to conflict and prevent our move away from the dichotomy presented by the polis and cosmopolis. Whereas Apel and Habermas see the

¹⁶² ICG report, 'Serbia's New Constitution: Democracy Going Backwards', 8 November, 2006, p.1: the new constitution 'makes it legally impossible – without further constitutional amendment – for Serbia to recognise Kosovo independence'. Even those Serbian politicians or parties who wish to move away from the past and adopt more democratic, pro-European positions face serious tactics aimed at discrediting them. The new constitution provides the means to squash domestic dissent, and may well further narrow Serbia's political spectrum, forcing much of its 'pro-Western political elite to march in lock-step with resurrected Kosovo-centric patriotism or else face accusations of treason.' (p.17)

¹⁶³ Campbell, 1998a, p.80

¹⁶⁴ *ibid.* p.13

need for these conflicting priorities to be resolved through the institutionalisation of cosmopolitan law which effectively de-politicises the questions raised by this paradox through constituting them in a legal sense, Bulley and Campbell look for a more intangible approach which cannot be articulated prior to the moment of its production, yet seeks ‘to avoid technologized or rule-governed responses to the complexities of particular situations at all costs.’¹⁶⁵

This thesis has theorised an option which seeks to combine elements of both approaches. By focusing on the possibilities of dialogue, as opposed to institutionalised laws for humanitarian intervention, this framework recognises that we cannot anticipate what the solution should be which will develop out of dialogue and that such dialogue must not be restricted by constraints not, within reason, discursively redeemed. The emphasis placed on process as opposed to substantive content shies away from ‘rule-governed responses’ which indicate content without necessarily due concern for process. At the same time, it recognises a need to find practical political solutions to conflict whilst retaining a normative grounding and reflecting consensus on a number of moral norms. Herein lies the role of hermeneutics and reflective judgement in a theoretically-informed application in which we do not simply apply universal knowledge to a situation, but rather come to understand the universal through particular situations. We need to understand each particular conflict prior to applying any singular interpretation of international law or designing interventions to achieve an aim in accordance with supposedly universal norms. A communicative model should recognise actors particular to the conflict and solutions which grow out of dialogue among all relevant parties. Rule-governed solutions for the problem of human suffering in conflicts which stem only from powerful states without reference to the participation of all those affected is, bringing us back to the theory/practice dilemma, problematic: ‘in a process of enlightenment there can only be participants.’¹⁶⁶

6.3 Agency and legitimacy in International Relations: the deterritorialising of responsibility

In response to the question raised earlier concerning the location or agents of responsible citizenship, it is suggested that civil society actors may also be seen as good

¹⁶⁵ Nick Vaughn-Williams, 2007: ‘Beyond a Cosmopolitan Ideal: the Politics of Singularity’, *International Politics*, 44, p.122

¹⁶⁶ Habermas, 1974, p.40

international citizens, not least because many operate on a local, regional or global level. Moreover, this draws a distinction between the state system and the role of states, moving away from a state system which is constituted by and imbued with notions of national interest, territorial integrity, self-preservation and sovereignty, without abandoning the notion of the state which remains, empirically, a powerful actor within international society and one which still grapples with ideas of ethics, rights and responsibilities. One of the clear implications of the theory adopted in this research is that it does not allow us to discern the precise actor. While the context of Kosovo focused on here identifies particular actors, notably states, the communicative imperatives hold no intrinsic or preferential status for the state as an actor. Moreover, the development of good international citizenship raises questions as to appropriate actors, thus lending itself to potential confusion over the subject of analysis. The central issue addressed in this research, however, is not the identification of specific actors as good international citizens, but rather as suggested by the title of Chapter 3, dialogue as the object of critique and an analysis of the process by which actors contribute to dialogue and processes of conflict resolution. This opens up avenues for further investigation of the concept of agency in relation to a revised concept of good international citizenship, suggesting non-state actors such as NGOs and transnational corporations, and is presented as a strength rather than a weakness of the framework.

From the critical theoretical position adopted in this thesis, Bulley's and Campbell's writings dance around a theme which supports some of the conclusions of the present research. Campbell talks of a 'deterritorialization of responsibility' and indicates that intervention should be rethought to encapsulate and 'involve nonmilitary and nonstate actors'.¹⁶⁷ What we have called good international citizenship thus no longer simply belongs to a state-centric forum, but may be transposed onto other levels of participation and engagement. This returns us to Linklater's criteria for good international citizenship which requires a shift in focus both upwards and downwards from the 'national' sphere, and aids to move international relations theory beyond the confining realms of communitarian approaches which are complicit in a state-centric approach, where the inclusion of some must inevitably produce the exclusion of others, and beyond the universalist, somewhat abstract, approach of some forms of cosmopolitanism. One of the inadequacies of the concept of good international

¹⁶⁷ Campbell, 1998a, p.176, p.240

citizenship revealed through a discussion of the role and construction of dialogue in international relations was its state-centric nature and the limitations this places on effective agency in situations of intervention and conflict. Moreover, it was problematic in terms of its critical capacity for analysing legitimacy. If, however, we bring in a discourse element and situate it at the core of good international citizenship, then we have strong normative grounds to develop a critique of existing practice and we have a framework which recognises that states are one among many actors.

Consequently, an implication that may be drawn from this analysis is that inter-state fora are not the only dialogic community needed in global politics, as may be concluded by the failure of states to meet the criteria for procedurally fair conversation. This failure, coupled with the circumstances of Kosovo, indicates that we should look to civil society and non-governmental actors. Moreover, states as good international citizens should, when necessary, act reflexively to recognise the flawed nature of the UN and other international organisations and look to civil society actors instead of resorting to state mechanisms, recognising that state representation cannot be separate from the national interest, and therefore in cases such as conflict and humanitarian need, may be an intrinsic part of the problem. This reading of good international citizenship differs from Wheeler's version as he sees states as having the capacity to protect national interest, behave as cosmopolitan good international citizens and protect human rights; the state, therefore, remains part of the solution.

We must recognise that states are unlikely to be keen to widen the dialogue to include non-state actors because they currently remain the most powerful actors within the global community. Statists proffer the argument that NGOs are not elected and are not representative or accountable to the electorate, therefore why should they be included in dialogue with those actors who are representative and accountable? This argument not only ignores the grass-roots origin of many NGO's, but also the point that many state governments, if subjected to a closer inspection, would face questions over the legitimacy of their internal power and their accountability; these however, remain questions for democratic theorists.¹⁶⁸ The move towards accepting different actors as intrinsic to effective and fair dialogue asks why should we limit ourselves to the state.

¹⁶⁸ Allen Buchanan makes a similar point concerning the democratic and representative credentials of many states in: 'Reforming the international law of humanitarian intervention', Holzgrefe, Keohane (eds.) 2003, p.139. This suggests that electoral accountability is not the only form of accountability or 'good citizenship'. The communicative imperatives offer other criteria which do not change whether they are being used to assess states or NGOs.

They are a practical reality and they claim to be representative liberal democracies for the most part, but, as demonstrated in Kosovo, they are not sufficient to an inclusive dialogue.

At this point, it is instructive to refer to Kosovan Nansen Dialogue (KND) as an example of a civil society actor working along dialogic principles which strongly reflect some of the communicative imperatives offered in this research.¹⁶⁹ KND might be seen as a good international citizen, especially in the context of its regional, networked character and European links, as it is but one branch of the Nansen Dialogue Network which has locally staffed branches across the Western Balkans and is linked to the Nansen Academy in Norway. Nansen's methodology offers important parallels with the theoretical framework offered here, as its mission statement expresses clearly:

NANSEN DIALOGUE is marked by the wish to provide a neutral and open space where the different actors in a serious conflict can meet face to face in truthful and honest communication. The aim is to break down enemy images, as well as to increase understanding of each other's positions, interests and needs. Facilitators and lecturers try to stimulate the cognitive analysis of the conflict itself and the experience of "the other's" position. The focus is not on who is right or most guilty, but on how to build respect for democratic principles, human rights and peaceful conflict resolution for future improvement of society. These principles are to be an alternative in political organisation to national chauvinism and ethnic loyalty.¹⁷⁰

The projects run by branches of the Nansen Network recognise the power of what Habermas refers to as 'steering media' – money and power - in supporting and reproducing political messages based on ethnic division and ethnic identity and controlled by political parties. Consequently, a variety of projects seek to break down such essentialized identities and present different understandings of the truth, individual and collective experiences. Similarly, education projects seek to address the ethnic segregation in schools and communities. This approach explores alternative solutions to joint challenges which touch areas of interest for all parties.

Nansen's dialogue methodology maintains strong hermeneutic elements rather than expressing a need for consensus on any particular position. By placing the emphasis on listening to the 'other' perspectives, dialogue participants can share their different explanations of events and 'confront each other with alternative interpretive

¹⁶⁹ I spent a brief period in May 2006 working with KND in Kosovo and observing their practices.

¹⁷⁰ Nansen Dialogue Network Annual Report, 2004, p.3

frameworks.’¹⁷¹ Bryn argues that if ‘one can come to understand (if not accept) the other’s perspective, then one comes to understand the “legitimacy” of a decision to fight for or against independence.’¹⁷² This avoids the danger of dominant perspectives suppressing other views. It also develops the concept of dialogue as one of understanding and recognition. Whilst most people in Kosovo experienced the conflict through an ethnic meaning, a hermeneutic approach does not limit itself to the horizon of a particular community or tradition.

Nansen’s methodology, like hermeneutics, favours an approach which privileges listening and communicating; it understands that different people will hold different truths, and it seeks to find ways of understanding these different truths through dialogue without eradicating their differences. Thus, we can see a positive shift from the adoption of particular ‘positions’ to recognising common interests.¹⁷³ The entrenchment of positions was an issue raised in Chapter 5, where the representation of the conflict by states within the Security Council took on the rigidity of incompatible positions, preventing alternative solutions from being explored which were not grounded in ontological assumptions. This problem was also highlighted in Kosovar politics as the positions of both Serbs and Albanians became more rigid and uncompromising. Mertus is particularly cognisant of the problems with this approach to conflict mediation and her position bears a striking resemblance to Gadamerian hermeneutics; she demonstrates the need for us to try and understand the truth, whatever that may be, from other perspectives and how the Truth has come to be framed in such a way:

Conflict resolution experts who insist on putting seven X’s and seven Y’s in a room and having them slug it out until they come to a compromise are asking people to alter their Truths. Yet Truths cannot be compromised. They are integral to our identity. We must hear Truths, see them, touch them, but not insist on their immediate transformation. Only time can change the perception of experience and shape the telling of myths. Outsiders who demand an immediate retelling are perceived as illegitimate; any reshaping must come from within.¹⁷⁴

¹⁷¹ Steinar Bryn: ‘Engaging the “Other”’: The Nansen Dialogue Network in the Balkans’, <http://www.peoplebuildingpeace.org/thestories/print.php?id=127&typ=theme>

¹⁷² *ibid.*

¹⁷³ *ibid.* See Ingrid Vik, 2005: *Dialogue in Practice: Nansen-dialogue network and activities in the West Balkans*, Helsinki Committee for Human Rights in Bosnia and Herzegovina

¹⁷⁴ Mertus, 1999, p.3

To borrow the words of Steinar Bryn, the director of the Democracy, Human Rights, and Peaceful Conflict Resolution project at the Nansen Academy, ‘Dialogue did not fail in Kosovo. Dialogue had just never been properly tried.’¹⁷⁵ In the context of dialogue initiated at the international level, to develop Bryn’s point one step further, it may be that whilst dialogue did fail in Kosovo, it did so *precisely because* it had never been properly tried.

Initiatives taken by other groups within Kosovar and Serb society might also have been profitably supported by the international community rather than largely ignored. Chapter 1 demonstrated the significant presence of and potential inherent in the non-violent resistance movement in Kosovo as well as the missed opportunities for civic, dialogic and political engagement on the part of the international community. ICG notes that in January 1998, Belgrade’s ‘Appeal of the Fifty Association’, a right-wing intellectual group, appealed to Kosovar intellectuals to work together to achieve a settlement outside the ordinary party and regime channels. Other Serb groups who attempted to cross the ethnic border and work with Kosovars included the Humanitarian Law Foundation, the Soros Foundation, the Belgrade Circle, Helsinki Committee, the Forum for Ethnic Relations, while on the Kosovar side, there was Veton Surroi, the editor of *Koha Ditore* and a respected intellectual, Gazmend Pula, the head of the Helsinki Committee for Human Rights in Kosovo, and Shkelzen Maliqi, the former director of the Open Society Institute’s Pristina Office.¹⁷⁶ Whilst these actors could often only meet safely at internationally-organised conferences, one action the international community could have taken would be to encourage the occurrence of these conferences. Areas where increased contacts might have been encouraged and facilitated both by states and NGOs include support for education and health provision; for emerging civil society actors; for independent media, and for the Kosovar student movement.¹⁷⁷ These political opportunities are particularly important in context of the lack of engagement with them by the international community *and* the strong justificatory argument of last resort offered in support of NATO’s intervention.

The distinction Young draws between power and violence and her application of this Arendtian distinction to the question of military intervention is helpful for two

¹⁷⁵ Bryn, ‘Engaging the “Other”’

¹⁷⁶ *Kosovo Spring*, 1998, p.34-5; See Troebst (1998) for other examples of inter-ethnic attempts at dialogue between 1992-1998.

¹⁷⁷ *Kosovo Spring*, 1998, p.52-3

reasons. Firstly, drawing on Arendt, the concept of power differs greatly from the Weberian assumption, which informs most international relations theory, that power is dominance and sovereign control over territory and people. Power in Arendt's understanding:

establishes and maintains institutions, that is, regulated and settled means of cooperating to bring about collective ends. It has its basis in the consent and support of those who abide by, live according to, and interpret rules and institutions to bring about new collective ends.¹⁷⁸

Secondly, if we accept this different understanding of power, then arguing that military intervention is a moral duty in certain cases raises a number of problems. These problems are by no means new or original, however, so it is useful to look at them in the light of a collective understanding of the purpose of power and the communicative framework presented in this thesis. As Young points out:

If those who call for making war on human-rights violators think thereby that they are bringing power to bear on the situation that will positively change relationships, produce new institutions of cooperation, restore routines in which people can safely carry out collective activities of production, distribution, administration, regulation, and play, they are almost certainly mistaken.¹⁷⁹

Certainly, the experience of post-conflict Kosovo has demonstrated that violence did little to repair relationships or institutions.

Young's argument that violence should not be legitimised (through institutions, covenants or laws), as this leaves it open to abuse in a variety of ways, but rather must be justified, has clear parallels with the desire voiced here to reject institutionalised terms and conditions for humanitarian intervention. Young argues that violence must be justified on a case-by-case basis within the limits of only general rules expressing circumstances where specific agents may consider violence can be justified. Such justification assumes a normative and consequentialist aspect; that the use of violence will prevent a greater harm. One way in which it can be justified is in accordance with the discourse theory of justification presented in this thesis which not only focuses on the process leading up to intervention, but also enables us to comment on the quality of the intervention in terms of its consequences in relation to justifications offered. Consequences alone may not legitimise or delegitimise a particular intervention, but their consideration allows an assessment to take place in terms of the opportunities

¹⁷⁸ Young, from Chatterjee and Scheid (eds), 2003, p.254

¹⁷⁹ *ibid.* p.258

opened up or closed off for further dialogue as a result. Strategic actions can both open up and close off opportunities for dialogue. Post-intervention conflict resolution and the development of lasting peace require that opportunities for dialogue are facilitated by intervention, not that ethnic/societal divisions should be further entrenched as a result of intervention.

One theme has kept returning throughout this work and that is the continuing tension present between the concepts of the universal and the particular. Chapter 2 saw the suggestion that it might be undesirable to transcend this tension, a sentiment that has become embedded in this work through the concepts of discourse and reflective judgement discussed in Chapters 3 and 4. Sznajder has articulated the relationship between these concepts in a way that is fruitful for understanding the kind of cosmopolitan orientation embodied by this version of good international citizenship. He suggests that the difficulties experienced by Jewish intellectuals in remembering and positioning the Holocaust in relation to the dual concepts of their particular Jewish status and the modern universal concepts of human rights – ‘their inability to give up either their universalistic dreams or their national identity – were not merely an indecisiveness born of trauma and exile. These difficulties were not only matters of subjective concern but are directly relevant to cosmopolitan theory and praxis.’¹⁸⁰ Universal maxims such as ‘we should save the innocents’ are merely pious because they contain no element of the personal: no one acts upon them until ‘they are mixed with the passion of identity; the feeling that you just can’t look yourself in the face if you allow this to happen without doing something.’¹⁸¹

In the need to find the particular in the universal we are drawn back to Honneth’s patterns of recognition, present in the here and now, necessary for recognition of others as well as constitutive to self-understanding. Rather than advocating a top-down or bottom-up approach to cosmopolitanism, this approach seeks to recognise the intertwined nature of our personal identities and the engagement of universal values and morality in everyday life. If this speaks for the location of good international citizenship within the cosmopolitan and communitarian literature first addressed in Chapter 2, then the other core element to good international citizenship

¹⁸⁰ Natan Sznajder, 2007: ‘Hannah Arendt’s Jewish Cosmopolitanism: Between the Universal and the Particular’, *European Journal of Social Theory*, 10(1), p.113

¹⁸¹ *ibid.* p.120

addresses the 'how' and is located in the concepts of communication, legitimacy and judgement.

Reflective judgement and deliberative reason are articulated by Ferrara in ways which meet the conditions laid out above for a cosmopolitan-oriented good international citizenship. Viewed through the language of communicative fairness in Chapter 4, Ferrara considers that our 'reflective endorsement' of what is reasonable begins from our particular self-conception, but is by no means required to remain there. Similar to Arendt's 'enlarged thinking', engagement with and contribution from others through dialogue may alter our self-conception by indicating alternative paths. Reflective judgement becomes the means to decide what is unacceptable to us when considered in relation to the integrity of our identity. Ferrara expands this framework through a discussion of communicative, or deliberative, reason which seeks to find the best solution to the problem at hand within the given context. Thus, it aims to coordinate the actions of a plurality of actors within a given time frame and within a particular context. Its claim to universality is two-fold: it lies in the procedures which guide discourse and, to use Ferrara's phrase, in the 'power of exemplarity: the best solution to the given problem commands assent beyond its original context by virtue of its being recognized as an instance of excellence within its own parameters.'¹⁸² Consequently, it retains a critical and transformative force by encouraging 'a critique not based on principles that transcend who we are *qua* political community but on the authenticity of a modern identity in which we partake *qua* free and equal citizens respecting each other.'¹⁸³

It is, perhaps, fitting to draw on and adapt Campbell's conclusions on Bosnia to Kosovo in closing, arguing that 'the international community's response, informed as it is by theorizations concerning territory and identity drawn from a broadly defined realist discourse, has furthered the violence and would not be difficult to improve upon.'¹⁸⁴ This indicates that the dilemmas over humanitarian intervention, in part at least, do result from inadequate communicative practices and a lack of reflexivity and recognition of the need for intersubjectivity. A dialogic approach has demonstrated ways in which we can understand legitimacy and, consequently, humanitarian intervention, in the case of Kosovo. Such an approach seeks to mediate and not close down the relationship between our 'responsibility to act' and our 'responsibility to

¹⁸² Ferrara, 2007, p62

¹⁸³ *ibid.* p.61

¹⁸⁴ Campbell, 1998a, p.241

otherness'. By arguing that those affected by the policies and decisions of a state have a right to take part in deliberation over those policies and decisions, a revised understanding of good international citizenship attempts to contribute to a normative construction of international relations by seeking to influence ways in which we understand and participate in processes of legitimacy and justification which are key to the global debates surrounding humanitarian intervention, ethics and the use of force.

Appendix 1 - A summary of the UN Security Council resolutions¹⁸⁵

Resolution 1160 was adopted on 31 March 1998 under Chapter VII of the UN Charter, by a vote of 14 in favour to none against, with 1 abstention (China). It established an arms embargo on the FRY, including Kosovo, and banned the sale or supply of arms and all related material. A Sanctions Committee was established with responsibility for monitoring the ban, examining information concerning violations and recommending appropriate measures in response. The Council urged all parties to enter ‘without preconditions into a meaningful dialogue on political status issues’¹⁸⁶ and requested the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia to begin gathering information relating to the violence in Kosovo which might fall within its jurisdiction.

Resolution 1199 was adopted on 23 September 1998 under Chapter VII with fourteen in favour and one abstention (China). It reaffirms the sovereignty and territorial integrity of the FRY, calls for the cessation of all action by the security forces affecting the civilian population and orders the withdrawal of security units used for civilian repression. It requires the FRY to facilitate the safe return of refugees and IDPs and to allow unimpeded access for humanitarian organizations and aid; to enable effective international monitoring in Kosovo and to make rapid progress towards a clear timetable for dialogue. It insists that the Kosovo Albanian leadership condemns all terrorist action; it reminds states of their obligations concerning the prohibitions imposed by resolution 1160 and, it ‘Decides, should the concrete measures demanded in this resolution and resolution 1160 (1998) not be taken, to consider further action and additional measures to maintain or restore peace and stability in the region.’

Resolution 1203, adopted on 24 October, 1998 under Chapter VII, repeats the terms of 1160 and 1199, endorsed the Holbrooke agreement signed in October and notes the commitment of the FRY to complete negotiations on a full settlement by 2 November.

Resolution 1239, adopted 14 May 1999, addresses the humanitarian relief efforts being undertaken, calls for further aid and declares the right of all refugees and displaced persons to return safely to their homes.

¹⁸⁵ S/RES/1160 (1998); S/RES/1199 (1998); S/RES/1203 (1998); S/RES/1239 (1999); S/RES/1244 (1999)

¹⁸⁶ S/1998/223

Resolution 1244, adopted 10 June 1999 under Chapter VII, agrees and endorses the peace terms agreed on to end the war and provides a mandate for the deployment, under United Nations auspices, of both international civil and security presences.

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