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Foreword

First, let me say thank you for the opportunity to write a foreword for the latest issue of the *Paterson Review*, a journal with which *Diplomat & International Canada* has had a partnership for five years. It's been our pleasure to host the online version of the journal, which is in the business of encouraging academic discussion among graduate students of international relations, and which is full of important words from our country's next great minds, many of whom I expect *Diplomat* magazine will call on for contributions in the coming years.

For observers of international affairs, the recent election was frustrating indeed. Foreign policy and Canada's place in the world simply didn't register as national issues – though they presumably registered strongly, for some voters, as personal issues. In the campaign itself, though, Canada's economy, coalitions past and present and massage parlour visits took precedence. Even the country's all-important relationship with the U.S. — given the inherent complexities of such things as the negotiation of a common "perimeter border" — barely merited a peep. Nor did such things as Canada's pending trade agreements (including a comprehensive free-trade deal with the European Union).

And yet what Canada does internationally — through diplomacy, defence, and development — matters. It expresses our fundamental national interests on the international stage, specifically our dedication to humanitarian goals, democracy, equality, justice and the rule of law. And, lest we questioned whether democracy was for everyone, the sweep of uprisings in the Middle East had served to solidify its Churchillian status as "the worst form of government, except for all those other forms that have been tried from time to time."

While many have mourned Canada's seeming dwindling importance in the world, the premise went unexplored in the campaign. While sewing a Canadian flag on the knapsack when traveling abroad still acts as reasonable currency for goodwill, Canada has changed its foreign-policy mind on a number of important issues. The flag, in other words, may now articulate different values than it did in the past.

Canada's reputation indeed may have taken a beating in the early years of the 21st Century – according to some critics. Perhaps most significant was our loss of a rotating seat on the United Nations' Security Council to Germany, and more disconcerting, Portugal, the European Union's latest financial headache and bailout contender. Canadian diplomats thought they had enough votes to win the seat but when all was said and done, many countries that had whispered their support ended up having a change of heart.

On the other hand, Canada's failed Security Council bid may also reflect one of the dilemmas of foreign policy-making — that principles and interests may be inherently incompatible. To that effect, some have argued that Canada lost the Security Council seat solely on the basis of its unequivocal support for Israel, a principled position.

In its commitments abroad, Canada's contribution to UN peacekeeping has fallen to 51st place among contributing countries, taking a place behind Bangladesh, Togo and Fiji. On the other hand, Canada has made a remarkable commitment to the restoration of Afghanistan, both in our military contribution, our economic assistance and the improvements we've helped to make in the lives of the Afghan people. Indeed, Canada paid preciously in the loss of more than 155 lives, more than any other country in the world (relative to population).

But while official Canada may be moving ahead, standing still or losing its place, public policy expert David Eaves argues that young Canadians are moving forward

and forging their own paths on the world stage. His thinking — which he first laid out in a report entitled *From Middle to Model Power* for an organization that strove to engage young Canadians on the country's public policy debates — is that while the country as a whole "may seem adrift, as individuals, Canadians are more effectively and successfully engaged than ever."

Now, a few years after that report was first published, his thoughts remain relevant. He says he thinks in attracting young people, the Department of Foreign Affairs and International Trade has an increasingly competitive environment in which to work. "There are so many places to engage in the 'abroad,' where you can do values-based work, get involved at the forefront of issues and have some greater freedom of action."

So maybe that's it. Maybe Canada's place in the world can be shaped in both official and unofficial ways while still building a good national reputation. And maybe unleashing the power of our young citizenry is a good way to start. Sew that flag on your bag and then lead by example.

Jennifer Campbell
Editor-in-Chief
Diplomat & International Canada

Letter from the Editors

The world has reached a crossroads; globalization has contributed to the interconnectedness of humans surpassing national borders. In turn, international politics have become more intricate and complex. The world has the ability to pool its knowledge and resources and collectively address issues and dilemmas that touch all areas of the globe. In an increasingly interdependent world, state and non-state actors must contend with a nearly infinite number of policy issues and debates that cut across traditionally stand-alone issue areas. It is inappropriate to continue to look at the world simply through the lens of politics or economics. Our interconnected world demands that practitioners are sensitive to the myriad dimensions of any international policy problem, and that nothing occurs in a vacuum in this third age of globalization. Thus, contributing to international affairs policy discussions and discourse is vital to the development of well-crafted and effective policies that govern the world. These thoughts are highlighted to emphasize the importance of encouraging dialogue among students at the graduate level. We are the upcoming architects of policies, processes, structures and frameworks that set precedents for generations to come.

We are proud to present the 11th Volume of the Paterson Review, a student-run academic journal focused on policy-relevant issues and research. With hopes of garnering work touching on an array of global issues, the Paterson Review publishes exceptional academic discussions and empirical research in the following subject areas of international affairs: conflict analysis, development studies, international finance, international trade policy, human security and global governance. This year's publication was one of our most competitive, with 40 submissions from across North America and Europe, whereby seven papers were selected for publication by graduate students from some of the most renowned graduate policy schools in Canada.

As the Paterson Review continues to evolve, concurrently its selection, peer review and editorial process has become increasingly rigorous. This review process has three distinct phases. First, a blind review is conducted to select a list of publishable submissions. The blind review process consists of roughly two months worth of very thorough discussions on every submission. If selected, the articles are then submitted to an academically qualified expert in the subject matter for evaluation. Once the expert reviewers deem the top papers empirically sound, the successful articles are put through a scrupulous editing process by the Paterson Review editorial staff.

Philippe Mineau begins the 11th Volume with an in-depth discussion on the proliferation of private labeling standards associated with the protection of the environment, and offers several policy options to reduce the negative effect of private eco-standards on trade. Diego Silva challenges academic education in international development by noting that North America is home to many academic programs in International Development Studies, and asks why these types of programs are scarce in Latin America. Todd MacDonald, Mallory Mroz, and Archana Pandya, discuss the methodological challenges of conducting rigorous human rights reporting in politically unstable and insecure environments by analyzing the methodology used by Human Rights Watch in that organization's 2009 report, "Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo." Keyvan Abedi examines the role of amnesty laws in response to the Algerian Civil War of the 1990s, and argues that amnesty laws were an appropriate policy tool to end the conflict. Louise Mimnagh investigates Canada's values and interests when participating in international negotiations by analyzing European and Canadian support for the United Nations Declaration on the Rights of Indigenous Peoples. Martin Vihrenov Manolov examines a particular niche in the political analysis of European integration,

whereby the existence of a "permissive consensus" will be examined as a descriptor for public support for the European integration project. Finally, Ruth Stephen examines how mediator bias and leverage interact to affect mediation success, which is supported by the case analysis of the Falklands/Malvinas conflict and the 1975 Israeli-Arab disengagement agreement.

Since 2007, the Paterson Review has been published in hard-copy format and is circulated to international affairs and public policy schools around the world. The journal is also available online through Diplomat & International Canada magazine at www.diplomatonline.com. As of last year, Library and Archives Canada now carries copies of the Paterson Review, another mark of the growth and expansion of the journal attributable to former Editor-in-Chief, Tiffanie Tri.

We would like to express our sincere appreciation to all those who contributed to the 11th Volume: the expert reviewers, contributing editors, blind reviewers, line editors and the designer who dedicated their time and expertise to this publication; to the authors for their significant contributions to the journal; to the staff at the Norman Paterson School of International Affairs (NPSIA) for their ongoing support; to Genevieve Leroux and Norean Shepherd for their administrative support; to Diplomat & International Canada for their continued partnership; and to our sponsors, the Centre for Security and Defence Studies and NPSIA. The success and advancement of this journal would not be possible without your continued support.

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1 GREEN IS GOOD BUT WHO CAN KEEP TRACK? ADDRESSING THE NON-TARIFF RELATED TRADE BARRIER ASSOCIATED WITH THE PROLIFERATION OF PRIVATE ECO-LABELS AND STANDARDS

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ABSTRACT

The proliferation of private standards, particularly related to requirements associated with the protection of the environment, has been identified by the World Trade Organization (WTO) as creating an unnecessary barrier to trade. This barrier negatively affects producers in developing countries, especially those turning to more sustainable practices. This issue has been raised and studied by the WTO Committee on Sanitary and Phytosanitary Measures and the Committee on Trade and Environment, and solutions are within reach. There are simple ways to reduce the negative impact of private eco-standards on trade, including drafting guidelines for the practical implementation of a transparency mechanism mandated by the WTO surrounding private labels and standards. This mechanism would use existing government Enquiry Points, which are already mandated by two WTO agreements, to provide information on domestic private standards to producers world-wide.

INTRODUCTION

In response to growing environmental and sustainability concerns, consumers are increasingly turning to "green" or environmentally-friendly goods – products which are purported to be grown or manufactured in a way which does not negatively affect the environment or the welfare of future generations. Recently, the World Trade Organization (WTO) Committee on Sanitary and Phytosanitary Measures (SPS Committee) and the Committee on Trade and Environment (CTE Committee) identified the proliferation of private standards, particularly related to requirements associated with the protection of the environment (to be referred to as eco-standards), as creating an unnecessary barrier to trade, affecting mostly developing countries (WTO 2009a; WTO 2010a). These countries could benefit the most from an increase in trade, especially trade in goods which do not harm the environment in which they were produced. This paper will address ways in which to reduce the negative effect of private eco-standards on trade, including drafting guidelines for the practical implementation of the Agreement on Sanitary and Phytosanitary Measures Article 13 as well as for the Agreement on Technical Barriers to Trade Article 4.1.

This trade policy question is significant for all exporters of agricultural products and manufactured goods, but is of particular significance to developing countries, many of whom have indicated in a recent survey conducted by the SPS Committee that compliance with private eco-standards is a necessary prerequisite for exporting to a large number of developed country markets (WTO 2009a, 4). Trade policy aficionados will undoubtedly note that eco-standards actually fall outside the mandate of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), which focuses on limiting the spread of disease and pests, and protecting the health of consumers from contaminants, toxins and risks associated with additives.[1] Yet the issue was first raised in the SPS Committee because to exporters, there is no difference between standards falling under the SPS mandate and standards based on environmental or social objectives, and many private standards include food safety as well as other requirements (WTO 2010a).

This issue is of particular importance to the current round of negotiations at the WTO, as Paragraph 16 of the Doha Ministerial Declaration calls for negotiations "to reduce or as appropriate eliminate ... non-tariff barriers, in particular on products of export interest to developing countries," while Paragraph 31(iii) stipulates that negotiations be held "on the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods." (WTO 2001a) From another angle, the negotiations on "trade and the environment" in the Doha Development Agenda include

"the elimination of tariffs and non tariff barriers on environmental goods and services" as one of its main three themes of negotiation.

BACKGROUND

The SPS Agreement and the Agreement on Technical Barriers to Trade (TBT Agreement) establish the sovereign right of member states to set and enforce domestic standards in order to protect the health and safety of their citizens, but only in a manner which does not perpetuate protectionism by creating unnecessary and unjustifiable barriers to trade. Members are thus required to support their mandatory standards with scientific principles, to harmonize them with international standards (where they exist), and to provide equivalent and non-discriminatory measures between members. Most importantly, members are bound to transparency by publishing notices, a mechanism which has been found to work well for mandatory labelling (WTO 2002, 2).

Yet mandatory standards enforced by domestic governments are not the only standards that affect trade. Consumers should now be familiar with voluntary environmental labelling schemes, such as the EcoLogo, organic certification, the Marine Stewardship Council, GlobalGAP, and Fairtrade, for example. More recently, retailers Wal-Mart, Best Buy (in the U.S.) and Asda (in Europe), together with electronics suppliers Dell, HP, Intel, and Toshiba have created the "Sustainability Consortium," a new label initially to be applied to consumer electronics (Environmental Leader 2010), which may soon be extended to all consumer goods (given the other partners involved in the project, which include Pepsico, Coca-Cola, Disney, and Colgate-PalmOlive, amongst others).[2]

While in theory these privately-run standards remain voluntary, in reality, because they are often associated with large retailer chains (such as Wal-Mart in America, and Tesco in Europe), not being certified under these private schemes means giving up access to a large portion of the consumer market.

This is an important market for producers in developing countries. The "environmental" or "green goods" sector has grown rapidly in the last decade, reaching an annual net worth of U.S. $700 billion. This sector also enjoys a high growth rate: over 14 percent between 1996 and 2000, including 7 to 8 percent of annual growth in developing countries. Most future growth in this sector will occur in developing countries, but it will also generate growth in export revenues for developed countries (Mathew and Córdoba 2009, 386).

Environmental labels and standards are important not only in terms of market access and economic development. They are also important for efforts to transition toward a more sustainable society because they provide a good compromise between Multilateral Environmental Agreements (MEAs), which often suffer from a lack of political support and lack effective enforcement regimes, and state-enforced trade restrictions, which can lead to inter-state conflicts. This is despite the fact that environmental labels and standards do not fully internalize environmental shadow costs (Melser and Robertson 2005). Ultimately, not all costs, including hard-to-measure environmental or social damage, are included in the price of eco-labelled products. Eco-labels are but one of many tools to be used in the transition toward an economy that fully internalizes social and environmental damage, toward a society that values sustainability at its core.

In the TBT Agreement, the Code of Good Practice was created in order to try to bind private standard-setting bodies to internationally-developed standards, where applicable, such as those elaborated by the International Standards Organization. The TBT Agreement Article 4.1 urges members to "take such reasonable measures as may be available to them to ensure that ... non-governmental standardizing bodies within their territories ... accept and comply with this Code of Good Practice." (TBT Agreement)[3]

Similarly, Article 13 of the SPS Agreement places the obligation on members to "take such reasonable measures as may be available to them to ensure that non governmental entities within their territories ... comply with the relevant provisions of this Agreement." (SPS Agreement) These obligations became increasingly significant in the last decade due to the increasing demand for consumer information and a growing movement towards consumer activism (WTO 2007). In response, there has been a large increase in the number of private standards and labelling schemes, which now number in the thousands (WTO 2009b, 2).

These obligations in the SPS and TBT Agreements should in theory limit private labelling schemes from creating unnecessary barriers to trade, however a majority of private sector labelling schemes do not accept or comply with the Code of Good Practice, in part because Members do not consider the wording of the TBT Agreement, Article 4, to be legally binding (Inside Trade 2007).

In recent SPS Committee meetings, as well as in recent CTE Committee meetings, several members (largely developing countries) expressed concern at the increase in private standards, which are in practice becoming impediments for reaching markets in developed countries, because they are in effect creating market access difficulties (WTO 2010b). Developing countries are no longer able to keep up with the growing number of private schemes (WTO 2009c; WTO 2009d), where producers are seriously affected by the informational requirement as well as the cost of being certified under private schemes (Ndhlukula and Du Plessis 2009, 2). Thus the proliferation of private standards has created a trade barrier that affects the developing world, restricting the flow of capital to developing countries (Charnovitz 2008). Due to the size and growth potential of the green goods market, private standards also affect economies in transition and to a lesser extent, developed countries. Seeing as private standards reduce the potential flow of environmentally-friendly exports, these standards also curtail access to environmentally-friendly goods in domestic markets.

For example, farmers in Brazil have to comply with 115 requirements for the Integrated Fruit Production (PIF) program, 214 requirements for GlobalGAP, and 70 requirements for organic certification; some requirements are common to all three schemes, but many are not, as each certification has a different focus. More specifically, one may focus on product properties, such as residue levels, while another certification may focus on production systems. Fair trade for example takes an entirely different track than the others, focusing on small-scale producers, labour conditions, and a minimum price for producers. On top of these varying requirements, monitoring requirements also differ. For example, PIF-certified farmers must be monitored three times a year, twice a year for GlobalGAP, and once a year for organic and Fair trade certified farmers (Grote 2009, 13). Thus certifying the same product under many different schemes (which may be required in order to gain access to many different markets) is both costly and information intensive; keeping track of all the requirements can be a logistical nightmare, creating a barrier to entry into markets, especially for small-scale producers.

Consequently the SPS Committee agreed to address the issue using a three-pronged approach, including consultations via survey, an invitation for members to submit other relevant information, and by continuing to hold informal information sessions attended by appropriate representatives of bodies involved in the setting of private standards (WTO 2008b) – these sessions had been ongoing since 2006, and had been used to bring to their attention some of the concerns raised in the SPS Committee as well as in updating the Committee on latest developments (WTO 2010a).

The survey of members, including other relevant information, showed that private standard requirements for agricultural goods often exceed those of national and international standards, especially in their requirements for lower maximum

residue limits and in their more detailed and prescriptive operational procedures. Most respondents identified the multiplicity of private schemes, as well as the lack of harmonization between them, as the central difficulty in dealing with private standards. Most importantly, the survey highlighted the problem caused by the lack of transparency in what each certification scheme requires of producers (WTO 2009a).

SUBSTANTIVE SOLUTIONS

There is a strong economic rationale for promoting harmonization between different environmental standards (Bonsi, Hammett, and Smith 2008). The European Community is already taking steps to harmonize its environmental standard and labelling schemes; it is currently instituting a system of double-certification, where products under national schemes automatically qualify for the Europe-wide scheme and vice-versa (Commission of the European Communities 2008).

Harmonization also deals with the problem of "meaningless" labels such as those created and enforced solely by a single producer. A recent theoretical analysis has shown that when there are multiple eco-labels, and some of them do not accurately reflect the high or low environmental quality of the product, the environmental quality of all firms is diminished while prices remain high (Ben Youssef and Abderrazak 2009, 20). This further justifies the need for more stringent regulation of private standards.

The SPS Committee specifically identified the lack of transparency as playing an important part in the trade barrier, and this provides a hook with which to address this issue. If certification bodies were made to provide the requirements of their schemes to domestic governments, the technical information provided would enable domestic governments to link and define equivalent schemes in their countries. Government assistance in providing equivalency between domestic-private standards would make it easier for exporters to be certified thus increasing the amount of certified goods in domestic markets.

Some analysts propose a framework to identify several conditions for transparency to be an effective policy instrument: it must serve a specific purpose, it must specify who provides the information, it must have a defined scope, it must create clear benefits to those who provide the information, and it must have a useful way to aggregate and present this information (Collins-Williams and Wolfe 2010, 555–6). These conditions would apply to information provided by private certification schemes to national governments. The "clear benefits" appear on several fronts: not only would domestic consumers have access to more environmentally-friendly goods, but the certification bodies themselves would also benefit from increased transparency. When more producers are certified, the label becomes more prevalent in domestic markets, and thus more recognized by consumers. This is important for the certification bodies, as it furthers the environmental goals that prompted the creation of the label in the first place.

WTO members are already obligated to provide SPS and TBT enquiry points, so that producers may obtain information on mandatory standards. Extending this service to also cover private standards, would not severely strain the existing infrastructure, mainly considering the role of the internet in conveying complex information to users world-wide.

This demand-side approach contrasts existing initiatives, such as South Africa's Integrated Crop Management Assessment System, a supply-side effort to compare all private standards side by side in a single checklist (WTO 2009a, 5). Other developing countries, such as Namibia, are also considering this type of initiative in order to inform and empower their domestic producers (Ndhlukula and Du Plessis 2009, 4). This could be an effective response to the problem posed by the multiplicity of private standards, yet it necessitates action on the part of developing countries; in order

to generalize the benefits of harmonization, the solution should be institutionalized in the WTO, and it must involve developed members given their substantially larger administrative capacity, rather than putting the onus solely on developing countries.

On the one hand, providing information to increase transparency can create favourable outcomes when the providers as well as the users share common objectives (such as increasing trade in environmental goods). On the other hand, if the users of the information are unable to change the situation, it can be an inefficient process (Weiss 2002, 233–4). This is why developing countries are also seeking a stronger voice in the setting of the standards themselves, in order to create a process of accommodation between standard-setters and producers that take into account local conditions and production practices (Manoj 2004, 72).

STATE OF PLAY IN THE WTO

The SPS Committee has acknowledged in its last two reports that private standards are a serious concern for developing country members, especially South and Central American states including Brazil, Paraguay, Uruguay, Ecuador, and Saint Vincent and the Grenadines (WTO 2008c; WTO 2009d). The negotiating group on market access has also endorsed measures, including the Enhanced Integrated Framework for Least Developed Countries and other aid-for-trade initiatives, designed to enable developing members to meet technical standards and address other non-tariff measures, as well as procedures to facilitate the resolution of non-tariff barriers (WTO 2008d).

Switzerland, the U.K. and other European countries have repeatedly announced their support for more work on harmonization. An increase in the amount of private standard-related information available to foreign producers that leads to an increase in trade in environmentally-friendly goods benefits their domestic markets as well as producers in developing countries (WTO 2007; WTO 2009e). Overall, member submissions have focused on a need for greater harmonization with international standards, a greater capacity for mutual recognition between schemes, more involvement of producers in standard-setting, greater accessibility for producers (both in terms of information and costs), better communication of the rationale for standards, and greater compliance with the TBT Code of Good Practice (WTO 2001b; Bonsi, Hammett, and Smith 2008; WTO 2002; WTO 2003; WTO 2009b).

India, in addition to other developing country members, has been reluctant to open the door to non product-related process and production method (PPM) standards in the WTO (Mathew and Córdoba 2009, 383). PPM standards differentiate between like goods on the basis of how the good was produced (for example in an environmentally-friendly fashion or not), and not on the basis of the actual physical characteristics of the goods. This reservation stems from the perceived danger that once introduced into the trading system, non-product related PPM standards could also be used to discriminate between products on the basis of consumer perception and social objectives (Manoj 2004, 83–84). For example, if standards based on the enforcement of a minimum wage (akin to the Fair trade requirements) were to be introduced across the trading system, this could lead to an erosion of certain manufacturing countries' competitive advantage.

There is also the fear that accepting this narrower definition of 'like products' could lead to a higher incidence of mandatory eco-standards as opposed to voluntary ones (United Nations Environment Program 2006, 32). Thus, India has been reluctant to engage in the discussion over eco-standards, and maintains the view that private standards that differentiate between products on the basis of non-product related PPM- raise serious issues under WTO rules, a view which is shared by other developing countries, such as Saudi Arabia (WTO 2010b).

Yet, as mentioned, the reality is that in recent years *de jure* voluntary standards have become *de facto* mandatory standards in order to access developed

country markets. Thus, the following proposed solution should not in any way be seen to legitimate government-run mandatory standards which discriminate based on non-product related PPMs; it is simply trying to deal with the current reality of the trading system concerning private standards. Nor does this proposal require amending the TBT Agreement text to include non-product related PPMs, something that would be opposed by most if not all members.

Canada has for the greater part stayed out of the debate, owing to its delicate stance on non-product related PPMs. Until 1996, Canada was in favour of non-product related PPMs being specifically and unambiguously accepted as legitimate in the TBT Agreement (WTO 1995), but this changed with the introduction of genetically modified organisms (GMOs) to Canadian agriculture in the 1990s. Subsequently faced with the European Community's moratorium on genetically modified foods and crops, Canada filed a complaint with the WTO dispute settlement process against the European Union, seeking to uphold the strict definition of PPMs, thus making any trade restriction on GMO-produced canola oil contrary to WTO discipline. The complaint was resolved in Canada's favour in 2006 (WTO 2006), yet the moratorium remains, and since then Canada has not taken part in debates surrounding non-product related PPM standards, whether they are private or government-run.

PROPOSED INSTITUTIONAL SOLUTION

The approach taken by the SPS Committee is on the right track; having completed the survey as well as the descriptive report, the SPS Committee is now in a strong position to tackle the problems posed by private standards by suggesting possible actions for both the SPS Committee and the TBT Committee. The issue was partially addressed by a special workshop in July 2009 which involved members of the Food and Agriculture Organization, the Marine Stewardship Council, the International Trade Center, the Organization for Economic Co-operation and Development and the United Nations Economic Commission for Europe. However, an institutional framework involving private standards would be more efficient in the long term than merely holding workshops.

The SPS and TBT committees must first address the lack of transparency associated with private standards; once this has been established, it will naturally follow that harmonization, equivalency and increased consultation with producers will be much easier to implement. These committees must learn from the success of South Africa's Integrated Crop Management Assessment System in providing easy-to-use logistical information on standards to producers, in the form of a single side-by-side checklist.

The SPS Committee and the TBT Committee should establish guidelines for the implementation of SPS Agreement Article 13 and TBT Agreement Article 4.1. These guidelines should bind members to a policy intervention whereby private standard-setting bodies must notify governments of their standard requirements. As a result, members will be actively soliciting information from private standard-setting bodies and aggregating this information at the national enquiry points. National enquiry points, already part of the SPS Agreement and TBT Agreement obligations, currently serve as information portals and contact points, disseminating information on domestic standards. These national enquiry points could also potentially be used to convey information on private standards, as this is not a wide departure from their original function.

The previously noted conditions that are required to make a transparency policy effective are all satisfied in this case. Transparently disseminating private standards serves a specific purpose as it resolves an important trade barrier. Who provides the information should be clearly specified (private standard-setters). Next, the scope of the

information should be clearly identified (the afore-mentioned standard requirements). Further, those who provide the information will benefit from doing so because greater use of a standard by producers means more fees paid to the standard-setters and wider recognition of their label. Finally, the information should be aggregated and presented in a usable fashion, by the existing SPS and TBT Enquiry Points.

Members should also agree on the inclusion of specific trade concerns arising from the application of private standards in both the SPS Committee agenda and the TBT Committee agenda. Thus, members affected by a private standard will be able to voice their concerns in the committees, a first step in determining appropriate courses of action. This last recommendation may prove contentious, however, as many developed countries (including the United States and members of the European Union) have repeatedly stated, WTO rules are generally targeted at state action rather than purely private conduct, and so the discussion should remain focused on government-enforced standards. Many developing countries such as Argentina, Colombia, Turkey, and China would disagree (WTO 2010b). Although it was noted in a recent SPS Committee meeting that differences among members as to what the SPS Committee could do on the issue of private standards "reflected differing views on the appropriate role governments should play in private business transactions, not differences in the development status of Members." (WTO 2010c)

Brazil, as part of the MERCOSUR trading group, recently tabled a similar proposal to the one proposed here for the SPS Committee that is specifically intended to establish guidelines for the implementation of SPS Agreement Article 13 and include private standards in the SPS Committee agenda. However, its proposal also included a "mechanism for monitoring of private standards by the SPS Committee: under this mechanism, the Committee would evaluate the consistency of private standards with SPS disciplines." (WTO 2009f) This mechanism is unlikely to yield the desired results, as the TBT and SPS Agreements have no mechanism for imposing obligations on non-governmental standard-setting bodies (the WTO binds its members, i.e. domestic governments, not private entities). Only public intervention by member states would be liable to TBT and SPS obligations; therefore it is more useful to focus on institutionalizing domestic transparency and increased disclosure by private standard-setters.

This solution does not seek to bind private organizations to WTO obligations, nor does it burden member states with the task of regulating private standard-setting organizations in their jurisdictions. Using enquiry points that have already been established under the TBT and SPS Agreements, information on private standards will be collected and aggregated for general use. Not only will this directly benefit exporters in all countries, it will also make the future task of harmonization, finding equivalency between the standards and coordinating requirements with producers much easier, should this become a trade imperative.

The proliferation of private standards, especially standards pertaining to environmental objectives, has created a significant trade barrier, hampering the transition of developing countries toward sustainability. Yet this could easily become an example of successful global cooperation within the WTO. Mandating a transparency mechanism surrounding private standards would not entail a severely contentious political debate, and it may prove an important first step toward greater harmonization and ease of access for producers.

NOTES

1. Annex A, paragraph 1 of the SPS Agreement states four objectives:
(a) to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
(b) to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;
(c) to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; and
(d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.
2. A full list of participating companies is available from:
http://www.sustainabilityconsortium.org/.
3. All WTO legal documents are accessible online: http://www.wto.org/english/docs_e/legal_e/legal_e.htm

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2 TEACHING YOU HOW TO DEVELOP THEM: ANALYZING THE ABSENCE OF DEVELOPMENT STUDIES IN THE DEVELOPING WORLD

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ABSTRACT

While in North America there are many academic programs in International Development Studies (IDS), this paper finds that in Latin America, these types of programs are scarce. A possible explanation for this phenomenon is that development programs in the North and in the South follow a strategy that I have called "teaching you how to develop them." According to this strategy, people from the North see themselves as agents of development of those in the South, who lack the benefits of their life in the North. In a similar way, policy makers from the South see themselves as agents of development for rural populations who lack the benefits of living in an urban environment. Consequently, the subject of analysis of academic programs in development ends up being an externalized group of actors lumped together into one category: "the other." This category of analysis differs for scholars from the North and the South. While "the other" in IDS would be considered the Third World, "the other" in the development programs from the South (DPS) would constitute the rural inhabitant. A second possibility is that DPS follow the shifts within the development discourse that take place in the North. According to this perspective, IDS engages with the whole picture of development. Over the years, IDS gathers and helps construct and deconstruct different ideas and strategies for development. As opposed to IDS, DPS only engage with fragments of the whole picture. DPS concentrates on different topic areas (i.e. agriculture, environment, and regional economics) according to the relative importance of each topic within the northern discourse in a specific period of time. Data was collected to identify the main programs of development that are taught in Latin America and their year of emergence. The results are then analyzed in order to evaluate the two hypothesis presented above.

INTRODUCTION

The academic programs in Development Studies offered by the universities in the global North and South[1] show significant discrepancies. In the North, it is possible to find a great number of programs in Development Studies at the undergraduate and graduate level. In the academies of the South, Development Studies do not have a place of their own. Today in Canada, twenty-one universities offer undergraduate programs in IDS; there are six master's programs in this field and thirteen programs which have a concentration in IDS (International Development Studies Network 2008). Meanwhile, the top one hundred universities of Latin America, located in thirteen countries, offer only six programs in development studies, at both the undergraduate and graduate levels. As recognized by Haan, "it is probably fair to say that development-studies knowledge has continued to be concentrated in the North." (2009, 69) Countries in Latin America have lower levels of GDP, health coverage, education, gender equality and higher levels of fertility, income inequality and insecurity than developed countries. Yet, as opposed to the universities of most developed countries, universities in South America do not seem to be engaged in the interdisciplinary study of these issues through the field of Development Studies. Thus, the topic at hand is relevant for various reasons.

First, it is concerned with factors that prevent developing countries from studying what many northern experts have theorized (within IDS) as ways to improve the situation in the developing world. If the development project is legitimate, scholars and students from developing countries should be involved in the discussions of development, adopting, criticizing and producing new ideas that enrich the current bulk of knowledge. The opinions of those who have had to live close to poverty, war and inefficient health and educational services would certainly provide insight for understanding how to overcome "underdevelopment." Therefore, the problem of concern in the following research directly addresses a barrier of participatory development. If developing countries are not involved in the discussions of the development project, how can they actively participate

in it? Second, the research question challenges the legitimacy of development itself. The "underdeveloped" may conceive of development in ways that differ from those ideas accepted in IDS. In this sense, people from the South may not identify with the places, labels and meanings given to them in this area of study. If development is a Northern project, the research question highlights a visible way in which development discourse, knowledge, and thus power, is controlled by the countries of the North. Why do Latin-American universities lack programs in Development Studies?

In this paper I apply two forms of analyses to address this question. The first type analysis consists of documenting the nature of development as a strategy coming from North to the South, and from urban to rural areas. The second form of analysis includes the examination of historical trends of the different development programs that can be found in the South. Following the first portion of the analysis, it can be argued that development programs in the North and South follow a strategy that I have coined "teaching you how to develop them." According to this strategy, people from the North see themselves as agents of development for those in the South who lack the benefits of their life in the North. In a similar way, policymakers from the South see themselves as agents of development for those lacking the benefits offered by their urban environment. Consequently, the subject of analysis of academic programs in development ends up being an externalized group of actors lumped together into one category: "the other." The presence of such a strategy (teaching you how to develop them), helps provide a better understanding of the absence of IDS programs in the universities of Latin America.

In the second section of the following analysis, it is observed that the emergence of different DPS is related to the change of priorities in the development discourse that takes place in the North. According to this perspective, IDS engages with all the facets of development. Over the years, it gathers and helps construct and deconstruct the different ideas and strategies for development. In contrast, DPS engage with particular areas of development studies. These programs concentrate on different topic areas (i.e. agriculture, environment, and regional economics) according to their relative importance within the Northern discourse in a specific period of time.

These two forms of analysis described above lead to two hypotheses that are evaluated in this paper. First, I present a historical account of the birth of development as a Western project and the beginning of Development Studies as a field of research. From this section it is possible to identify the subject of study in IDS. Second, after explaining the strategy "teaching you how to develop them," I compare the subject of study of IDS to that of the different programs in development found in the top one hundred universities of Latin America. Next, in order to evaluate the second hypothesis, I explore how the development discourse has changed over the years. I analyze if the year of appearance of the different types of academic programs in development found in Latin America is related to the timing of the shifts in the development discourse of the North.

TEACHING YOU HOW TO DEVELOP THE THIRD WORLD? THE BIRTH AND NATURE OF DEVELOPMENT STUDIES

According to Shaw, "the idea of development was invented in the post-Second World War to describe the process by which "backward" countries would "catch up" with the industrialized world—courtesy of its assistance." (2004, 17) In accordance with this project, IDS was born as a strategy that crystallized various discourses focusing on the Third World. This very discourse was to be created by the developed countries;

"all that was important in the economic, social, political and cultural life of the poor countries entered into this new strategy." (Escobar 1985, 385) Pletsch situates the origin of the concept of Third World at the beginning of the Cold War period (1981, 565). Those who were not part of the U.S. (First World) or the U.S.S.R (Second World) blocks were normalized as the underdeveloped people of the Third World. This classification was later extended in order to include eastern European countries.

The term "underdeveloped" was popularized by President Truman´s famous speech in 1948 that introduced a fourth point to America's foreign policy. Point Four (as I will refer to it) turned out to be merely a list of good intentions towards the people of the Third World indicating what should be done without making any real commitments (Rist 2002, 72). What is important about the introduction of this concept is that it changed the way development was perceived in the First World. The idea of development, which was originally an intransitive phenomenon that simply happens, became a process sensitive to policy with a defined direction (from underdevelopment to development). "No longer was it just a question of things developing; now it was possible to develop a region." (Rist 2002, 73)

Point Four and the birth of development as a transitive process were effective components of America's foreign policy. After the Second World War, the United States was in the process of consolidating itself as the world's super power. Decolonization was essential for this purpose as it undermined the power of European countries and opened new potential markets and zones of influence for the United States. The dichotomy 'developed/underdeveloped' was very effective in discrediting colonialism. As opposed to the colonizer/colonized relationship, in the new dichotomy "every State was equal de jure…underdeveloped and developed were members of a single family, the one might be lagging a little behind the other, but they could always hope to catch up." (Rist 2002, 73-74) While justifying the dismantling of colonial empires, the development discourse allowed the U.S. to deploy a new anti-colonial imperialism. In the new rhetoric, intervention was not only justified but also considered a necessity in order to help those "lagging behind" to close the gap. According to Escobar, "it was only a matter of adopting the appropriate strategy to do it, of setting in motion the right forces to ensure progress and global happiness." (1985, 385) The factors that would set in motion the project of IDS were coming together. The subject of study had been created, normalized, and naturalized under a specific category.

The problematic of analysis was also established. The subject of study was characterized by a lack of modernity, which was in stark contrast to the culture of the First World. Also, it was already possible to consider a plan of action since development was later understood as a transitive process. Development action was justified for the sake of welfare as a positive intervention, as opposed to the previous "civilizing" projects of the colonial era. Finally, the discourse was ready to be legitimized by the academy. This last step—the professionalization of development—"allowed experts to remove from the political realm problems which would otherwise be political, and to recast them into the apparently more neutral realm of science…it would lead in a few years to the consolidation of Development Studies in most major universities of the developed world." (Escobar 1985, 387) From this perspective, the field of Development Studies consolidated as a discourse that legitimizes interventions from the North to the South. IDS represents a Western strategy produced "as a means of effecting domination" over those normalized as the underdeveloped people of the Third World (Escobar 1985, 377). In this sense, although "there are diverse views concerning what Development Studies is or should be," the subject of study appears to be clear: IDS is commonly "seen to be concerned with processes of change in so-called Third World or developing countries." (Kothary 2005, 3) As stated by Loxley, "IDS focuses on developing countries *per se*." (2004, 25) Moreover, the subjects of development of Todaro and Smith´s book

on development are the "Low Developed Countries...of Africa, Asia and Latin America, as well as the ´transition´ countries of eastern Europe and the former Soviet Union," enclosing the same countries as the "Third World" classification (2009, preface vii).

TEACHING YOU HOW TO DEVELOP THEM

Even if Development Studies programs are scarce in Latin America, there are various types of programs related to development. In the top one hundred universities of the region, Rural Development Studies is the most common of such programs, but there are also others in Sustainable and Environmental Development, Regional Development, Economic Development and a few programs in Gender and Development. Who is the main subject of development in DPS? The strong presence of programs in Rural Development in Latin American suggests the rural inhabitant (peasants, indigenous communities) as a plausible answer to this question. In addition, the fact that a great percentage of the population in developing countries live in rural areas could be reflected in the importance given by other programs to the rural inhabitant (Todaro and Schmidt 2009, 64).[2]

If the latter assumption were proven to be plausible, the strategy "teaching you how to develop them" would explain, to a great extent, the absence of IDS programs in Latin America. According to this strategy, a division is created between those developed and those lacking development. When this division is made, a process of normalization occurs. The subject of development starts to be seen as part of a homogenous group whose members share common ailments such as: poverty, backwardness and ignorance. While this process facilitates the objectification of the subject of study, it also reinforces the identity of the agent of development through common and often positive characteristics such as: rich, advanced and scientific. As the subject of development is portrayed through its absences, which are those characteristics considered necessary by the agent of development, the aim of Development Studies becomes the fixing of what the other lacks (Mitchel, 2002; Gasche, 2002; Mohanty, 2003; Platsche, 1981).

There are two important implications: first, because the agents of development have already achieved development in their own eyes, they claim to know what is good for the other. Second, there is a separation between the subject of study and the researchers. The researchers are not part of the subject of study; they are rather promoting development. In IDS, the scholars from the North try to see the world from a Southern perspective in order to find solutions to the problems of a group to which they do not belong, i.e. the "Third World". In DPS, the scholars and policymakers from the developing world (and thus, subjects of study in IDS) do not consider themselves subjects of development. Instead, they define the other as the rural inhabitant. In this way, there is an internal replication in the South of the agent-subject dynamic that is found between Northern experts and Southern subjects of development. This would explain why it is difficult to find programs of IDS in the South, as this would require the agents of development to become part of the subject of study themselves.

In this section of the paper, I evaluate the answer given to the question "who is the subject of development in DPS?" while comparing it to the question "who is the subject of development in IDS?" which was explored in the previous section. In order to analyze whether there is an identifiable subject of development in DPS, I first identify the academic programs related to development based on the top one hundred universities in Latin America (Consejo Superior de Investigaciones Cientificas 2011). I classify the academic programs into different categories according to their name (keywords: "development") and their content.[3] Using the second classification, I will analyze the main and most common subjects taught across universities in the categories with the largest number of programs. I also present a brief summary of the common objective of each category of programs, as shown on the universities´ websites. To make sense

of the results, I will draw on the history (origins and evolution of the program) and literature of these disciplines (founding ideas, key people).

Teaching you how to develop the peasants? The target population in DPS

The findings of the research are summarized in Table 1; seventy programs related to development studies are being taught within developing country universities. These programs are found in eleven of the thirteen countries considered. Cuba and Puerto Rico are the only countries that in spite of having universities considered in the ranking, do not offer any academic programs geared towards development studies. Brazilian and Mexican universities offer the highest number of programs, with twenty-seven and twelve, respectively. These programs can be classified by name into ten categories of development programs as shown here below in Table 1. Under this classification, the category with the highest number of programs is Rural Development (thirteen programs), followed closely by Sustainable Development (eleven programs), and Regional Development (ten programs).

Table 1 – DPS in Latin America by Name

	DS	Economic	Local	Sustainable	Environmental	Regional	Rural	Agricultural	Gender	Public Policy	**Total**
Argentina			2			1	1				4
Brazil	1	5	1	3	5	5	5			2	27
Chile	1						1				3
Colombia	1				1		3				5
Costa Rica				1							1
Jamaica		2							3		5
Mexico			2	5	2	1	1	1			12
Peru				1	1	1			1		4
Uruguay	1						1				2
Venezuela	1			1	1	1	1	1		1	7
Total	5	7	5	11	10	10	13	2	4	3	70

When classifying these programs by their content, we can merge Regional and Local Development and Rural and Agricultural Development into two single categories. Table 2 illustrates these changes. We are left with eight categories of which Rural Development and Local and Regional Development have the highest amount of programs (fifteen each), followed by Sustainable Development (eleven programs) and Environmental Development (ten programs). Together, these categories are comprised of fifty-one of the seventy programs (73 percent) related to development found in Latin America. Who is the target population of these programs?

Table 2 – DPS in Latin America by Content

	DS	Economic	Sustainable	Environmental	L&RD	Rural	Gender	Public Policy	**Total**
Argentina					3	1			4
Brazil	1	5	3	5	6	5		2	27
Chile	1				1	1			3
Colombia	1			1		3			5
Costa Rica			1						1
Jamaica		2					3		5
Mexico			5	2	3	2			12
Peru			1	1	1		1		4
Uruguay	1					1			2
Venezuela	1		1	1	1	2		1	7
Total	5	7	11	10	15	15	4	3	70

Rural Development

As we will see, the objectives of the programs in Rural and Agricultural Development considered in this paper are in accordance with the objectives and target population that were set by the World Bank under the strategy of Rural Development. The *Universidad Veracruzana* (Mexico) summarizes the average objective of a Rural Development program in our sample:

> "[t]he objective of the program is to educate experts with the technical capacity necessary to transform and manage the resources present in the rural sector. The program should give its students the knowledge to promote environmentally sustainable projects aimed at increasing the income levels of the actors involved. Graduates of the programs are expected to encourage higher productivity levels taking advantage of the comparative advantages of the sector in order to increase its productivity and the welfare of the rural population." (Universidad Veracruzana 2011)

The technical knowledge is often emphasized because eight of the programs are offered by faculties of Agronomy and Agricultural Engineering. When did this strategy start? Who is its target population? According to Martinussen, in the 1950s development research was "mainly concerned with agriculture as a source of the economic surplus, labour and raw materials required for industrial development." (1997, 129) The rural sector was viewed merely as an area rich in land and other natural resources that could be mobilized for the sake of industrialization. The importance of the rural area rested on its capacity to feed the industries and urban populations with raw materials and food. However, viewing the countryside as the source of resources available for extraction, without considering its progress as an essential factor for the reproduction of those resources, could end up threatening the sector´s capacity to sustain industrialization. "An increasing number of development researchers came to the conclusion that, unless the sector itself was developed, agriculture would sooner or later become a serious obstacle to both industrial and aggregate growth." (Martinussen 1997, 129) The mobilization of the labour force that came from the countryside – reflected in massive waves of migration from the rural areas to the cities – revealed the limited capacity of the metropolis to absorb the expanding labor force. Theorists who acknowledged these phenomena "began to perceive growth and development of agriculture as primary targets." (Martinussen 1997, 129)

Nevertheless, the rural inhabitant was not the target of these efforts. Rural residents were perceived more as an obstacle than as a driving force to development.

Peasants were conceived as irrational actors who contented themselves with producing for their own subsistence. Peasants "did not recognize and exploit the opportunities available to them for increasing their production and incomes." (Martinussen 1997, 129) In 1964, T.W Schultz built a strong critique against this common conception. According to him, "there are comparatively few significant inefficiencies in the allocation of the factors of production in traditional agriculture." (Schultz 1964, 37) Further, in his view, peasants carefully "allocate scarce resources and achieve the highest possible efficiency under the given technological conditions." (Matinussen 1997, 136) In order to increment production, it was therefore necessary to introduce new technologies and ensure that peasants had access to them. Following this reasoning, agriculture related research and development efforts were mainly driven by large international centers, transnational corporations and international organizations, under a strategy called "the green revolution."[4]

Aimed at increasing agricultural output, the green revolution introduced genetically modified seeds with a higher productivity yield per area. Agricultural production increased substantially where the strategy was applied. Yet, new crops were more vulnerable to plant diseases, insect attacks and required more water than traditional crops. This is considered to be, by Schultz, one of the main biases introduced by the green revolution: "[b]ecause the new varieties are only high yielding when combined with irrigation, extensive use of fertilizers, plant protection, etc., this form of cultivation assumes that the farmers either have resources to buy these necessary inputs or have access to credit." (Martinussen 1997, 141) Therefore, the green revolution benefited more the large-scale farmers than anyone else.

According to Escobar, Rural Development was "conceived by experts as a strategy to correct the biases of the green revolution," as a "way of bringing the green revolution to small farmers." (1995, 155) Robert McNamara (president of the World Bank at the time) presented this new strategy at the 1973 annual meeting of the board of governors of the organization, held in Nairobi. The problem was presented to the board as a high number of small farmers without the capacity to contribute significantly to agricultural production. The commitment was that those with the necessary knowledge – the developed countries – were going to take action to solve this problem as a means to reduce global poverty. The goal was to increase the rate of agricultural production growth of small farms to 5 percent by 1985.

Agricultural development had come to be Rural Development. Although the emphasis was still directed towards the growth of agricultural production, its main goal was presented to be the reduction of rural poverty as opposed to industrialization. Therefore the rural inhabitant appears as the target of development. As the World Bank stated this goal, "Rural Development is a strategy designed to improve the economic and social life of a specific group of people—the rural poor: it involves extending the benefits of development to the poorest among those who seek a livelihood in rural areas." (World Bank 1975, 3)

Regional and Local Development

The great number of master's programs in Regional Development offered by Latin-American universities reflects the influence of this strategy in the region. Most of them are aimed at a specific geographical area. For example, the master's program in Local Development of the *Universidade Federal do Pará* (Brazil) is directed to the Amazonia, the master's program of the *Universidad de los Andes Merida* (Venezuela) is directed to the "region trujillana" of Venezuela and the *Universidade Regional de Blumenau* (Brazil) has as an important objective to "adopt a new vision of development that takes into account the specificities of the different regions." (Universidade de Blumenau 2009) The majority of these masters programs offer courses in regional economic theory and

regional planning; some of them offer courses in urban, as well as rural development. Most of the programs give high importance to the process of decentralization and offer programs in this thematic. For example, the graduate program offered by the *Universidad Nacional Mayor de San Marcos* (Peru) assesses that the students graduating from this course should be able to "effectively support the decentralization processes and the modernization of the state." (Universidad Nacional Mayor de San Marcos 2011)

When did this strategy start? Who is its target population? According to the World Bank, "[t]he purpose of Local Economic Development (LED) is to build up the economic capacity of a local area to improve its economic future and the quality of life for all. It is a process by which public, business and non-governmental sector partners work collectively to create better conditions for economic growth and employment generation." (Swinburn, Goga, and Murphy 2004, 1) The purely economic focus of this definition is not a coincidence. Regional and Local Development is the result of a resurgence in the 1980s of the region as a unit of study within Western social science (Storper 1997, 3). In the period between the Second World War and the 1980s, the region had already been carefully studied in regional economics, development economics and economic geography. Some of the most important theories of regional economics were developed by Western scholars: Boudeville's (1966) growth pole theory, Myrdal's (1944) theory of circular cumulative causation, Hirschman's (1958) theory of unbalanced growth, and Douglass C. North's (1955) export based theory. Nevertheless, "they strongly influenced the regional economic planning of the countries of the periphery, especially in Latin-America." (Ferreira and da Cruz, 2009) These theories are still taught today as regional economic development theories in some of the universities considered in this paper. Regional economic theories, however, were "not considered to have any interest for main stream western social science." (Storper 1997, 3) In addition, in Regional Development the region was not considered as a fundamental unit of social life (like markets), or as a fundamental motor process of it (like technology). Rather, the region was treated as an outcome of deeper political-economic processes (Storper 1997, 3). In spite of this, growth differences across regions caught the attention of social scientists in the early 1980s. While many regions remained in poverty, others, such as the Silicon Valley in California, Emilia Romagna in Italy, Baden Wuttermberg in Germany or the M4 corridor in England, were powerful stories of regional economic success (DiGiovanna 1996, 4-8; MacLeod 2002, 808). When western social scientists asked themselves why some forms of production appeared in some regions and not in others, the region finally gained credibility as a unit of study in social science: "the debate over regionalization... for the first time has been taken seriously by social scientists interested in such central topics as technological and organizational innovation and national competitive advantage in a world economy." (Storper 1997, 4)

Why should Regional Development be considered over National Development? Neoliberal ideas consider that large-scale government bureaucracies are too rigid and too slow in order to respond effectively to the rapidly changing global economy (Beer Haughton, and Maude 2003, 5). In this sense, national governments do not have the capacity to counter the impacts of globalization: "[i]t is abundantly clear that the urban and regional crisis in developing countries have reached the breaking point and cannot be managed by the countries themselves." (Chatterji and Kaizhong 1997, 6) The problem is the opposite for regional actors. According to Beer, Haughton, and Maude, locally based agencies can respond to economic opportunities as they arise. They are best positioned to identify and act upon the critical impediments to growth, mobilize community resources to support development initiatives, build social capital within the local business community, and engage in strategic planning for the future of their region. In this sense, "[a]ny region, any city, any town... has the capacity to improve its economy if it can get mobilized." (Beer, Haughton, and Maude 2003, 5) Nevertheless,

recognition of these facts is not enough. Decentralization is necessary so that regions actually have the legal capacity and responsibility to make decisions and take actions for their local development (Martinussen 1997, 210).

Regional Development was born in the North as an urban-focused discipline. It does not make a clear distinction between the researcher and the target population of development. As a result, it is easy to find Regional Development research directed towards developed countries.[5] However, this is not consistent with the hypothesis "teaching you how to develop them." Even so, the usefulness of this discipline lies mostly in developing countries. These countries are agricultural to a great extent and their cities suffer the pressures of urban explosion worsened by rural migration. For this reason, Regional Development should be focused in rural areas (Chatterji and Kaizhong 1997, 3). Although Regional Development in the South might be inclined towards the rural sector, the discipline's target of development is the region itself, not the peasant. Thus, "teaching you how to develop them" is not a valid hypothesis in the case of Regional Development Studies.[6]

Sustainable vs Environmental Development

The masters programs in Sustainable Development found in Latin America are focused on production, business and policy/project management. For example, the *Universidad de Guadalajara* (Mexico) offers a program in Tourism and Sustainable Development, the *Universidad Catolica del Peru* (Peru) has a program in Bio-commerce and Sustainable Development, and the *Universidade de Brasília* (Brazil) offers a course called "Business and Environmental Economics." The *Tecnólogico de Monterrey* (Mexico) reflects the emphasis towards management. The university wants its graduates to have the capacity to plan, design and manage an organization and public policies (Tecnologico de Monterrey. 2011). On the other hand, the programs in Environmental Development promote different alternatives to development with a focus on the environment (which includes society and nature). These programs are highly interdisciplinary; they are not production-oriented and the emphasis on management is not as strong as that of programs in Sustainable Development.

When did these strategies start? Who is their target population? Both initiatives have common origins. They are the result of a series of meetings and reports conceived between 1968 and 1987. Caldwell suggests that concerns about the environment go back to 1968 when both the Paris Biosphere Conference and the Washington, DC conference on the Ecological Aspects of International Development were held (1984, 299). In 1972, the United Nations held a conference in Stockholm with "human environment" as the topic of concern. This conference is "usually credited with popularizing the concept of sustainable development." (Barbier 1987, 88) It was the first significant international meeting highlighting the risks human beings were bringing upon their own sustainability by harming their environment. In general, the concern was that few countries were taking adequate account of environmental considerations when making policy or planning development. They were not allocating or regulating uses of their living resources so as to ensure that they were environmentally appropriate and sustainable. Many governments did not have the political will, the adequate legislation, or the financial and technical resources necessary to carry out the conservation measures required (International Union for Conservation of Nature and Natural Resources 1980, 2, 4).

In 1975, the International Environmental Workshop was held in Belgrade by the United Nations Educational, Scientific, and Cultural Organization (UNESCO), and produced what is known as the Belgrade Charter. The Charter called for a new type

of development that would recognize the interrelation between human society and the environment. It argued that "no country should grow or develop at the expense of another nation and that the consumption of no individual should be increased at the expense of other individuals." (UNESCO 1975, 1) The workshop emphasized reconciling our understanding of quality of life and "happiness" with the environment, instead of merely basing it on GDP growth.

From this perspective, economic development is in conflict with nature. Society, as part of the environment, should react by looking for alternative paths of development that do not only focus on economic outcomes: "[t]hose policies aimed at maximizing economic output without regard to its consequences on society and on the resources available for improving the quality of life must be questioned." (UNESCO 1975, 2) Instead, development should encompass "developing social and individual well-being in harmony with the biophysical and man-made environment." (UNESCO 1975, 3) The Belgrade Charter is in accordance with the principles of environmental thought in which the environmental development programs are based.

Sustainable Development would appear to reconcile economic growth and environmental protection. This new strategy identified the source of environmental degradation in such a way that the environment and the goals of development no longer appeared to be in conflict (Bartelmus 1986, 13). According to Balterlmus, the basic premise of Sustainable Development is that "many environmental problems in developing countries originate from the lack of development, that is, from the struggle to overcome extreme conditions of poverty." (1986, 18) In their struggle to survive, poor people take actions that end up harming the environment. They "often have no choice but to opt for immediate economic benefits at the expense of the long run sustainability of their livelihoods." (Barbier 1987, 89) For this reason "putting people first, and enabling them to meet their needs, can be, then, to reduce these pressures, to reduce degradation, and to maintain potentials for sustainable agriculture and sustainable development at higher levels of productivity." (Chambers 1986, 7) Therefore, the focus must be on the poor people of the world who are forced to deplete environmental resources in order to survive. Sustainable Development should help them acquire means in which they can provide for themselves and increase their material standard of living without harming the environment. This will, in fact, reduce their need to degrade the environment, also minimizing cultural disruption and social instability (Barbier 1987, 89). Development and the environment are once again reconciled: "Sustainable Development would make possible the eradication of poverty and the protection of the environment in one single feat of Western rationality." (Escobar 1995, 192)

In 1987, Sustainable Development became a plan of action with the Brundtland commission report entitled *Our Common Future*: "Our Common Future launched to the world the strategy of sustainable development as the great alternative for the end of the century and the beginning of the next." (Escobar 1995, 192) Nevertheless, "it was not until the UN Conference for Environment and Development or the Earth Summit in Rio de Janeiro in 1992 that the concept (sustainable development) was thrust into centre stage of the global public policy debate." (Paul 2003, 2) The focus of these conferences was the reduction of poverty and the management of natural resources. As the science in charge of allocating scarce resources, economics found a fertile place in this new discipline; this was a marriage that is well reflected in the masters programs found in Latin America. In Environmental Development, the target is the environment itself. This includes society (both rural and urban) as well as nature. Moreover, there is no separation between the researcher and the subject of development. As opposed to this, Sustainable Development's main target population is the "poor" who, having no option, end up involved in practices that are not environmentally friendly. However it is not the urban poor who are mainly addressed by this strategy; it has to be the type of poor

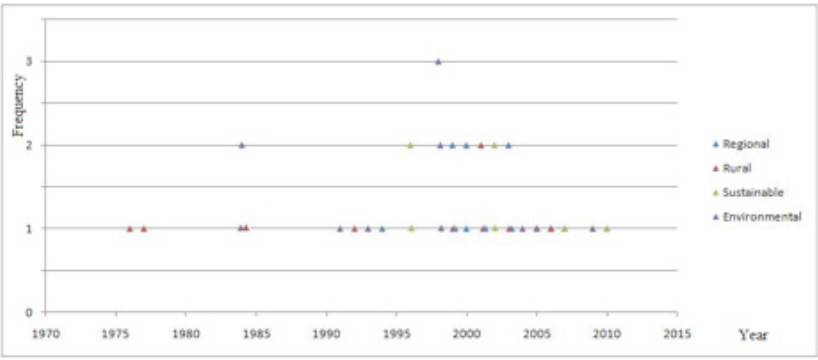
that lives close to nature. As discussed above in this paper, the only actor fulfilling these criteria in the developing world is the rural inhabitant. The greatest number of people situated under the poverty line in these countries lives in the rural sector where, by definition, they are perceived as having a close relationship with nature. Therefore, while "teaching you how to develop them" does not hold for Environmental Development programs, it is compatible with the programs in Sustainable Development.

FOLLOWING THE SHIFTS OF THE DEVELOPMENT DISCOURSE

As shown in the previous section, different client groups of development appear in the twentieth century: "the inclusion of the peasantry was the first instance in which a new client group was created en masse for the apparatus....in 1980s, the objectifying gaze was turned not to people but to nature—or, rather, the environment—resulting in the by now in/famous discourse of sustainable development." (Escobar 1995, 155) In addition to this, *the Region* appears as a client of development with Regional Economics though it only gained strength within the social sciences in the 1980s. Do these shifts of the development discourse coincide with the year of appearance of these types of programs in Latin America?

In this section, I draw from the historical analysis presented in the previous section in order to identify the years of appearance of each one of the strategies of development. Subsequently, I present the research findings concerning the years of introduction of the graduate programs related to development offered in the region. The data was gathered by exploring the websites of the development programs previously identified. The programs that do not make this information available on their websites were contacted by email and/or telephone. In total, out of sixty-four masters programs identified, it was possible to obtain this information for about fourty-four programs. Figure 1 shows the results for the four categories with the highest number of programs.

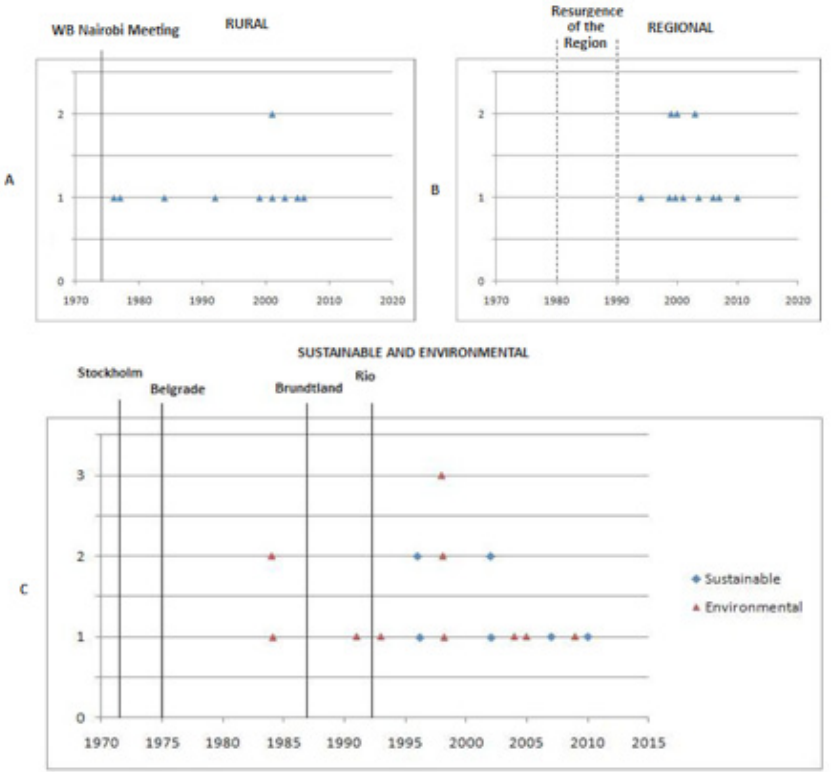
Figure 1 – Frequency of Development Programs in Latin America by Category



The oldest programs of this sample are programs in Rural Development. These programs date from 1976-77, shortly after the World Bank Nairobi meeting, where this strategy was launched as a development objective (see Panel A, Figure 2). In 1985 the first programs in Environmental Development started to appear, thirteen years after the Stockholm conference and ten years after the Belgrade conference (see Panel C, Figure 2). According to the information available, until 1994, only programs in Rural and Environmental Development were being offered in Latin America (apart from

one program in economic development). Sustainable Development programs began to appear in 1996. No program of this type appeared before the Brundtland commission report (1987) or the UN Conference on Environment and Development, in Rio de Janeiro (1992). (Panel C, Figure 2) Regional Development programs started to appear in 1994 and have become very popular ever since. The timing of this strategy is also compatible with the revival of regional economics in the 1980s (Panel B, Figure 2).

Figure 2 – Emergence of Development Programs in Latin America by year



CONCLUSIONS

The hypothesis, *teaching you how to develop them*, was evaluated based on four main categories of DPS: Rural, Regional, Sustainable and Environmental Development. In two of these four cases, the hypothesis was found to be reasonable. While Rural Development and Sustainable Development programs have the rural inhabitant as their main subject of development, Regional and Environmental Development studies have different targets. This means that in twenty-six of fifty-one cases analyzed (51 percent), the hypothesis was not proven wrong. Considering that particular categories were omitted from the analysis, Development Studies and Economic Development programs, can be assumed to follow this hypothesis in this paper. Thus, the strength of the hypothesis could be greater. Since the research takes the form of a comparative case

study, with each category of programs as a case, it does not give definitive conclusions about the hypothesis. Nevertheless, this paper proves the relevance of the hypothesis, which opens the possibility for further studies that go beyond Latin America. In this way, the research could be operationalized quantitatively with stronger conclusions.

The second hypothesis showed that DPS in Latin America do not contradict the shifts of the Northern development discourse. The oldest program in each of the four categories appeared only after the strategy to which it responded was popularized in the North. Rural Development programs appeared shortly after the World Bank meeting in Nairobi (1973). Environmental Development Programs appeared after the UN International Environmental Workshop held in Belgrade (1975). Sustainable Development Programs were introduced after the Brundtland Report (1987) and the UN Conference on Environment and Development held in Rio (1992). Finally, Regional Development Programs became popular after the resurgence of Regional Economics in the 1980s. Today, the four categories of programs coexist, which could indicate that the strategies are not mutually exclusive. Instead, they complement each others' discourse. For this reason it is possible to find Rural and Sustainable Development programs directed to a specific region, while Regional and Rural Development programs place emphasis on sustainability.

Although IDS programs are very scarce in Latin America, scholars from that region are aware of the development strategies produced in the North; they study them and they teach them. Nevertheless, they do not simply adopt the development discourses produced for the Third World: "even these knowledges are far from being just applied without substantial modification, appropriations, and subversions." (Escobar 1995, 224) Latin American scholars combine and transform these strategies; they rename the actors involved and appropriate other discourses that were not created for the developing world (such as Regional Development). In so doing, in some cases they replicate the agent-subject dynamic of IDS. In other cases, Latin American scholars consider it appropiate to introduce more complex strategies, where the classical concept of development is put into question (such as environmental development). The influence of the development discourse in DPS is strong. However it does not totally explain what developing countries conceive of as development.

Finally, it is important to assert that the database created to conduct this study could be of great use to Latin American universities teaching programs related to development. As it centralizes information about the different programs being taught in the region, this database could strengthen the dialogue and academic discussion between people involved in similar programs. Canada already counts on a website that centralizes the most important information about IDS programs in the country (International Development Studies Network). The same could be done for DPS in Latin America, using the database built in this paper as a springboard for future analysis in this field. Universities in the region could be encouraged to enrich such groundwork in the future.

NOTES

1. The terms North/South are used in this paper in reference to those countries generally considered developed/developing according to the Western material perception of progress.
2. Nearly 30% of the Latin American population is rural. In ten Latin American countries (Haití, Costa Rica, Dominican Republic, Paraguay, Panamá, Nicaragua, honduras, Guatemala, El Salvador, Ecuador, Bolivia) rural populations are over 40% (CEPAL 1999).
3. Taking into account the presentations, objectives, and curriculums of the programs as shown on the universities´ websites.
4. For the origins of the Green Revolution see: http://www.agbioworld.org/biotech-info/topics/borlaug/borlauggreen.html
5. One example of such studies is the comparison by Andrew Beer, Graham Haughton and Alaric Maudeof regional development experiences in the U.S., Australia, England and Northern Ireland.
6. Some may think the region could be considered as the other of the nation. Nevertheless, since members of the region are at the same time members of the nation, this analysis would not go in accordance with the agent-subject dynamic implied in definition of otherness used throughout this paper or the strategy"teaching you how to develop them."

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3 CHALLENGES OF HUMAN RIGHTS REPORTING: ASSESSING THE METHODOLOGICAL RIGOUR OF A HUMAN RIGHTS WATCH REPORT

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ABSTRACT

This paper evaluates the 2009 Human Rights Watch (HRW) report, "Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo." Given HRW's credible reputation and ability to influence policy decisions, there is an expectation of sound policy recommendations and transparent methodology. Notwithstanding HRW's current credibility, the authors of this study conclude that HRW's advocacy work could benefit from implementing two organizational policies. The first recommendation would be for HRW to thoroughly disclose its research methodology to its audience. Second, it is important for HRW to avoid making claims and policy recommendations based on evidence and findings presented in its reports, which cannot be supported.

INTRODUCTION

Human rights groups seek to report on global human rights violations in a timely manner, but face a number of challenges due to the nature of this work. For example, these advocacy groups must strike a delicate balance between disseminating timely reports about global human rights violations and conducting methodologically sound research. Yet this challenge is one that all human rights organizations face, lest they lose their credibility. Indeed, the legitimacy of these institutions depends "upon their reputation as providers of objective expertise, as neutral third parties whose information and claims can be trusted." (Price 2003, 589) According to HRW Executive Director Kenneth Roth, for example, the organization's moral capital is a "finite resource that can dissipate rapidly if not grounded in [HRW's] methodological strength" (Roth 2004, 65).

With the aim of promoting better methods in human rights research, this article evaluates the methodological strength of one specific HRW report. The July 2009 report, "Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of the Congo" (hereinafter "the 2009 Report" or "the Report") will be examined. This particular report investigates the extent to which women and girls suffered acts of sexual violence perpetrated by the *Forces Armées de la République Démocratique du Congo* (FARDC), attempts to stop this abuse, and how these efforts have been ineffective. This report was purposefully selected as it examines wartime sexual violence and allows for greater insight into the methodological rigour of HRW's reporting of sexual violence and other human rights violations occurring in conflict zones.

The 2009 Report is assessed on the following basis: methodology, the strategy used for addressing ethical concerns, and the evidence base for its claims and recommendations. Mindful that policy-oriented organizations must deal with strict timeframes and finite resources, the following recommendations are proposed to HRW in order to strengthen this particular report. First, HRW should consider fully disclosing the research methodology used within their reports or on the HRW website to the fullest practical and ethical extent . Second, HRW should avoid claims and recommendations that are not supported by the evidence presented. By incorporating these measures, HRW could enhance its moral capital and boost its reputation as a leading advocate for human rights.

CONTEXT

The debate in the academic literature is divided into two categories: one concerned with whom and with what frequency HRW reports on, the other on the quality of the reports themselves. The first category is reflected in NGO Monitor's 2005 report on HRW's activities in the Middle East. This report uses a scale to measure and compare HRW

coverage on Middle Eastern countries, and concludes that HRW weighted its focus more heavily on Israel rather than Egypt, Iran, Saudi Arabia, the Palestinian Authority, Syria and Libya (NGO Monitor 2005, 3). Likewise, a more extensive study conducted by Ron and Ramos quantitatively analyzed data from every HRW report listed in its publications catalog from 1980 to 2000. They found that larger countries such as China, India, and the United States received more attention than smaller countries that suffered from human rights abuses. Ron and Ramos (2009) hypothesized that HRW responds to the potential influence and visibility in hopes of increasing public attention. The authors conclude that "whichever side of the fence you fall on, there's no denying it: There's a politics to human rights." (Ron and Ramos 2009) Whether or not one finds this "politics" morally questionable is a matter of ethics.

In contrast, the second category of dialogue concerned with HRW is mainly related to matters of social science research methodology. One example of this genre is Manfred H. Wiegandt's critical remarks on the 1995 Human Rights Watch/Helsinki Report on xenophobia in Germany. Wiegandt's article noted what he thought was an excessive comparison between German xenophobia and the genocides in Rwanda and the former Yugoslavia (1996, 835) and questioned the HRW report's policy recommendations (Ibid, 836-839). Furthermore, a second study conducted by Ballesteros et al. and the *Centro de Recursos para el Análisis de Conflictos*, assessed the quantitative information in HRW reports in Colombia from 1988 to 2004. The authors found that the reports could have been strengthened by specifying sources, defining variables, and improving the continuity of coverage with the selection of statistics varying from year to year (Ballesteros et al. 2007, 2).

Situated within this second category, our study contributes to the dialogue surrounding the research methodology of HRW reports. Mindful of the challenges in human rights reporting, our study provides an unprecedented detailed analysis of the methodological rigour of a specific HRW report. As strong supporters of HRW, the authors of this article believe that a failure to uphold certain scientific standards through the use of more rigorous methodology could lead to situations where politics can detract from HRW reports. An example of when questionable research methodology detracts from the findings of a report occurred in 2006 when President George W. Bush dismissed a 2006 Iraq mortality study published in *The Lancet*. President Bush described the methodology of this survey, by Burnham et al., as being "pretty well discredited" (U.S. Department of State 2006). Although some academics agreed that there were methodological flaws in the Burnham et al. study (Johnson et al. 2008; Hicks 2006), the dismissed study took the limelight from reports that could have been more effective in conveying the amount of Iraqi life loss during the Second Gulf War. If HRW and other human rights advocates do not uphold methodological standards, governments and policymakers may have a valid reason to outright reject specific reports. It is with the utmost respect for both the institution and the work of HRW, that this research attempts to shed light on particular reporting styles that could be improved to ultimately strengthen HRW's argument as it challenges the Government of the Democratic Republic of the Congo (DRC) and the FARDC to end abusive practices and respect human rights law.

METHODOLOGICAL ASSESSMENT

One persistent tension in research is between methodological rigour and policy relevance. This so-called "rigour-relevance" trade-off may lead researchers to "forego levels of abstraction and elegance" while conducting research (Nye 2008, 156-157). Given that HRW has carried out its research under time constraints and in a conflict zone, the Report was subjected to inherent and reasonable limitations on methodological rigour. Yet HRW could have increased the Report's credibility by being more transparent about its methodology, limited as it may have been.

Study Population and Respondents

The Report's authors examined one study population: female victims of sexual violence in North and South Kivu in the DRC. The team interviewed five relatives of victims and thirty-one victims of sexual violence from North and South Kivu above the age of twelve. HRW did not use testimonies from victims who could not identify their attacker. Furthermore, HRW interviewed relatives of victims to verify and validate the respondents testimonies.

HRW also interviewed over fifty key informants, including interviews with church representatives and non-governmental organizations (NGOs), staff of international agencies, government officials, military officials, and Congolese lawyers and judges. The researchers also interviewed sixteen members and former members of FARDC's 14th Brigade. These interviews provided information about developments in North and South Kivu, criminal acts committed by members of the 14th Brigade, subsequent legal proceedings, and limitations of the military justice system. Interviews with informants from the 14th Brigade described their living conditions and suggested potential reasons in which soldiers were raping civilians. In addition to these primary sources, the research team consulted various secondary sources, such as reports and documentation from UN agencies and other NGOs to evaluate national and international actions taken to combat sexual violence in the DRC and to support information provided by interviewees.

Sampling Frame and Strategy

The researchers selected the case of the 14th Brigade as an example of the FARDC's human rights abuses. According to the Report, the 14th Brigade was chosen "as an example, not an exceptional case," of soldiers who rape in the DRC and commanders who condone these actions (HRW 2009, 21). The Report notes that the 14th Brigade exemplifies the problems of the FARDC and the challenges in preventing and punishing abuses (HRW 2009, 23). Yet, it is unclear how the 14th Brigade is representative of other FARDC brigades, or whether the prevalence of sexual violence in North and South Kivu is comparable to the rest of the DRC. Indeed, it is possible that North and South Kivu are an extreme case, as they demonstrate unusually high rates of sexual violence. In fact, a 2008 report from the UN Secretary-General describes the situation in North and South Kivu as unstable and a grave humanitarian crisis compared to the rest of the DRC (United Nations 2008, 8). The 14th Brigade may in fact be an extreme and atypical case, rather than one that is representative of the FARDC or the DRC as a whole.

In the 2009 Report, HRW's methods for selecting interviewees are also unclear. Researchers may have pursued any one of many possible options for respondent selection. For example, they may have selected respondents from lists of women who reported having been raped to local or international authorities, or from lists of women attending local health clinics. Many more methods are possible, however HRW provides no details in the 2009 Report.

Methodological Issues

First, the Report does not describe its research design. It does not fully explain the logic and reasoning behind the selection of the 14th Brigade as a case study, thus it is difficult to determine if the findings can be generalized to the FARDC. Moreover, the Report does not explain how victims were selected for interviews. Hence, the widespread nature of sexual violence committed by the 14th Brigade in North and South Kivu is difficult to ascertain.

Second, the Report provides inadequate citations for a number of key informants and secondary sources. It has been determined that, of eighty-three cited

interviews with key informants, only fifty-seven provided sufficient information to determine the authority and legitimacy of the interviewee. These citations provided information about the interviewee's profession, position and details about where the interview was held. Yet the Report presents insufficient information on the authority and legitimacy of the key informants for the remaining twenty-six cited interviews. For example, when citing interviews with "lawyers," it is unclear from the citations if these were Congolese or international, military or civilian lawyers (see Appendix I for a list of all insufficiently described informants). Overall, over 30 percent of cited interviews did not have sufficient information regarding the credibility of the informant. This lack of information undermines the strength of the argument of the Report as a whole.

Although HRW must conceal the identity of its informants for reasons of confidentiality and security, HRW could have provided more information that would demonstrate the informant's credibility without jeopardizing the informant's security or revealing their identity. For instance, as opposed to listing "lawyers" (HRW 2009, 46-48), or "UN Official" (HRW 2009, 21, 45, 32), perhaps HRW could list "senior Congolese criminal lawyers" or "senior UN human rights officials based in the DRC for the past two years." These minor details significantly improve the credibility of the informant while protecting their identity at the same time. In particular, this additional information shows that HRW's informants were relevant professionals, which strengthens the legitimacy of the informant's testimony. Similarly, the 2009 Report cited statistics on the prevalence of sexual violence that were difficult to verify, and cited sources that did not elaborate upon their own methodology (see Appendix II for the problems associated with statistics that are difficult to crosscheck). This assessment found that while HRW cited six different sources of statistics, five of the sources could not be located or were not publicly accessible. The difficulty of finding these sources impedes efforts to verify their reported statistics and evaluate their methodologies. Therefore, approximately 83 percent of the statistics used in this report could not be easily verified which adds to the difficulty of fully evaluating the Report's findings.

Third, the types of interviews used for the Report were not mentioned. For example, the Report does not state if the interviews were semi-structured or close-ended, and provides no information on data collection or analysis techniques. Without these details, it is difficult to evaluate the accuracy of the Report's findings. It is also impossible to determine what questions were asked, whether they were appropriate for collecting accurate information, and whether the findings would be replicable if other researchers were to conduct a similar study.

Finally, the 2009 Report provides no details on the ethnicity, sex, and nationalities of the interviewers and translators. In an ethnically diverse country such as the DRC, the identity of translators and interviewers could potentially cause a respondent bias. Due to the interviews' sensitive subject matter, moreover, the sex of the interviewers and translators could affect respondents' comfort levels quality of information. Nationality may also have played a role, given the DRC's international and post-colonial relations. Thus, HRW missed an opportunity to demonstrate the rigor of its methods by failing to provide this information.

Despite the shortcomings in HRW's citations, the overall challenges of reporting on human rights violations and the unique difficulties of working in the DRC must be acknowledged. First, documenting and disseminating reports of human rights violations in any context can jeopardize the security of the informant, their relatives, and acquaintances. Increased visibility of the abuses could also provoke the perpetrators and may ultimately trigger reprisals. Second, the current situation in the DRC requires particular recognition. In the last fifteen years, the DRC has been the site of armed conflict and clashes; violence against civilians, including looting, rape and summary executions (amongst other human rights violations), and oppression of

political opponents, human rights activists and civil society leaders. Furthermore, the eastern DRC is not only an active conflict zone, but it also has minimal transportation and communications infrastructure, which further complicates research in the field.

In similar vein, any organization documenting human rights violations in an active conflict zone or fragile state must take particular precautions to protect its informants, translators, and other local partners. Nevertheless, the difficulties of conducting field research in the DRC does not preclude HRW from disclosing and publishing its research design and methodology, particularly since these matters are typically completed prior to and following the field research. HRW, thus, still carries the burden of outlining its research methodology and providing accurate references for its cited statistics. Likewise, the security considerations of reporting human rights violations in a conflict zone does not prevent HRW from providing additional details to demonstrate the credibility of the informant without jeopardizing their security. Similar information can be provided to validate the professionalism and legitimacy of translators and other partners. As suggested above, these details can be provided in a manner that strengthens the informants' credibility without putting the safety of these individuals at risk.

Suggestions for Improvement

Given the Report's limited transparency, it is difficult to evaluate the research methods used for this study. HRW could address the concerns highlighted above by providing the following information in the Report:

- the study's research design
- the criteria used in selecting the 14th Brigade as its primary case study
- the type of strategy used to select respondents
- the total number of key informants
- the relevant background information of key informants (without compromising their safety, anonymity and confidentiality)
- the type of interviews conducted and
- the demographic profiles of the research team and the translator

However challenging it may be to conduct time-sensitive research in a conflict zone, HRW should still be obliged to disclose its research methodology more thoroughly.

ETHICAL CONCERNS

Field research with vulnerable populations faces a number of ethical challenges. This section discusses how the HRW research team addressed the following specific ethical concerns in the 2009 Report: 1) Informed consent and vulnerable populations 2) used the 'do no harm' principle and 3) confidentiality, anonymity and data security. Finally, this section will conclude with some recommendations for improvement regarding ethical research processes.

Informed Consent and Vulnerable Populations

Due to the research's sensitive subject matter, particular challenges are involved. For instance, while participating in the research for this report, informants may have discussed incidents that could incriminate other individuals, such as soldiers or commanders, and this might have exposed participants to the risk of reprisal. While the Report notes that respondents "agreed" to participate, it is unclear if HRW disclosed the potential risks of participating in this research to respondents (HRW 2009, 56). HRW's general methodology webpage does not elaborate on this issue (HRW 2008). Informed consent strives to ensure that potential respondents fully understand the risks and possible consequences involved with participating in the research. Yet, children, soldiers

and victims may not have the capacity to fully understand the potential consequences of participating in an interview with an international organization. HRW does not mention if and how it took special precautions to ensure that these vulnerable populations understood these risks.

Moreover, research with children and prisoners require special measures to avoid undue influence from authority figures. The Report notes that no interviews were conducted with "children under the age of twelve" (HRW 2009, 12). However, HRW interviewed at least three respondents who were under the age of eighteen. According to international standards, such as the United Nations Convention on the Rights of the Child, all children under the age of eighteen require special care (Office of the United Nations High Commissioner for Human Rights 1990). Both the Report and HRW's website do not elaborate on any special measures taken when interviewing children. There is also no mention of how informed consent was received from internationally-defined minors. Likewise, the Report does not provide any information on how researchers dealt with incarcerated respondents. For example, the Report cites interviews with convicted soldiers at Bukavu prison, however does not mention how researchers dealt with these individuals, disassociated themselves from prison authorities, or tried to protect them from potential reprisals (HRW 2009, 43). Such information could help ensure that children and prisoners participated in the Report in an informed and voluntary manner (Interagency Advisory Panel of Research Ethics 1998, Chapter 2, Article 4).

'Do No Harm'

The 'do no harm' principle is a research standard that aims to respect human dignity and welfare by minimizing harm to respondents. HRW did not describe how it conducted its interviews in a manner that upheld this principle. Interviews which include having participants recall the experience of sexual violence may leave the participants in a worse state of mind. The onus is on HRW to disclose how it conducted its interviews in a manner that upheld the 'do no harm' standard. Similarly, the Report does not mention whether researchers provided any compensation to respondents in return for their participation.

The potential for re-traumatization is a concern with this type of research. The portion of the HRW webpage which describes its general approach to research methodology states that HRW researchers, in general, "are careful to avoid re-traumatizing people who have suffered serious abuses. They make sure to approach interviewees at the appropriate time and setting and are trained to communicate with sensitivity" (HRW 2008, Paragraph 22). Moreover, the Report states that researchers ensured that victims of sexual violence were safe and comfortable during their interview (HRW 2009, 12). However, HRW does not provide any information about referring respondents to counselling services after the interview.

Confidentiality, Anonymity and Data Security

HRW states that it protects the confidentiality and anonymity of participants (HRW 2008). The former refers to ensuring that the identity of the respondent cannot be derived through the information provided, while the latter refers to not using the respondent's name. HRW asserts its research practices maintain respondent privacy by ensuring that "interviews took place in private" (HRW 2009, 12). Significantly, the Report does not state which procedures it followed to secure the data that was collected from interviews. Given the sensitive nature of the information, respondent safety would be compromised if the data was stolen.

Recommendations for Improvement

Due to the Report's lack of details, it is difficult to evaluate the ethical precautions researchers took while conducting this study. HRW can make this report more transparent by sharing the following information with its readers:

- how informed consent was obtained from vulnerable populations
- if and how the potential participants were informed of the risks involved in participating in the research
- how the 'do no harm' principle was upheld and the ways that HRW addressed the potential for re-traumatization by possibly offering compensation or counseling services to potential participants and
- how the data collected was secured

Owing to the limited information provided about the ethical procedures followed for this research, it would be unsound to suggest other techniques to resolve these concerns. However, the challenge of conducting sensitive research in a conflict zone should not hinder HRW's disclosure of its ethical procedures.

EVIDENCE BASE FOR MAIN CLAIMS AND RECOMMENDATIONS

Main Claims

Overall, the 2009 Report makes four main claims. Two of these four claims are not substantiated by the Report's evidence. First, the Report contends that the 14th Brigade of the FARDC "exemplifies many of the problems of the Congo's army" (HRW 2009, 23). Yet HRW does not clearly explain why the 14th Brigade reflects the characteristics of the larger army to which it belongs, and its limited information on sampling strategy makes this claim difficult to substantiate. As a result, the Report's findings may not be generalized to the FARDC as a whole.

Second, the Report claims that the 14th Brigade has committed "widespread" acts of sexual violence in North and South Kivu (HRW 2009, 12; 25). While it is unclear what the threshold for "widespread" is, this claim is based on evidence provided by relatives and victims of sexual violence committed by members of the 14th Brigade in this region. Given that the strategy for selecting victim respondents was not disclosed, the findings cannot be generalized to all of the 14th Brigade or the FARDC. It is unclear how representative this sample is of all victims of rape committed by members of the 14th Brigade in the region or the entire FARDC. The evidence clearly does substantiate the occurrence of sexual violence committed by the 14th Brigade. However, it does not help readers assess its geographic or numeric prevalence; HRW should avoid language that could be interpreted as suggesting that it does.

Third, the Report both argues and provides good evidence for the claim that a culture of impunity in the 14th Brigade and the FARDC persists as a result of a weak military justice system. To corroborate this claim, the Report draws on more than fifty interviews with key informants. In particular, the Report cites Congolese military lawyers, international and domestic judicial officials, representatives from international organizations, human rights activists, and victims. Likewise, the Report draws on secondary sources, such as reports from international organizations like the United Nations Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO, previously known as MONUC) and the Program for the Restoration of Justice in Eastern Congo. These sources confirm the existence of a culture of impunity within the 14th Brigade and a weak military justice system in the DRC.

Finally, the Report claims and provides strong evidence for the argument

that national and international efforts have had a limited affect on combating sexual violence. This general claim is substantiated with secondary sources, such as reports from the International Centre for Transitional Justice and the MONUC. Interviews with key informants, such as UN officials, human rights activists and Congolese government officials, also support this claim.

Consistent with the evidence presented in this report, its main claims can be reframed as and limited to the following: (1) the 14th Brigade is committing acts of sexual violence in North and South Kivu despite international and Congolese efforts; (2) a culture of impunity persists within the 14th Brigade as a result of the weak military justice system in the DRC.

Assessment of the 2009 Report's Overarching Policy Recommendations

The Report also makes several broad policy recommendations to both domestic and international actors. To the Congolese Government, the Report recommends creating a special chamber with Congolese and international judges, professionalizing the FARDC, and strengthening the military justice system. It also recommends that the Congolese National Assembly shift jurisdiction of crimes against humanity to civilian courts. Furthermore, the Report recommends that MONUC, other UN agencies, the European Union, the United States and other international donors support the Congolese justice system with funding and technical assistance. Finally, it recommends that the UN Security Council adopt measures against parties to armed conflicts and strengthen its responses to combating sexual violence. A number of these recommendations are accompanied by specific proposals (HRW 2009, 8-11).

Based on the reframed main claims established above, the comprehensive recommendations made in the Report are reasonable. Although the Report's methodology does not allow for recommendations to be made to the FARDC as a whole, the thirty-one reported cases of rape committed by members of the 14th Brigade do clearly warrant the FARDC's attention. Given that the 14th Brigade has been disbanded and that its members have been integrated into other units, HRW's overarching recommendations to the FARDC to combat the culture of impunity and professionalize the army seem appropriate (HRW 2009, 26). There are numerous specific policy proposals, however, that are not sufficiently substantiated and require further investigation. For example, one proposal calls for the creation of military barracks to provide proper living accommodations to FARDC soldiers, thereby preventing rape by these troops. While the Report states that "many soldiers" believed that barracks would solve their problems, the Report only cites the testimony of one soldier to this end (HRW 2009, 44). Likewise, this proposal was based on potentially biased evidence as this soldier's testimony could have simply reflected his own personal desire for military barracks. HRW cites no broader evidence base on the potential link between military living accommodations and sexual violence.

The Report also did not provide any evidence in support of the recommendation for creating a gender advisory position within the FARDC, or to create a special envoy for sexual violence. The Report seemed to assume that these recommendations would effectively combat sexual violence in the DRC, but provided no empirical basis for these claims. Other recommendations without sufficient evidence include, but are not limited to, the following: the provision of medical and legal support to victims whose cases were prosecuted, the inclusion of women on the judicial bench and in security sectors, the use of targeted arms embargoes, and the reorganization of MONUC troops to rapidly protect civilians from acts of sexual violence. All of these examples illustrate the discrepancy between the specific policy recommendations and the Report's evidentiary base (see Appendix III for an inclusive list).

Suggestions for Improvement

HRW can address these inconsistencies by making recommendations that are proportional to its research or to provide evidence gathered by other reputable sources. In particular, HRW should ensure that its recommendations flow logically from the research presented in the Report, or from systematic research conducted by others. Implementing this suggestion could substantially strengthen HRW's findings and recommendations.

CONCLUSION

Despite the numerous difficulties and challenges of conducting research in conflict zones such as the DRC, HRW's work is unprecedented and essential to protecting human rights. HRW investigates human rights violations in some of the world's most challenging environments and reports the abuses in a timely manner. This article analyzed the 2009 Report's research methodology, and highlighted several concerns that could be addressed through greater transparency. This disclosure could strengthen the Report's conclusions, arguments, and its recommendations. Finally, this article evaluated the evidentiary base for the Report's main claims and recommendations, and found that, while the overarching recommendations were substantiated, specific proposals were not based on any available evidence. To strengthen its recommendations, HRW should avoid claims and recommendations that its evidence and cited findings cannot support. By incorporating these recommendations, HRW will better preserve its moral capital and further its credibility as an effective advocate for human rights.

APPENDIX I: INSUFFICIENTLY DESCRIBED KEY INFORMANTS

This list demonstrates that HRW did not provide adequate information to assess the legitimacy and authority of twenty-six informants cited. More information about the following individuals would strengthen the credibility of the evidence provided in the 2009 Report. It should be noted, HRW did not list the specific date or even the month in some of the citations thus, there are discrepancies in the data outlined below.

Position/Affiliation	Type of Correspondence, Location, Date	Location of Citation in the Report
Congolese justice official	Interview: Kinshasa 2007	Page 48
Congolese lawyer	Email Correspondence: May 26, 2009	Page 45
Congolese lawyer	Interview: Goma, March 27, 2009	Page 49
EUSEC representatives	Interviews: Goma, March 30, 2009	Page 43
EUSEC staff	Telephone Interview: May 2009.	Page 43-44
Foreign military expert	Interview: Kinshasa, October 2, 2005	Page 41
Human rights activist	Interview: Bukavu, April 2, 2009	Page 25-26, 31 and 33
Human rights activist	Interview: Bukavu, April 3, 2009	Page 42
International and Congolese organizations involved in army training	Interviews: Goma, March 27 and 30, 2009	Page 42
International Committee of the Red Cross representative	Telephone Interview: May 19, 2009	Page 42
International NGO	Email Correspondence: June 10, 2009	Page 45
International NGO	Interview: Goma, March 27, 2009	Page 48
Kabare resident	Interview: Bukavu, April 2, 2009	Page 33
Lawyer	Telephone Interview: May 7, 2009	Page 47-48
Lawyers	Interviews: Goma, March 27, and Bukavu, April 2, 2009	Page 46
MONUC official	Interview: Kinshasa, September 30, 2005	Page 41
MONUC official	E-mail correspondence: May 19, 2009	Page 42
MONUC Rule of Law Unit	Telephone Interview: March 16, 2009	Page 44, 46
Priest	Interview: Kabare, April 3, 2009	Page 31
Program for the Restoration of Justice in Eastern Congo (REJUSCO) staff	Interviews: Goma and Bukavu, March 27 and 31, 2009	Page 45
Staff of military prosecutor's office	Interview: Goma, May 11, 2009	Page 50, 52
UN official	Interview: Goma, March 30, 2009	Page 21
UN official	Telephone Interview: May 19, 2009	Page 35, 42
UN official	E-mail correspondence: May 5, 2009	Page 42
UN official	Interview: Goma, May 2009	Page 49
UN official	Interview: Goma, March 30, 2009	Page 50

APPENDIX II: VERIFICATION OF SEXUAL VIOLENCE STATISTICS

In attempt to understand the methodology used to produce the statistics cited in the Report, this appendix will present how each statistic was verified. This appendix will also assess the overall reliability of this study. Perhaps a more aggressive and thorough strategy could be used, however, a more simple search strategy was used that would be typical of most reader's efforts. Thus, it is meant to assess the overall ease of confirming the data in the Report. We searched for the report title in the original language in which it was published. Attempts to locate source documents were done using the following search strategy:

Part 1: Search Strategy

Report Title	Organization Responsible for Report	Database Used	Search Result
"Figures on sexual violence reported in the DRC in 2008," (Quelques chiffres des violences sexuelles reportées en RDC en 2008) No page number was given in the 2009 Report. However, it is noted that the source is on file at HRW.	The United Nations Population Fund (UNFPA)	Google Google de la République démocratique du CongoUNFPA Document Archives	Report could not be accessed by solely using this search strategy
"R. Coomaraswamy: 48% of the victims of sexual violence in the DRC arechildren"	MONUC	Google MONUC website	The source is accessible but the methodology used to obtain the statistic is not disclosed. The source is a news report on a press conference during which Radhika Coomaraswamy was speaking at. She is the current Special Representative for Children and Armed Conflict.
Nicola Dahrendorf, former MONUC Senior Advisor and Coordinator on Sexual Violence, statement at a presentation to the "Conference on the Great Lakes Pact – Two years on: Issues of Implementation and Enforcement"	London School of Economics	Google Conference Website of the London School of Economics	The transcripts could not be accessed by solely using this search strategy.
CPVS Sud Kivu, "Data Presentation of the Medical Sub-Commission," (Présentation des données de la sous-commission médicale)	CPVS	Google Google de la République démocratique du Congo	Report could not be accessed by solely using this search strategy

Part 2: Verification

The following section presents the claims, citations, verification process of the statistic used, and the problem with not being able to locate the particular document. HRW's claim and footnoted citation are taken directly from "Soldiers who Rape, Commanders who Condone," verbatim.

Page 14: (Footnote # 4): UNFPA Citation for sexual violence

Claim: "Tens of thousand of women and girls in Congo have become victims of sexual violence during the past 15 years. The United Nations Population Fund (UNFPA), the agency coordinating work on sexual violence in Congo, reported that 15,996 new cases of sexual violence were registered in 2008 throughout the country. In the eastern

province of North Kivu alone, there were 4,820 new cases."
Citation: Footnote #4: UNFPA, "Figures on sexual violence reported in the DRC in 2008," (*Quelques chiffres des violences sexuelles reportées en RDC en 2008*), undated (on file with Human Rights Watch). According to the Minister for Gender, Family, and Children, over one million women and girls have become victims of sexual violence in Congo. Human Rights Watch telephone interview with Marie-Ange Lukiana, Minister for Gender, Family Affairs, and Children, June 9, 2009.
Verification: The UNFPA document was not located on the Internet. As noted above, the claim of one million women and girls as victims of sexual violence was based on a telephone interview with the Minister for Gender, Family Affairs, and Children.
Problem: The 2009 Report attempts to argue that sexual violence is prevalent in the DRC and particularly in the North and South Kivu provinces. HRW unquestioningly uses the statistics from the UNFPA and the Minister for Gender, Family Affairs, and Children to strengthen its argument. However, HRW does not report on why it used these particular statistics or the quality of the methodology used to gather and determine these estimates. Since the source of these statistics could not be ascertained, it is impossible to determine the soundness of the methodology used and the authenticity of the statistics.

Page 14: (Footnote #5): UNFPA Citation for percentage of victims who are children

Claim: "UNFPA also reported that more than 65 percent of victims of sexual violence during the same period were children, the majority adolescent girls."
Citation: Footnote #5: Human Rights Watch email correspondence with UNFPA, May 19, 2009. In contrast, the Special Representative of the UN Secretary General for Children and Armed Conflict estimates that 48 percent of victims are children. "R. Coomaraswamy: 48% of the victims of sexual violence in the DRC are children," MONUC news article, April 21, 2009, http://monuc.unmissions.org/Default.aspx?tabid=932&ctl=Details&mid=1096&ItemID=3602 (accessed May 11, 2009). Under international law, anyone under the age of 18 is a child.
Verification: HRW's email correspondence with UNFPA was not accessible on its website. The MONUC news article that cites the Special Representative of the UN Secretary General for Children and Armed Conflict's estimate of victims that were children does not disclose the methodology used to obtain that statistic. (See: http://monuc.unmissions.org/Default.aspx?tabid=932&ctl=Details&mid=1096&ItemID=3602)
Problem: The Report relies on this statistic to strengthen its argument that the DRC is "the worst place to be a woman or a child" (HRW 2009, 15). However, we were unable to access the statistics on HRW's website and HRW or the source of the statistic does not disclose the methodology used to determine this estimate.

Page 14: (Footnote #6): Percentage of victims that are less than ten years old

Claim: "An estimated ten percent of victims are children less than ten years old."
Citation: Footnote #6: Nicola Dahrendorf, former MONUC Senior Advisor and Coordinator on Sexual Violence, statement at a presentation to the "Conference on the Great Lakes Pact – Two years on: Issues of Implementation and Enforcement," London School of Economics (LSE), May 29, 2009, attended by Human Rights Watch researcher.
Verification: Although an outline of the LSE conference was found, a transcript of Nicola Dahrendorf's speech was inaccessible via the internet.
Problem: The 2009 Report uses this statistic to illustrate the widespread prevalence of sexual violence and how this mass atrocity has affected young children. However, since the authors were unable to access this statistic, it cannot be evaluated.

Page 14: (Footnote #7): Official statistics and estimates from UNFPA

Claim: "However, official statistics are only estimates and the data collected by UNFPA is fragmented and fails to paint an accurate picture. It is likely that it represents only a small percentage of the total reported cases of sexual violence."

Citation: Footnote #7: "There are discrepancies in the number of reported cases. For example, according to the medical sub-commission of the Commission provinciale de lutte contre les violences sexuelles (CPVS), there were 10,644 cases of sexual violence registered in South Kivu in 2008, while the official UNFPA figure for South Kivu is 2,883. CPVS Sud Kivu, "Data Presentation of the Medical Sub-Commission," (*Présentation des données de la sous-commission médicale*), February 2009 (on file with Human Rights Watch); UNFPA, "Figures on sexual violence."

Verification: Although the CPVS report is on file with HRW, it is not publicly accessible. As noted above, the UNFPA report is also inaccessible over the Internet, however it is on file with HRW.

Problem: In terms of disclosing the methodology used for both of these reports, HRW notes that the UNFPA methodology consisted of collecting data at the provincial level and channeling the data to a "central point" (HRW 2009, 14). Data collection methods are not disclosed. This report relies on these statistics to further its main claim that sexual violence in South Kivu in 2008 is particularly prevalent. However, the lack of accessibility to the reports cited or disclosure of their precise methodology limits the ability to replicate this study.

Page 14: (Footnote #9): Estimate of women who have access to health care

Claim: "According to one estimate, less than 50 percent of women who are raped are able to access health centers."

Citation: Footnote #9: Nicola Dahrendorf, former Senior Advisor and Coordinator on Sexual Violence at MONUC, statement at a presentation to the "Conference on the Great Lakes Pact – Two years on: Issues of Implementation and Enforcement," London School of Economics (LSE), May 29, 2009, attended by Human Rights Watch researcher.

Verification: Although an outline of the LSE conference was found, a transcript of Nicola Dahrendorf's speech was not located.

Problem: Internet searches were conducted to locate the source of this statistic. However, the source was not found and, consequently, we were unable to evaluate it.

General Problem

Overall, we were unable to gain access to any statistic concerning sexual violence used in the 2009 Report. No document cited could be found through the broad search strategy mentioned above. This means that it is difficult to confirm the authenticity of these statistics and thus, it may be impossible to replicate this research. The ability to replicate is a pillar of rigorous research methods and contributes to verifying the results and the confidence of the findings. While the authors of this report understand that it is not always possible to ensure that every document used is publicly available, HRW should ensure that it provides proper citations so the documents that are publicly available can be located with minimal difficulty. It should be noted, the authors did not attempt to contact HRW to ask for access to the documents (or concerning any other issue) as the objective of this study was to assess HRW's research methodology, as presented in its reports and website.

APPENDIX III: THE 2009 REPORT'S RECOMMENDATIONS WITH INSUFFICIENT EVIDENCE (Page Number for Each Verbatim Quote is in Parentheses)

1. [To Congolese Government/FARDC] "Create the position of gender advisor in the FARDC for awareness-raising and advocacy regarding sexual violence, including violence against soldiers' wives and daughters, to be filled by a senior officer and located within the command structure." (8)

Why Recommendation is Problematic:

- No evidence to show that the creation of a gender advisor in the FARDC would be effective in raising awareness about sexual violence.

Suggestions for Improvement:

- Provide information or evidence in the Report that would show how the gender advisor in the FARDC would be effective in combating sexual violence.
- Provide an example of a situation where this recommendation has worked in the past.
- State how this recommendation would be effective if there is no clear command structure within the FARDC.

2. [To the Congolese Government/FARDC] "Ensure soldiers receive a regular, adequate salary and have access to medical and psychological care." (8)

Why Recommendation is Problematic:

- Weak evidence due to lack of various sources (i.e. based on account from military officials and soldiers).

Suggestions for Improvement:

- When providing salary figures, provide the purchasing power and cost of living that the salary could provide.
- Provide evidence this recommendation (or a similar policy) working in the past.
- Triangulate and confirm findings with other sources.
- Use secondary sources that are accessible to the general public.

3. [To Congolese Government/ FARDC] "Create military barracks that provide a base for soldiers and their families." (8)

Why Recommendation is Problematic:

- Insufficient evidence due to lack of verification or corroboration of this information.
- HRW refers to "many soldiers" but only cites one informant.

Suggestions for Improvement:

- Verify this information with other sources.
- When referring to "many soldiers" cite the exact number of soldiers who mentioned this problem.
- Provide more information about how much, if any military housing is already available for the soldiers and their families.
- Refer to a case where more military barracks improved the situation.

4. [To the Congolese Government] "Strengthen expertise of military prosecutors and judges on investigations that link senior officials to crimes committed on the ground, including their command responsibility." (9)

Why Recommendation is Problematic:

- No evidence of a lack of expertise on the part of military prosecutors and judges is presented in the report.
- No case or example to show how strengthening the expertise of military prosecutors or judges would be effective.
- No information provided about how this recommendation would contribute to prosecuting senior officials.

Suggestions for Improvement:

- Provide evidence of lack of expertise of military prosecutors and judges and how training would contribute to prosecuting senior officials.
- Provide evidence as to why this recommendation would work.

5. [To the Congolese Government] "Appoint more senior military officers to the military bench in eastern Congo, as Congolese law mandates that judges in military courts must have a similar or higher rank than the defendant." (9)

Why Recommendation is Problematic:

- No citation of Congolese law.

Suggestions for Improvement:

- Provide citation for the Congolese law or quote the law in the footnote.

6. [To the Congolese Government] "Inform victims and their families about their rights and the judicial proceedings, offer counseling to adult and child victims through trained staff, and avoid re-traumatizing or stigmatizing victims during the judicial process." (9)

Why Recommendation is Problematic:

- Although a very worthy recommendation, there is no evidence in this report to show that victims were not informed of their rights, offered counseling services, or that they were or would have been re-traumatized through the judicial process.
- The Report does not claim to investigate the affect of the judicial process on the victims or the quality of support services offered to victims of sexual violence during investigations or prosecutions of their cases.

Suggestion for Improvement:

- Questions pertaining to victims' knowledge about their rights and the judicial could have been asked during the interview process.

7. [To the Congolese Government] "Ensure that all victims whose cases are investigated or prosecuted receive adequate medical and psycho-social support." (9)

Why Recommendation is Problematic:

- No evidence in this report to support whether or not victims whose cases were investigated or prosecuted received medical and psycho-social support.
- Report does not claim to investigate the quality of support services offered to victims of sexual violence.

Suggestion for Improvement:

- Provide evidence from victims' testimonies stating whether victims received any medical or psycho-social support.
- Cite documents that are accessible to the public.

8. [To the Congolese Government] "Improve access to justice for victims, in line with UN recommendations, including by making the medical certificate free of charge and supporting legal assistance programs." (9)

Why Recommendation is Problematic:

- No explanation of what which specific "UN recommendations" should be supported (beyond the medical certificate and legal aid programs).
- The Report does not claim to investigate the quality of legal support services offered to victims of sexual violence.
- There is no evidence to substantiate the recommendation that obtaining a medical certificate has been problematic for victims.

Suggestion for Improvement:

- Explicitly state which particular "UN recommendations" are being referred to.
- Present data concerning the quality of legal support services and difficulty obtaining a medical certificate.

9. [To the Congolese Government] "Increase the number of female judicial staff." (9)

Why Recommendation is Problematic:

- No evidence demonstrating that there are not enough female judicial staff or that this supposed absence has affected the prosecution of sexual violence.
- No evidence demonstrating that specifically male judicial staff have hindered the prosecution of sexual violence cases.
- No evidence or other cases cited about how increasing the number of female judicial staff will positively affect the prosecution of sexual violence.

Suggestion for Improvement:

- Provide evidence which indicates that the lack of the female judicial staff or how male judicial staff has hindered the prosecution of sexual violence cases.

10. [To the Congolese Government] "Ensure compensation payments are paid, possibly through the creation of a compensation fund." (9)

Why Recommendation is Problematic:

- The Report does not mention the investigation of compensation packages that could potentially be provided to victims. There is no information concerning inadequate compensation to victims.

Suggestion for Improvement:

- Provide evidence of compensation packages not being paid.
- Provide a case study of how compensation funds support victims of sexual violence.

11. [To the Congolese Government] "Ensure the safety of victims, witnesses, and human rights defenders working on FARDC crimes." (9)

Why Recommendation is Problematic:

- There is no evidence to show that a lack of witness protection is an obstacle to justice in North and South Kivu.

Suggestion for Improvement:

- Use evidence from other sources or HRW's interviews with witnesses in North and South Kivu to demonstrate that witness protection is necessary.
- Show how the problem in Ituri can be generalized to North and South Kivu.

12. [To MONUC] "Organize MONUC troops so they can react rapidly and with adequate logistical support in order to effectively protect women and girls against acts of sexual violence." (9)

Why Recommendation is Problematic:

- Insufficient evidence to support the recommendation that MONUC troops should be re-organized and to effectively prevent the occurrence of sexual violence.

Suggestions for Improvement:

- Provide information or examples of MONUC's ability or inability to react against acts of sexual violence.
- Provide details of challenges that MONUC faces, including logistical difficulties.
- Cite a case where a peacekeeping mission with sufficient logistical support was able to effectively protect civilians from sexual violence.

13. [To MONUC] "Avoid cooperating with Congolese army units and military commanders that have been implicated in serious violations of international humanitarian law." (9)

Why Recommendation is Problematic:

- No evidence to show how not cooperating with implicated army units would combat the occurrence of sexual violence.
- No evidence of international organizations or local organizations cooperating with implicated army units beyond providing gender training.

Suggestion for Improvement:

- Present evidence of cooperation between implicated army units and MONUC and how it would affect sexual violence in the DRC.

14. [To MONUC] "Make efforts to increase the number of female peacekeepers and to create a female unit in the UN police, with particular skills in addressing sexual violence." (9)

Why Recommendation is Problematic:

- No reference to the number of women in MONUC and the UN police or how an increase of women in these security forces will help combat the prevalence of sexual violence.

Suggestion for Improvement:

- Cite evidence of the lack of female peacekeepers in the DRC and provide examples where an increase of women have helped combat the prevalence of sexual violence.

15. [To MONUC, UN agencies, EU, US, and other international donors] "Take measures to implement UN Security Council Resolution 1820 on sexual violence including by improving technical expertise on sexual violence crimes in all UN member states, with a view to assisting countries affected by sexual violence in armed conflict." (10)

Why Recommendation is Problematic:

- No evidence to support the recommendation that UN resolution 1820 needs to be implemented in all countries affected by sexual violence.

Suggestion for Improvement:

- Provide evidence as to why implementing UN resolution 1820 in all countries will help decrease the prevalence of sexual violence.

16. [To the UN Security Council] "Request the Secretary-General to publicly list parties to armed conflict that are responsible for acts of sexual violence in violation of international law in the annexes to his reports on children and armed conflict." (10)

Why Recommendation is Problematic:

- No evidence to support the recommendation to publicly list parties to armed conflict that are responsible for acts of sexual violence.

Suggestion for Improvement:

- Cite past examples of how this "name and shame" tactic has changed the behaviour of implicated parties.

17. [To UN Security Council] "Adopt targeted measures, including arms embargoes, against parties to armed conflict that fail to address acts of sexual violence against women or children committed by their members; and apply individual measures, including travel bans, asset freezes, and exclusion from governance structures against individual commanders responsible for sexual violence." (10)

Why Recommendation is Problematic:

- No evidence or examples to indicate that targeted measures would be effective in combating sexual violence.

Suggestion for Improvement:

- Provide cases where targeted measures have decreased the amount of sexual violence in a conflict zone.

18. [To UN Security Council] "Take measures to implement Resolution 1820 on sexual violence in armed conflict globally and in Congo, including by taking action to end impunity for sexual violence and by strengthening the capacity of peacekeeping personnel to protect women and children against sexual violence." (10)

Why Recommendation is Problematic:

- No evidence presented to support recommendation of implementing UN resolution 1820 beyond DRC (i.e. globally).
- No evidence used to show an incapacity of peacekeeping personnel.

Suggestions for Improvement:

- Present evidence that supports recommendation to implement UN resolution 1820 beyond DRC and how this would combat sexual violence.
- Report instances of when the incapacity of peacekeeping personnel failed to protect women and children against sexual violence.

19. [The UN Security Council] "Request the Secretary-General to establish and hire for the position of Special Envoy or Representative on Women, Peace, and Security, at a level that signals accountability and resource-commitment, to coordinate and drive the full implementation of resolutions 1325 and 1820 within the UN system." (11)

Why Recommendation is Problematic:

- There is no evidence in the Report that confirms a causal link between the prevalence of sexual violence and how the implementation of UN resolutions 1325 and 1820 will address this problem.
- UN resolution 1325 on Women, Peace and Security calls for the participation of women in peace processes and the protection of women and girls from violence and respect for their rights. However, the Report does not discuss how the increased participation of women contributes to decreasing the level of sexual violence in the DRC.
- No evidence to support the need for the full implementation of these resolutions beyond the context of the DRC, i.e. the UN system.
- No evidence in the Report to illustrate how the creation of a Special Envoy or Representative on Women, Peace, and Security would contribute to decreasing sexual violence.

Suggestion for Improvement:

- Present an argument or evidence detailing how the full implementation of resolutions 1325 and 1820 will lead to the decrease of sexual violence.
- Present an example of how the presence of a Special Envoy or Representative on Women, Peace, and Security would contribute to decreasing sexual violence.

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4 THE EFFECTIVENESS OF AMNESTY LAWS FOR PEACEMAKING IN ALGERIA

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ABSTRACT

This paper examines the role of amnesty laws in response to the Algerian Civil War of the 1990s. Critics argue that amnesties were not a responsible policy decision as they ignored Algerian obligations under international law and the suffering of victims. This paper begins with a distinction between ending the civil war by achieving negative peace, as opposed to pursuing accountability and politics of inclusion as measures of positive peace. Positive peace measures were not feasible during the Algerian Civil War due to a "hatred of the state," and given this political climate, amnesty laws were actually effective in ending the conflict and achieving negative peace. In addition, the second round of amnesty laws under the Civil Concord Law were not designed entirely for reasons of political expedience, nor did they grant blanket impunity. Nevertheless, the effectiveness of the amnesty law does not absolve the state's obligations to victims once the conflict has ended, and more significant efforts to achieve positive peace should have been employed.

INTRODUCTION

Amnesty laws are a controversial transitional justice mechanism as critics argue that they promote historical amnesia at the expense of justice and prevent reconciliation (Méndez 1997, 274). Adequate punishment for each and every crime respects the rights of the victims and upholds the rule of law. Other critics argue that, even without just deserts, a post conflict society must seek a principled reconciliation for the transition away from conflict to be meaningful. Both views, however, see the factors that cause a successful transition to be based on an abstract value of the rule of law (Cohen 1995). From this perspective, an amnesty law's peace objective is inherently unattainable as it sacrifices justice by offering amnesties. The effectiveness of amnesty laws, however, should not be judged on the grounds that justice may be the preferred gateway to peace. The debate over the role of amnesties in peacemaking is clearly revealed in the efforts taken to end the Algerian Civil War of the 1990s. This paper will engage this debate and argue that an effective amnesty law can resolve specific socio-political obstacles and offer the key ingredient to end conflict. The Algerian transition away from its civil war will serve as a test case of this hypothesis.

The Algerian Civil War is a particularly interesting case for the purpose of this study. Algeria, a French colony until 1962, was ruled mainly by the military until the 2004 elections, when the first signs emerged that the military would remove itself from day to day politics (Bouandel 2004). It may be intuitive to assume that a country historically led by the military would misuse amnesty laws to the point of treating them as blanket impunities. Indeed, criticisms of the Algerian amnesty laws are not uncommon in the literature. While this paper does not wish to praise any side involved in a bloody civil war, the interest is certainly focused on the fastest and most effective means of ending conflicts such as the one that occurred in Algeria. To this end, the Algerian case study is expected to provide insights on possible factors that can make amnesties more suitable to certain circumstances.

The ideal model for effective amnesties is drawn from the analytical framework presented by Mallinder (2008), which includes three key criteria. First, the socio political obstacles to a successful transition must be suitable for an amnesty law; second, the amnesty must be designed to target the specific obstacles while avoiding other politically expedient considerations; and third, like all public policy initiatives, the amnesty law must be implemented properly. The amnesty laws used to end the Algerian Civil War will be examined according to these criteria to determine whether particular outcomes would have resulted in the absence of amnesty laws.

The first section of this paper will address the normative debate on the use

of amnesties in Algeria. The second section will examine Algerian amnesties with respect to the first criteria of socio-political obstacles, and whether the political climate in Algeria made amnesties appropriate for the circumstances. The third section will turn to the second criteria and examine whether the amnesty laws employed by Algeria actually addressed the obstacles to peace. Finally, a brief analysis of the third criteria will reveal that the implementation of the policy should have included other transitional justice mechanisms in its latter stages, and that critics are correct insofar as demands for greater truth from victims are legitimate.

THE NORMATIVE DEBATE

A legal normative perspective would declare amnesties as clearly inadequate given that they are, by definition, not seeking accountability. Amnesties are said to ignore the suffering of the victims for the benefit of torturers and murderers. These arguments are entirely correct if the end goal of a transition away from conflict is to achieve justice and accountability. However, this does not imply that a legal form of justice also invariably leads to a successful transition to peace. The legal arguments against amnesties are therefore predetermined by the goal of accountability and deny the possibility that a particular set of conditions could make amnesty laws an effective policy choice in post conflict societies trying to achieve a successful transition to negative peace (that is, the absence of widespread violence). Where the goal of legal scholars is to promote human rights, their efforts remain admirable.

One method to distinguish the legal and political sides of this debate is through the concept of positive and negative peace (Call and Cousens 2008, 3). Peacemaking in an ongoing civil war such as in Algeria can achieve "negative peace" by simply ending the conflict. The realm of "positive peace" begins when political actors decide to go beyond ending a conflict and strive for normative goals stemming from moral imperatives, such as seeking judicial accountability or implementing participatory politics. Amnesties may be called morally deficient, but they are strictly meant to bring about negative peace and any moral deficiency can be offset through positive peace measures once the conflict has ended. Amnesties are arguably shortsighted policies able to stop violence in the short-term without necessarily leading to lasting peace. On the other hand, amnesties can be effective tools for ending a conflict under certain, but not all, circumstances. Nevertheless, critics of amnesties have played an important role over the years as the use of amnesty laws by political actors has evolved over time. In fact, more recent peacemaking attempts employing amnesties are more likely to consider international human rights standards (Roht-Arriaza and Gibson 1998, 884). For example, earlier amnesty laws may have offered blanket impunity whereas more recent policies have offered targeted and limited amnesties.

Essentially, political actors must remember that state action is torn between "the 'pull' of compliance as much as the 'push' of norm violations" when deciding on amnesty laws (Cardenas 2004, 213-14). In the case of a civil war, there is a significant push from norm violations due to the severe nature of the alleged crimes and critics argue that amnesty laws are unable to generate enough pull from compliance from the alleged aggressors. Therefore, the issue rests on whether an amnesty law can offer a balance between the push of norm violation (through the ongoing conflict) that can be absorbed by the pull of compliance (through the offer of amnesties) so as to end the conflict. The current literature on Algeria's amnesty laws-for example, as presented by Scully (2008) and Jørgensen (2000)-strongly emphasize Algeria's legal obligations under international treaties and customary law. This paper, on the other hand, examines the empirical evidence to determine whether Algeria effectively used amnesties despite their shortcomings under international law.

ADDRESSING THE CRITICS

Justice and Peace: Independent Objectives

International human rights groups heavily condemned the Algerian government's amnesty proposal. Amnesty International, Human Rights Watch, the International Center for Transitional Justice, the International Commission of Jurists, and the International Federation for Human Rights issued a joint press release on April 14, 2005, stating that the amnesty laws in Algeria "may permanently deprive victims or their families of their right to truth, justice and reparation ... and thus impede any chances of ensuring that justice and accountability become part of a transition to peace." (International Center for Transitional Justice 2005) Amnesties may in fact exclude justice and accountability from the transition away from civil war, though that is different than asking whether amnesties can effectively end conflicts. Amnesties can therefore be evaluated with respect to different objectives. Rights groups may focus solely on the amnesty's inability to provide justice, without necessarily considering the link between amnesties and the need to end the conflict.

Justice and Peace as Mutually Dependent

Other critics make the case that justice and peace are two mutually dependent factors for a transition to be successful. Arnould (2007, 230) argues that the use of amnesty laws to resolve the Algerian Civil War failed to result in peace and reconciliation in part because of its effects in generating amnesia and disregarding the victims' suffering. Arnould (2007, 227) supports her argument on the grounds that the Algerian amnesty law failed to meet standards of international law, did not provide enough accountability, and failed to reflect the will of the people. These criticisms are presented in varying degrees by other authors as well. Scully (2008) argues that both sides of the conflict committed war crimes, and that amnesties are inadequate with respect to Algeria's international treaty obligations, and therefore provide insufficient levels of accountability. For these critics, the objectives of all transitional justice measures should include both peace and justice; a standard that makes amnesties unacceptable.

Critics have elaborated the link between justice and peace by, for example, highlighting the referendum held prior to the implementation of the amnesties in Algeria. Scully (2008, 1025) poses the following: "Virtually all of Algeria suffered, but are all Algerians victims, as the state maintains?" The referendum may represent the wishes of the people, but not of the victims. Kristianasen (2006, 346) argues that by allowing both victims and the population at large to vote in this referendum, the victims actually perceive the question on the ballot as to whether they were "for or against peace?" However, the failure to address past wrongs may or may not be an obstacle to peace.

Amnesties and Accountability

A more nuanced legal argument would call for the use of "responsible amnesties," where amnesties can be acceptable if some form of accountability is in place because of a link between justice and peace. If justice is unattainable due to political circumstances, then the amnesties should be in a form that includes some measure of accountability. International law and treaty obligations generally provide the minimum requirements of accountability, irrespective of the particular obstacles that are inhibiting a successful transition. This paper, on the other hand, defines a successful transition as the policy that can most effectively end the conflict. An amnesty is considered as "responsible," though not from a legal objective of just deserts, if it can end the conflict so as to avoid multiplying the number of victims and economic hardships that accompany a civil war.

A legally responsible amnesty looks after past victims at the expense of all Algerians for example, whose freedom and sense of personal security was affected by the civil war, in addition to the fact that all Algerians were to remain potential victims so long as the civil war continued.

Moreover, the lack of accountability in amnesty laws is not as clear-cut as legal arguments suggest. Mallinder (2008) finds a general trend over time whereby amnesty laws are becoming more specific in the individuals that are targeted and the conditions that are imposed on amnestied individuals. Earlier cases of amnesties were more likely to be implemented with the explicit goal of providing blanket impunity to a large group of individuals, whereas more recent applications of amnesty laws have shifted their focus toward resolving specific political problems. This distinction speaks to the motives of the state where the offer of amnesties to the opposition can be a legitimate attempt to end conflict (Jørgensen 2000). Legal scholars argue that stronger norms of accountability in the field of international human rights have forced post conflict states to favour more legally responsible amnesties, and that the more targeted amnesties are a result of these efforts. Legal advocacy therefore has a role to play in affecting norms and thereby the implementation of transitional justice measures, amnesties included.

Other Arguments Against Amnesties

Academic observers have not criticized Algerian amnesty laws solely on legal grounds. Joffé (2008) argues that the amnesties in Algeria failed to end the violence of the civil war because its terms were unacceptable to the Islamist fighters, and that this can be seen through the persistence of violence in recent years. The amnesties did not grant mercy or clemency as much as they attempted to consolidate power in the hands of the state, and the backlash from this unilateral approach failed to end the civil war. Joffé (2008) analyzes the effectiveness of amnesties in solving the political power struggle between the Islamist fighters and the government forces. Therefore, whereas Arnould's (2007) reasons for declaring a policy failure were based in part on a failure to pursue accountability, Joffé's (2008) analysis demonstrates the possibility of evaluating the effect of amnesties independently from Algeria's legal obligations to international law. In the following section, this paper will make a case in favour of amnesties for achieving negative peace to resolve the Algerian Civil War. It will be argued that the amnesties were effective in their goals, despite possible shortcomings in implementation.

ALGERIA: AMNESTIES FOR PEACE

Conflict Resolution without Military Victory

Amnesties are sometimes presented as a necessity for a post conflict society's effort to successfully find a stable post-conflict political bargain (Snyder and Vinjemuri 2003; 2004). When a conflict is settled through outright military victory, one side is able to impose order. However, when the opposing forces are unable to settle their differences militarily, amnesties can be a good alternative to fighting endlessly. Therefore, whether an amnesty is being responsibly used to end a conflict should be assessed in terms of whether the amnesty was offered with the reasonable expectation that it would stop the fighting, or whether it was strictly enacted for reasons of political expedience. The analysis will highlight the most relevant factors that shaped Algeria's transition in order to establish whether the civil war would have ended without the use of amnesties. Arnould (2007) recognizes the fragile political context of Algeria as a justification for amnesties, yet also insists that the amnesty's failure is partly due to its inability to account for the plight of victims. However, the victims' needs are directly related to the fragile political environment, and a better understanding of the socio-economic and

political triggers of a civil war can provide a greater explanation of the needs that can be addressed by transitional justice mechanisms. This section will provide the context that pushed Algerian society over the edge, and into civil chaos, to show a more nuanced analysis of the needs that were being addressed by the amnesty laws.

Two important dates of the Algerian Civil War in the transitional justice literature are 1988 and 1992. In 1988, an unexpected rise of popular discontent led to violent protests that challenged the one party rule in Algerian politics. As a result of the events of 1988, the state revised its constitution in 1989 to allow for a new political party to be established, the Islamic Salvation Front (FIS, or Front Islamique du Salut), as a way to meet demands for political inclusion (Quandt 2008). In 1992, the success of the FIS in the legislative elections was interrupted by a military intervention that was followed through with an official declaration of a state of emergency. The events of 1988 and 1992 are accepted as the efficient causes of the Algerian Civil War. However, the permissive, or underlying, cause of war is equally important as it consists of the broader political environment, which provided context for Algerians to start a civil war as a result of these events. This allows for an evaluation of the role and purpose of amnesties in overcoming the underlying impasse sustaining the civil war. This is not an appeal to address root causes, as addressing root causes can hardly be expected to stop the fighting once the conflict is actually underway (Woodward 2007). Insofar as root causes of the conflict in Algeria, Arnould (2007), Joffé (2008), and Quandt (2008) all agree that worsening socioeconomic conditions in the 1980s were at the root of high levels of public discontent. Instead, insight into the political culture that turned the 1988 revolt and the 1992 clampdown into triggers for a civil war can shed some light on the political obstacles to peacemaking and whether amnesty laws were a proper response.

The Islamic Factor

Islam is the single unifying factor among the various political factions that opposed the Algerian state during the late 1980s and 1990s. Its role as a religious instrument, however, cannot be overemphasized at the expense of the political opportunists using its rhetoric for secular ends. The social unrest of the late 1980s was driven largely by worsening economic conditions, and never by a desire to emulate Muslim ideals (Colás 2004). The FIS was using Islamic rhetoric to replace foreign concepts of state and democracy with Islamic sources of authority such as the "umma" (community of believers) and the "majlis al-shura" (consultative council) (Colás 2004, 247). Despite the variety of grievances against the state by different segments of society, Algerians largely agreed to condemn the state's system of patronage and corruption through the lens of Islamic ideals. The FIS was Islamicizing European concepts of statehood in order to challenge the state, without actually offering an alternative form of Islamic government in the theological sense. Merely preaching from holy texts did not make it a religious movement given the decidedly secular political use of Islam to address people's socioeconomic concerns (Quandt 2008).

Islam was the most convenient channel for an anti establishment political movement for several reasons. First, it is an effective legitimizing instrument in countries with majority Muslim populations, and more importantly, its use is not reserved to religious scholars (Grandguillaume 1983). While political authority may be contested, religious ideals are not. It is tempting for any political movement to associate itself with Islam under these circumstances. Indeed, the ruling National Liberation Front (FLN) and the FIS were both primarily nationalist in their visions and only used religious rhetoric for mass appeal (Quandt 2008). They both used nationalism to appeal to angry youth and combined it with Islam to gain support from older moderates, drawing upon the general discontent over those in political power (Quandt 2008). The Islamic factor in the Algerian Civil War was not a fight for or against Islam, as much as

it included Islam as an instrument for popular mobilization. As a result, while Islam has had a huge impact on the events in Algeria in terms of mobilizing the masses, the political problems leading to the civil war and the obstacles to a successful transition are not related to questions of religious authority.

In practical terms, the populist Islamist discourse was used to frame the narrative of power relations in Algeria, as opposition groups claimed that the politicians occupying Algeria's highest political circles had come to see themselves as effectively constituting the state (Benrabah 2004). Algeria's ruling elites internalized this criticism and began to personally identify with an idea that they were the guardians of a nation in peril. The unintended consequence was that both sides of the state-citizen relationship held a very weak definition of the state as a small collection of bureaucratic institutions and narrow political interests. Benrabah (2004) refers to the political environment of this period in Algeria as an ideal breeding ground for a "hatred of the state" mentality amongst Algerians. To worsen matters, there was also a rise in patronage and corruption among government officials (Quandt 2008), which further justified this hatred of the state and also confirmed suspicions that Algeria's politicians were fundamentally self-serving and disinterested in the public interest. Therefore socio political factors are more important than the Islamic rhetoric because Algerians directly attributed their economic hardship to the political elite.

In light of the strained state citizen relationship in Algeria during the civil war, any transitional justice measure employed needed to achieve reconciliation not just within society but also between the state and society. While Arnould (2007, 227) accepts that Algeria suffered from a "fragile political context" and that this may warrant amnesties, amnesties are not necessarily a remedy to political fragility, however are only suitable if they can overcome a political problem. The fragility of domestic politics is a given during a civil war; it is the specific context and character of the civil war that determines whether amnesties are a suitable solution for the political problem. In the case of the Algerian Civil War, there was a combination of Islamic rhetoric, a general dislike of the state, and deteriorating socioeconomic conditions prior to the civil war. The politics were not only fragile, but more importantly, there was tension and enmity between state and citizen.

Needs of Victims

There are several legal arguments for trials and condemning amnesties that are justified based on the needs of victims. Trials are said to help victims more generally by contributing to a strengthening of the rule of law and protecting against the reoccurrence of human rights violations in the future (Orentlicher 1991). More specifically, victims are said to require trials because society is bound by a normative obligation to dispense punishment to the aggressor so as to "honor and redeem the suffering of the individual victim." (Neier quoted in Weschler 1990, 244) Yet, at the same time, the nature and extent of the violence by both the state and militants against civilians in Algeria can make individual trials especially challenging. It would be far too optimistic to assume that the judicial system would have the capacity to collect and present evidence following due process, not to mention the challenge of actually conducting fair and free trials. A failure in this regard may allow war criminals to either walk free for lack of evidence or to be incarcerated as a result of a lack of due process. Further, even if international support provided resources and capacity to the local judicial system, the adversarial nature of trials could further antagonize relations between state and citizens.

Furthermore, the needs for justice from the individual perspective of the victims must be balanced with the equally pressing need of instituting the rule of law so as to uphold justice. This can only be accomplished by first ending the conflict. This is not equivalent to the argument where that state building must follow a particular

sequence before the rule of law can be established (Fukuyama 2007). Instead, in cases like Algeria, where transitional justice mechanisms are invoked because outright military victory has failed to end the conflict, peacemaking is an important objective. In the Algerian context, "amnesties can ... be part of a process of broadening political inclusion" (Cobban 2007, 208) by engaging individuals that are otherwise in armed conflict against the state. Amnesties can also indirectly stimulate political inclusion by convincing other Algerians not directly involved in the violence that the state had acted in the public interest to end the civil war.

Most importantly, the needs of the victims are not inherently at odds with the need to end the conflict, as the former cannot be defined as intransigent and fixed in time. When the conflict is ongoing, victims are more worried about physical security than seeing their suffering honoured and redeemed (Mallinder 2008, 12). Once their personal security needs are met, their concerns turn to social needs, particularly with regard to their place in society vis-à-vis their aggressors. For the Algerian Civil War, an amnesty law would have been ideal in this sense if it could achieve the rule of law in the short term to then subsequently allow for other transitional justice measures to attend to the social needs of victims. Given the political environment identified above and the needs of victims as shaped by the ongoing conflict, the use of amnesties for ending the civil war and promoting political inclusion was indeed a responsible use of amnesties with respect to the victims of the war.

AMNESTIES IN ACTION

As previously noted, an amnesty law needs to address the socio political obstacle to a successful transition to peace. It should not simply be a politically expedient tool to buy off former combatants with promises of immunity from prosecution. The sociopolitical obstacle to ending the civil war in Algeria is identified as the hatred of the state, and an effective amnesty would have avoided granting blanket impunity. Amnesties providing automatic impunity to large groups of individuals without requiring that they apply or request it, is generally condemned as being politically expedient and not targeted at the obstacle to a successful transition (Mallinder 2008, 6). However, this was not the case in Algeria. The Algerian case is interesting because the state employed amnesty laws more than once with some variations between iterations. This section will begin by outlining early efforts at ending the violence through domestic trials. This will be followed by a greater focus on the framework of the amnesties that were offered in Algeria under the law 95-12, the Civil Concord Law (CCL), and the Charter for National Reconciliation and Peace (CNRP).

Domestic Trials: 1992-1994

The military intervention that disrupted the January 1992 elections was followed with martial law and a state of emergency. Shortly thereafter, the state issued a declaration banning the FIS from political activity (Benrabah, 2004). By the end of 1992, trials were underway resulting in a total of 13,770 trials over two years with 1,661 death sentences, 8,448 prison sentences, and 3,661 acquittals (Jørgensen 2000, 683). The number of trials suggests a focused and serious undertaking, yet the failure to stop the civil war suggests that the trials suffered from problems of enforcement and legitimacy. The state was able to dispense justice through its courts, however was unable to enforce the outcome and see its deterrent effect take hold. For example, 1,463 of the 1,661 death sentences were actually delivered in absentia (Jørgensen 2000, 683).

Scully (2008) and Arnould's (2007) analysis of the legality of Algeria's amnesty laws did not examine these domestic trials. However, their proposals for greater accountability would probably find them lacking in due process. The legalist argument

follows that show trials invariably lack legitimacy and thus fail to turn the page on a civil war. It is unclear whether the trials failed to end the civil war from a lack of state legitimacy, state capacity, or both. In the end, the state's inability to enforce each death sentence meant that it would have been just as unable to enforce any sentence if it were to follow due process. Once again, the hatred of the state felt by ordinary Algerians was exacerbated by socioeconomic conditions and created a political window for the rhetoric of the Islamists. As a result, juridical solutions were unlikely to appease Algerians because the political discourse that fueled the civil war was fundamentally critical of all forms of government power. The judicial branch was not exempt from perceptions of corruption.

Amnesty Law 95-12

The first attempt to end the conflict through amnesties took place in 1995 under the law 95 12. Amnesty applicants admitting to crimes would be considered "repentant terrorists" and were eligible for a reduced sentence (Scully 2008, 982). Those not guilty of major crimes were offered complete amnesty, while others were eligible for reduced sentences (Joffé 2008). This amnesty failed to initiate a transition for peace as the civil war continued well into the late 1990s. A plausible explanation may be that it was not offered as part of a wider peacemaking process, as there was no political negotiation with the opposition parties (Scully 2008). Also, these unilateral amnesties were offered so shortly after the trials that militants might have been hesitant to submit to the state's authority.

The Civil Concord Law of 1999

The Civil Concord Law (CCL) was presented and implemented only months after the election of Algeria's first civilian president, Abdelaziz Bouteflika, in 1999. Similarly to law 95 12, the CCL offered full amnesty to those who had not committed major crimes, such as massacres, rapes or murder, and partial amnesties to those involved in them (Joffé 2008, 216). The difference between the amnesty law of 1995 and the CCL of 1999 was that the latter was offered after the government had reached a negotiated truce with the FIS. This time around, the state first engaged opposition forces in political negotiations (Jørgensen 2000). As a result, the state's offer of amnesties was conditional on an armistice with the FIS' military wing, the Armée Islamique du Salut (Arnould 2007, 228). The amnesty offered under the CCL was the result of political negotiations, unlike the earlier amnesty of 1995 that was perceived as being imposed unilaterally by the state. The state gained the reassurance that it would not continue to be challenged by militants and the militants were able to lay down their arms without admitting defeat.

According to Jørgensen (2000), 80 percent of the Algerian militants gave up their arms and surrendered by the January 2000 deadline beacuse of the CCL. This speaks to the effectiveness of amnesties in greatly, though not entirely, reducing conflicts. The remaining 20 percent explains why there is such disagreement over the effectiveness of amnesties. The general disagreement between varying accounts of the effects of amnesties on the Algerian Civil War rest on whether this reduction of violence is interpreted as the end of the civil war. For example, Joffé (2008) argues that Islamist violence continued well after the amnesty laws were offered, so the civil war did not end. Arnould (2007) and Scully (2008) argue that the amnesty laws did not eradicate the violence in full, and also failed to meet accountability requirements.

Despite the violence that persisted after the amnesties, the civil war of the 1990s had effectively ended. First, fewer than 1,000 militants carried out the remaining violence. Second, the aims and means of the remaining militants did not reflect the popular uprising of the FIS of the 1990s (Quandt 2008). The Islamist rhetoric that was

previously used to ignite the conflict no longer resonated with the broader population. Quandt (2008) adds that the civil war ended not only because of a quantitative reduction in the number of militants, but also owing to a qualitative change of the attacks that followed. The remaining militants began operating more like a terrorist organization by making a distinction between their audience and targets, as well as choosing targets based on their political, rather than military, value.

Overall, the Algerian Civil War was a good candidate for implementing amnesties, and the amnesties were effectively successful in curbing the civil war, but not in ending the violence. The amnesties were instrumental in bringing FIS leaders to the negotiating table.

Amnesties and the Rule of Law

Observed from a perspective of law as more than just a set of coercive orders (Hart 1961), the CCL struck the right balance between the obligation to prosecute and a need for peace (Jørgensen 2000). The amnesties were able to restore the rule of law while pursuing justice to the extent that it was possible, given the political circumstances outlined earlier. The reduced sentence offered to those who had committed some crimes actually consisted of replacing the death penalty with prison sentences. This is hardly controversial for legal scholars emphasizing international treaty and customary law obligations (Scully 2008 and Arnould 2007).

Moreover, not all crimes were eligible for amnesty as applicants must not have been involved "in collective massacres or the use of explosives in public places." (Jørgensen 2000, 685) Others were eligible depending on the severity of the crime: the death penalty was replaced with prison sentences of up to twelve years, while ten to twenty year sentences were brought down to seven years (Jørgensen 2000). Finally, ten year sentences were reduced to a maximum of three years, and those with shorter sentences saw their sentences cut in half (Ibid). The greatest incentive for many militants was to avoid the death penalty, and for example, some of the surviving FIS political elite actually served full twelve-year sentences in addition to being banned from political activity upon their release (Joffé 2008, 222).

Lastly, a third group of applicants was eligible to serve probations instead of prison sentences. As Jørgensen (2000) argues, this tiered system of ranking the various types of crimes and their respective punishments showed that the amnesties did not entirely ignore the gravity of the crimes committed. Even the person under probation did not get impunity, though perhaps they were not punished severely enough from a just deserts perspective. However, the goal of the probation was to pursue policies of inclusion while protecting the public from further harm (Jørgensen 2000).

Reduced penalties have been used more recently in Colombia's Justice and Peace Law of 2005. This law offered Colombian paramilitaries reduced sentences and, more importantly, also a guarantee not to be extradited to the United States in exchange for a full confession. According to Hunt (2009), this law did not attract as many militants as the Algerian case. The Colombia law, however, was subject to a number of legal challenges going as far up as the Colombian Supreme Court. In the Algerian case, the judicial branch did not enjoy as much independence, and therefore militants did not face as much uncertainty with respect to the government's ability to deliver on their promises of reduced penalties. In the end, the amnesty laws in Algeria included provisions to respect the rule of law and dispense punishment insofar as achieving negative peace was the primary concern in a political environment where the state enjoyed little public support.

Charter for National Reconciliation and Peace (CNRP)

The improved security situation following the 1999 CCL helped Bouteflika win a second term in the 2004 elections. Unlike the 1999 elections where he enjoyed support from the high ranks of the military, the elections in 2004 were considered as relatively fair and free from military intervention and influence (Bouandel 2004, 1526). Bouteflika's major campaign promise was to continue with his agenda to improve the security situation and fully eradicate violence through policies of reconciliation (Bouandel 2004, 1536). This resulted in the drafting of the CNRP, which was "divided into four sections, designed to consolidate peace, consolidate national reconciliation, address the issue of the 'disappeared' and solidify national cohesion." (Joffé 2008, 219) In essence, the CNRP translated into another amnesty offering similar to earlier amnesties as well as reconciliation measures such as restoration of certain civil rights, some form of compensation to the widows and children of terrorists, and reparation payments for the families of the disappeared persons (Arnould 2007).

Following the success of the CCL in greatly reducing violence, the Algerian president offered another amnesty to the militants who were hesitant during earlier amnesty laws. However, this effort failed to recognize that the militants (some of whom were now fighting under the banner of Al Qaeda) were not driven by socioeconomic factors, but by a transnational Salafi jihadist ideology generally linked to Bin Laden. Therefore, the amnesties offered under the CNRP were mostly inconsequential and unnecessary. They did not make things worse, however they failed to improve the situation. The real failure in the CNPR was the missed opportunity for the state to pursue greater levels of positive peace, such as adequate measures for revealing and publicly acknowledging the truth about the state's role in the civil war.

AMNESTY SHORTCOMINGS

The Algerian Civil War demonstrates a link between successful negotiations and amnesties in bringing peace, where the increase of negative peace then uncovers a link between amnesties and the need for truth. As already mentioned, victims may only seek peace during a civil war, however over time these needs evolve into more social concerns, and these require some form of truth telling. Algeria established a truth commission under the Conseil National Consultatif pour la Protection et la Promotion des Droits de l'Homme (CNCPPDH). The work of this truth commission was submitted to the president in March 2005, and its outcome was a recommendation to offer monetary compensation to the families of the victims (Joffé 2008, 217). However, the report has never been published.

To some extent, the fragile political context can explain this decision. The general distrust of the state by the public meant that measures of state citizen reconciliation were essential, and publishing this report may have included details of wrongdoing by the state. The decision ultimately rested on a choice between making the facts known and seeing if they led to reconciliation or resentment. The fact that it has not been published is leading to speculation that it must contain information that is damaging to the state (Joffé 2008, 217). This is where the critics stand on solid ground: the government has been so far unwilling to officially acknowledge its own role in the atrocities and to offer an adequate truth of the events to victims. Jørgensen (2000) argues that public recognition can be as valuable to victims as prosecutions. Further, Mallinder (2008) also argues that more selective and better-targeted amnesties are not the only tools for making a successful transition to peacetime, and that other mechanisms should be used as well. Once the negative peace that is required to end a conflict is successfully brokered through amnesties, other measures fostering positive

peace should also be sought. No matter how disapproving the contents of the report to the state, it is unlikely to lead to another civil war. At this point, criticisms of political expedience are valid with regard to the state's unwillingness to engage in truth-telling.

CONCLUSION

Human rights advocates are not wrong to be critical of amnesty laws. It is easy to imagine how politicians can misuse amnesties, as Algeria first did. Amnesties have evolved from their early days, and are now being used more selectively. Quandt's (2008) breakdown of the civil war suggests that violence levels fell after the amnesty offering, and that the residual conflict that persisted after the amnesties was largely the doing of ideological terrorists. Overall, this makes a strong case in favour of amnesties as an effective policy response to ending the Algerian Civil War. The amnesty laws in Algeria properly addressed the obstacle of getting militants to disarm by allaying their fears of criminal prosecution. This should not be accomplished at the expense of the victims, as positive peace measures should be addressed once negative peace concerns are alleviated. The fact that Algeria failed to follow through with adequate truth telling after the end of the civil war does not mean that the amnesties failed to end the civil war.

Algeria offered amnesty on three occasions, but only once did the amnesties have the desired effect of reducing violence. Thus amnesty laws have to follow certain guidelines to be effective. As such, the Algerian experience reveals some policy prescriptions when compared to the ideal amnesty presented by Mallinder (2008).

First, the socio political obstacles to a successful transition to peace must be suitable for an amnesty law. In Algeria, the opposition had enough popular support and adequate resources to continue fighting, yet after several years of military conflict it was also evident that the state would not be defeated either. Thus the militants needed a means to stop fighting without fear of further repercussions, and amnesties provided this solution. Second, the amnesty must be designed to target the specific obstacles while avoiding other politically expedient considerations. The Algerian amnesty was not a case of offering blanket impunity; it offered some reduced sentences, and even banned certain individuals from political activity indefinitely. The negotiations that occurred were a key element of ensuring that political expedience is not prioritized over other considerations. Finally, similar to all public policy initiatives, the amnesty law must be implemented through to its conclusion. Proper implementation requires the government to determine whether any positive peace measures are necessary and then follow through to ensure that victims' needs are met to the greatest extent possible.

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5 COMMON VALUES & DIVERGENT INTERESTS: CANADA, THE EUROPEAN UNION AND THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

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ABSTRACT

On 13 September 2007, 143 member states of the United Nations (UN) General Assembly voted in favour of the Declaration on the Rights of Indigenous Peoples. Canada initially supported this Declaration; however, in a last-minute change of heart, Canada voted against it. In contrast, the European Union (EU) voted in favour of the Declaration. Considering that both Canada and the EU espouse the common value of human rights, their divergence regarding the Declaration on the Rights of Indigenous Peoples at first appears difficult to explain. However, while national values inform a state's identity and policy considerations, this papers argues that focusing on values cannot accurately predict or explain a state's support (or rejection) of the Declaration. This paper utilizes Putnam's Two-Level Game Theory and Tsebelis's Nested and Institutional Games Theory to suggest that governmental interests possess much more explanatory value. As a result of this analysis, this paper also discusses the need for Canada to behave consistently during negotiations and interactions at both the international and national level, in order to secure legitimacy and reduce concerns that Canada may be prone to defection.

INTRODUCTION

On 13 September 2007, 143 member states of the United Nations (UN) General Assembly voted in favor of the Declaration on the Rights of Indigenous Peoples (hereinafter the "Declaration").[1] This overwhelming support for the Declaration occurred after twenty-two years of negotiations, making it one of the "most discussed and studied declarations in UN history." (Tauli-Corpuz 2006)

Canada initially supported this Declaration and was heavily involved in the drafting process; however, Canada was inflicted with a last-minute change of heart. As a result, instead of merely abstaining from the vote with eleven other UN member states, Canada actively voted *against* the Declaration (UN Department of Public Information 2007). Canada's UN Ambassador John McNee attributed this reversal to "significant concerns" with last-minute modifications and the rejection of Canadian requests to continue negotiations (INAC 2008c).[2] In contrast, Portuguese Ambassador João Salgueiro acted on behalf of the European Union (EU) and voted in favor of the Declaration. In a sharp comparison to McNee's statement, Salgueiro praised the amended text as "ensuring the widest possible support," and highlighted that it possessed the critical support of indigenous representatives (UN Department of Public Information 2007).

Since the adoption of the Declaration, the EU has highlighted their support for this document demonstrating their "commitment and attention" to the problems and discrimination that indigenous populations face (European Commission 2009). In contrast, the Canadian government of Prime Minister Stephen Harper has come under intense domestic and international criticism for voting against the Declaration.

A MODEL THAT DISTINGUISHES VALUES FROM INTERESTS

Considering that both Canada and the EU espouse the common value of human rights, their divergence regarding the Declaration on the Rights of Indigenous Peoples appears difficult to explain. This is perhaps owing to the assumption that values are the primary variable impacting behavior, and that those with common values will therefore adopt similar or identical behavior.

This paper suggests that explanations which focus on values alone cannot fully clarify the contrasting behaviors of Canada and the EU. Therefore, this essay

promotes a theory-guided analysis of this case study, and the application of a Values/Interests model (Levy 2008, 4). This model is beneficial as it conceptualizes both values and interests as two separate and distinct variables that affect an agent's motives and subsequent behavior. As a result, the model permits the isolation and separate analysis of both values and interests, which is valuable when attempting to discern the relative strength of each variable. The isolation of each variable also offers insight into how both values and interests individually affect an agent's decision-making process and behavior. Accordingly, such insight can assist in the generation of predictions and explanations of an agent's behavior, and will therefore support the purpose of this paper.

OUTLINE FOR THE ANALYSIS

Using the Values/Interests model, this essay will argue that values were not the dominant variable in Canada's decision to vote against the Declaration. Consequentially, this analysis will argue that values generally lack a significant predictive value when trying to calculate a government's potential support for such declarations. In contrast, this piece will illustrate that an agent's interests have a significantly greater predictive value when trying to determine their future behavior, or explain past behavior. [3]

Therefore, this paper will begin by defining both values and interests to establish a strong foundation for this analysis. Next, an overview of the Declaration on the Rights of Indigenous Peoples will be outlined, whereby two main criticisms facing Canada for voting against the Declaration will be highlighted. This paper will then proceed to investigate the predictive value of both variables seeking to explain an agent's behavior, and will illustrate the poor explanatory strength that values have when attempting to predict governmental support for such declarations.

Consequentially, this paper will focus on the predictive value of an agent's interests, and will utilize Putnam's Two-Level Game Theory to further illustrate the importance of interests as a variable impacting government decisions. Likewise, Tsebelis's Nested Games Theory and the concept of "institutional design games" will also be employed to clarify the role of government interests. Finally, there will be a discussion emphasizing the following key policy recommendation: Canada must foster greater consistency during interactions at both the international and national levels, in order to secure legitimacy and reduce concerns that Canada may be prone to negotiating in bad faith.

DEFINITIONS FOR MODEL: "VALUES" AND "INTERESTS"

The Definition of "Values"

When considering "values," one often thinks of individual values and how they influence a person as they "make decisions, make sense of the world, and to give meaning to their lives." (Giacomini et al. 2001, 12) However, when attempting to establish what exactly values *actually* are, a strong and specific definition can be difficult to locate. One functional definition developed by Canada's National Forum on Health will be applied in this paper. This forum defines values as "relatively stable cultural propositions about what is deemed to be good or bad by a society." (Giacomini et al. 2001, 5) This definition also goes on to distinguish values from ethics, preferences, interests, beliefs, attitudes, or opinions (Ibid). Similarly, value-based explanations for behavior assume that people are consistently "guided by internalized predispositions," and that these dispositions will "persist despite changes in life circumstances." (Chong et al. 2001, 542)

Beyond securing a definition of values, significant difficulties are still present when attempting to study values, especially in regards to actually locating

and recognizing them as such. Therefore, this paper will focus on values that have tangibly manifested themselves in various kinds of expressions, including: public statements; government or legislative documents; and various actions (Giacomini et al. 2001, iii). Another difficulty in studying values at a community, governmental or other organizational level is that such groups are not homogenous and therefore consist of individuals possessing conflicting values. As a result, this essay acknowledges the difficulties in determining the aggregate values of a group, however is resigned to consider that "the whole is greater than the sum of its parts" for this analysis (Ibid, 13; Arrow 1950). Similarly, this essay also specifically considers "values" as an aggregate national or state-based attribute that is stable over time.

The Definition of "Interests"

Efforts to define "interests" face many of the same dilemmas noted above. Yet a precise definition is needed since some definitions of interests "have been stretched to include anonymously donating to charity" because of the personal satisfaction derived from assisting others (Kulkinski 2001, 401). This essay will use a narrow definition of interests, as suggested by Chong et al. in their psychology-based analysis of self-interest. This definition conceptualizes interests as the "tangible, relatively immediate personal or [group]... benefits of a policy." (2001, 542) Therefore interest-based explanations assume that "people make cost-benefit calculations to determine which alternatives are best for them given their personal circumstances." (Chong et al. 2001, 542) These definitions are quite advantageous for two reasons: first, the focus on tangible benefits will avoid a complex and potentially fruitless focus on abstract and hypothetical benefits which may be impacting behavior; second, the time restraint in this definition will also assist in reducing distortions from excessively long-term calculations (Ibid).

In contrast to considering values as an aggregate national or state-based attribute, "interests" will be considered an attribute of the government in power. This acknowledges the effect that a particular government's interests can have on state behavior, and recognizes that one government can have markedly different interests than the one that preceded it.

One difficultly when discussing the impact of interests on an agent's behavior is "whether the material benefits of a policy are visible, or cognitively accessible, to the decision-maker." (Ibid, 544) Yet such a concern further supports utilizing the above definition, only focusing on tangible benefits. Thus for the purposes of this analysis tangible benefits will include increases in government power, fiscal savings, budget use which results in constituent approval, and the increased likelihood of re-election (Kingdon 1993, 74). With these two definitions in mind, this essay will summarize the Declaration on the Rights of Indigenous Peoples and outline the criticism Canada has faced for not supporting it, before returning to the variables of values and interests and testing their predictive quality in terms of explaining behavior.

SUMMARY OF THE DECLARATION

The UN describes the Declaration on the Rights of Indigenous Peoples as outlining individual and collective indigenous rights, "cultural rights and identity rights to education, health, employment [and] language." (UN Permanent Forum on Indigenous Issues 2008) The Preamble of this Declaration also notes its connection to the Charter of the United Nations (1945) and their common spirit of promoting human rights as the Declaration affirms, "that indigenous peoples are equal to all other peoples." (Ibid)

Articles 1 through 6 also acknowledge that indigenous rights are intertwined with human rights, as they recognize that indigenous populations have the right to be free from adverse discrimination. Article 3 also reiterates the right to self-determination

outlined in common Article 1 of the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966), and this right is expanded upon in articles 31 through 36.[4] Articles 6 through 10 also outline indigenous rights to life, community and security, while Articles 11 through 13 describe the right to preserve indigenous culture, spirituality and languages. In connection to preserving indigenous culture, articles 14 through 18 summarize rights to education, access to information, and labor law protections. Articles 18 through 23 also describe the right of indigenous populations to operate their own institutions, while outlining participatory rights in decisions impacting their communities. As for Articles 24 through 30, this section suggests government-indigenous protocols when addressing indigenous territories and resources, and Article 37 also notes that this Declaration does not threaten the enforcement of current treaties, or limit the ability of indigenous groups to generate new agreements. Finally, Article 28 encourages governments to take "appropriate measures" and uphold this Declaration, while Articles 40 through 46 outline dispute resolution concerns and remedies, but stress that this Declaration cannot be used to "dismember or impair...the territorial integrity" of any state (Davis 2007).

While the Declaration extensively discusses the indigenous individual or community, it fails to explicitly define what constitutes "indigenous peoples." This ambiguity was noted by many UN member states, which outlined their expectation that this document would be interpreted according to the "ordinary meaning" of the term (Currie 2001, 138-139). For many states, including Norway and Indonesia, this ordinary meaning is derived from Article 1 of the International Labour Convention No. 169 (1991).[5]

Summary of the Controversy: Balance of Rights and Status of Declaration as Binding

As noted, the Canadian government has faced significant criticism for their decision to vote against the Declaration on the Rights of Indigenous Peoples. The first main critique is in response to a joint statement from Indian and Northern Affairs Canada (INAC) and Foreign Affairs and International Trade Canada (DFAIT), where both ministries outlined their concern that the Declaration "does not recognize Canada's need to balance indigenous rights to lands and resources with the rights of others." (BBC News 2007) As a result, the Canadian Government stressed that this document was not suited for a nation that must respect "the rights of other individuals and groups, and the general welfare of society as a whole." (INAC 2008c) In response, Rights and Democracy Canada, the UN, and the Indigenous People's Caucus (IPC) have criticized such statements. For example, the IPC argues that the rights outlined in this Declaration have already "been codified by the member States of the United Nations in countless treaties" and are contained in the UN Declaration of Human Rights (1948).[6]

The second predominant critique with regards to the Federal Government's statements is that while it supports the "spirit" of the Declaration, it had to vote against the document due to some specific aspects of the text (BBC News 2007). Some of these aspects reportedly included provisions that were "overly broad, unclear and open to interpretation" regarding the recognition of Indigenous rights to lands, territories and resources (INAC 2008c). In light of this statement, critics argue that this Declaration is not legally binding, making concerns over any wording or ambiguities in the text irrelevant. Critics therefore feel that as long as the government supports the "spirit" or intent of the treaty, there is no legitimate basis for its rejection. Phil Fontaine, former Chief of the Canadian Assembly of First Nations, also specifically states that this is only an "aspirational document," and the Canadian Human Rights Council describes it as

"a standard of achievement to be pursued." (CBC News 2007; Canadian Human Rights Commission 2008) Yet even though the Preamble describes the Declaration's purpose as merely "encouraging States to comply with... all their obligations," both critics and the Canadian Government are aware that this is not necessarily a permanently non-binding status. For example, UN Declarations by the General Assembly are never legally binding unless they are domestically empowered as such, or complete the difficult process of crystallizing into customary law.[7] Therefore, a latter section of this essay will address how the spirit of national approval and the development of customary international law could affect this Declaration, and may have therefore influenced the actions of the Canadian Government.

VALUES: INVESTIGATING CAUSATION RELATIONS

Canada and the EU: Common Values of Human Rights

With the summary and controversies of the Declaration in mind, along with the previous definitions of values and interests, this section will investigate the potential causal relationship between state behavior and the espoused human rights values of both Canada and the EU. It will therefore discern if national values can reliably predict state support for this Declaration. Yet the first component to investigating the predictive quality of human rights values is to secure the assumption that Canada and the EU both indeed value human rights, and that their conceptions of human rights are comparable.

Canada's human rights values are well pronounced, the most explicit evidence of this being the Canadian Charter of Rights and Freedoms that is embedded in the Canadian Constitution Act (1982). In addition, Canada possesses a Human Rights Commission, which works to prevent discrimination by administering the Canadian Human Rights Act (1985). Article 2 of the Human Rights act also outlines protections for individuals on grounds including "race, national or ethnic origin, color, religion, age, sex, sexual orientation, marital status, family status, [and] disability." Likewise, DFAIT notes that the Canadian government regards the respect for human rights as a "fundamental value," and highlights Canada's support of the Declaration of Human Rights (1948) and the Convention on the Rights of the Child (1989) as evidence of this value (DFAIT 2003).

The EU is also quite overt in articulating their human rights values, and state that "human rights, democracy and the rule of law are core values of the European Union" (EUROPA). Such claims are supported by the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) that led to the establishment of the European Court of Human Rights, and the appointment of a Human Rights Commissioner. The Preamble of the Charter of Fundamental Rights of the European Union (2000) also declares that the EU is "founded on the indivisible, universal values of human dignity, freedom, equality and solidarity." Similarly, Article 21(1) echoes Article 2 of the Canadian Human Rights Act, as it also protects individuals on many grounds including sex, race, color, ethnic or social origin, genetic features, language, religion or belief, disability, age or sexual orientation. The EU also works to share and instill these values in others, especially in the European Neighborhood Policy and trade or development agreements (European Commission 2006).

Therefore commonalities between these two agents is evident, although such similarities are understandable since both populations and their institutions have been heavily influenced by the "liberal Western tradition of human rights," the concept of natural rights, the Judeo-Christian tradition, and philosophers such as Socrates, Aristotle, Thomas Aquinas, and John Locke (Devine et al. 1999; Raphael 1966).

Indigenous Rights as Human Rights

Although Canada and the EU possess nearly identical concepts of human rights, it is also necessary to clarify that they both consider human rights as encapsulating indigenous rights. This is to ensure that divergent behaviors are not based on different perceptions of indigenous rights.

In Canada, the inclusion of indigenous rights into the concept of human rights is explicit. For example, DFAIT describes North American indigenous groups as an essential element of Canadian culture (DFAIT 2003). The Canadian Human Rights Commission also notes that their work focuses on four key groups including indigenous populations, and the Commission recently launched their own "National Aboriginal Initiative."[8]

Although the EU Charter of Fundamental Rights does not explicitly address indigenous people, Article 21 does outline extensive protections in terms of race, ethnic origin and color. Yet the EU does explicitly include indigenous rights under the scope of human rights in several instances; for example, Article 5 of the EU Council Resolution on Indigenous Peoples within the Framework of the Development Cooperation of the Community and Members States (1998) supports indigenous rights by defining them as "essential for… the observance of human rights." Furthermore, the EU endorsed indigenous rights as human rights by voting in support of the Declaration on Indigenous Rights and Freedoms, although the majority of EU documents discussing indigenous rights are linked to third parties and foreign development policies (European Commission 2009).

Relationship between Values Support of Declaration

As both Canada and the EU clearly value indigenous rights and consider them as an essential element of human rights, this section will test the predictive significance of values in explaining behavior. The first question must ask, is there a causal link between valuing human rights and accepting UN declarations regarding human rights? Yet simply from an initial observation of Canada and the EU, it appears that there is no definite causal relationship between valuing human rights and supporting UN human rights-based declarations.

It is also important to investigate whether Canada's behavior is merely an outlier within the UN Assembly; therefore, an investigation of the behavior of other UN member states and their interaction with this Declaration is required. This analysis makes the assumption that all UN member states value human and indigenous rights, as Article 1(3) of the UN Charter (1945) declares that "promoting and encouraging respect for human rights" are some of the primary purposes of the UN. However when examining UN member states, there is a strong correlation but not absolute causation between valuing human rights and supporting this document. For example, 143 of the 192 UN member states voted in support of the Declaration. This is significant since this indicates that 91 percent of the states present during this vote were in favor of the resolution (35 states were absent). In contrast, only eleven states or 7 percent of those present abstained from the vote, and only four states or 2 percent voted against the Declaration (UNGA 2007). Therefore, while there is a general correlation between a state formally valuing human rights and supporting this Declaration, values are still unable to explain the complete range of behaviors exhibited in this particular UN vote.

Relationship between Valuing Human Rights and Actual Human Rights Record

How can the behaviour of the four states that actively voted against the Declaration be justified, despite their formally stated value of human rights? One possible explanation is that Canada, the United States, New Zealand and Australia may formally support human rights, but avoided the Declaration since they possess poor human rights records. Therefore, can a state's support for this Declaration predict their actual human rights record? As a country's human rights record is difficult to determine, this analysis will utilize the Fund for Peace's Failed State Index. This Index utilizes a variety of indicators to calculate a country's absolute ranking, yet this analysis will only focus on the ninth indicator that measures the "suspension or arbitrary application of the rule of law and widespread violation of human rights." (Fund for Peace 2007) For this Index, a lower score indicates an excellent human rights record, while ten is the worst possible score.

In terms of the relationship between values and actual human rights records, countries which embrace both human rights values and have excellent human rights records illustrated their support for this Declaration. For example, the Failed State Index ranked the Netherlands, Sweden, Austria, Belgium, Denmark, Ireland, Finland, Norway and Luxemburg in their top ten states with secure human rights, and all of these UN member states supported the Declaration. However it is also important to note that many states with incredibly poor human rights records also supported this Declaration. The Failed State Index gave Sudan, Burma, North Korea, Zimbabwe, Somalia and Iraq the poorest scores in terms of the ninth indicator, with scores between 9.7 and 10; yet all of these states supported the Declaration.

When looking at the states that did not support this document, we can also see that even states with positive human rights records will not always support such a Declaration. For example, this index ranked New Zealand sixth, Canada thirteenth, Australia seventeenth, and the United States forty-eighth in terms of the ninth indicator with an average score of only 2.12. In fact, the only possible trend noted between human rights records and support for this Declaration was that states with poor human rights records tended to abstain from the vote. For example, the Failed State Index gave abstaining states an average score of 6.9 (Ibid).[9] Therefore as a result of this analysis it is evident that Canada, the United States, New Zealand and Australia did not avoid the Declaration since they possess poor human rights records. It is also evident that values and support for this Declaration have a weak causal relationship to a country's actual human rights record.

Relationship between Values and Actual Human Rights Records with Indigenous Populations

While values and actual human rights records appear to lack any strong causal relationship or predictive value, it is important to dissect the concept of human rights further. For example, while all the states that voted against the Declaration formally value human rights, they also all possess significant indigenous minorities. As a result, it is possible that these states only have positive human rights records in terms of their general population, which may statistically obscure a lack of human rights protections for their indigenous minorities; therefore, the lack of support for this specific Declaration may be linked to prejudice. In response, this next section of the analysis seeks to understand whether there is a significant relationship between the failure to support this document and a poor relationship between the state and its indigenous minorities. At first glance, it is quite evident that all of the countries that originally rejected this Declaration have endured significant criticism for their historical relationship and treatment of their indigenous populations.

In Canada, New Zealand, Australia and the United Sates, both the historical difficulties of indigenous populations since colonization, and the successful elements of their relationships with their respective governments are well known.[10] For example, since 2008 the Federal Canadian Government has successfully increased indigenous autonomy through seventeen Aboriginal self-government agreements with thirty-six different Aboriginal communities, which includes First Nations, Métis and the Inuit (INAC 2008b). However, despite such successes the history of the relationship between the Canadian Government and indigenous populations have been impacted by the assimilation based policies promoted though legislation such as the Indian Act (1867), and the Report on Industrial Schools for Indians and Half-Breeds (1879) which established Indian Residential Schools. Aside from the common sexual and psychological abuse that indigenous children experienced in such schools, they also isolated children from their traditional surroundings, and interrupted the transmission of indigenous culture to the next generation (Erasmus 2004). Difficulties that modern Canadian indigenous communities experience are also highly documented, including their high rates of suicide, lower than average life expectancy and overrepresentation in the Canadian criminal justice system (O'Grady 2007, 3). In fact, indigenous rights advocates have commented, "that studying Aboriginal suffering and injustice is its own institution in Canada." (CBC Archives 1996) Racism towards Aboriginal communities is also incredibly evident, as indigenous individuals experience higher than average unemployment rates, earn less when they are working, and are grossly underrepresented in professional fields (Powless 1985, 2-5).

While obviously unique due to their own historical context, the circumstances of indigenous peoples in New Zealand and Australia are similar to the Canadian context, especially in terms of discrimination, assimilation based policies, the dispossession of traditional territory and the destruction of culture. Modern concerns over the treatment of indigenous populations are also present, including a significant disparity between the health of indigenous and non-indigenous citizens; for example, a 2007 report noted that some Australia indigenous infant mortality rates where three times the national average (Australian Science Media Centre 2008; Head 2007). Likewise, in 2007 the monitoring body for the UN Convention on the Elimination of all Forms of Racial Discrimination (CERD) (1965) outlined concerns that "fundamental human rights breaches may have occurred" against indigenous groups in New Zealand (Jackson 2006, 3). The United States has also faced significant criticism for their treatment of local indigenous populations, and submissions to the CERD monitoring group reported substantial societal pressures to assimilate, and that on a majority of Indian reservations 25 percent to 50 percent of residents live below the poverty line (Saldamando 2007, 7).

However not all UN member states with criticisms regarding their indigenous populations voted against the Declaration. Brazil voted in support of the Declaration, despite international criticism of former Brazilian President Cardoso who signed Decree 1775. This Decree granted private companies "unprecedented power to challenge the boundaries of indigenous reserves," and opened more than half of the indigenous areas of Brazil for mining, logging, and ranching (Turner 1996). Similarly, a 2005 report from Amnesty International notes that indigenous leaders working to secure their traditional territories have been the targets of violence, and are occasionally murdered (Osava 2005). Iran, Iraq, Syria and Turkey also supported this Declaration, despite accusations of serious human rights violations against the indigenous Kurdish minority in each state. For example, a 2008 Amnesty International report describes the cultural discrimination against the Kurdish minority in Iran, as well as the oppression and torture of Kurdish activists (Amnesty International 2008). Botswana also supported this Declaration, even though recent governments have been severely criticized for the ongoing discrimination and assimilation efforts against the indigenous San people. Moreover, former President

Festus Mogai described this semi-nomadic indigenous group as "Stone-Age creatures" that must be integrated into the rest of society (BBC News 2002).

Thus considering that many states which have also been accused of discrimination against their indigenous populations signed this Declaration, it appears that racism is not a dominant variable when deciding to support such legislation, although it may linger in some form, considering the often subtle impacts of colonial legacies, racial discrimination and xenophobia.

Therefore owing to the fact that this analysis has illustrated a focus on values and behavior in a one dimensional or linear fashion can be misleading, and "one may fall into the trap of assuming that specific policy positions should map neatly onto general values." (Kulinksi 2001, 316) Furthermore, this investigation has shown that a government's espoused values are unable to accurately predict that same state's support of the Declaration on the Rights of Indigenous Peoples. It also appears that there is no strong causal relationship between a country's values, actual indigenous or human rights records, or support for this document.

HYPOTHESIS: GOVERNMENTAL INTERESTS POSSESS A STRONG PREDICTIVE VALUE

The lack of predictive quality in regards to state values therefore suggests that another variable is dominant when deciding upon support for such declarations. Therefore in regards to the initially outlined Values/Interests model, the following section of this paper will investigate the predictive value of a government's interests, and the impact of these interests on state behavior. Accordingly, this section will investigate both Canadian and EU interests in regards to indigenous groups in their jurisdiction, and attempt to discern what was at stake for both parties in terms of accepting or rejecting this Declaration. Yet in order to illustrate the impact of interests in making this decision, this analysis will begin by utilizing Robert Putnam's Two-Level Game Theory.

Putnam: Two-Level Game Theory

As Putnam designed his Two-Level Game Theory to investigate "when domestic politics impact international relations," his model separates domestic and international pressures on a government, and describes these pressures as a two-level game (Putnam 1988, 427-428). At the national level, or Level II, domestic groups exert pressure on the government to take up policies which suit their interests. At the international level, or Level I, the government attempts to facilitate international agreements while trying to avoid commitments that may generate negative reactions at the national level (Ibid, 434).

Yet the intricacy of this game is that the government is playing both games simultaneously, and attempting to locate an equilibrium between both levels. Thus this model also acknowledges the complexity of negotiations by recognizing a move that is rational at Level I "may be impolitic" at Level II, or vice-versa. In order to retain legitimacy and trust at both levels, the government will generally strive to be consistent in both games, especially since results that irritate the national level may conclude in the government's defeat in the next election (Putnam 1988, 434).

Hence through the desire to soothe both levels of pressure, the government attempts to "find a move that appeases both levels, or a move that causes realignments and co-operation." (Ibid) Such moves are dictated by the "win-sets" of each level, which contain all the possible agreements that would be approved by each level (Ibid, 436-437). Ideally, the government will be able to locate a move that overlaps between the win-sets of each level.

The appeasement of both levels is also essential since Putnam assumes that agreements proposed by the government must undergo a ratification process at Level II, such as parliamentary approval (Ibid). Related to this, involuntary defection describes the government's failure to successfully ratify the agreement, while voluntary defection refers to a negotiating partner at Level I opting out of the agreement since there is no significant political cost for doing so, or there is little evidence to suggest that the agreement will be upheld (Ibid, 438). Therefore both types of defection raise concerns over "deliverability," and that a negotiator may be "promising more than one can deliver." (Ibid, 439)

Another interesting aspect of Putnam's theory is in regards to the construction and content of these win-sets. For example, the individuals that comprise of the national level are not a homogenous group, and groups of domestic constituents interact with one another, and are impacted by power differences and possible coalitions between them. As a result, weak constituent groups often fail to place effective pressure on the government and are overlooked (Ibid, 442-445). Similarly, policy interests and issues are intertwined and do not exist in a vacuum; as a result, an agreement which satisfies a group may have unintended consequences in regards to another (Ibid, 446). The agreement between Level I and II may also not encapsulate the entire move by the government, as "side payments" may be used to compensate some groups (Ibid, 450).

Finally, Putnam also allows one to conceive of the "chief negotiator" as an individual with their own interest and desires, and that they may not be "merely an honest broker." As a result, the chief negotiator will "normally give primacy to his domestic calculus, if a choice is to be made" in order to protect his own incumbency at re-election potential at Level II (Ibid, 457-458).

Application: Two Level Game Theory & European Union Interests

In terms of national or Level II pressures, the EU faces relatively little pressure in comparison to the Canadian government. This is generally in relation to the limited impact that this Declaration will have in the EU, specifically considering its small indigenous population and lack of indigenous land claims. For example, the most widely recognized indigenous group in the EU are the Sami people in Sweden and Finland, as well as the Romani people, which are dispersed across various member states.

Moreover, in terms of win-set construction and the power or preferences of various groups, the Sami population was definitely the main Level II group exerting pressure on the EU in an effective manner. This is despite the fact that there are only an estimated 27,500 Sami in the EU, and they only consist of approximately 0.2 percent of Swedish and 0.1 percent of the Finnish population (Solbakk 2006). However this small group is quite concentrated, and has developed effective internal networks: the Sami in both states have formed their own parliaments; and the Sami in Finland have also "made it compulsory for [the Parliament of Finland] to consult the Sami... in matters of interest to them." (Institut de Sociolingüística Catalana 1998) As a result, the Sami have put forth a coherent voice to influence the EU.

The EU also faces some pressure from the international realm, or Level I. This is in relation to the desire for the EU to expressly support and incorporate the promotion of indigenous rights through trade and development agreements with non-EU member states. However, these Level I pressures also overlap with those in Level II, resulting in a large win-set for the EU. These overlaps consequentially present a relatively accessible move for the EU that will appease various groups. In addition, the manner in which the EU has delegated power to the European Commission, and its mandate to seek an agreement that all member states will accept and ratify, also

forces the EU to locate a move within overlapping win-sets (Conceiçao-Heldt 2009, 7). Therefore, in terms of Putnam's Two-Level Game Theory and the EU, it is unsurprising that the EU voted in support of the Declaration, behaved in a manner consistent between games, and appeased stakeholders.

Application: Two Level Game Theory & Canadian Interests

At the domestic level, the Canadian government faces pressure from various groups with conflicting preferences and ideas. The first group is the general "indifferent" public which is detached from current events, and either uninterested or unaware of this Declaration and indigenous issues; yet while this group may be indifferent to indigenous issues they are still concerned about the use of tax dollars, and wish to reap the benefits of their earnings (as taxpayers).

The second group involves those who possess subtle or pronounced prejudices against Canadian indigenous populations. This group tends to have negative notions of those experiencing poverty, and a distrust of the racialised "other." (Canadian Dimension 2004) Yet in its more pronounced form, this prejudice exercises itself through accusations that indigenous population are trying to expand their rights at the expense of non-indigenous citizens, and that they constantly engage in protests or unfounded land claims. As a result, this group vocally opposes any concession-like behavior with indigenous groups, under the belief that "if you give them an inch, they will take a mile."

The third group involves indigenous and non-indigenous activists who seek improved living conditions and protections for Aboriginal Canadians. In terms of direct stakeholders in this group, the 2001 Canadian census recorded that Aboriginals account for 3.4 percent of the population, for a total of 976,305 people (CBC News 2006). The three main populations of indigenous people also include the First Nations at 65 percent, the Métis comprising 30 percent, and the Inuit accounting for 5 percent of the indigenous population (Ibid). Yet while this third group is modest in numbers, they are dispersed across the country and their voice is often difficult to present as a forceful and congruent whole. This severely impacts their power during the construction of the national win-set, as the third group's preferences are often overshadowed by a coalition of the first two groups. The extent to which this third group lacks a voice was also painfully illustrated by Ovide Mercredi, former Grand Chief of the Assembly of First Nations; in 1993 when over 500 delegates met to work on the draft for the Declaration on the Rights of Indigenous Peoples, the Canadian government issued a statement which was written without any involvement or input from the Canadian Assembly of First Nations (Mercredi 1994, 65-66).

In additional to these three domestic groups, the Canadian government was also under significant pressure at the international level to support the Declaration; this included pressure from other UN member states, and international organizations such as Amnesty International. Yet as a result of both levels of pressure, the Canadian government adopted a move which it felt would appease the largest domestic group, but would also deflect criticism from the international community and indigenous and non-indigenous activists at home. This move involved three components; an explanation which made the international community a scapegoat; side payments to the Canadian indigenous population; and finally a vote against the Declaration.

The first component, making the international community a scapegoat, was meant to deflect criticism from both the domestic and international levels, and reduce the appearance of impolitic, inconsistency, and irrationality. This was accomplished by stating that the government did indeed support the "spirit" of the Declaration, but that last minute changes and a refusal by other UN member states to continue

negotiations left the text with "provisions that are fundamentally incompatible with Canada's constitutional framework." (BBC News 2007) This explanation attempted to appease all groups at once, by arguing that they would have supported the Declaration if other agents had been more cooperative. This move also highlighted the Canadian government's interests in appeasing the main domestic coalition, by stating that they were unable to support any Declaration which did not "recognize Canada's need to balance indigenous rights to lands and resources with the rights of others." (Ibid)

The second component involved strategically timing side payments to the domestic group which experienced the greatest harm from the refusal to support the Declaration: Canada's indigenous population. Therefore, in order to refute any criticism from this group that may affect "indifferent" constituents, three side payments were announced within a year of voting against the Declaration.[11] The first side payment was adoption of a $1.9 billion compensation plan for victims of the Indian Residential Schools, through the Indian Residential Schools Settlement Agreement (2007) on September 19 2007 – only six days after voting against the Declaration (CBC News 2008). The second side payment was in June 2008, and involved the public apology by Prime Minister Stephen Harper "on behalf of Canadians for Indian residential schools." This apology was also combined with "letting go" ceremonies, and framed as an "opportunity to move forward." (Office of the Prime Minister 2008) The third side payment was the repeal of section 67 in the Canadian Human Rights Act in February 2008, which previously restricted "the ability of First Nations people living on reserve to file a [human rights] complaint against band councils or the federal government." (INAC 2008a)[12]

Therefore through these side payments, the Canadian government sought to offer precise and controlled concessions to Canadian indigenous populations, and avoid any connection to any legislation or Declaration which was remotely ambiguous, or even just aspirational. This is in connection with the third and final component of the government's action – a vote against the Declaration. Many observers have called this an irrational move, since merely abstaining from the vote or supporting the Declaration with conditions could have appeased all levels and groups. Yet this apparent irrationality is explained by George Tsebelis, with his concepts of nested games and institutional design games.

George Tsebelis: Nested and Institutional Design Games

In terms of Putnam's Two-Level Theory, it is surprising that Canada did not vote in support of this Declaration, or merely abstain. After all, while an abstention or vote in support of this Declaration would have appeased many pressures in both levels, the decision to actively vote against this legislation appears irrational. Yet George Tsebelis offers some insight into this apparent irrationality, and suggests that if "an actor's choices appear to be suboptimal, it is because the observer's perspective is not complete." (Tsebelis 1990, 7) He therefore proposes that the government did not perceive itself to be playing merely a two-level game, but felt that they were "involved in a whole network of games," or nested games (Ibid).

Therefore the government's apparently irrational behavior can be explained by the dynamics of these additional games occurring *beyond* Putnam's model. Specifically, Tsebelis's concept of the "institutional design game," or a game "about the rules of the game," has a particularly strong explanatory value (Tsebelis 1990, 7, 98). For example, if the government felt that is was additionally playing an institutional design game, this would explain their reluctance to commit to an ambiguous document, even a legally non-binding one, out of the concern of setting a precedent against their own interests or disrupting the current balance of human rights between different groups.

Consequently, a lack of commitment and ambiguity was perhaps viewed as the winning move, especially if the goal is to preserve the ability to act in accordance to one's own interests in the future.

The concept of institutional design games also explains why the government did not merely abstain from the vote, or issue an "understanding" of how the text should be interpreted; after all, the United Kingdom was not criticized after they issued such a statement, and outlined that they understood the commitments on repatriations as being non-legally binding, and lacking any "retroactive application on historical episodes." (UNGA 2007) Yet since the government felt this was a game regarding future rules, such an abstention would undermine their use of the "persistent objector" rule. Under international law, this rule occasionally allows a state to "escape the binding force of a rule of customary international law to which it objects." (Currie 201, 175) Nevertheless, this rule only stands if the state objects before the norm becomes part of customary law, if the state consistently maintains this position, and if their objection is explicit. Therefore "mere silence or inaction will be construed as acquiescence, not objection" – and was not enough in this game (Ibid).

Similarly, various government statements illustrate the perception of playing an institutional design game. For example, John McNee said that several articles in the Declaration were "overly broad, unclear and capable of a wide variety of interpretations," and cited concerns that previously settled land claims might controversially be re-opened (CBC News 2007). Moreover, at that time Indian Affairs Minister (then Chuck Strahl) also legitimately outlined concerns that the Declaration conflicts with the Canadian Charter of Rights and Freedoms, and that it could therefore upset Canada's current human rights structure and the relationship between indigenous and non-indigenous populations (Ibid).

Clearly, both of these statements suggest some concerns about the rules of the game changing if the government supported this Declaration and it gained any legal strength. Such concerns about the rules of the game may also have been triggered by Bolivia and Ecuador which granted domestic legal force to this Declaration, and the consideration of other states to follow suit (UN 2008). Thus the concept of institutional design games increases our potential understanding as to why the government failed to abstain and accept a move, which may have appeased both levels, and acted in a manner which appeared irrational within a Two-Level Game perspective.

A Desire to Preserve Interests and Avoid Unintended Consequences

With the concept of institutional design games in mind, Putnam's discussion of intertwined policies and concerns over unintended consequences from governmental action becomes incredibly relevant. For example, if this Declaration did become legally binding, it may induce a greater national discussion on indigenous issues and increase pressures to improve their average standard of living. This could cause considerable difficulties for the federal government, as the British North American Act (1867) dictates all items as either under provincial or federal jurisdiction, and s.91(24) places "Indians, and Lands reserved for the Indians" under federal authority (Webster 2006, 4). This would exacerbate the "Modern Indian Problem," which began to emerge during the 1950s once "the enormity of the cost of providing modern health and social services to Indians was becoming apparent." (Webster 2006, 3-16) As a result, the federal government has attempted to engage in cost avoidance while trying to convince the provinces that they are responsible for indigenous populations due to their s.92 jurisdiction over and hospitals, education and "all Matters of a merely local or private Nature." (Constitution Act 1867, S. 92) Furthermore, the longstanding fiscal neglect of

indigenous communities has caused them to fall further and further behind the national average, and the fiscal investment needed to have them "catch up," has become daunting. Yet as noted, devoting fiscal recourses to improving the plight of Aboriginal communities is unappealing to many constituents; so in order to preserve incumbency and power, the government had a considerable interest in avoiding any fiscal burden even remotely linked to this Declaration, devote fiscal resources to "more popular areas of activity," and thus appeal to a greater pool of constituents (Ibid, 3-16; Armitage 2003, 11-12).

POLICY RECOMMENDATIONS: IMAGE, TRANSPARENCY AND CONSISTENCY IN NEGOTIATIONS

While values are important to the identity and policy considerations of a state, the inability of values to accurately predict or explain actual state behavior has been illustrated regarding this case study. Instead, a focus on governmental interests with Two-Level, Nested and institutional design games offered a much stronger explanatory value when trying to forecast or explain government behavior concerning this UN Declaration.

Yet pressures to live up to expectations at both the national and international level are also comprehensible within Putnam's framework. For the chief negotiator, or the Canadian government in this case, the pressure to unconditionally support all human rights based declarations on the grounds of valuing human rights is problematic. First, it can result in attempts to join every human rights based declaration – whether Canada can realistically honor it or not.[13] Also, while flirting with such expectations is understandable due to the political benefits which coincide with signing these agreements, such behaviors undoubtedly aggravate the tensions between Canada's romantic values and the real limits of resources available to uphold these agreements. Secondly, such an unconditional image, whether consciously created by the state, or allowed to flourish through stakeholder assumption, can generate significant tension between various stakeholders and the chief negotiator. This is evident by the controversy surrounding the Government's decision to vote against the Declaration, as the assumption that Canada is an unconditional values-based negotiator created confusion with stakeholders at various levels.

As a result, in terms of policy Canada must attempt to locate the equilibrium not only between those at the national and international levels, but also finding the equilibrium between value-based expectations and state interests. This equilibrium must therefore include considerations regarding the assumption of unconditional support for such declarations, and the communication channels and level of transparency between Canada as a negotiating party and stakeholders.

By challenging the expectation that the Government will unconditionally sign onto all human rights based declarations, Canada can set the stage for high quality discussions regarding the actual content of these documents.[14] By not allowing stakeholders from any constituent group or level assume that their position will be accepted or rejected, full participation from all stakeholders can be encouraged as they promote their position in a democratic and competitive nature. Such an approach may also support a critical discussion of the positive and negative aspects of these documents, and generate balance between the image of Canada as a champion of human rights with the image of Canada as a critical and thoughtful agent. Addressing assumptions about Canada's position on signing human rights based declarations could also allow for the cognitive awareness of the difference between valuing human rights

and unconditionally supporting the human rights documents. This cognitive awareness may therefore combat the perception of some analysts that "the expectation of what Canada *should* do, and the reality of what it *is* doing, is growing wider and wider." (Welsh 2005, 58) It could also soften accusations that Canada has "avoided the rule of law [and obligations] whenever we believed it could damage our national interests." (Gotlieb 2005)

This equilibrium can also be pursued by Canada through being far more transparent and inclusive with its various national and international stakeholders. Compliance with current policies that promote inclusive negotiations will allow all stakeholders to be aware of the full nature of the Canadian government's position. This can therefore reduce or eliminate stakeholder surprise by what would otherwise appear to be unpredictable last minute changes of heart. This transparent structure can also reinforce the opportunity for stakeholders at all levels and in all groups to contribute to dialogue, develop the quality of debate, and comprehend the positions or perspectives of other agents. As a result, past actions by the Canadian Government, such as contributing a statement to the draft of the Declaration on the Rights of Indigenous Peoples, without any involvement or input from the Canadian Assembly of First Nations, must be avoided.

Therefore, such an approach or desired equilibrium between value-based expectations and state interests could assist Canada during negotiations, because consistency and transparency can foster legitimacy and trust with stakeholders at both the national and international level. As a result, Canada must combat the assumption that valuing human rights must lead to the unconditional support of all UN human rights based Declarations. This will allow Canada to avoid the appearance of negotiating in poor faith, issues of deliverability in negotiations, and feelings of dismay or betrayal generated in stakeholders due to values-to-behavior based assumptions. The current lack of transparency about government interests, and the myth that values are able to predict behavior, will only undermine government efforts to generate legitimacy and trust during interactions at both the national and international level – and this is clearly against the Canadian governments' values and interests.

NOTES

1. United Nations General Assembly. United Nations Declaration on the Rights of Indigenous Peoples, (A/RES/61/295) 13 September 2007.
2. Please note that during the publication of this essay, the name of Indian and Northern Affairs Canada (INAC) was changed to Aboriginal Affairs and Northern Development Canada (AANDC). All references to documents issued before this change still refer to INAC.
3. Please note that it is not the intent of this paper to discern any moral or ethical stance on whether or not voting for, against or abstaining from the vote regarding this Declaration was the "right" decision. Therefore, this essay is not investigating if any party should vote for the Declaration. Instead, the focus of this essay is to determine which variables and explanations possess the greatest predictive value for determining how a party will vote regarding human rights based UN declarations. It therefore aims to utilize the United Nations Declaration on the Rights of Indigenous Peoples as a single case study, which may be used to predict or explain UN party member voting behavior in the future.
4. Article 3: self-determination as a peoples right to "freely determine their political status and freely pursue their economic, social and cultural development."
5. United Nations Department of Economic and Social Affairs, Division for Social Policy and Development Secretariat of the Permanent Forum on Indigenous Issues, "The Concept of Indigenous Peoples," Workshop on Data Collection and Disaggregation for Indigenous Peoples," New York, 19-21 January 2004. Article 1(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; Article 1(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.
6. Yet it is still even controversial to consider the affluent Universal Declaration of Human Rights as a document of customary law – further supporting the argument that the Declaration on Indigenous Rights will not become legally binding.
7. Please see Currie, Public International Law, 99. UN General Assembly resolutions and declarations have "no formally binding force of their own," unless they complete the full process of transitioning from lex ferenda (soft law) into lex lata (hard law). However, this process requires evidence of consistent state practise and opinio juris.
8. This initiative is to increase dialogue between the government and indigenous stakeholders to discern "how to incorporate the unique context of First Nations communities into human rights protection mechanisms." Canadian Human Rights Commission, "About Us," Government of Canada, May 7, 2009: http://www.chrc-ccdp.ca/about/default-en.asp (accessed July 29, 2009). Canadian Human Rights Commission, "National Aboriginal Initiative," Government of Canada, April 2, 2009: http://www.chrc-ccdp.ca/nai_ina/default-en.asp (accessed August 1, 2009).
9. Failed State Index scores: Azerbaijan (6.4), Bangladesh (7.8), Bhutan (8.5), Burundi (7.5), Colombia (7.5), Georgia (5.4), Kenya (7), Nigeria (7.1), Russian Federation (8.5), Samoa (4.9) and Ukraine (5.9).
10. Please note that the following is not intended to be a complete assessment of the positive and negative elements of the complex relationship between indigenous populations and their respective governments in Canada, New Zealand, Australia, and the United States. Rather, it is merely a brief overview to outline that despite an overall strong human rights record, these countries have witnessed human rights violations regarding their indigenous populations.

11. This paper does not wish to suggest that these side payments were exclusively created due to the vote against the Declaration, but rather that they were payments on route to development or fruition which were strategically announced around this vote to deflect domestic or international criticism. This speculation is entirely based on the dates of official approval for such side payments, and the official announcements of such side payments. For example, the Indian Residential Schools Settlement Agreement was officially approved by the Federal Cabinet on May 10th, 2006 – but officially announced over a year later on September 19th 2007, "coincidently" six days after voting against the declaration.
12. Repealed, 2008, c. 30, s. 1. Canadian Human Rights Commission, "National Aboriginal Initiative." Indian and Northern Affairs Canada, "Canadian Human Rights Act - Repeal of Section 67," Human Rights, November 21, 2008: http://www.ainc-inac.gc.ca/br/hr/chr/index-eng.asp, (accessed August 1, 2009).
13. Yet flirting with such expectations is understandable in Putman's model due to the political benefits that various governments secure by signing these agreements. This has also been a frequent criticism regarding Canada's relationship with the Koyoto Protocol (1997).
14. Aside from trying to establish the aforementioned equilibrium, portraying such an unconditional image can damage Canada's legitimacy and power as a negotiating party, by creating assumptions regarding Canada's win-set.

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6 PUBLIC OPINION ANALYSIS - THE "PERMISSIVE CONSENSUS" AND ITS COMPONENTS: REFLECTIONS FROM THE EUROPEAN INTEGRATION PROJECT

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ABSTRACT

This paper is focused on a particular niche in the political analysis of European integration characterized by the evaluation of public attitudes and support levels. The existence of a "permissive consensus" will be examined as a descriptor for public support for the European integration project. I will argue that the existing theoretical conceptualizations fundamentally overlook a major component of the permissive consensus – the permissiveness of the general public as a function of their decision-making process. Consequently, I evaluate this permissiveness empirically and propose general conclusions informing the path for future research in the field of public opinion.

INTRODUCTION

> *"L'opinion publique n'existe pas."* (Bourdieu)
> *"Opinion has caused more trouble on this little earth than plagues or earthquakes."* (Voltaire)

Marks and Hooghe suggest that political popularization of issues by national parties, and their respective positioning vis-à-vis these issues, reflect public opinion; particularly on the question of European integration (2008).[1] However, the opposite can also be true. Public opinion on any given issue may be shaped by the political popularization of the issue.[2] This is owing to the informational asymmetry that exists between the political elites and the general public. This imbalance allows the political elites to present and attribute importance to issues, which are then transferred to the general public through the process of politicization. As a result, the role of public opinion can be described as either influential to the political process (which would render this role immensely important) or largely led by the political process (which negates its significance).

This paper will examine the role of public opinion vis-à-vis the European integration process through the foundations developed for the concept of the "permissive consensus." In order to carry out this analysis, the paper is divided into two major sections. The first section evaluates the existing theoretical conceptualizations and empirical analyses of the concept of permissive consensus, which I challenge as being one-sided and therefore insufficient for the holistic evaluation of the empirical utility of this concept. More importantly, in this section, I will identify an alternative theoretical understanding and suggest four testable scenarios which, coupled with the existing research, would allow one to evaluate the concept of the permissive consensus more thoroughly than previous analyses. The second section provides an empirical evaluation of four possible scenarios and proposes a testable hypothesis defining the relationship between public knowledge and participation. In this section, I will identify two variables that will be used to test the scenarios and present the results of the statistical analysis.

THE THEORETICAL ANALYTICAL FRAMEWORK: THE "PERMISSIVE CONSENSUS" AS A TOOL FOR PUBLIC ATTITUDE RESEARCH

The focus of this work concerns whether decisions are in fact being made over the indifference of the general public. Lindberg and Scheingold argue that the saliency of the community is directly proportional to the perceived interests of individual groups (Lindberg and Scheingold 1970). By using the concept of the permissive consensus, a selective and variable saliency of an issue would not pose any significant challenges to the integration process as long as the majority of the public perceives this salience. [3] Prior to Lindberg and Scheingold, Key identified the consensual pattern of opinion as

permissive of governmental action, by suggesting "the existence of general support for a position creates [...] a permissive consensus." (1961, 32) Accordingly, envisioned through the perspective informed by the concept of the permissive consensus, public attitude provides the government with the ability to act, if such action is judged desirable (Key 1961). Lippmann illustrated the importance of the permissive consensus by arguing that the failings of democracy are directly related to the acquiescence of the general public, which in turn is inherent in the fabric of democratic governance.[4] Acceptance by the general public is one of the core properties of the permissive consensus.

More importantly, Key argued that governmental action does not inform the development of the permissive consensus rather the existence of the permissive consensus informs the "timing and precise form of the action taken." (1961, 33) This suggests that the permissive consensus, by the virtue of each of its components – the permissive nature of public attitude and the public consent towards the proposed governmental actions – allows for policy-making at the supranational level to proceed.[5] However, it is important to ask how the permissive consensus is applicable to the study of the European integration project.

Lindberg and Sheingold argue that if the permissive consensus remains a constant fixture in the integration project, one could reasonably expect that people will continue to support the project as long as it provides greater prosperity. The main reason for this, as the authors have suggested is that "the satisfaction of material needs tends to render people politically quiescent." (Lindberg and Scheingold 1970, 251) Conversely, the alternative, the one that foresees the demise of the permissive consensus, is based on the existence of a community riddled with societal cleavages, which leads to radical politics, entailing the mobilization of mass publics.

Hurrelmann presents a contemporary formulation of Lindberg and Scheingold's argument. He suggests that because of the existence of the permissive consensus, the forced mechanisms of participation such as referenda, which are hoped to generate public support, may in actuality have the reverse effect of reducing the levels of public support (Hurrelmann 2007).[6] This may be even more applicable if one considers the existence of a shift from a permissive consensus to a permissive dissensus. This argument essentially implies that in circumstances where the general public displays ignorance and apathy for the European project, and coupled with a general increase in Euroscepticism, or dissent, the effect of reversal in public attitude, arising from the forced participation, may be even stronger. Hurrelmann's argument is underlined by the understanding that institutional remedies for democratization, which appear most desirable in the normative sense, may not at the same time be the best tools for increasing public support thus, suggesting that elite driven democratization lacks a key component: the demos.

While many scholars have analyzed the permissive consensus, as such, the term itself is still largely ambiguous. Even V.O. Key, the original author of this concept, does not elaborate on its definition. Indeed, Key provides a basic conceptual definition, however, one is left incognizant of the particular meaning of each of the components of the term. The Oxford English Dictionary suggests that the permissive consensus is "the granting of permission for agreement in the judgment reached by a group as a whole." (Oxford University Press 2010) However, this definition, as such, only specifies the latter component, ergo, it is only the agreement (consent) that is made explicit, thus, leaving a gap as to how this agreement is reached. It appears that most authors have focused their research on the "consensus" component of the permissive consensus. Therefore, before the discussion of the "permissive" component, which answers the above question, it would be beneficial to examine why this has been the case.

The "Consensus" Component

Owing to the shift in the levels of public support, the consensus[7] component has also shifted towards the direction of a dissensus, or a constraint towards further integration. This argument is most prominent in the work of Hooghe and Marks, who suggest that the permissive consensus is at this point replaced by a "constraining dissensus." (Hooghe and Marks 2008, 5)[8] At the very outset of their work, Marks and Hooghe negate the utility of the concept of the permissive consensus. The basic assumption, which acts as the foundation of the authors' argument, is that "citizens care – passionately – about who exercises authority over them." (Hooghe and Marks 2008, 2) This assumption implies interest, action, reaction, and participation of the mass public for, and over, the political process.

In contrast, Converse suggests that "logical inconsistencies" in the belief systems of the general public would be prevalent because they far less frequently consider the "elements involved in political belief systems." (1964, 210) This suggests that the evaluation of the consensus component may be riddled with such "logical inconsistencies." At its extreme, this would mean that the people who are in favor of more integration would also oppose/dismiss the loss of national sovereignty.

Consequently, the objective analysis of empirical knowledge of the public vis-à-vis the functions of the European institutions is an important indicator for evaluating the existence of a permissive consensus. In other words, the true value of support or dissent by the general public is proportional to the level of knowledge of the mass public.

The "Permissive" Component

The discussion surrounding the effects of public opinion in the late 1900s revolved around the question of whether or not public opinion was of significance.[9] In today's perspective, the academic debate has illustrated that the "affirmative" position has largely achieved victory. Therefore, the analysis of the laissez-faire or lenient component of the permissive consensus takes the existing research one step further by asking: how does the public decide to support or reject the European integration project?

Merritt and Puchala have demonstrated that many European citizens (over 30 percent in all member states examined) were not even aware of the existence of the European Economic Community (Hewstone 1986, 22).[10] This assertion, illustrates the limitations of the public support provided under the guise of the permissive consensus. This means that while arguing that the mass public in all member states is supportive of the integration project they are also most uninterested in it (Lindberg and Scheingold 1970); in turn suggesting that there is a general lack of knowledge about the project. This, according to Lindberg and Scheingold, stems from the perceived lack of relevance of the integration project to people's lives (Lindberg and Scheingold 1970, 77-78). In their analysis, they relate public interest for integration to the levels of knowledge about the project.

The evaluation of public knowledge alone cannot be considered as a sufficient indicator for the existence of general and widespread permissiveness. This is well illustrated by Barker, who stresses the importance of active public participation. The author states, "... government both does and should rest on the active consent of the governed..." (Barker 2003, 159) This means that the process of governance should be "overtly authorized" by the general public, thus explicitly and negatively linking the permissive component to active public participation. This validates the thesis that whether or not the public consents to the policy trajectory of government is only secondary to the expression of the very same public's consent or dissent *actively.*

More importantly, Barker relates legitimation and thus legitimacy, of the system of governance, to the "actions of identifiable persons either individually or

collectively." (Barker 2003, 163) According to the author, such legitimation can take on a number of forms, such as: "speech, writing, ritual, and display." (Ibid).[11] Three forms of participants can carry out those actions: "subjects and citizens, groups, and ruling elites." (Ibid) For the purposes of evaluating the permissive consensus the focus will be on the subjects and citizens. Therefore, if subjects/citizens participate in the political process through the various forms of participation, then the permissive component has ceased to exist. However, this assertion prompts an important question: what level of public participation is an appropriate threshold in order to make the former claim?[12]

Consequently, following the discussion on the relation between opinions, knowledge, and action, four possible scenarios can be deduced which seek to ascertain the existence of the permissive component, and thus by extension the permissive consensus. These scenarios can be formulated in the following manner:

S1) If the general public are relatively well aware of the components and function of the EU political system, and actively participate in this system, regardless of whether they consent to, or dissent against the systemic decisions, the permissive component *does not* exist.

S2) If the general public are relatively well aware of the components and function of the EU political system, but *do not* actively participate in the political system, regardless of whether they consent to, or dissent against the systemic decisions, the permissive component *does not* exist.[13]

S3) If the general public *is not* relatively well aware – or are even misinformed – regarding the components and functions of the EU political system, but actively participate in this system, regardless of whether they consent to, or dissent against the systemic decisions, the permissive component *does not* exist.[14]

S4) Lastly, if the general public *is not* relatively well aware – or are even misinformed – regarding the components and functions of the EU political system, and *do not* actively participate in the system, regardless of whether they express consent to, or dissent against the systemic decisions, the permissive component *does* exist.

On the basis of these four scenarios, I propose the existence of a relationship between public knowledge and public participation. This relationship informs the existence, or lack thereof, of public permissiveness or in other words, the permissive component of the permissive consensus. The potential outcomes of this relationship have been categorized in the four scenarios presented above. These are not hypotheses; rather they are possible categorical scenarios, which can be empirically tested. These scenarios can be visualized as follows:

Table I – Scenarios for "Permissiveness":

S1-Not Permissive: High levels of knowledge and active participation.	**S2-Not Permissive:** Low levels of knowledge and active participation.
S3-Not Permissive: High levels of knowledge without active participation.	**S2-Permissive:** Low levels of knowledge without active participation.

As a result, public attitudes towards the integration project can be identified as permissive with only the fourth scenario as indicated in the bottom-right corner of the above table. This ensures a significant threshold that must be achieved if one is to argue that the permissive consensus is still in existence. These four scenarios will be empirically tested through the data discussed in the following section.

EMPIRICAL ANALYSIS

From an empirical perspective, there is a significant commonality between many of the scholars (Lindberg and Scheingold; Inglehart et. al.; Gabel and Palmer; McLaren;

Hooghe and Marks; and Hurrelmann) who have examined the concept of the permissive consensus. This is due to the fact that their empirical analysis seeks to evaluate the consensus component of the term. The scholarship in this field has focused on determining whether the public supports the project, with the goal of concluding that they either support the project, or not. While I accept the empirical research carried out by all of the authors as valid, the previous section challenged their analytical results on the basis of an alternative theoretical conceptualization of the permissive consensus.
I challenge these results because in both cases the arguments are presented in a similar fashion. In the cases where the outcome is that there is public consent; it has been assumed that such consent is permissive. Similarly, in the cases where there is a lack of public consent, the assumption has been that the public is no longer permissive of supranational action.

This assumption may seem logical, however, the fact remains that it simply is an assumption and as such, it can be empirically tested. This test is based on the following question: is the EU population permissive of government action or not? This test is carried out and the results will be presented in the sub-sections to follow.

The Basis for Empirical Analysis

On the basis of the four scenarios presented above, "knowledge" and "participation" become the two variables that will be tested in the following empirical analysis. However, before this, it would be of significant value to identify some rudimentary definitions for the concepts of participation and knowledge. These definitions form the basis upon which I have selected the questions that make up the composite of the knowledge and participation variables.

Knowledge, in this case, can be defined as having a basic to intermediate understanding of the EU political system. This suggests that an individual would have to display an awareness of the existence, and an understanding of: the political institutions (European Commission, Council of Ministers, European Parliament, etc.); political processes (decision making); functions (role in the political process); and hierarchies (importance of the institutions).

Participation, on the other hand, can be defined as taking part in political life. This in turn suggests that an individual would have to display: direct participation in the political system (voting); participation in interest groups, political associations and parties; deliberation of political issues; and participation in social movements (protests).

Both variables are reflected throughout the data in a cumulative fashion. This means that the more a participant knows, the higher their knowledge score.[15] Similarly, the more a respondent participates, the higher their participation score. There are, however, some limitations inherent in employing such basic definitions. The most significant one is manifested in the number and variety of questions that can be qualified as participation and knowledge.[16]

Lastly, following from these four scenarios and definitions, I propose a singular hypothesis: H1) *There is a strong positive relationship between knowledge and participation.*

The following empirical analysis will illuminate not only the validity or invalidity of this hypothesis, but it will also illustrate the distribution of the general population that fits in each of these four scenarios. From this, I will suggest some basic generalizations and implications for the existence of permissiveness and thus by extension, the utility of the permissive consensus as a tool for evaluation.

The basis for the empirical analysis is the Eurobarometer survey data for the March-May 2008 time period (Eurobarometer 2008b). This survey is one of the regular bi-annual surveys conducted by Eurobarometer. As a whole, this particular survey has

gathered the responses of over 30,000 participants and, as such, presents a satisfactory sample population for the ensuing empirical analysis. This aggregate data, collected and coded by Eurobarometer, I employ in this analysis by recoding it to fit the variables under examination. The two variables (participation and knowledge) were calculated on the basis of scores that were derived from the questions asked by the Eurobarometer questionnaire (Eurobarometer 2008b).[17] These questions can be categorized in two groups. The first group includes questions that directly evaluate the respective variables. As such, this group can be termed as "strong indicators." Conversely, the second group includes questions that determine the variables only indirectly. Therefore, I have termed these sets of questions as "intermediate indicators." The two tables below include the entire set of questions that I have used in order to conduct the statistical evaluation of the two variables.

Table II – Questions included in the participation variable:

Question Number:[18]	**Question Wording:**	**Quality of Question:**
QC2	The next European elections will be held in June 2009. How interested would you say you are in these elections?	Strong
QC3	Can you tell me on a scale of 1 to 10 how likely it is that you would vote in the next elections in June 2009? Please place yourself at a point on this scale where "1" indicates that you would definitely not vote, "10" indicates that you would definitely vote and the remaining numbers indicates something in between these two positions.	Strong
QC5	If you do not go to vote in the European elections of June 2009, will it be because...?	Strong
QA1	When you get together with friends, would you say you discuss political matters frequently, occasionally or never?	Intermediate
QA15a	Please tell me for each statement, whether you tend to agree or tend to disagree.	Intermediate
QA33	Would you say that it is very important, important, not very important or not important at all for you that the institutions of the European Union function in a transparent way?	Intermediate

The first two questions in the strong category directly evaluate whether a respondent has participated (or intends to do so) in the supranational political system and, as such, they will not be discussed any further. The last question in this category, however, may seem ambiguous, but once the possible responses are examined this potential ambiguity is dispelled.[19]

The second category of questions represents inquiries that are only a general fit to the definition of participation provided above. As such, political deliberation (QA1) is generally a strong indicator, however, in this case, the question only refers to such deliberation in the private context. Therefore, it only displays the potential for participation. The responses to the following question (QA15a) imply that participation has at some point occurred.[20] An additional implication is the following assumption: if a person perceives that their voice is being heard, they will potentially continue to participate. Nevertheless, this question cannot be qualified as a strong indicator because it only demonstrates the potentiality for participation rather than direct participation.

The question inquiring into the necessity for institutional transparency (QA33) is also an intermediate indicator. This is because the expression of interest in institutional transparency suggests that the respondent may also be interested in participating in the political process, where the lack of transparency is a *de facto* barrier to participation.

Table III – Questions included in the knowledge variable:

Question Number:[21]	Question Wording:	Quality of Question:
QA16	Have you heard of?	Strong
QA34	For each of the following statements about the European Union please tell me whether you think it is true or false.	Strong
QC1	In your opinion, when will the next European elections be held, here in (OUR COUNTRY)?	Strong
QA19a	Which of the following are the main reasons for trusting the European Parliament?	Intermediate
QA20a	Which of the following are the main reasons for not trusting the European Parliament?	Intermediate
QA21a	Which of the following are the main reasons for trusting the European Commission?	Intermediate
QA22a	Which of the following are the main reasons for not trusting the European Commission?	Intermediate
QA23a	Which of the following are the main reasons for trusting the Council of the European Union?	Intermediate
QA24a	Which of the following are the main reasons for not trusting the Council of the European Union?	Intermediate
QC4a	Among the following criteria, can you tell what would be the main element in your decision in view of the European elections? Firstly?	Intermediate

In Table III, the questions that are identified as strong indicators are all self-explanatory. Each of these questions explicitly measures the knowledge of the participant directly related to the issue or event. As a result, this category will not be discussed any further.

The second category of (intermediate) indicators is somewhat more ambiguous and deserves to be discussed in more detail. The first six questions in this category can be examined as a group because, while different responses are provided, the questions themselves are similar in quality.[22] The first possible responses for each of the questions are admittedly of a higher quality than the latter two. However, it is the question in its entirety that determines its quality for evaluation. As such, the responses that allow the respondents to qualify their own level of knowledge include a certain level of personal bias, which lowers the overall quality of the question. It should be noted that the utility of these questions is not based on a relationship between trust and knowledge, although such a relationship may indeed exist.[23] The utility lies in the nature of the possible responses, which, by nature, demonstrate knowledge.

The last question in this category includes responses that do not clearly and explicitly determine the level of knowledge of the participants.[24] However, inquiring into the raison d'être of a participant for selecting a Member of the European Parliament illustrates issues of importance, which are indirectly related to the concept of knowledge. As such, "the position of the candidate on European issues" (see endnote 24 response #3) is a response that indicates a higher level of knowledge than "the positions of candidates on national issues." (see endnote 24 response #2) This is owing to the understanding that the former response (see endnote 24 response #3) illustrates an awareness of the supranational political institutions (Eurobarometer 2008b).

Methodology

The threshold that was used in order to determine whether a person has a low or high participation or knowledge is one standard deviation, where if a respondent is located at one standard deviation below the mean, or lower, their knowledge, or participation was considered low. Similarly, if a respondent was located at one standard deviation

above the mean, or higher, their participation, or knowledge was considered high. In this instance, a simple median split is not sufficient because it attributes low scores to the portion of respondents whom fall immediately below the mean. The problem is manifested in the fact that these participants exhibit moderate levels of knowledge and participation rather than low levels of the former and latter.[25]

The threshold of one standard deviation below the mean can be said to provide a more accurate representation of the low scores of participation and knowledge. This threshold accounts for approximately 16 percent of the population.[26]

As a result, participation, being one standard deviation below the mean (or 16 percent) and knowledge, being one standard deviation below the mean (or 16 percent), provides the expectation that only 2.56 percent (see endnote 14) of the sample population (Eurobarometer 2008a) would be categorized in the low participation/low knowledge cell (see Table I).[27] In other words, this threshold predicts that only 2.56 percent of the population would be categorized as permissive. Consequently, this threshold also represents a specific standard on the basis of which the statistical analysis can be carried out.

The statistical tools employed in this analysis are: a) Pearson chi-square test of independence; b) Pearson product-moment correlation coefficient (correlation); and c) coefficient of determination. The chi-square test of independence determines whether the assumption of independence between the participation and knowledge variables is correct. As such, this test examines the frequencies (counts of participants) falling within each of the four scenarios (see Table I). Therefore, the chi-square test compares the actual frequencies vis-à-vis the expected ones (for example, the expected frequency–if knowledge and participation were statistically independent of one another¬–for low knowledge and low participation is 2.56 percent). Lastly, and more importantly, this test determines whether the differences between the actual and predicted frequencies could have been because of chance.

The correlation test provides the strength and direction of the correlation between the two variables. Consequently, the statistic attributes a value between one and negative one. While a value of one would indicate a perfect positive correlation, a value of negative one would indicate a perfect negative correlation. It is also possible to have a value of zero, which would then indicate that there is no relationship between the two variables. Finally, the correlation statistic also includes a test that determines the statistical significance of the correlation.

The last statistical tool employed is the coefficient of determination. This test effectively squares the coefficient of correlation. This statistic does not provide the direction of the correlation, however it offers the proportion of variability in one of the variables that can be explained by the other variable. This effectively means that this statistic informs the ability to predict one variable based on the other variable.

The Empirical Analysis

The outcome of the computation of the statistic for correlation is that there is a moderate positive correlation between the two variables ($r = .372$, $p<.001$). Therefore, and perhaps not surprisingly, when a participant has a high or a low score in the one variable they are more likely to receive a high or a low score in the other variable. This probability is illustrated mathematically through the coefficient of determination ($r^2=.138$). This, in turn, suggests that the in 13.8 percent of the cases, knowing the score of one variable, a researcher would be able to predict the score in the other variable.

The Pearson chi-square test of independence has also generated statistically significant results ($x^2=3209$, $p<0.001$). This statistic provides the categorical information that illustrates the distribution of the population between the four scenarios (see Table I).

Table IV – Chi-Square Test of Independence:

			Knowledge Variable:		
Participation Variable:			High Knowledge[30]	Low Knowedge[30]	Total:
	High Participation[30]	Count:[31]	22,433 (74.4%) (S1)	2,499 (8.3%) (S2)	24,932 (82.6%)
		Expected Count:[32]	21,086.8	3,845.2	
	Low Participation[33]	Count:	3,084 (10.2%) (S3)	2,154 (7.1%) (S4)	5,238 (17.4%)
		Expected Count:	4,430.2	807.8	
		Total:	25,517 (84.6%)	4,653 (15.4%)	30,170 (100%)

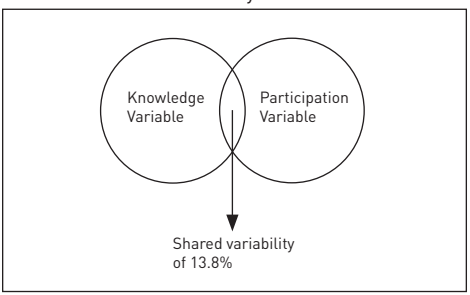
The shaded cell is a representation of the four scenarios presented in Table I, where each darker shaded square correlates to each of the four scenarios.

Results

The Pearson correlation test provided two important results. The first suggested that there is a strong positive relationship between the two variables (knowledge and participation). Both knowledge and participation received a score of r=0.372. This score indicates that there is a strong relationship in the variation between knowledge and participation. When the one variable A increases/decreases variable B does so as well. More importantly, this statistic illustrates that the probability of this correlation being due to chance is below 0.001. Both of these results confirm the hypothesis (H1) proposed in the theoretical section above.

More interesting is the outcome of the coefficient of determination (r^2). This test illustrated the shared variability between knowledge and participation. This can be illustrated as such:

Table V – Shared Variability:



This means that in 13.8 percent of the cases, the variability of one variable could be determined by knowledge of the variability of the other. This then suggests that permissiveness as a function of knowledge and participation may be estimated by testing the one variable only with relatively little accuracy. Consequently, this confirms the supposition that the permissive component should be evaluated on the basis of both the knowledge and the participation of the general public within this political system.

The following statistical test, similarly to the Pearson correlation, evaluates whether there is a correlation between the two variables. The difference, however, can be found in the method for evaluation. While the Pearson correlation employs the two variables as continuous, the chi-squared test calculates the data categorically. This provides the clearest illustration of the four scenarios presented in the theoretical section. Table IV (illustrated earlier) presents the following data in its raw form.

Table VI – Empirical Results for "Permissiveness":

S1-Not Permissive: 22,433 people (74.4% of the population)	**S2-Not Permissive:** 2,499 people (8.3% of the population)
S3-Not Permissive: 3,084 people (10.2% of the population)	**S2-Permissive:** 2,154 people (7.1% of the population)

The chi-square statistic has demonstrated that the actual level of "permissiveness" (7.1 percent) is significantly higher than the projected level (2.56 percent). This illustrates that the threshold for measuring the levels of knowledge and participation is appropriate.

More importantly, however, is the categorical data that the chi-square generates. Thus, 74.4 percent of the sample population are both aware of the EU political system and participate in it (Eurobarometer 2008a). Moreover, if one is to combine all the non-permissive scenarios the outcome is that 92.9 percent of the population can be categorized as non-permissive. This in turn suggests that the permissive component of the permissive consensus only exists in very few of the cases. This does not mean, however, that permissiveness does not exist. Rather, this result means that only 7.1 percent of this sample population, at the time of this survey, fell within the category of permissive.

Limitations of the Results

While this empirical analysis does provide some meaningful results for the evaluation of the permissive component of the permissive consensus, they are not definitive. This is owing to three major limitations. First, the basis for this analysis was only a singular questionnaire that was conducted shortly before the upcoming European elections. As such, this event could have inflated the number of people who participated and/or had knowledge of the EU political system. Second, the questions that were employed in order to generate the participation and knowledge variables were of mixed quality. This means that the intermediate indicators may inflate or deflate the results. Third, the binary recoding of variables mires the range of possible scores that a participant could have, meaning that there is less than optimal accuracy in the representation of the two variables. Nevertheless, it should be noted that creating a binary code across two sets of questions is a conservative procedure, because it removes the variation from the data and, as such, makes it easier to agree upon the outcome of the variables for each case, thus, making it harder to find proof for the hypothesis. In fact, a more powerful analysis, including more variation in future research, may prove that the observed relationship may be even stronger than has been presented in this paper.

Overall, this empirical analysis does not provide a comprehensive answer to the basic question: is the EU population permissive of government action or not? This question can only be answered in an adequate fashion if a more extensive empirical analysis is conducted. This would have to addresses each of the limitations discussed above. However, this empirical study provides the groundwork for such analysis.

CONCLUSION

The academic discussion of the permissive consensus has largely focused on the consensus component. Contemporary authorship has suggested that in fact, the general public not only does not consent to the trajectory of integration; but rather, expresses dissent for the project. While this has been ascertained through various empirical studies (McLaren; Hooghe and Marks; Inglehart et. al.; and Gabel and Palmer), I have argued that such assertions are in fact based on an incomplete evaluation of the

permissive consensus. As a result, in order to enhance such evaluation, I have argued for the inclusion of the analysis of the permissive component. This argument is based on the understanding that while consent, or dissent, are both equally important indicators, they must be discussed through the prism of public knowledge and public participation within the political system.

Lastly, in order to test the existence of the permissive component, I have suggested four scenarios that represent a high burden of proof. Thus, the empirical tests that were carried out in the following section, were aimed at determining the validity of the claim that the permissive consensus may still be an accurate tool for discussing public attitudes towards the European integration project.

The results of this empirical analysis can be summarized in four concise conclusions. First, there is a moderate positive correlation ($r=0.372$) between the two variables (knowledge and participation), which is statistically significant ($p<0.001$). Second, the shared variability between the two variables does not sufficiently justify ($r^2=0.138$) the neglect of the evaluation of either variable. Third, only a relatively small portion (7.1 percent) of the sample population (Eurobarometer 2008a) can be categorized as permissive of governmental action. Fourth, and maybe most importantly, the limitations of this empirical analysis do not sufficiently justify the derivation of broad societal generalizations.

This study has provided an initial conceptualization of the importance of the evaluation of the permissive component of the permissive consensus, while at the same time, informing the necessity for, and the general direction of, future empirical research. This research should better illuminate the question of whether the EU population is or is not permissive of government action, thereby, proving the utility of the permissive consensus as a valuable tool for the evaluation of public opinion towards the European integration project.

NOTES

1. Hooghe and Marks have argued that party leadership (at the national level) would politicize an issue if "they see electoral advantage in doing so" (Hooghe and Marks 2008, 19). The importance of this assertion is derived from the understanding that politicizing an issue invariably contributes to its public prominence and thus also contributes to the popularization of the given discussion, thus thrusting the issue into the realm of widespread public opinion.

2. Lindberg and Scheingold have suggested that the level of support for the integrative undertaking is affected by the environment within which the community must function which can be in turn conditioned by broad societal trends. One factor that afflicts these societal trends is primarily the interaction among participating elites (Lindberg and Scheingold 1970). Thus, suggesting that public support can be perceived as a background variable which conditioned but did not determine growth processes in the community. Moreover, the authors have argued that the fundamental appeal of the European Economic Community was not the coordination of policy fields, but rather the "economic payoff, which has followed in the wake of the economic union." (Lindberg and Scheingold 1970, 28)

3. This understanding is derived from the notion, which Lindberg and Scheingold have maintained, that it is the institutions that were the true engines of the European project and that the permissive consensus was simply the background support that informs the general path for these institutions.

4. "[T]hey [the people] are compelled to act without a reliable picture of the world, that governments, schools, newspapers and churches make such small headway against the more obvious failings of democracy, against violent prejudice, apathy, preference for the curious trivial as against the dull important, the hunger for sideshows and three legged calves. This is the primary defect of popular government, a defect inherent in its tradition, and all its other defects can, I believe, be traced to this one."(Lippmann 1965, 230)

5. Key has stressed that the existence of the permissive consensus "is not directive of public action" (Key 1961,35). Thus the permissive consensus does not necessitate the government to act, rather it allows such action to be carried out in the potential sense. Moreover, the permissive consensus in one policy may be constrained by the same phenomenon in another (Key 1961). This is far more pronounced at the supranational level, where more than one venue for political participation exists. Thus as McLaren's research has illustrated, the consent for more coordination in unemployment policy is constrained by the consent for more nationalized social welfare policy (McLaren 2006).

6. Hurrelmann has argued that the permissive consensus is still very much in existence. As a matter of fact, the author suggests that the permissive consensus is the reason for the declining levels of public support during the ratification debates over the European Constitution (Hurrelmann 2007). This argument seeks to ascertain the implications, for the concept of the permissive consensus, of the declining levels of public support. Indeed the permissive consensus is generally believed to describe a circumstance where the general public tacitly supports further integration, where the support can be described in the terms presented by Easton: "specific and diffuse support". Therefore, the alteration in support levels is in effect the evaluation of the "consensus" component of the permissive consensus. Consequently, if we perceive support to vary in a linear fashion, then at the polar opposites of this line we will find full support and complete lack of support. Thus the shift that has been generally described in the literature moves the cursor from a location closer to full support to a location closer to complete lack of support.

7. Converse succinctly illustrates the importance of measuring the "consensus" component of the permissive consensus. The author states that "democratic theory

greatly increases the weight accorded to the numbers in the daily power calculus" (Converse 1964, 207). This serves as the underlying understanding for many if not most of the scholars interested in researching the attitudes and levels of support concerning the European integration project.

8. It appears that the wide belief that the permissive consensus has largely ceased to exist is based in the general tendency for citizens not to support the project. While the withdrawal of support may be real even if statistically contested, the passive acquiescence and uninvolved nature of the public largely remains as a fixture on the European political landscape.

9. Putnam has suggested that public opinion can be characterized as a "leading" or "lagging" indicator (as identified by Hewstone 1986). Borrowing this conceptual understanding from Putnam, we can then apply it directly to the "permissive" component. This would mean that if public opinion is permissive, it is more likely that it would be a "lagging" indicator. Existing research has already suggested that indeed, within the European Community, public opinion can be best characterized as "lagging", where various elites and interest groups mold the public's view (Etzioni 1969). The outdated nature of this research prompts a more current re-evaluation.

10. The assertion made by Merritt and Puchala, however should not be taken out of context. Hewstone demonstrated that many authors in the 60s and 70s have also argued that the public does have political ideologies even if they are "less clearly articulated" (Lane, Milbrath and Wilker). More importantly, Merritt and Puchala suggested, "he [the common person] knows something and cares about foreign affairs." (1968, vii)

11. Barker questions the consciousness of EU citizens. The author suggests that they are "subjects by themselves but not for themselves." This is because, Barker has argued, "people may not have a sense of being governed." This sense is best developed through "commands and demands, coercion and taxation." According to the author, these exercises in power are what make subjects aware that they are subjects. The validity of this argument is overtly apparent. However, these criteria, particularly with regard to the EU, are incomplete. The complex structure of policy-making and the affects that these resulting supranational policies have at the national level, in most cases, only indirectly affect the criteria presented by Baker. Nevertheless, irrespective of the fact that EU policies have an indirect influence, such influence is indeed very real. Therefore, it can be argued that if a subject is relatively well informed with regards to the role of EU policy-making, they could very well develop the sense of being a subject – who is governed by this supranational system. Thus, we reach another important question: what is the relationship between the level of relevant political knowledge of a subject and their active participation in the political process?

12. The answer to this question will be explicitly discussed in the following empirical section.

13. This is due to the understanding that the choice not to participate in the political process – particularly if someone with understanding of the system makes this choice – is in itself an active form of participation.

14. This is because, while it may be irresponsible to actively participate without having an informed opinion, it is also true that the political elites, by the virtue of their position, would have to pay attention to public opinion regardless of the merits of its objectivity.

15. Eurobarometer March-May 2008 Eurobarometer, "Data for Social Sciences," ZACAT - GESIS Online Study Catalogue, GESIS - Leibniz-Institut für Sozialwissenschaften, May 2008, http://zacat.gesis.org/webview/index.jsp

16. This limitation will be discussed in further detail in the following section where I will provide a justification for the selection of questions employed in the analysis.

17. All of the responses to the questions employed for analysis were recoded and calculated in a binary fashion. This means that each of the responses was attributed a

number between zero and one. This was done in order to be able to compute cumulative scores which can then be statistically evaluated. Thus, in the case of knowledge each time a participant answered a question correctly, they were given a score of one. In the instances where the response was incorrect, the respondent was awarded a score of zero. Similarly, in the case of participation, a response which indicated participation was scored as a one and a response which indicated a lack of participation was scored as a zero. Some of the responses had to be inverse coded. This means that in some instances, a negative response by a participant indicated knowledge or participation. Consequently, such a response was coded as a score of one. The calculation of the variables was done by taking the mean of all the responses making up each individual variable. Thus, the knowledge variable consists of the average of all responses where each individual participant receives an individual cumulative knowledge score. This average was calculated by the addition of all scores and dividing it by the number of questions to which a response was provided. This exercise was mirrored for the participation variable. In the instances where a respondent had not answered a question (left it blank), I have treated those "missing values" as non-existent. Consequently, the possible range of scores that a participant could be awarded was 0-10 for knowledge and 0-6 for participation. Finally, in order to conduct the empirical analysis, I have summed the scores of each of the participants across all questions and calculated the mean of these aggregate scores. Following this, I have calculated the standard deviation from the mean for the entire sample and on the basis of this, I have designated scores that were one standard deviation bellow the mean, or lower, and scores of one standard deviation above the mean, or higher, as representative of low and high levels of knowledge and participation respectively.

18. For full details of the questions asked please refer to: Eurobarometer, Eurobarometer 69.2 Basic Bilingual Questionnaire , Questionnaire, Opinion and Social, TNS (GESIS - Leibniz-Institut für Sozialwissenschaften, 2008).

19. The responses that I have used in this cases are: 1: You are not interested in politics, by-elections in general; 2: You are not interested in European elections; 4: You are not interested in European affairs; 5: You are against Europe, the European Union, the European construction; 6: You do not sufficiently know the role of the European Parliament; 9: You believe that you are not sufficiently informed to go vote; 10: You believe that you will be held up, due to traveling, work, health, etc; 11: You never vote; 13: You are not registered on the electoral lists.

20.The responses used are: 4: My voice counts in the European Union; 7: On European issues, my voice is listened to by the members of the European Parliament; 8: On European issues, my voice is listened to by the European Commission.

21. For full details of the questions asked please refer to: Eurobarometer, Eurobarometer 69.2 Basic Bilingual Questionnaire , Questionnaire, TNS Opinion and Social (GESIS - Leibniz-Institut für Sozialwissenschaften, 2008).

22. The responses that have been employed for this analysis are the following: 1: The decisions taken by the (INSTITUTION) are (not) taken in a democratic way; 4: You are (not) well informed about the activities of the (INSTITUTION); 11: Don't know.

23. It could be argued that a relationship between trust and knowledge exists on the basis of already predetermined responses. As such, the argument would suggest that the participants have already developed a sub-conscious prejudice for trusting or not trusting a particular governmental institution, thus negating the knowledge-value of the questions. In the case of the EU, it could be counter-argued that EU institutions have not yet reached the maturity of national institutions and as such, negative or positive prejudices are not fully developed by the population. However, this counter-argument requires empirical testing.

24. The responses that have been employed in this analysis are: 2: The positions of

candidates on national issues; 3: The position of candidates on European issues; 4: The position of candidates' parties on European issues; 6: The experience of the candidate on European affairs; 7: The experience of the candidates at the national level; 9: Don't know.

25. A threshold of two standard deviations below the mean would have also been possible, even if more stringent. However, in this circumstance, a combined low score on both knowledge and participation would have been an extremely rare event. This means that the predicted size of the category that represents "permissiveness" would be extremely small, thus reducing the analytical potential by potentially over-inflating the significance of the statistic tests.

26. The mathematical equation for this threshold is represented as follows: P(low participation ∩ low knowledge) = P(low participation) x P(low knowledge). It should be noted however that this equation assumes that participation as a variable and knowledge as a variable are independent of one another.

27.The equation can be visualized thus: P(low participation ∩ low knowledge) = (0.16) x(0.16) = 0.0256.

28. Higher than one standard deviation below the mean.

29. Lower than one standard deviation below the mean.

30. Higher than one standard deviation below the mean.

31. The count represents the frequency of participants which fall into the respective category.

32. The expected count represents the number of people that were expected to fall into the respective category by the mathematical calculation of the threshold (see page 10).

33. Lower than one standard deviation below the mean.

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7 BIASED POWERS AND POWERFUL BIAS: THE INTERACTION OF PARTIALITY AND LEVERAGE IN POWER MEDIATION

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ABSTRACT

This paper examines how mediator bias and leverage interact to affect mediation success. This success is defined as the likelihood that parties will achieve a settlement. A study of mediation literature on bias and the use of leverage by power mediators demonstrates that these elements can increase the probability of mediation success. A predictive theoretical framework on the interaction of bias and leverage in power mediation is then developed and tested through an analysis of the Falklands/Malvinas conflict and the 1975 Israeli-Arab disengagement agreement. The case studies demonstrate that settlements are facilitated when power mediators are strongly biased, as they utilize their coercive and reward power to issue credible threats and reward promises, while power mediators with moderate biases send unclear signals regarding their resolve to utilize coercive and reward power as leverage, reducing their perceived credibility and the likelihood that a settlement will be attained. These conclusions explain a relationship that has not been widely addressed in mediation literature, and provide a starting point for further research and testing, the results of which can be utilized by mediators to effectively plan their mediation strategy.

INTRODUCTION

Historically, mediator bias and the use of leverage were not commonly accepted mediation practices. Furthermore, their usage was not endorsed as effective means of dispute settlement. Conflict mediation and the use of power have been described as mutually exclusive: "one does not negotiate from strength; one may dictate from strength, but one does not negotiate," (Boulding 1962, as cited in Carnevale 2002, 25) and "there are two possible reasons for not negotiating: because one is weak and cannot afford to, or because one is strong and does not need to." (Bell 1962, as cited in Carnevale 2002, 25) Similarly, impartiality has been advanced as a key characteristic required for mediator acceptability (Skjelsbaek and Fermann 1996), and proponents of pure mediation characterise it as being free from bias, impartial and neutral. Today, bias, leverage, and power are recognized and even crucial components of most negotiations and represent important elements in the study of mediation (Zartman 2009).

It is now widely acknowledged that mediators have interests driving their participation in conflict resolution, and the prevalence of power mediation throughout the Cold War has earned this practice recognition in conflict mediation. Siniver asserts that of all mediator qualities, "power (leverage) and its perceived impartiality are of utmost relevance to [a mediator's] chances of success." (2006, 809) However, there is a lack of empirical evidence on the link between partiality and leverage, and further research is required to determine the effect of third-party bias on mediation outcomes in power-based mediation (Kleiboer 1996; Zartman 2009). Hence, while the issues of leverage and bias in mediation are often assessed separately, this paper will examine how mediator bias and leverage interact to affect mediation success, and develop a general framework to predict the outcome of these interactions.

The first section of this paper will lay the groundwork for the analysis by defining key terms and assumptions, followed by a literature review of work related to bias and the use of leverage by power mediators. Applying a deductive approach utilizing theories developed from models presented in the literature, I argue that settlements are facilitated when power mediators are strongly biased, as they utilize their coercive and reward power to issue credible threats and reward promises (sticks and carrots), while power mediators with moderate biases send unclear signals regarding their resolve to utilize coercive and reward power as leverage, reducing their perceived credibility and the likelihood that a settlement will be attained. A brief analysis of two cases will be employed to test the validity of the model and determine whether the hypothesis can be

supported. Finally, the implications of this model for theory and policy will be discussed, and suggestions made for future research.

KEY ASSUMPTIONS AND DEFINITIONS

Various definitions of bias, impartiality, neutrality, salience, power mediation, leverage, and mediation success exist in conflict intervention literature. The following section will clarify the use of these terms in this paper, and will also provide a brief overview of key assumptions.

A biased mediator is defined as a party who "has something at stake and is closer to one side than the other – politically, economically, and culturally." (Carnevale and Arad 1996, 40) A biased mediator's incentive for involvement in a conflict is often related to the aforementioned strategic interests. Hence, in the context of this framework, I define bias as a strategic, relational bias as a result of close political connections and interactions between the mediator and the disputant.

Mediator impartiality should not be confused with neutrality. Carnevale and Arad (1996) define an impartial mediator as an individual who is balanced, neutral, and has "no opinion regarding the conflict at hand." (40) However, the definition of impartiality that will be used in this paper is akin to Stulberg's (1987) definition: a party who "treat[s] all parties in comparable ways, both procedurally and substantively." (as cited in Carnevale and Arad 1996, 40) Impartiality is a position towards conflicting parties, while neutrality is the mediator's position vis-à-vis the conflict, not the parties. Young (1972) implies that neutrality causes a lack of engagement in conflict: there are situations where "there is a distinct role for an intermediary but in which no third party finds it worth his while to assume this role." (as cited in Carnevale and Arad 1996, 40) Zartman and Touval (1985, 32) also uphold this view: "mediators are players in the plot of relations around the conflict, with some interest in its outcome; otherwise, they would not mediate." Silbey (1993, 351) confirms the latter view by contending, "the mediator ... is not disinterested or neutral with respect to the importance and priority of resolving disputes." Consequently, in this paper I will assume that mediators can be impartial but are non-neutral since they have interests that explain their involvement in mediation. The varied nature of mediator interests will be addressed shortly in a discussion of conflict salience, which in this context is defined as the determinant of a mediator's resolve or willingness to act in a conflict.

A central tenet of mediation is that it is non-binding, non-compulsory, and both parties must willingly agree to a settlement. Zartman and Touval (1996) define power in mediation as a "mediator's ability to move a party in its intended direction." (as cited in Siniver 2006, 811) Matz (1994) contends that any mediator pressure has the potential to compromise party autonomy; therefore caution must be exercised to mitigate this effect. However, Boskey (1994) explains "a party's autonomy is compromised only in cases where the party has lost the capacity to make the decision to walk away from the agreement. That capacity is not lost because of ... pressures." (372) Hence, an important assumption in the context of this framework is that as long as a disputant retains their freedom of choice to withdraw from the mediation process, power mediators do not impose solutions or coerce disputants, but can use leverage to encourage a settlement. Leverage is "the exercise of influence by a mediator for the purpose of changing the behaviour of a disputant in a specified way." (Babbitt 1993, 9)

There are many different approaches to defining successful mediation. Bercovitch and Houston (1996) define success as a reduction in violence and the preservation of a balance of power. However, a single mediation is comprised of numerous diverse variables such as needs, desires, and the prevailing domestic and international socio-political context. Furthermore, every mediation is unique, making it difficult to derive a universal indicator or definition of success.[1] For the purposes

of this paper, success will be defined as a settlement having been reached between disputant parties. The weakness of this approach is that it ignores the material result of mediation and the likelihood of parties adhering to the agreement. It assumes that parties will negotiate in good faith and as a result will agree to settlements with which they are comfortable, and that they are willing to uphold. The strength of this approach is that it provides an easily measurable indicator of success with a high degree of reliability that can be applied across various cases. In addition, since the argument that follows concerns the process in reaching a settlement and whether parties agree to a settlement, for the purposes of this framework successful mediation defined as an agreement being reached is sufficient.

The final assumption is that certain "conditions are more conducive to successful mediation." (Siniver 2006, 810) Mediator qualities, timing, power, and the nature of the conflict all play roles in mediation success. In contrast to the view that insists that too many factors affect mediation success to attempt to isolate any single factor (Kleiboer 1997), this paper will assume that certain conditions facilitate successful mediation and attempt to isolate the effect of mediator bias and leverage on the success of power mediation. Further implications of this approach will be discussed in the conclusion.

LITERATURE REVIEW

The following section will summarize the findings of relevant research on power mediation and on bias, and then develop a hypothesis to predict how mediator power and bias interact to affect mediation outcomes.

Impact of Power Mediators on Mediation Success

The most significant characteristic of power mediators is that as a result of their economic and military strength and their "extensive global involvements," (Touval 1992, 233) they possess vast resources that they can use as leverage to influence the decisions of disputants in mediation efforts. In addition, they possess status and power in the international community, which enable them to be more influential and discourage disputants from acting in ways that might weaken their bilateral relationship with these powerful states. Princen (1995) asserts that third party interveners with interests in the conflict expand the bargaining range because they can offer resources with which concessions can be obtained. Instead of a two-way negotiation, the interaction becomes a three-way negotiation where parties are presented with additional incentives and risks to move them towards a settlement (see Appendix I). These factors increase the success of power mediation.

Kleiboer (2002, 129) notes that, as a result of providing compensation to parties making concessions, great powers "actually pay the price for some of the concessions made by the two sides." As such, power mediators also help parties minimize their losses, making mediation by power mediators who are willing to use leverage a very attractive arrangement for disputants,[2] who may actually seek out power mediators for this reason (Bercovitch and Houston 1996). Similarly, Frei (1976) demonstrated that "mediation efforts by superpowers are more likely to be accepted than mediation efforts by medium or small powers." (as cited in Babbitt 1993, 15) Power mediators have a range of resources they can employ as leverage. Rubin (1992, as cited in Siniver 2006) and French and Raven (1959, as cited in Carnevale 2002) define several types of power that a third party intervener may possess as a result of resources at its disposal: reward power (offering side payments), coercive power (issuing threats or sanctions), expert power (offering specialized knowledge or expertise), relational power (owing to a pre-

existing relationship with a disputant), and referent power (stemming from strength or prestige), among others. The use of pressure and leverage in power mediation can play a significant role in mediation success (Touval 1982; Inbar 1991; Touval 1992; Kleiboer 1997). For example, in the 1970s Rhodesian mediation, the coalition formed by African states, Commonwealth states, and the U.S. effectively used its influence and resources as leverage "at critical junctures to keep the conference from collapsing," enabling negotiations to continue (Rothchild 1996, 484).

Literature on power mediation suggests that power mediators are best placed to exercise leverage as a result of their extensive resources, and that the use of leverage results in greater mediation success.

Impact of Bias on Mediation Success

As mentioned previously, many earlier definitions of mediation included impartiality as a requirement for effective mediation. However, today few deny the positive role that mediator bias can potentially play in conflict intervention. In fact, Kleiboer (1997, 44) posits that mediator impartiality might be "an undesirable or even an impossible prerequisite." She explains that parties to a conflict might accept a biased mediator because the opposing disputant views the mediator as being able to influence the party to whom it is partial in order to deliver concessions, while the party benefiting from this relational bias views the mediator as being on their side. In addition, Carnevale and Arad (1996) suggest that parties accept partial mediators because they want to foster or preserve positive relations with the mediator, or they may want to benefit from resources the mediator has to offer. These reasons for engaging with a partial mediator are of even greater relevance for high power mediators with whom alliances are more important and who possess more extensive resources. For example, Egypt readily cooperated with U.S. mediation efforts "despite the apparent bias towards Israel" because they "became disillusioned with Moscow, [and were] eager to improve relations with Washington and, like Israel, to enjoy its economic and political patronage." (Siniver 2006, 817) This case will be further analysed shortly.

Not only is a mediator's strategic relational bias helpful to disputants, but "[p]artiality toward one side is ... permissible [and] may be helpful to the mediator." (Tome 1992, 286) This is because the mediator is able to negotiate greater concessions as a result of its influence and close relationship with its protégé, resulting in a more efficient settlement. Correspondingly, Kydd (2003) shows that in cases of successful mediation, mediators biased toward one party obtain greater concessions from that party than do unbiased mediators.

Carnevale and Arad (1996) and Touval (1982) demonstrate that the content of a biased mediator's proposals (content bias) is a more important determinant of mediation acceptability and success than the perceived bias of the source (source characteristic bias). Therefore, although a mediator may be perceived as strongly biased toward one disputant, the nature of their proposal is the main determinant of mediation success; "mediators must be perceived as having an interest in achieving an outcome acceptable to both sides, and as not so partial to one side as to preclude such an achievement." (Zartman and Touval 1985, 37)

Hence, many theorists (Wehr and Lederach 1991; Carnevale and Arad 1996; Savun 2008;, among others) agree that a partial mediator can enhance mediation success, and "biased mediators can succeed regardless of their biases and perhaps even because of them, and can act in an evenhanded manner with some degree of success." (Carnevale and Arad 1996, 49)

The literature review on the impact of bias and power mediators on mediation success demonstrates two key effects. First, mediator bias can increase mediator acceptability. In addition, when the mediator works towards an acceptable outcome

for both parties, a mediator's relational bias can bring about successful mediation because it can engender greater concessions from a disputant. Second, leverage is best employed by power mediators with extensive resources, and its use greatly enhances mediation success and the development of mutually acceptable outcomes.

ANALYSIS AND ARGUMENT: IMPACT OF BIAS AND POWER ON MEDIATION SUCCESS

Building on theories and models in the literature review, the following section will examine the link between bias, impartiality and leverage in power mediation and will develop a framework to predict the outcome of these interactions on mediation success.

Biased Powers and Mediation Success

A power mediator's success at producing an outcome acceptable to disputants is based on the mediator's use of leverage, and not on mediator impartiality (Zartman and Touval 1985; Smith 1994; Bercovitch and Houston 1996; Siniver 2006). While it follows that intervener impartiality is important for mediation by small, less powerful states (Slim 1992, as cited in Kleiboer 1996), for power mediators, successful outcomes are created as a result of their "ability to push the disputants towards an agreement by rewarding or depriving [them] of certain resources." (Siniver 2006, 813) The use or non-use of leverage represents a major factor in the success of power mediation; for example, "[t]he US refrained from utilizing its leverage in its secret mediation between Egypt and Israel in the winter of 1955-6, trying (but failing) to defuse the tensions that subsequently led to the 1956 war." (Touval 1992, 241) In contrast, in the 1975 mediation between Israel and Egypt, the United States used carrots and sticks to influence parties to arrive at an agreement: aid and military supplies were delayed to pressure parties to concede, then significant aid was granted when an agreement was reached and the conflict was resolved (Touval 1992). Hence, "[e]ffective mediation in international relations is more a matter of mediators' utilization of resources, leverage, and influence commensurate with their position to enhance fairness than it is of impartiality." (Brookmire and Sistrunk 1980 as cited in Bercovitch and Houston 1996, 26)

It follows that since the lack of bias is not a significant factor in achieving an effective outcome in power mediation, great power mediators can be biased to a greater extent than can smaller or less powerful actors who do not possess leverage, without the same detrimental effects on mediator acceptability and mediation outcomes.[3] In fact, a higher degree of relational bias may give a power mediator greater leverage to employ in dispute resolution: "the more ties mediators have with a party – and the more disposable goods they possess that the party values – the greater the potential they have for pressing the party by suspending ties and denying values." (Zartman and Touval 1985, 41) A biased mediator's close relationship with a disputant, often evidenced by bilateral cooperation and significant economic or trade linkages, enable the intervener to reduce economic benefits, trade relations, or aid, or to decrease interstate cooperation in order to influence the favoured party to a greater extent.

Hence, biased power mediators can strategically employ leverage to produce proposals that result in outcomes acceptable to all disputants and that increase mediation success.

Powerful Bias and Mediation Success

Leverage is only successful to the degree that threats or rewards are credible and the risk of a negative outcome or the benefits of a positive outcome are real. If a power mediator issues a non-credible threat, it will have little influence on a disputant's behaviour. What

then determines the credibility of threats and rewards by power mediators?

Determining a conflict's salience to an intervener is an important consideration for disputants in determining the credibility of threats and rewards by mediators, as salience determines a mediator's "willingness to absorb costs to achieve a particular settlement." (Carment and Rowlands 1998, 579) There is a direct relationship between salience and resolve to use leverage: as a conflict's salience to a mediator increases, the mediator's resolve to employ leverage to secure a favourable agreement increases (Carment and Rowlands 1998).

In an effort to operationalize salience, practitioners and theorists have suggested various elements indicative and predictive of a conflict's salience. These factors include the strength of formal alliances, the value of bilateral trade and investments, and geopolitical interests such as ownership of, or access to natural resources, the worldwide balance of power, or the desire for regional peace and stability (Kleiboer 1997; Carment and Rowlands 1998; Favretto 2009). Correspondingly, an important indicator of a conflict's salience is mediator bias: a strongly biased mediator, owing to its strategic relationship with a disputant, has compelling incentives to utilize leverage to negotiate an agreement, ensure an acceptable outcome for its protégé, thereby protecting its own interests. In this respect, mediator bias can give disputants important signals regarding a mediator's resolve to credibly employ leverage to resolve conflict (Favretto 2009).

This link between a mediator's relational bias, use of leverage, and credibility is also confirmed by Bercovitch and Houston (2000) who acknowledge,

> Legitimacy [and] leverage ... reside not only with the mediator but also in the type of relationship a mediator has with the parties in conflict. When an ongoing relationship or alliance exists between the mediator and the parties, factors such as common bonds, history, experiences, values, and interests all act to establish a degree of familiarity, rapport, understanding, [and] trust ... of a mediator. These factors also provide the basis for the use of ... sources of power and influence by the mediator in the conflict (Carnevale and Pegnetter 1985, as cited in Bercovitch and Houston 2000, 181).

Furthermore, in exploring the link between bias and the use of leverage by power mediators, Favretto (2009) demonstrates that a high level of bias is an important indicator of a state's intention or resolve to use its military powers to end a conflict. Based on Favretto's model, I submit that the assessment of bias as an indicator of a state's resolve to engage in conflict can be expanded to also include bias as an indicator of a mediator's resolve to follow through with threats and rewards. If a power mediator is highly biased, it will exercise leverage to ensure that the conflict is resolved and its interests are protected. A power mediator with a high degree of bias has an incentive not to issue meaningless promises or threats and risk damaging its reputation as well as its interests. Furthermore, power mediators have more resources at their disposal to use as leverage, and when highly biased, will readily use them to protect their strategic, economic, security, and political interests.

Hence, highly biased power mediators will send strong signals regarding their willingness to act, enabling disputants to make accurate assessments of intervener credibility and resolve to follow through with threats or promises, and contributing to successful mediation outcomes.

Favretto (2009) also demonstrates that due to disputants' possession of incomplete information regarding a state's resolve, threats of military action by an intervener with a moderate level of bias will be less credible and result in failed negotiations. I extend this theory to high power mediation and posit that moderate levels of mediator bias will create unclear signals, contributing to asymmetrical information regarding the intervener's willingness to enforce threats or implement rewards to

settle the conflict. This will therefore reduce the mediator's perceived credibility and as a result, disputants will be less inclined to make concessions and the likelihood of attaining a settlement will decrease. Additionally, moderately biased power mediators may be completely unwilling to employ coercive or reward power as leverage, and the non-use of leverage in power mediation further decreases the power mediator's credibility and the likelihood of disputants arriving at an agreement (Beardsley 2009).

Moderate levels of mediator bias give rise to information asymmetry. Disputants experience difficulty judging a mediator's willingness to act as a result of various factors, including the mediator's inconsistent behaviour, lack of a historical record of bias, or difficulty in assessing relative bias. For example, a disputant may be uncertain whether a mediator favours them or favours the other party as a result of geopolitical changes. An intervener's moderate bias might arise as a result of the identity of the disputants, the nature of the conflict, foreign policy priorities, or other strategic considerations. These considerations act as a counterbalance to mitigate a state's desire to strongly support a disputant and to utilize leverage to induce certain solutions to the detriment of the other disputant or other interests. As a result of this information asymmetry, disputants will be uncertain about what action – if any – the mediator will take to resolve the conflict, which will decrease their perceived credibility. A credible mediator "keeps parties engaged in the process. (Tome 1992, 285) This lack of perceived credibility will discourage disputants from making concessions and reduce the likelihood of a settlement.

Maoz and Terris' (2006, 426) research supports the link between disputants' perception of a mediator's credibility and their willingness to concede:

> Clearly, disputants' responsiveness to the mediator's offers depends on the extent to which they believe she is truthful and that she can deliver her promises (or carry out threatened sanctions) ... A mediator ... is more likely to induce disputants to accept her offers the more credible she is.

Similarly, Tome (1992, 287) recognized the importance of conveying clear signals in mediation and concluded that, "[p]artiality is a perception, and credibility is an intangible. Yet, like so many perceptions and intangibles, these factors have very real, tangible effects on negotiations."

Hence, moderately biased mediators give rise to asymmetric information, which decreases the intervener's perceived credibility and ability to influence disputant behaviour. This results in a decreased likelihood of achieving mediation success.

Measuring Bias

In assessing a mediator's resolve to employ leverage, it is not necessarily actual relational bias that is being evaluated by disputants; rather it is the disputants' perception of mediator bias. Bercovitch and Houston (2000) find that relationships between the intervener and parties in a negotiation "exert a significant influence" (197) on mediator strategy, and that this influence can be evaluated through "parties' perceptions of ... the appearance of bias." (181)

As a result of being based on perceptions, there is no easy measure of mediator bias. The degree of bias "is a matter of perception that makes the bounds of partiality somewhat nebulous." (Tome 1992, 287) In Favretto's model (2009), the level of state bias is treated as a continuum (instead of a biased/unbiased dichotomy), and bias is developed over time through a state's interactions with, and actions towards, other states in the international community. This facilitates the ability of observers to make judgements regarding a state's resolve because they can analyze the state's history of behaviour prior to the conflict situation. Savun (2008, 33) adopts a slightly different approach to assessing a state's bias, and argues that relative bias is the "degree of

closeness between two states in relation to a third state; ... reflect[ing] a triangular relationship." (See Appendix I) Consequently, Savun maintains that a state's overall bias in a conflict depends on its relative bias toward both parties involved in the mediation. I contend that both methods of determining relational bias supplement each other. Two cases will be employed in the section that follows to illustrate and test the validity of this theory and determine whether this hypothesis is borne out.

HYPOTHESES

The hypotheses developed from the literature review and theoretical models discussed above are as follows:

1. Power mediators with strong biases use their coercive and reward power to issue threats and rewards, which encourage disputants to make concessions and facilitate settlements and successful mediation outcomes. The perceived level of bias of power mediators can be assessed through a historical analysis of their actions, and an appraisal of their relative bias, based on the relationship between the mediator and each disputant.
2. Power mediators with moderate biases create ambiguous signals regarding their resolve to utilize coercive and reward power as leverage, reducing their perceived credibility and the likelihood that an agreement will be attained.

CASE STUDIES

A brief analysis of the 1975 Israeli-Arab disengagement agreement and the Falklands/Malvinas conflict, both mediated by the United States, will be employed to test the external validity of the framework and determine whether the hypotheses can be supported.

Strong Bias, Use of Leverage

In the mid-1970s, U.S. Secretary of State Henry Kissinger sought to mediate a second disengagement agreement between Egypt and Israel. At the start of negotiations, Egyptian and Israeli positions seemed irreconcilable. Egypt sought Israel's withdrawal from all of Sinai, while Israel sought an end to Egyptian economic pressure, belligerence, and propaganda (Touval 1982). Kissinger employed the "step-by-step" diplomacy method, negotiating smaller agreements to "promote confidence and trust between the disputants." (Siniver 2006, 816)

The level of U.S. bias in this conflict was quite apparent; "direct interest in the conflict and the outcome ... precluded [the United States] from being impartial." (Siniver 2006, 817) Several historic and ongoing issues drove this bias. The United States had strong strategic, political, and economic interests in ending the Arab oil embargo and promoting regional peace. It also sought to preserve Israel's relative military superiority in the region, and it had strong relational ties with Israel to whom it granted military and economic support (Touval 1982; Siniver 2006). Although relative bias decreased as the United States sought stronger relations with Egypt in order to diminish regional Soviet influence (Quandt 1975; Touval 1992), the United States was still strongly biased toward Israel, and Egypt recognized this. As Touval (1982, 275) notes, "Egyptians perceived Kissinger to be doubly biased [as a supporter of Israel as well as a Jewish Secretary of State]." Nevertheless, Egypt also had strategic foreign policy interests in accepting U.S. mediation.

As a result of the United States' strong bias and interests in a settlement of the conflict, it extensively and credibly employed coercive, reward, relational, and expert power throughout the mediation. Coercive power was employed when Israel was

reluctant to make concessions: the United States delayed aid and military supplies, "signal[ling] to Israel that its refusal to make further concessions might cost it dearly." (Touval 1982, 264) Subsequently, when Israel and Egypt concluded the agreement, the U.S. provided military and economic aid, and provided guarantees to monitor the parties' compliance with the agreement (Touval 1982; Siniver 2006). Issues were resolved "mainly through Israeli concessions, compensated for mainly by American contributions." (Touval 1982, 264)

The conflict was salient to the United States, as demonstrated by their strong bias and their credible use of leverage to induce concessions from Israel, the party to whom they were partial. "Kissinger felt that the US ... personally could not afford to appear in Arab eyes as incapable of persuading Israel. Sadat [president of Egypt] felt an even greater need than before to prove that his reliance upon the US was bearing fruit." (Touval 1982, 271) In this manner, the United States was compelled to issue credible threats and promises, and Egypt was eager to show that its trust in U.S. mediation was not misplaced, and endeavoured to cooperate with mediation efforts (Siniver 2006). Both parties made concessions and were rewarded accordingly, and a mutually acceptable settlement was achieved in September 1975.

The Israeli-Arab mediation supports the hypothesis and the external validity of the model: a high level of power mediator bias contributed to the effective and credible use of leverage, and resulted in disputant concessions and successful mediation. In addition, relative as well as historical bias were both relevant to understanding the mediator's level of bias.

Moderate Bias, Non-Use of Leverage

The Falklands/Malvinas crisis occurred in 1982 when, after continual sovereignty claim disputes with Great Britain over the Falkland Islands, Argentina invaded and occupied the Islands, despite British rule of the Islands for the previous 150 years. This affront to British sovereignty quickly escalated towards armed conflict, exerting pressure on the United States to intervene. The United States was confronted with a dilemma. Despite its longstanding relationship with the United Kingdom (culturally, militarily, and as a member of NATO), it had formed strong ties with General Galtieri's dictatorial Argentine government in order to counter the spread of Soviet influence. Argentina was the United States' "most reliable ally in the [southern] hemisphere," (Lippincot and Treverton 1994, as cited in Kleiboer 2002, 131) and after hearing that Galtieri had been offered intelligence and material assistance by the Soviet Union, the United States did not want them to, in desperation, turn to the Soviets for support (Haig 1984 and Gamba 1987 as cited in Kleiboer 2002). As noted by Kaufmann (1994), "support for either disputant would risk damaging U.S. ties with the other, possibly irreparably." (as cited in Kleiboer 2002, 132) The United States decided to mediate between the two parties to give the appearance of impartiality and avoid pressure to support one over the other: "[m] ediation without pressuring any party ... offered [a way] of extracting the United States from its predicament." (Kleiboer 2002, 132)

In judging the U.S. level of bias, one must consider that despite its historical alliance with the United Kingdom, the United States had significant considerations, as noted above, that reduced its level of relative bias. The United States was against the Argentine invasion, but its "support for Britain was ambiguous ... It was almost as though they were saying to London: Invade if you must, but you can understand if we are not cheering you on, even though we will help you if you are in trouble." (Gwertzman 1982) In its efforts to protect its relationship with both parties, the United States sent unclear signals to the disputants regarding its level of relational bias. Both parties had reason to believe that the United States would support them: the Argentines as a result of their growing cooperation on intelligence and military issues, and the British as a

result of their close relationship and historical alliance with America. Consequently, diverging perceptions of the U.S. level of bias contributed to information asymmetry and disputants' unwillingness to make concessions.

In addition, as a result of its moderate bias, the United States was unwilling to utilize leverage, and sought to mediate "without the use of the full range of its great power resources." (Kleiboer 2002, 133) Since power mediators cannot limit the extent of their involvement while maintaining their credibility (Beardsley 2009), the U.S.' credibility with disputants diminished. "Gradually the Junta came to the conclusion that [the United States] was stalling for time, holding out the false promise of a diplomatic solution." (Welch 1997, 483) The U.S.' lack of credibility combined with prevailing information asymmetry contributed to the intervener's lack of influence over disputants' behaviour and the failure of mediation efforts: no agreement was reached, and the British recaptured the Islands following a seventy-four day war.

The Falklands/Malvinas crisis supports the hypothesis and the external validity of the model. Thus, moderate levels of bias contributed to an unwillingness to utilize leverage and incomplete information regarding the mediator's resolve, resulting in decreased perceptions of the intervener's credibility, and unsuccessful mediation. In addition, the level of bias could only be explained through assessments of historical and relative bias.

CONCLUSION

This paper sought to determine how power and bias interact to affect mediation success and develop a predictive framework on the outcome of these interactions. The analysis has demonstrated that power mediators can be more biased than mediators with little power, as they have the benefit of using leverage to produce acceptable mediation outcomes. In addition, the level of perceived mediator bias was suggested as a determinant of a conflict's salience to the intervener, and the credibility of a power mediator's resolve to use leverage. The level of perceived bias should be judged based on historical factors as well as a consideration of a mediator's relative bias towards disputants. The resulting framework predicts that a high degree of power mediator bias contributes a credible indication of a mediator's strong resolve to use leverage, leading to disputant concessions and successful mediation. In contrast, a moderate level of perceived power mediator bias contributes to information asymmetry and uncertainty regarding the mediator's resolve to use leverage, reducing the intervener's credibility, the likelihood of disputant concessions and the probability of achieving a mediated agreement.

Implications for Theory and Policy

These conclusions contribute to the growing school of thought that recognizes the importance of bias and leverage in mediation. They also seek to explain a relationship that has for the most part not been widely addressed in mediation literature. Although both case studies supported the hypotheses, several important considerations should be made regarding the conclusions.

As mentioned earlier, this paper assumes that there are various factors that affect mediation success, however focuses on two: bias and leverage, and their effect on mediation outcomes. Although the case studies support the hypotheses *prima facie*, other variables might have affected the outcome of the mediations as well: "Although leverage is often necessary to become involved as a mediator in conflicts … it is not a sufficient condition for achieving successful outcomes … [there] are many other variables in play." (Kleiboer 2002, 128) An analysis of other variables such as the timing and intractability of the conflict for each case is beyond the scope of this paper. It is

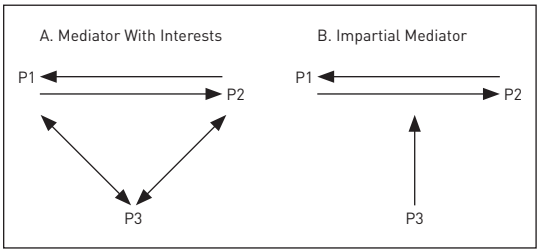
sufficient that the hypotheses show validity and logical consistency in that they explain the outcome of the cases under fairly narrow conditions.

Secondly, there exists considerable debate surrounding the use of coercive leverage in conflict resolution. Research has demonstrated that in the short-term, the use of leverage by third parties can result in conflict escalation (Kuperman 1996; Carment and Rowlands 2003; Rowlands and Carment 2006). In the longer-term, continual use of coercive or reward power as leverage can create a moral hazard where substate groups escalate conflict because they believe they will be rescued by international intervention, effectively reducing the costs of their rebellion (Kuperman 2008). In addition, disputants may develop the expectation of receiving rewards through mediation and seek to manipulate the mediator by refraining from making concessions until rewards are offered, or may become dependent on aid initially offered as a reward for concessions (Carnevale 2002; Idaszak and Carnevale 1989; Kleiboer 1996). Thus, potentially undesirable outcomes as a result of using leverage in mediation represent an additional consideration that power mediators should take into account in developing their mediation strategy.

Suggestions for Future Research

The hypotheses developed in this paper would benefit from a quantitative analysis to determine the correlation between variables in several relationships. For example, future research should inquire about the effect of the level of bias on the intervener's resolve to use leverage and the credibility of threats/promises. Another key question is how the probability of attaining a settlement is affected by the amount and types of leverage used (carrots, sticks, relational, etc.). Most of these suggestions involve transforming qualitative observations into quantitative measures; therefore careful consideration would have to be given to the model design to ensure a high degree of reliability and internal validity.[4]

Appendix I



P3 is the mediator
P1 and P2 are the disputants.
Arrows signify the direction of negotiating relationships.

(Adapted from Princen (1995, 24) with slight modifications.)

NOTES

1. See Kleiboer 1996 for further discussion on indicators of mediation success.
2. This also poses a moral hazard, which will be discussed in the conclusion.
3. See Princen 1995 for further discussion on the necessity for less powerful mediators to be impartial and potential implications when they are not.
4. Some research in this direction has already been conducted, for example by Harris and Carnevale (1990), where they determined the effect of compensation and pressure on concessions in negotiations.

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