Humanitarian Intervention: A Novel Constructivist Analysis of Norms and Behaviour

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Abstract

Over the last 25 years the international system, in which the primacy of sovereignty was central to notions of accepted state behaviour, has witnessed the development and increasing legitimacy of humanitarian intervention as a new norm. This norm acknowledges legitimate forceful intervention over the sovereign affairs of a state to alleviate severe humanitarian distress. This paper examines the development of this norm, seeking to understand why it has occurred and the motivations of those states engaging in interventionist behaviour. It proposes that the traditional Realist framework provided by Neorealism and Neoliberalism offers an incomplete analysis of the dynamic forces at work. Accounting primarily for variations in the calculation of material gain, Realism consequently diminishes motivational factors that appear to be evident in state behaviour. This paper introduces a novel Constructivist approach to the analysis of humanitarian intervention, focusing on the role of ideational factors and the continuous, mutually constitutive process by which norms and states affect one another. Examining the interventions in Northern Iraq (1991) and Kosovo (1998) this paper provides an alternative to Realism in the study of humanitarian intervention, highlighting how states behave to influence the development and legitimacy of norms and how legitimate norms can themselves influence state behaviour.

Keywords: Constructivism, Humanitarian Intervention, Legitimacy, Norms, Realism, Sovereignty
‘This developing international norm in favour of intervention to protect civilians from wholesale slaughter will no doubt continue to pose profound challenges to the international community’ (Annan, 1999)

Introduction

In the simplest sense, norms can be defined as ‘standards of appropriate behaviour’ (Finnemore & Sikkink, 1998, p. 891) and, since the birth of the system of states, norms of sovereignty have been both a theoretical and a practical keystone in international relations; self-determination, equality, respect and non-intervention have been standards of appropriate behaviour and fundamental norms from the Peace of Westphalia in 1648 right through to the present day (Suter, 2003, pp. 2-20; Philpott, 2001). However, the international system has witnessed an explosion of humanitarian interventionist behaviour both in rhetoric and practice which runs contrary to the norms of sovereignty. Humanitarian intervention is defined by Holzgrefe (2003, p. 18) as ‘the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.’

Whilst humanitarian intervention is not a purely modern phenomenon, it presents particularly pressing dilemmas for modern international affairs. As an action it necessitates the violation of sovereignty, and thus a violation of the norms that have previously defined both the reality and the study of international relations. As Welsh states, ‘the issue of humanitarian intervention has generated one of the most heated discussions in international relations over the past decades among both theorists and practitioners’ (2006, p. 1). Coinciding with the inception of the UN Charter’s declarations of self-determination and non-intervention, alongside the persistence of the Cold War, the norms of sovereignty have

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1 Although commonly referred to as a norm, sovereignty is not ‘a standard of appropriate behaviour’ in itself. Rather it is a concept or institution that encapsulates standards of appropriate behaviour such as self-determination, equality, respect and non-intervention. See Jackson (1999, pp. 432-433) for this distinction.

2 Abiew shows the ever present existence of humanitarian intervention (1999, pp. 21-44) noting that ‘sovereignty has coexisted with intervention for the cause of humanity since the inception of the state system’ (Abiew, 1999, p. 58); see also Knudsen (2009), Finnemore and Sikkink (1998)and Löwenheim (2003) for other specific cases of historical humanitarian intervention.

This paper is an investigation into humanitarian intervention, focusing on its dynamism as an evolving norm and changing behavioural practice in relation to that most established of concepts- sovereignty. To this end it is both a theoretical and practical investigation on the following questions:

1) How has a norm of humanitarian intervention developed in relation to the norms of sovereignty?

2) Why do states engage in humanitarian interventionist behaviour?

Central to approaching these questions is the methodology employed. Different schools of IR provide different interpretations of norms and behaviour. Katzenstein, Keohane & Krasner have suggested that the main axis of debate in contemporary International Relations scholarship is to be found along the lines of Rationalism versus Constructivism (1998) and this paper is essentially a contribution to this debate.4 By drawing on the Constructivist tradition this paper builds a novel framework which, it is argued, provides compelling insights into the central questions. It is divided into two parts:

Section 1 engages with the debate between Rationalism and Constructivism and is a theoretical analysis on the nature of norms and behaviour in international relations. This section presents a novel Constructivist framework as an alternative to Rationalism. This

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3 This may seem counterintuitive, and many consider the period following WW2 as correlating with a period of increased concerns for human rights. As Hurd states, ’since 1945 the idea has spread that massive human rights violations by states against their citizens may legally justify international intervention.’ (2008, p. 300) and whilst it is true that the idea of human rights had been permeating as never before (see Forsythe, 2012, pp.1-10), what the analysis form Abiew and Wheeler shows is that in practical terms this period, relative to other periods, did indeed hamper intervention on humanitarian grounds as states elevated respect for the norms of sovereignty.

4 The term Rationalism employed in this paper refers to the positivist, rational-choice schools and is not to be confused with the English School ‘Groatian’ tradition described by Martin Wight (1991).
framework integrates Holistic Constructivism with the concepts of Finnemore and Sikkink’s Norm Life Cycle, and Clark’s process of legitimacy.

Section 2 then examines the two examples of Iraq and Kosovo in the 1990s as archetypal cases of dynamism in humanitarian intervention. By presenting this framework and applying it to empirical examples, this paper attempts to offer more comprehensive insights into humanitarian intervention than can be provided by Rationalism.

1. The Theoretical Debate and a Novel Framework

This section addresses different perspectives from which to understand the development of new norms in the international society

Chapter 1 presents the Rationalist understanding of norms and behaviour, highlighting and critiquing its shortcomings. This section serves as the basis for which to construct the alternative Constructivist framework.

Chapter 2 introduces the relative merits of Constructivism, emphasising two important aspects which lend themselves to the analysis of humanitarian intervention; 1) the role of ideas in identity formation and subsequent behaviour, and 2) the mutual constitution of actors and structures in which the behaviour of states can shape the international system which, in turn, shapes the behaviour of states. It is in this chapter that the Finnemore and Sikkink’s Norm Life Cycle, and the concept of Holistic Constructivism are introduced.

Chapter 3 introduces Ian Clarke’s conception of legitimacy as a process. Combined with Holistic Constructivism and the Norm Life Cycle it is argued that the process of legitimacy provides a valuable analytical tool via which norm development and state behaviour can be understood, emphasising in particular the agency that states exhibit through ‘strategies of legitimisation’ can have in influencing norms.

1.1. Rationalism

Rationalism has long been the dominant paradigm in international relations, and continues to occupy a central role, if not still the central role, in IR scholarship. Kurki & Wight highlight how in the field of IR the influence of Rationalism has shaped not only how the subject is
theorised, but indeed what even counts as a valid question (2007, p. 15). Moreover, due to the prevalence of Rationalism in training methodological techniques (particularly in leading US graduate schools), the very fabric of IR still tends to be ‘deeply embedded’ within Rationalist assumptions (Kurki & Wight, 2007, p.15). Checkel (1998) famously wrote about ‘the Constructivist turn in international relations’ away from the ‘central locus’ of the ‘neorealist-neoliberal debate’, however despite the turn, Rationalism has remained ‘dominant’(Checkel, 1998, p.329). Rationalist analysis is the baseline of IR scholarship and as such is virtually impossible to ignore. This paper presents the Rationalist conception of humanitarian intervention, juxtaposing it with a Constructivist approach and subsequently assessing the relative strengths of each.

1.1.1 State Behaviour and Exogenously Defined Identities and Interests

Rationalists argue that in the anarchical international system, lacking an international sovereign or hegemon, states are locked in a ‘self-help’ system, engaged in a constant struggle to ensure their own existence. Neorealism sees the outcome of anarchy as insecurity and mistrust whereby states can only guarantee their survival by maximising their power relative to others (Waltz, 1979). Power, and factors relating to power, are the observable data with which to analyse the international system. As Mearsheimer argues ‘the distribution of material capabilities among states is the key factor for understanding world politics’ (1995, p. 91) . Neoliberalism on the other hand, does not believe that anarchy necessitates a focus on relative power, nor does it see the international system as a zero-sum game (Baldwin, 1993, p. 6; Stein, 1982, p. 318). Neoliberalism posits that states have an interest in their position in the international system in absolute terms, focusing on maximising their welfare irrespective of other states. Neoliberalism explains cooperative behaviour between states and institutions in international relations as a series of ‘iterated’ interactions, reciprocated in a ‘tit-for-tat’ manner, potentially in the interests of each (Axelrod, 1984). Importantly however ‘cooperation ensues not because of morality or idealistic motivations, but because it satisfies the long-term interests of power-maximising rational states’ (Hobson, 2000, p. 98; see also Keohane, 1984, pp.65-85). Despite the differences both theories stress the self-interested identity of the state. Be it relative or absolute gains, power or welfare, ‘both take the self-interested state as the starting point for theory.’ (Wendt, 1992, p. 392).
As Reus-Smit explains, ‘rationalists believe that actors’ interests are exogenously determined, meaning that actors encounter one another with a pre-existing set of preferences’ (2009, p. 197). Behaviourally, therefore, states follow a ‘logic of consequences’ (March & Olsen, 1998); the international systems is a ‘strategic domain’ (Reus-Smit, 2009, p. 197) wherein ‘states calculate ends and means to maximise or optimise their given interests’ (Panke & Risse, 2007, p. 92) where the ‘given interests’ are maximising power and material utility. This approach makes ‘if-then’ analysis possible- By presupposing the self-interested nature of the state it is possible to find patterns that connect certain situations or conditions with subsequent behaviour (Dessler & Owen, 2005).

1.1.2 The Regulative Power of Norms

However Rationalism, by exogenously presupposing the material identity of the state, can be seen as a form of ‘methodological individualism according to which the actor is ontologically prior to, and can be studied independently of, social structures’ (Panke & Risse, 2007, p. 93). An exogenous ontology of state identity and interests suggests that identity and interest are largely independent from the structures found in the international system and consequently norms are interpreted as merely the ‘intervening variable or intermediate-variable mediating between interest and political outcomes with little or no independent explanatory power’ (Björkdahl, 2002, p. 11). They ‘do not shape actors’ identities or interests but influence strategic choices and enable, sanction or prevent certain actions’ (Panke & Risse, 2007, p. 93).

In relation to norms, Neorealism and Neoliberalism diverge noticeably. Neorealism places the least amount of causal significance to norms - ‘norms are of trivial importance in explaining world politics, an epiphenomenon of the interests of the powerful’ (Shannon, 2000, p. 296). Thomas (2001, p. 8) writes of Neorealism ‘strong states comply because norms prescribe action they would take anyway; weak states comply when failure to do so would result in sanctions by strong states. In either case it is power and interest doing the talking, not the norms.’

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5 If condition X arises than outcome Y will occur. Classic examples include the ‘Security Dilemma’, ‘Bandwagoning’, ‘Balance of Power’ and ‘Chain-Ganging’
Neoliberalism however, accords ‘a more enduring and significant influence’ to norms (Florini, 1996, p. 365; Thomas, 2001, p. 8). Because of the view that states gain more from cooperation, they create and maintain regimes to facilitate collaboration (Thomas, 2001, p. 9). Despite the more significant role, for Neoliberals norms still, ‘as with realists, are related to calculations of self-interest […] norms facilitate market efficiency, are by definition compatible with interests, and are followed because the benefits outweigh the costs’ (Shannon, 2000, p. 296).

Ultimately Rationalism sees norms as being a product of states’ interests, interests that are predetermined and ontologically prior to norms or other structural elements in the international system. Norms do not affect actual individual interests, merely behaviour and strategies and to attain them.

1.1.3 The ‘Explanatory Poverty’ of Rationalism

This, of course, does not mean that all research underpinned by Rationalism is invalid. In the words of Kurki & Wight, scholars working within this tradition ‘have made some of the most important and lasting contributions to the discipline. Nonetheless, this view is highly contested and there is no reason to insist all research should fit into this model’ (2007, p. 15). It is the contention of this paper that, in analysis of humanitarian intervention at least, the rationalist model does not offer the best ‘fit’. Rationalism as an analytical method suffers from shortcomings in the explanation of the full range of ‘real-life’ behavioural and normative phenomena. By explaining the interests of states in exogenous terms, Rationalism can only account for behavioural change that is marginal and which is fundamentally related to material considerations. In any given situation behaviour is reduced to strategies of utility maximisation, ‘to logic of consequences’. With no impetus for change except for the interplay of predetermined state interests the analysis of the international system is exceptionally static. It accounts only for narrow developments related to materialism. Yet even a cursory look at state behaviour calls this into question. Finnemore (1996, p. 154) highlights this bluntly in the case of humanitarian intervention,

6 Whilst this paper focuses on the developments of humanitarian intervention, famously the big structural change ‘missed’ by Rationalism was the end of the Cold War.
‘Humanitarian intervention looks odd from conventional perspectives on international political behaviour because it does not conform to the conceptions of interest that they specify […] none of these [neo] realist or [neo] liberal approaches provides an answer to the question, what interests are intervening states pursuing?’

Consider briefly the 1992-94 case of humanitarian disaster in Somalia. The US ostensibly intervened to ‘attenuate the effects of famine, war and political disorder’ (Gibbs, 2000, p. 41). Much has been made of the lack of material interest. As Finnemore states, ‘Somalia is perhaps the clearest example of military action undertaken in a state of little or no strategic or economic importance to the principal intervener’. Similarly Glanville’s (2001) analysis of the intervention concludes that the US had ‘no perceived material or strategic interests at stake’ (p.115) and ‘the available evidence suggests that the decision to intervene was motivated by genuine humanitarian concern for the suffering Somalis as much as any other factor’ (p.118).

In the same vein Rationalism fails to account for norms and state adherence to those norms which do not reflect material concerns (Thomas, 2001, p. 10). If norms are derived from the material interests of the state how is one to account for a norm of humanitarian intervention, or indeed for any norm lacking material substance? What material distribution of power or interest does such a norm reflect? What transaction cost is it facilitating? Likewise, why do states often adhere to norms when it is not in their material interest to do so? (Thomas, 2001, p. 10).

A familiar Rationalist defence, primarily a Neorealist one, is that norms are mere ‘rationalisations’ masking actions really motivated by material interests (Reus-Smit, 2009, p. 198) - a ‘Trojan Horse’ for the intervener’s material gain. To briefly return to Somalia once more, Gibbs argues that there were indeed material considerations for the US such as spheres of influence, national power, prestige and access to potential oil supplies and concludes ‘humanitarianism was (at best) mixed with considerations of national interest’(2000, p. 41).

However, even if it is the case that norms such as humanitarian intervention are rationalisations, it still leaves Rationalism incomplete. Drawing on established norms to justify behaviour is a viable strategy only if that behaviour is in some measure consistent with the proclaimed norms. (Reus-Smit, 2009, p. 198). Again returning to Somalia, the US might have been interested in securing oil, but nonetheless it did engage in humanitarian behaviour. Skinner (1974, p. 292) points out ‘Even if the agent is not in fact motivated by any of the
principles he professes, he will nevertheless be obliged to behave in such a way that his actions remain compatible with the claim that these principles genuinely motivated him’

If the agent has to at least be appearing to adhere to the norm, and it is by no means certain that is just an appearance, then the norm still has causal power. If that norm is non-material in nature then clearly the international system has non-material characteristics that are not accounted for by Rationalism (Reus-Smit, 2009, p. 198). Clearly there is more to norms and behaviour than just materialism and using Rationalism as a method of analysis will therefore fail to capture the entire essence of humanitarian intervention. In this regard there is a gap between Rationalist analysis and reality that equates to what Matejkova calls an ‘explanatory poverty’ (2008, p. 77).

1.2. Constructivism

Where Rationalism sees the structure of the international system, its norms, as being dictated by the interests of agents, Constructivism sees a mutual constitution of structure and agent. In this chapter the argument is made that a Constructivist approach can overcome the ‘explanatory poverty’ of Rationalism, providing a fuller analysis of humanitarian intervention as a norm and as behaviour.

1.2.1 The Ideational Identity, Interest, and Behaviour of States: The Constitution of the Actor by the Structure

Rationalism is not concerned where interest ‘comes from’. Interest simply is. At first glance it is tempting to argue that Rationalism is concerned with interest formation, attributing it to the anarchical nature of international relations. The ontological reasoning is as follows: The lack of a hegemon leads to anarchy. Anarchy leads to self-help. Self-help leads to utility maximisation. Again, however, the cycle is driven by the assumption of the primacy of material self-interest. The structure is defined by the exogenously assumed nature of the actors, before that structure is then used to justify that nature. This is reification (Wendt, 1987, pp. 341-343; See also Wendt, 1992, p.410; Fearon and Wendt, 2005, p. 67; Ruggie, 1998; Legro, 1996). Constructivists contend that interest of the actor is formulated not exogenously, but endogenously. So where does interest come from?
In the Constructivist approach identity is the basis of interest, and thus behaviour (Wendt, 1992, p. 398). Identities are ‘relatively stable, role-specific understandings and expectations about self’ (Wendt, 1992, p.397) and are acquired by interacting with the structure (Wendt, 1992, p.397; Viotti and Kauppi, 2010, p. 286). Constructivism sees the international system as a society, and defines structure in terms of social relationships and shared, collective meanings (Viotti & Kauppi, 2010, p. 283). Therefore the structure is a ‘constitutive realm’ and ‘the site that generates actors as knowledgeable social and political agents, the realm that makes them who they are.’ (Reus-Smit, 2009, p. 199). As Wendt (1992, p. 402) describes, ‘it is through reciprocal interaction that we create and instantiate the relatively enduring social structures in terms of which we define our identities and interests’

Put simply, norms, as a significant manifestation of social relationships and shared meanings, not only regulate state behaviour, but can also constitute the very interests and identity that determine state behaviour. Shannon (2000, pp. 297-298) explains, ‘the social environment determines how to behave and what interests and identity to claim’ (see also Hurd, 2008; Legro, 2005, p.4; Kratchowill, 1993). In contrast to Rationalism, actors follow ‘logic of appropriateness’ over ‘logic of consequences’ where behaviour is not strategically dictated by self-interest but rather by identities and norms (March & Olsen, 1989; Viotti & Kauppi, 2010, p. 287; Steans, et al., 2005; Boli, et al., 1989; Finnemore, 1996).

With no prior material assumptions Constructivism, unlike Rationalism, does not limit the conception of the structure, and subsequently norms, in material terms. An endogenous social theory, Constructivism contends that the values of the physical world are socially emergent, having no meaning beyond that which the actors develop within an intersubjective social context (Adler, 1997, p. 324; Tannenwald, 2005; Hopf, 1998, pp. 172-173). Ideas shared between actors are thus the basis of basis of meaning, not material things. Consider why 500 British nuclear weapons are less threatening to the US than 5 North Korean nuclear weapons (Wendt, 1995, p. 73). As Hurd explains ‘a purely materialist approach has difficulty explaining why the USA should see British missiles as any less threatening than North Korean missiles […] the physical consequences of an attack would be equally devastating’ (2008, p. 301). The difference is in intersubjective understandings based on non-material ideas. In this case the idea is friendship – a shared meaning and understanding socially constructed through repeated interaction (Hurd, 2008, p. 301; Wendt, 1995). This is not to say that material weapons or currency are unimportant, rather their importance is based on
the ideas that ‘make them up’ (Wendt, 1999, pp. 135-136). *It does not rule material power out, it just rules more than that in.*

### 1.2.3 The Constitution of the Structure by the Actor and Holistic Constructivism

A central premise of Constructivism is that the relationship between actors and structure is not a fixed and stable fact, rather a mutually constitutive and continuous process (Viotti & Kauppi, 2010, p. 285; Hurd, 2008, p. 304). In the same way that the structure constitutes the actor (affecting their identities, interests and behaviour) the actors can constitute the structure. The social structure is made up of actor interactions, therefore actor agency can ‘change the rules of the game’ (Viotti & Kauppi, 2010). ‘Anarchy’ Wendt states famously, ‘is what states make of it’ (1992), and through actor agency new norms can be developed.

Of course such a reading of international relations presents an obvious problem. If actors constitute the structure which in turn constitutes the actor, *ad infinitum*, then how does original identity develop? Where can change, such as an emerging norm of humanitarian intervention, come from? (Bozdaglioglu, 2007, p. 136; Suganami, 2002; 2006). With no other determining factors, Constructivism faces the same criticism as Rationalism, namely it is offers ‘an overly static’ conception of the international system, ‘providing no clue as to how agents or structures change’ (Price and Reus-Sm it, 1998, p. 268; see also Barkin, 2010, p.57). ‘This uncertainty’ explains Bozdaglioglu ‘can be overcome by reference to the internal dimension of state identity’ (Bozdaglioglu, 2007, p. 136)

Holistic Constructivism emphasises that ‘socialization processes internal to a state can change the state’s identity and interests independently of [international] interaction’ (Copeland, 2000, p. 199). 7 This approach is a ‘unified analytical perspective that treats the domestic and international as two faces of a single social and political order’ (Reus-Smit, 2009, p. 225) As Mahdi Mohammed explains ‘From this perspective, domestic identity as well as shared norms of international society has causal effects on states' interest and behaviour’ (2011, p. 282). Interplay of both domestic and international structures combines to account for the identity of an actor.

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7 As opposed to Systemic Constructivism as popularised by Wendt which ignores the domestic (Reus-Smit, 2009, p. 223).
Returning to the central questions of this paper the Holistic Constructivist approach offers potential answers. Where Rationalism struggles to account for the non-material norms and behaviour associated with humanitarian intervention, Constructivism can find explanations in the social and ideational dynamics at play in the international system between actors and structure. By turning to the Norm Life Cycle these mutually constitutive dynamics are elaborated in more practical terms.

1.2.4 The Norm Life Cycle

Finnemore and Sikkink’s work (1998) on the Norm Life Cycle presents a reciprocal mechanism through which actors influence the emergence of new norms, while norms also influence actor behaviour. It proves a valuable tool for analysing the extent to which a norm of humanitarian intervention has emerged, and the reasons why states undertake humanitarian interventionist behaviour.

![Figure 1: The Norm Life Cycle](Finnemore & Sikkink, 1998, p. 896)

There are three stages to the cycle; Emergence, Cascade, and Internalisation. Norms emerge when they are actively promoted by actors with strong notions and an agenda of appropriate behaviour - norm entrepreneurs (Finnemore & Sikkink, 1998, p. 896). Entrepreneurs attempt to persuade other actors to alter their behaviour in accordance with the norm entrepreneur's ideas of appropriate behaviour (Hoffman, 2003, p. 7).

A norm reaches its second stage - Cascade - when the number of actors acting as norm entrepreneurs reaches a ‘tipping point’ where its prevalence in the international society leads other states to conform without any domestic pressure or impetus. (Finnemore & Sikkink, 1998, p. 902). This stage demonstrates the role of the structure in determining state identity, interest and behaviour. Because actors shape their identity in dense networks of social
relations, they are socialised to want things by the international society and thus the norm influences actors through a variety of socialisation mechanisms (Finnemore, 1996, p. 2). Examples of such mechanisms include the emulation of others, praise by other actors for conformity, and ridicule for deviation (Shannon, 2000, p. 297; Finnemore & Sikkink, 1998, pp. 902-904; Florini, 1996; Ron, 1997, p. 277; Barnett, 2011, p. 162). There are other more active actor orientated mechanisms such as diplomatic praise or censure, material incentives or sanctions (Shannon, 2000, p. 297; Finnemore & Sikkink, 1998, p. 902). Therefore, norms can either regulate behaviour, or constitute identity, or both (Viotti & Kauppi, 2010, p. 285).

By the final stage of the cycle, norms ‘achieve a taken-for-granted quality’ (Internalisation) and are rarely questioned (Finnemore & Sikkink, 1998, p. 904). At this stage norms are at their strongest in constituting actors; of course the archetypal examples are the norms of sovereignty which we have seen, until perhaps recently, to be considered fundamental structures (Finnemore & Sikkink, 1998, p. 904).

Consistent with Holistic Constructivism the domestic and the international are ‘deeply entwined’ with domestic norm dynamics which affect and are effected by the international sphere-‘a two level norm game’. (Finnemore & Sikkink, 1998, p. 893). A state’s internal, domestic norms can play a role in influencing its external, international identity, thus by opening the ‘black-box’ of the state one can see how the impetus for original ideas and norms in the international system is provided. These norm dynamics are not limited to states. Non-state actors such as International Organisations or even individuals can play a role, particularly as norm entrepreneurs (Finnemore & Sikkink, 1998; Viotti & Kauppi, 2010, p. 285).

Hoffman (2003, p. 7) notes that this framework is effective in three important ways:

‘First, it is an evolutionary framework (though implicitly so). Change in some agents alters the environment driving change in other agents as all strive to do ‘well’—act appropriately. Second, the framework provides a mechanism for norm emergence—norm entrepreneurs supply the ideas that would be norms. Finally, within this framework we see the seeds for norm change as well as emergence.’

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8 Following logic of appropriateness regulation does not, like Rationalism, necessarily mean actors adhere to the norm purely due to material limitations, instead they take cues from the social environment - they may want to act in certain way, and may even have the material capability to do so, but still may not do so.
Returning to the central research questions, it seems that Constructivism can offer potential explanations. Dynamics such as norm entrepreneurs, persuasion, and socialisation can, and it is argued in Chapter 2, do affect the extent to which there is a norm of humanitarian intervention and how states behave.

So far the theoretical basis from which to understand norms and behaviour has been covered, but the question of legitimacy still remains. This paper presents legitimacy as the final part of the theoretical framework.

1.3. Legitimacy as a Process: Influencing the Mutual Constitution of Norms and Behaviour

‘Legitimacy’ as Clark puts it ‘is much the most favoured word in the practitioner’s lexicon, but one that remains widely ignored in the academic discipline of international relations.’ (2007, p. 2). Legitimacy is famously under-theorised in international relations (Gallagher, 2013, p. 58; Charlesworth & Coicaud, 2010, pp. 1-20). In part the lack of theorising relates to the prevailing academic view that the supposed anarchy of the international system makes legitimacy irrelevant in the international sphere (Clark, 2007, p. 11). This of course relates to Rationalism which cannot attribute any significant value to the concept of legitimacy-like norms, any talk of legitimacy is a simple reflection of material interests (Wheeler, 2002, p. 7; Carr, 1939; Clark, 2007, p. 11; Gelpi, 2003, p. 12).

The Constructivist logic of appropriateness implies that ‘actors comply with norms because they accept them as legitimate’ (Wheeler, 2004, p. 30; see also Wendt, 1999, pp. 285-90). The advancement of a norm through the life cycle is synonymous with the acquisition of legitimacy. Norm entrepreneurs attempt to present an emerging norm as being legitimate; its growing legitimacy is the product of successful consensus-building. Legitimacy can thus be considered to be the ‘language and currency of norms.’ The problem of this implication, notes Wheeler, ‘is that it tells us nothing about the normative value of the norm’ or precisely why it should be considered legitimate (2004, p. 31; see also Hurd, 1999, p. 381).
Ian Clark’s conception of legitimacy helps resolve this problem. For Clark, and this paper, legitimacy is a process by which norms emerge and are adhered to, not an inherent property (2007, p. 15). This process helps further the understanding of competing norms, evident in the case of the friction between norms of sovereignty and humanitarian intervention. Finnemore and Sikkink explain that ‘new norms never enter a normative vacuum but instead emerge in a highly contested normative space where they must compete with other norms.’ (1998, p. 897). Legitimacy can be envisaged as ‘a contested political process, drawing upon both [existing] norms and material power.’ (2007, p. 4). The end result is a legitimate norm ‘accepted by international society as a tolerable consensus on which to take action’ (Clark, 2007, p. 3). This elaborates on both the procedural and substantive aspects of legitimacy and develops the concept of how norms attain legitimacy and, by extension, how they influence behaviour.

**1.3.1 Strategies of Legitimation and Norms of Morality, Legality and Constitutionality**

‘To understand how norms work’ states Finnemore ‘we need to understand the complexity, contradictions, and indeterminacy of the larger normative system in which political action takes place.’ (2000, p. 2). When norm entrepreneurs seek to persuade other states to adopt an idea there must be a point of reference for this persuasion. ‘Efforts to promote a new norm take place within the standards of appropriate behaviour defined by prior norms’ (1998, p. 897) and Clark suggests that attempts to promote new behaviour, to legitimise it, are made by drawing on existing norms of morality, legality and constitutionality (2007, p. 207). Such behaviours are termed ‘strategies of legitimation’ and highlight actor agency (Clark, 2007, p.2). Clearly, they also highlight the mutually constitutive effect of the existing normative structure. Clark (2007, p.30) explains, ‘legitimacy is, to a degree, what states make of it, but

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9 Strictly speaking Clark’s conception of legitimacy is based on an English School approach. However the similarities and overlap between the English School and Constructivism are well documented (see Bellamy, 2005; Dunne, 2007; Buzan, 2004). Indeed Clark himself specifically ties his work to the Constructivist approach (2007, p. 14). Furthermore it must be noted where Clark refers to legitimacy as a process relating to ‘rightful conduct’ by extension this paper applies it to norm’s as a ‘standard’ of appropriate conduct/behaviour.

10 Legitimacy from ‘rightful source of authority’ (procedural) or because it embodies ‘proper ends and standards (substantive) (Beetham & Lord, 1998, p. 3)

11 Clark refers to morality, legality & constitutionality as singular norms, this paper construes them as types of norms.
International society is constrained by shifting normative pulls, even as it helps to push these in new directions by its own political projects’. This summary evokes and parallels the mutual constitution of norms and behaviour in the Norm Life Cycle and one can see that actors have agency in the development of norms in an attempt to appeal to legitimacy, but their behaviour is influenced by the legitimacy of existing norms.

The role of legality in the process is most evident. Norm entrepreneurs draw on the existing legal normative framework in relation to humanitarian intervention. As will be witnessed in Chapter 5, NATO members attempted to legitimise their novel intervention, one without UNSC approval, by drawing on existing laws. A common misunderstanding is to consider legality and legitimacy as synonymous (Clark, 2007, p.210-211; Gallagher, 2013, p.64). Such a conflation limits explanations for change in the international system (Clark, 2007, p.211). For instance slavery was legitimate standard of appropriate behaviour but is no longer so. The process by which the norm of slavery became illegitimate was not simply a change in law - obviously there is more to norm emergence than just the legal context. Indeed frequently in international relations there is reference to behaviour as being legitimate even if it is illegal (Clark, 2007, p.212).

Here the role of morality reveals itself. ‘Situations can arise’, as Wheeler notes, ‘where an alternative moral practice develops that secures approval but breaks existing law.’ (2002, p. 3). Falk (2003, p. xvi) has described the NATO intervention in Kosovo as ‘technically illegal [but] politically and morally legitimate.’ When actors attempt to legitimise their actions they not only draw on legality but also morality.\textsuperscript{12} Lacking the physicality of legal norms, identifying moral norms presents a challenge, but one can see indirect evidence of them through observing rhetoric and behaviour (Finnemore, 2001; Kowert & Legro, 1996). Indeed in Kosovo both Blair and Clinton made repeated references to the intervention as being ‘just’, ‘necessary’ or for moral ‘values’ (Blair, 1999a; Blair, 1999; Clinton, 1999). These appeals demonstrate the existence, at least in part, of moral normative value in legitimating behaviour and norms.\textsuperscript{13}

\textsuperscript{12} Thus potentially leading to an eventual change in law
\textsuperscript{13} The most common manifestation of moral value in legitimating behaviour comes in the form of ‘just war theory’ (Walzer, 2006; Chesterman, 2001). Nardin (2002) provides an alternative moral value along Kantian lines that there are pervasive ‘moral imperatives’ amongst humanity to protect the innocent.
Finally we can consider *constitutionality*, which is a ‘somewhat ambiguous’ term (Gallagher, 2013, p. 65). Clark describes constitutionality as standards of appropriate behaviour based on mutual expectations and circumstance (Clark, 2007, p. 220). It represents a normative influence not necessarily based on either law or morality. Clark provides the example of the early eighteenth century norm of ‘balance of power’ which was neither moral nor legal but informed and legitimated behaviour (2007, p. 209). Likewise the European great power concert demonstrated a norm of consultation between the great powers that was neither legal nor moral, yet still legitimated behaviour (Clark, 2007, p. 209). In this norm circumstance is operative, shared expectations built on the general context of the international system at any time (Gallagher, 2013, p. 66; Clark, 2007, p. 226).

### 1.3.2 Power and Consensus

Normative appeal on its own however, does not constitute legitimacy. Legitimacy may be considered the political space marked out by the boundaries of legality, morality and constitutionality but because they can pull in incompatible directions an accommodation needs to be struck between them in order for a norm to be considered legitimate (Clark, 2007, pp. 19-20). In reaching this accommodation Clark’s process of legitimacy includes the role of power and consensus in norm dynamics.

From the Constructivist approach it can be shown that legitimacy, or rather legitimate norms, influence the exercise of material power. Material *power*, however, can itself influence the legitimation process of norms (Clark, 2007, p. 20). Power can be seen as the material ability to achieve interests. As we have seen from the Constructivist approach interests need not be material but actors may very well wield material power to achieve non-material interests.\(^{14}\) Power alone is not be enough however to constitute legitimacy its own, as the ‘anti-land mine norm’ demonstrates. The US, the world’s most powerful state, refuses to ban land mine usage yet, whilst such things are hard to prove, it would be difficult to argue that land mine usage is the standard of appropriate behaviour in the international system. Indeed Finnemore & Sikkink (1998, p. 901) argue that the prohibition of land mines as a norm has already cascaded.

\(^{14}\) They can of course wield material power for material interests, i.e. related to security or economy.
The final essential element of the legitimisation process is the role of consensus. As stated in Chapter 2, the building of consensus plays a major part in pushing an emerging norm to the ‘tipping point.’ Interestingly this suggests the Norm Life Cycle may equate to a ‘numbers game’ (Hampson, 2002, p. 177). Finnemore and Sikkink argue that roughly a third of states adhering is sufficient to drive a norm to tipping point (1998, p.901). However, just like normative appeal and power, Clark’s legitimacy process highlights that consensus on its own is not enough. It needs to be ‘the right kind of consensus’ (Clark, 2007, p. 192). Consensus is both a ‘source of legitimacy and as a possible effect and outcome of it’ (Clark, 2007, p.206). Accordingly whilst a level of consensus will spur on a socialisation effect (Hurd, 1999; Wheeler, 2004), normative appeal, and material power, contributes to consensus in the first place.

1.3.3 Summary

The Rationalist approach exogenously attributes state behaviour in terms of material utility maximisation. Thus changes in the international system, changes such as humanitarian intervention, cannot be fully accounted for. Attempts to dismiss humanitarian intervention as mere justifications still cannot account for why those justifications would have any meaning, and consequently why any humanitarian behaviour occurs. Building on Holistic Constructivism, the notion of a Norm Life Cycle, and Clark’s process of legitimacy it is possible to conceive an ideational integrated framework with which to account for changing behaviour and norms in the international system.

The existing norms of the international system impose a structure of constitution upon the actors within it. At any time these norms produce an environment which defines ‘what is acceptable’, or legitimate. Drawing from this international environment, and developments within their domestic environment, ideas can emerge that constitute actor identity and subsequent interests. With these novel ideas and identities actors can play the role of norm entrepreneurs. These norm entrepreneurs attempt to legitimise their behaviour by drawing on the existing moral, legal and constitutional normative context, along with utilising their material power, in order to create a new legitimate norm- a consensus on the standard of appropriate behaviour.
This framework can, it is argued, provide a better analysis of the two central questions in the introduction of this paper. The norm of humanitarian intervention develops in relation to the process of legitimacy-the extent to which a tolerable consensus has been built on existing norms of legality, morality and constitutionality. Similarly states engage in humanitarian intervention because the normative context, both international and domestic, influences their identity.

From this framework arises a further important consideration - norms do not guarantee certain behaviour. As Finnemore (1996, p. 157) explains when she writes ‘the connection between norms and action is one in which norms create permissive conditions for action but do not determine action. Changing norms may change state interests and create new interests […] but the fact that states are now interested in these issues does not guarantee pursuit of these interests over all others on all occasions’

Identities are complex and in any given circumstance an actor will have multiple interests. As will be seen in Section 2, states can have an interest in humanitarianism and material concerns of safety or economy, the interplay of which impact upon eventual behaviour.
2. The Empirical

The second section of this paper refers to cases of humanitarian intervention across the last 25 years, but focuses on two cases in particular - the intervention in Iraq at the end of the first Gulf War, and the NATO action 'Operation Allied Force' in Kosovo. The first case shows the emergence and development of a new normative environment within which the international community responded to the situation of the Iraqi Kurds. By the time of the second, in 1998, the normative context again faced pressures for change. It is argued that the Constructivist framework employed, juxtaposed against a Rationalist analysis, provides an illuminating look at how the norm has developed in relation to sovereignty, emphasising states’ strategies of legitimation within the larger normative context. The case studies examined are deserving of far more comprehensive study than can be afforded here, nonetheless the empirical investigation provided here still hopes to achieve a level of explanation for norm development and actor behaviour than can be supplied by Rationalism.

2.1. Northern Iraq

2.1.1. Background and Context

In March 1991, following the Gulf War, the vulnerability of the Iraqi regime coupled with expectations of western support led to Shiite and Kurdish rebellions in the North and South of Iraq respectively (Fenton, 2004, pp. 37-64; Kelly, 2008, pp. 41-59). What followed was a brutal assault on the Kurdish population and a mass exodus of approximately 2.3 million refugees along the Iranian and Turkish borders, constituting a humanitarian disaster of grand proportions (Kelly, 2008, pp. 45-46; Cook, 1995, p. 35).

Although on a grand scale, the humanitarian disaster in Northern Iraq in was not isolated in the post WW2 international order. Gross human rights violations and genocide were prevalent in places such Chile (Herbert & Policzer, 2010), Guatemala (Drouin, 2010), El Salvador (Americas Watch Committee, 1984) and Ethiopia (Kissi, 2006). During this period peoples in Cambodia, Tanzania and Bangladesh15 were also subject to gross human rights violations but were all eventually relieved by international intervention (Wheeler, 2002).

Only in the case of the Indian intervention in Pakistani Bangladesh were justifications made

15 At the time part of Pakistan
to the morality of humanitarianism, and in the event it was resolutely rejected by international society as a standard of appropriate behaviour (Wheeler, 2002, p.55).

However Northern Iraq was a watershed moment. Following the passage of UN Resolution 688 on April 5th 1991 the UK, US and France headed an unprecedented military relief operation against the will of the Iraqi state. Behaviour that was legitimised, at least in part, by appeal to humanitarianism, as Wheeler (2002, p. 169) states ‘For the first time a group of states publicly justified the use of force in terms of enforcing compliance with a Security Council Resolution that demanded respect for human rights.’

2.1.2 Material Intervention?

From a Rationalist perspective it could be argued that this intervention was simply a reflection of material concerns. Looking at the negotiations surrounding the passing of Resolution 688 it is absolutely clear that without reference to maintaining ‘international peace and stability’ it would never have passed. On April 4th, barely a day before the eventual resolution, the French Foreign minister called for a ‘duty to intervene’ pressing for enforcement action under Chapter VII, appealing only to the moral context of the situation (Yamashita, 2004, p. 41). This draft failed to gain garner support and the eventual redraft required explicit reference to international peace and security in order to ‘placate most members’ worries about the legitimacy’ (Wheeler, 2002, p. 143). Security is, of course, a material concern wholly in keeping with the Rationalist conception of the state as utility maximisers. One could envisage any humanitarian response as a strategic calculation to prevent the instability caused by mass refugee migration, the altruistic outcome of which would be purely incidental, or that the protection of Turkey, as a key NATO ally, was a strategic interest (Murphy, 1996, p. 183). As for why there was no real opposition to the intervention despite the concerns voiced, David Malone (2006, p. 87) conjures an image in purely material terms when he states ‘Their [China and Russia] rhetoric did not match the reality of their frequent unwillingness during much of the 1990s to confront an emerging unipolar Power [sic] –the United States- and whatever ‘coalition of the willing’ it could assemble’. In such an interpretation we are reminded of E.H Carr’s material understanding of legitimacy as ‘the product of dominant nations or groups of nations' (Carr, 1939, p. 111).
But why this particular crisis, at this particular time, suddenly factored into strategic calculations of France, the UK, the US, Belgium, or any other state? In 1971 the case was made that the genocide in Bangladesh constituted a threat to international stability (Thant, 1978, p. 424), yet with the exception of the meagre support offered by Italy and France, there was no suggestion that states who were not involved considered humanitarian disasters as affecting their material interests (Wheeler, 2002, p. 59; Wheeler, 2004, p. 43). Even if it is conceded that material interests the driving force behind the behaviour (and subsequent norm emergence) what purpose did the extensive morale rhetoric serve? One could possibly draw the conclusion that they acted as a ‘Trojan horse’. However one could equally draw the conclusion that the legal, material rhetoric acted as a Trojan horse, as it were, for the ideational interest. Indeed many have made that analysis, with Tesón (1996, p. 344) arguing:

‘Aside from word games, this is still a human rights issue […] A reasonable interpretation of Resolution 688 is that the Security Council was centrally concerned with the human rights violations themselves, and the reference to the threat to peace and security was added for good measure’.

Again, even if we are to take the rhetoric as a covert rationale, we are reminded of the Constructivist argument that for morale appeals to have any basis or effect then they must inherently have some causal power.

The Constructivist approach does not rule out the material interests. There is no doubting that states had material interest in the case of Iraq, however these interest are part of a wider complex identity that is not solely reducible to materialism. The alternative Constructivist analysis employed by this paper interprets a group of norm entrepreneurs, influenced by the prevailing domestic and international normative environment, persuading and forging a powerful consensus by drawing on the existing legal, moral and constitutional normative context.

2.1.3. Identity, Interest and Strategies of Legitimation

The initial response to the crisis occurred ‘according to traditional norms of state interaction’ (Fenton, 2004, p. 40). President Bush declared the matter an ‘internal affair’ of the Iraqi state

16 See also Murphy, 1996, p. 183; Rodley, 1992, p. 31; Abiew, 1999, p. 153
whilst the UK assumed a similar position (Stromseth, 1993, p. 78). Seemingly the consensus amongst states was that intervention in the humanitarian crisis would be illegal (Fenton, 2004, p. 40). It is at this point however, that France materialised as a norm entrepreneur, ‘spearheading’ coordination to prevent the crisis (McQueen, 2005, p. 68). As Fenton (2004, p. 40) clearly describes

‘The French agreed with the legal assessment that to intervene to assist the Kurds would constitute illegal interference in Iraq’s internal affairs, but they suggested that they would attempt to change the law to allow such an intervention’

The French Foreign Minister stated ‘law is one thing, but the safeguard of a population is something at least as precious’ (quoted in Webster, 1991). The emergence of France as a norm entrepreneur can clearly be linked to an interplay of international and domestic influences. The humanitarian interests of the French state ‘reflected the demands of a growing constituency within French society that sovereignty should be no barrier to the relief of suffering’ (Wheeler, 2002, p. 142). This was based on the ‘droit d’ingérence, a moral ‘theory’ forwarded by the French non-governmental organisation ‘Médecins Sans Frontières’ (MSF) advocating the right of victims to international assistance (Murphy, 1996, p. 189; Abiew, 1999, p. 155; Kaldor, 2001). Notably the founding member of MSF, Bernard Koucher, was at the time Minister for Humanitarian Affairs and had the ear of the President. (Wheeler, 2002, p. 142).\(^{17}\)

Media reporting of the intensifying violence and use of chemical weapons against the Kurds, public demonstrations in European capitals (Yamashita, 2004, p. 39), and the continued moral appeals of the French culminated in a noticeable shift in the positions- the identity- of several states (Yamashita, 2004, p. 39).\(^{18}\) Iran and Turkey, facing an influx of refugees, requested the United Nations Security Council (UNSC) take action on the legal basis of Chapter VII (United Nations, 1945a), arguing that the situation was a threat to international peace and security (Murphy, 1996, p. 169).

On April 5\(^{th}\) France jointly tabled Resolution 688, co-sponsored by the UK, US, and Belgium, condemning the ‘the repression of the Iraqi civilian population’ whilst constituting

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\(^{17}\) In these details lie perfectly a demonstration of the ‘two-level norm game’ and domestic/international mixed dimension of the norm life cycle and Holistic Constructivism

\(^{18}\) The famous ‘CNN effect’ at work in influencing the public and policy-makers of states (Minear, et al., 1994, p. 52; Robinson, 1999; Shaw, 2002).
the situation as ‘a threat to international peace and security’ (United Nations, 1991). Paragraph three of the resolution stated that ‘[The UNSC] Insists that Iraq allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq’ (United Nations, 1991). Although not expressly invoking Chapter VII, by making the link all states involved knew they were ‘opening the door’ to intervention and setting a precedent (Stromseth, 1993, p. 86). By pushing these novel ideas the UK, US and Belgium can be seen to have joined France in acting as norm entrepreneurs.

During the deliberations of the Resolution three positions arose (Fenton, 2004, p. 42; Stromseth, 1993, p. 87). The first – including France and UK - was an expressly moral position, invoking interventionist rhetoric, arguing that flagrant violation of basic human rights could not be left unchecked by the international community. The second – including USSR and US -, and most common position expressed, supported the resolution and stressed concern for human rights, but maintained the legitimacy of the resolution lay in the legal normative basis of the threat to peace and security. The third group, consisting of Cuba, Yemen, and Zimbabwe, resolutely rejected the resolution, claiming that any talk of intervention would be illegal under Article 2 (7) of the UN Charter (United Nations, 1945b).

In the deliberations over Resolution 688 one can witness the strategies of legitimation by the norm entrepreneurs. Along with making legal appeals to Chapter VII, Britain and France drew on the moral context, claiming that massive human rights violations become ‘a matter of international interests’ when they ‘assume the dimension of a crime against humanity’ (Yamashita, 2004, p. 43). Additionally the UK, Belgium and France invoked the 1949 Geneva Convention and several other states ‘made explicit mention of Iraq’s general non-compliance with international human rights instruments’ (McQueen, 2005, p. 36). Conversely, along with Cuba, Yemen and Zimbabwe, Russia and China also voiced concerns over the legal implications for state sovereignty. The resolution passed with 10 in favour, 3 against (Cuba, Yemen, Zimbabwe), and 2 abstentions (China, India). Through the passing of the resolution the norm entrepreneurs established a precedent in linking domestic humanitarian issues to the international domain as threats to international peace and security, in doing so they ‘brought the issue of humanitarian intervention to the forefront of international concern and legal discourse.’ (Gallant, 1992, p. 833).

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As the UK, US and France began organising the supply of humanitarian relief operations it became apparent that the continued attacks by the Iraqi forces on the Kurds would mean that relief operations could not be realised without additional measures (Murphy, 1996, p. 173; Stromseth, 1993, p. 89). Consequently the UK, supported by the European Community, conceived the plan of ‘safe havens’ - no-fly zones with international military protection afforded to the Kurds. Originally the US was not persuaded, convinced any intervention posed high-risk to US forces and ‘had Vietnam written all over it.’ (Wheeler, 2002, p. 149). As Bush publicly stated ‘we’re not going to get sucked into this by sending precious American lives into this battle’ (quoted in Malone, 2006, p.88). With their military power necessary to implement any ‘safe-haven’ no intervention could take place without US support (Fenton, 2004, p. 47; Weiss, 2005, p. 64). However, after continued pressure from the EC the US relented, announcing ‘Operation Provide Comfort’ and taking the lead in a joint military task force designed to intervene in Iraq for the humanitarian purpose of providing relief (Fenton, 2004, p. 47; Weiss, 2005, p. 64).

Naturally Iraq refused permission, and without mention of force in Resolution 688, the intervention was not explicitly authorised by the UNSC. Nonetheless Operation Provide Comfort was implemented, involving 20,000 troops from 13 states (Murphy, 1996, p. 174). Invoking paragraph six of Resolution 688, which ‘appeals to all Member States and to all humanitarian organisations to contribute to these humanitarian relief efforts’ (United Nations, 1991), the intervening states claimed this legally justified the deployment of troops (Rodley, 1992, p. 33). Additionally paragraph three was used as legal basis. Douglas Hurd, the UK’s Foreign Minister, when asked if the intervention was illegitimate replied: ‘No, because the Security Resolution 688 insists- that’s the word it uses- that the UN operation should be carried out in Iraq. There’s no violation of Iraqi Sovereignty’ (quoted in Murphy, 1996, p. 188).

Both the French and the US also appealed to a moral normative standard to justify the intervention. President Bush, talking on the operation, stated clearly ‘I want to underscore that all we are doing is motivated by humanitarian concerns’ (1991). Not surprisingly President Mitterrand also invoked a strong moral justification, claiming ‘[t]oday, when we observe flagrant human rights violations on a massive scale, we cannot stand idly by. We have a duty to put a stop to these situations’ (quoted in Murphy, 1996, p.190). Douglas Hurd perhaps summed up the combined moral and legal normative appeals of the norm entrepreneurs when he said ‘Not every action that a British, or an American, or a French
government takes has to be underwritten by a specific provision in a UN resolution [...] no one who has looked [at Iraq] can doubt extreme humanitarian need [...] We’re clear, the French are clear, the Americans are clear on a strong legal as well as humanitarian ground’ (quoted in Fenton, 2004, p. 39).

By justifying the intervention on humanitarian grounds, both legal and moral, this could be considered the genesis of the humanitarian intervention norm in the contemporary international system. As Wheeler (2004, p. 34) describes: ‘This was the first time since the founding of the UN that a group of states had explicitly defended the use of force in humanitarian terms.’

However despite the justifications of the intervening states, the lack of an explicit Chapter VII resolution meant that they were undoubtedly on ‘meagre’ legal grounds which at the very least could have been challenged (Wheeler, 2002, p. 154; Fenton, 2004, p. 50; Yamashita, 2004, p. 52; Murphy, 1996, p. 186). Yet, with the obvious exception of Iraq, no official objection or condemnation was forthcoming. – a surprising occurrence given that many nations, even significant ones such as Russia and China, were ‘on the record’ as having denied Resolution 688 as a justification of forcible intrusion (Malone, 2006, p. 87). Thus the US, UK, France and other supporting states projected their military into Iraqi sovereign territory without Iraqi consent, but also without reproach, on the grounds of humanitarianism. A tolerable consensus was brokered and a norm was arguably legitimised.

2.1.4. Legitimacy and Norm Development

Interpreting Iraq through the Constructivist framework the normative appeals and consensus of those advocating humanitarian intervention succeeded in legitimating the behaviour. Arguably the post-Cold War power balance aided the process, western states being able to project their power unhindered in the implementation of the intervention (Clark, 2007, p. 15). A Constructivist analysis can draw the conclusion that Northern Iraq was the development of a legitimate norm that socialised other states and influenced their behaviour, to quote Wheeler (2002, p. 154):

‘The Soviet Union, China, and the other non-Western States on the Security Council were anxious about the precedent set by Western action in northern Iraq, but none of these states
wanted to be exposed publicly as opposing a rescue mission that was saving lives and they were shamed into silence’ 20

With Iraq the emergence of humanitarian intervention as a norm was not extensive. Only relief could be provided, and even then only on the basis of a Security Council resolution (Roberts, 1993, p. 437). Nonetheless the significance was profound. Thomas Pickering, US ambassador to the UN, observed: ‘The response to the plight of the Kurds suggests a shift in world opinion towards a re-balancing of the claims of sovereignty and those of extreme humanitarian need’ (quoted in Freedman and Boren, 1992, p. 82).

The precedent had been set that sovereignty was not inalienable in the face of humanitarian emergencies and the international community began to accept that the interests of people can potentially come before the interests of states (Abiew, 1999, p. 156; Stromseth, 1993, p. 103). Thus began the development of a reconceptualization of the norms of sovereignty. Subsequently, humanitarian intervention as a norm engendered what Robert’s describes as the ‘ratchet effect’, where states, by legitimising the prescription of humanitarian intervention in one case, are compelled to do so in others (1996, p. 16). In effect ‘the genie’ argues Kaldor ‘was out of the bottle’ (2001, p. 43).

As the 1990s progressed the norm was developed into a securely established legitimate standard of behaviour, encompassing broader situations. Indeed in Somalia armed intervention was explicitly authorised under Chapter VII, highlighting the robustness of the norm and its increasing legitimacy in relation to norms of sovereignty- ‘by the end of the decade most states were prepared to accept that the UNSC was entitled to authorize armed humanitarian intervention.’ (Bellamy & Wheeler, 2011, p. 516).

2.2. Kosovo

2.2.1. Background and Context

In 1998, as the Federal Republic of Yugoslavia (FRY), disintegrated, the Kosovo Liberation Army (KLA), committed to the political independence of Kosovo, engaged in increasingly violent attacks against the authorities of the Serb-dominated state (Amstutz, 2005, pp. 21-23; Murphy, 2007, pp. 71-73). The Serbian response to the escalating attacks was brutal, with

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20 Emphasis added
Serbian security forces adopting a policy of ethnic cleansing (Murphy, 2007, pp. 71-72). Serbian security forces ‘rampaged, raped and pillaged their way through Albanian towns and villages, creating some 400,000 displaced persons’ (Fenton, 2004, p. 47; Weiss, 2005, p. 64). As the atrocities intensified the UNSC passed several legally binding resolutions under Chapter VII, identifying the internal humanitarian situation as a threat to international peace and stability, demanding a cessation to hostilities (Schnabel & Thakur, 2000, pp. 1-3). When negotiations broke down in the face of continued Serbian aggression and the failure to reach a peace agreement, NATO commenced ‘Operation Allied Force’ (OAF) and began bombing Yugoslavia on March 20th, 1999 (Schnabel & Thakur, 2000, pp. 1-3).

What was at stake in Kosovo was an entirely new normative development for humanitarian intervention. Where Somalia had secured expressed Chapter VII authorisation of force in implementing a humanitarian mandate, Kosovo secured no such authorisation. Indeed OAF was undertaken despite the open knowledge that the action did not have UNSC consent. As a result both Russia and China declared the behaviour a flagrant breach of international law. Although the intervention in Northern Iraq similarly lacked overt authorisation, the standard of behaviour was altogether quite different. Iraq was an intervention of humanitarian relief (Roberts, 1993, p. 437; Wheeler, 2002, p. 169), Kosovo on the other hand was characterised as humanitarian war (Roberts, 1999; Woodward, 2002). It was, explains Roberts (1999, p. 102), ‘the first time a major use of destructive armed force had been undertaken with the stated purpose of implementing UN Security Council resolutions but without Security Council authorisation.’

Consequently the legitimacy of such behaviour became the subject of contention- the locus of which being whether armed intervention could ever be legitimate without UNSC authorisation (Greenwood, 2002, p. 144; Heinze, 2009, p. 1; Falk, 1999, pp. 143-145; Murphy, 2007, pp. 74-76; Clark, 2007, p. 222).

How did the norm of humanitarian intervention develop over Kosovo? Why did NATO member states undertake the operation, and indeed why did others oppose it? And finally, was the operation legitimate and what did it mean for the legitimacy of the norm?
2.2.2. Material Intervention?

The strongest appeals for the legitimacy of the intervention were based on a moral normative context, yet Bellamy (2002, p. 3) highlights the self-interest NATO had in preventing the conflict from causing a mass refugee crisis or even outright war. The Rationalist analysis seems even more convincing when one looks at the selectivity of the intervention. Despite the interventions in Northern Iraq and Somalia, the lack of action in Rwanda and Bosnia undermines claims that the norm of humanitarian intervention was, or indeed is, anything other than a convenient cover for securing material interest. Indeed critics of NATO, notably Cuba argued that the intervention was precisely realpolitik in action, stating ‘never before has the unipolar order imposed by the USA been so obvious and so disturbing’ (Krieger, 2001, p. 438), a charge all the more prescient when the means of intervention, airstrikes, were employed precisely because they minimised the material risk despite increasing the risk of civilian casualties (Roberts, 1999, pp. 114-116).

However, as with Iraq, a purely materialist analysis obscures the ideational dimension to humanitarian intervention, and potentially underestimates the causational and constitutive effect of the norm. The failure to intervene in Rwanda and Kosovo cannot be taken as proof for the ‘derivative’ character of norms. As was noted in Chapter 3, norms are ‘permissive’ and whilst they influence state interests they do not ‘guarantee pursuit of these interests over all others on all occasions’ (Finnemore, 1996, p. 157). Identities are complex and influenced by the impact of multiple norms, some of which of course prescribe material interests. From the Constructivist framework the conclusion is not drawn that the norm is purely incidental, rather that the norm does affect state identity and interest, but in the cases of Rwanda and Bosnia it was not enough in relation to material interests.

Paradoxically, looking at Rwanda one could interpret the actual strength of the norm. Bellamy and Wheeler (2011, p. 516) hold Rwanda up as an example of how far the norm had developed, highlighting the fact that ‘no member of the UNSC tried to oppose intervention on the grounds that this violated sovereignty.’ Indeed, whilst states refrained from intervention due to material reasons, they were forced to circumnavigate the ideational influence of the humanitarian intervention norm, for if they had labelled the crisis in Rwanda as genocide, they would have had to act (Barnett, 2002, p. 3). Furthermore it could be argued that because intervention was the standard of appropriate behaviour in Bosnia, NATO members suffered socialisation pressures that influenced their identities and interests, Roberts (1999, p. 104).
argues ‘the main underlying explanation for the willingness of NATO to take action over Kosovo […] was a sense of shame\textsuperscript{21} that in the first four years of atrocities they had failed.’

\textbf{2.2.3 Identity, Interest and Strategies of Legitimation}

Through the Constructivist framework one can see prior to OAF the extent to which humanitarian intervention had become established as a legitimate norm influencing the behaviour and identity of states. As Belgrade began its crackdown on the Albanian Kosovars Madeline Albright, U.S Secretary of State, began ‘to lead through rhetoric’, mobilising a strong international response (DiPrizio, 2002, p. 136). Preceding any UNSC deliberations Albright declared the US would not by idly in the face of atrocities (O’Connell, 2000, p. 75). Other states, like Germany, were less openly coercive, yet called publicly for cessation and ‘diplomatic intervention’ (O’Connell, 2000, p. 75).

The UNSC adopted two Chapter VII resolutions (1160 on March 31\textsuperscript{st} and 1199 on 23\textsuperscript{rd} September) declaring the situation a threat to international peace and stability. They called on both the KLA and the FRY to desist hostilities and introduced an arms embargo, with the strongest statement coming in Resolution 1199 (United Nations, 1998) worded: ‘[The UNSC] Decides, should the concrete measures demanded in this resolution and resolution 1160 (1998) not be taken, to consider further action and additional measures to maintain or restore peace and stability in the region’

The landmark normative development in Northern Iraq of interpreting a domestic humanitarian crisis as a threat to international peace and security was by this stage an accepted standard of behaviour - the only UNSC abstention to both resolutions was China. It demonstrates, following from Iraq and Somalia, the reconceptualization of the balance between humanitarian intervention and norms of sovereignty. It was becoming ever more accepted that ‘the principle of non-intervention was not sacrosanct if it permitted governments to massively abuse human rights within their borders’ (Wheeler, 2004, p. 34).

However the resolutions stopped short, primarily due to Chinese and Russian opposition, of containing the wording ‘all necessary means’ sought by the UK and US - the accepted phrase by which the UNSC authorised force (Krieger, 2001, p. 337). The Russians in particular

\footnote{\textsuperscript{21} Emphasis added.}
emphasised that any armed intervention would be vetoed. This resistance, coupled with the worsening humanitarian situation, led to discussion amongst the NATO members about potential intervention without UNSC authorisation and in the face of opposition. NATO members began publicly threatening the FRY with airstrikes (Binyon, 1998, p. 13; Butcher, 1998, p. 19; Walker, 1998, p. 17) and began the act of providing potential justifications any future, unauthorised intervention (O’Connell, 2000, p. 76). On October 13th NATO members further showed their intent when all 16 members unanimously gave the go-ahead for the bombing of FRY targets. Despite a temporary break-through in that month, peace negotiations eventually fell through resulting in NATO’s unauthorised bombing campaign.

By commencing the intervention NATO had pushed the norm of humanitarian intervention in a new direction. Through their actions and justifications they assumed the role of norm entrepreneurs, engaged in strategies of legitimation drawing on both the legal and moral normative context.

The overt defence of NATO was that of legality. Joyner (2002, p. 602) identifies the two main legal arguments presented. Firstly, previous UN Security Council resolutions could be construed to lend some authority to NATO’s actions; and secondly, principles of general international law provided for a right of intervention on the grounds of ‘overwhelming humanitarian necessity’.

However given the tenuous legal ground, the clear subtext of the interventions justification was strongly grounded in appeals to morality by most NATO members (Bellamy & Wheeler, 2011, p. 520; Murphy, 2007, p. 76). Prime Minister Blair argued that intervention was ‘not for territory but for values’ (1999) , President Chirac that ‘the humanitarian situation constitutes a ground that can justify an exception to a rule, however firm and strong it is’ (quoted in Clark, 2007, p.213) whilst President Havel (1999) stated it was legitimate on the grounds it was an ‘ethical war’ undertaken ‘out of respect for the law, for a law that ranks higher than the law that protects the sovereignty of states, that is, the higher law of human rights’.

Domestic normative environment of states provides further ‘Holistic Constructivist’ rationale for state behaviour and interest. With similar developments in other countries22, Volker Heins provides an insight of how the international normative environment shaped the policy-

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22 E.g. in the U.S with the ‘Clinton Doctrine’ (see Joyner, 2002, p.597).
making of the Blair government, which in turn would then drive change in international normative environment: ‘Under Blair there was discursive erasure of the domestic/international distinction. Principled beliefs regarding the needs of strangers played an increasingly crucial role. More important, though, were causal beliefs about the impossibility of containing developments and threats emerging in geographically distant places. The 1990s sociology of ‘globalization’ and the imaginary of the borderless world had a real impact on New Labour’s foreign policy. Furthermore, the distinction between the inside and the outside of the nation-state was blurred by the way in which domestic policy formulas have been projected internationally’ (2007, p. 54).

However despite their interests and their strategies to legitimate them, more so than was the case in Northern Iraq, these strategies were strongly challenged. Where Iraq achieved a tolerable consensus largely by normative appeal it was not so in Kosovo. As Clark (2007, p. 214) explains:

‘Those who supported the NATO action sought to legitimize it as legal, while additionally in support of humanitarian objectives; those who opposed it viewed it as illegal, whatever the moral grounds, and hence denied its claim to legitimacy’

2.3.4. Legitimacy and Norm Development

Through the Constructivist framework we can thus interpret the identity, interest and behaviour of the NATO states as being affected by the normative context. Influenced by the norm of humanitarian intervention, along with domestic normative developments, it was in their ideational interest to halt the Serb atrocities. An interest no doubt compounded with material concerns. Faced with obstacles in the UNSC, NATO members acted as norm entrepreneurs in attempting to legitimate humanitarian intervention without UNSC consensual approval.

What do these events, however mean for the development and legitimacy of the norm? Did Kosovo mark the elevation of humanitarian intervention above that of sovereignty- the legitimacy to intervene in humanitarian cases even without UNSC approval?

Arguably this can be a conclusion drawn. Russia, along with Belarus and India, tabled a draft resolution condemning NATO’s intervention as a violation of the UN charter, demanding a
cessation of hostilities. The resolution however was defeated resoundingly by 12 votes to 3, with only Russia, China and Namibia voting for the motion. Furthermore, as OAF began to wind down, the UNSC passed resolution 1244 authorising relevant international organisations to establish the international security presence in Kosovo with all necessary means (United Nations, 1999).

By achieving a majority consensus of all NATO members and the majority of the UNSC the implication was indeed that in the face of humanitarian crisis, intervention, even without UNSC authorisation, was legitimate (Wheeler, 2002, p. 280; Clark, 2007, p. 187).

Additionally Kosovo spurred on increased discourse in international relations about the relationship between norms of sovereignty and humanitarian intervention. Most prominently the International Commission on Intervention and State Sovereignty (ICISS) published a report specifying criteria, which if met, would legitimate humanitarian intervention over sovereignty, even without UNSC approval (ICISS, 2001).

However a more pertinent conclusion to be made is that Kosovo, whilst a legitimate instance of humanitarian behaviour, did not emerge and sustain a new normative development allowing for humanitarian intervention overriding sovereignty without UNSC approval. Looking at the normative context of constitutionality and the accepted shared expectations of the constitutional order help to understand this distinction and arrive at this conclusion.

By implication the unauthorised intervention gained legitimacy as the UNSC, or indeed any significant grouping of states, did not form a consensus against the action. However during the events surrounding Kosovo the statements made by the NATO governments were ‘for the most part based on the proposition that Kosovo was an exceptional case’ (Roberts, 1999, p. 102). Throughout the preceding years the international community had internalised and recognised the legitimacy of the norm of humanitarian intervention in the constitutional context of the UNSC. Norms of sovereignty and humanitarian intervention were reconciled in this context. Potentially the constitutional normative setting in 1999 allowed for Kosovo to be a considered a legitimate action. Clark (2007, p. 225) argues that the whole of Europe ‘carried the burden of the non-too illustrious role in Yugoslavia during the 1990s’ but also the ‘more positive memory of NATO’s eventual role in Bosnia’. Combined with the morality of the situation, along with the large consensus of states that wished to address the crisis, the resulting acceptance was arguably less tacit legitimisation and more that ‘they understood the political context within the Council that had forced NATO to act without authorisation’
A brief comparison with the Iraq war in 2003 seems to suggest this is the case, for whilst the morale and legal normative contexts between the two were equally debatable in their appeal (Clark, 2007, p. 225), Iraq was less legitimate because as a challenge to the constitutional order, it was ‘regarded as the culmination of a tendency’ rather than as was the case in Kosovo as ‘an isolated departure’ (Clark, 2007, p. 225).

3. Conclusion

Humanitarian intervention, since 1991, has emerged as one of the most important phenomena in international relations. It embodies a dynamic evolution of normative structure and state behaviour in the international system and as such is an attractive subject of research. Humanitarian interventions are infrequent, and the complex social, economic, historic and political factors involved open motivations up to many interpretations. Nevertheless, when they do occur, as scholars of international relations we need to provide a coherent framework of analysis, one which is important in what it tells us about the structure and actors in the international system.

From the viewpoint of Rationalist analysis, interventionist behaviour for the purposes of humanitarianism must necessarily have an underlying materialist motivation, rooted in the behaviour of states as utility maximisers and expressed as a strategic calculation. As a consequence norms, as part of the structure of international relations, are of ‘trivial importance in explaining world politics’. Derived from the capabilities of states they are purely reflections of distribution of those capabilities. Yet if norms are a mere epiphenomenon, how is one to account for the emergence of the norm of humanitarian intervention? Or indeed how is one to explain humanitarian behaviour? Ostensibly embodying non-material interest, it appears to fall outside the analytical parameters of a Rationalist approach. Insomuch as it offers an explanation of behaviour and norms it offers the ‘Trojan Horse’ explanation, casting humanitarian intervention as a 'cover' for material and strategic gain. However this stops short of asking the more fundamental question of why there was a need for a cover, and why humanitarian rationale was being used as that cover. To recall Skinner, ‘even if the agent is not in fact motivated by any of the principles he professes, he will nevertheless be obliged to behave in such a way that his actions remain compatible with the claim that these principles genuinely motivated him.’ With this insight it is understood that there must be at least some causal power in the norm used as justification,
and from this viewpoint alone it seems evident that Rationalism suffers from at least some ‘explanatory poverty’ relating to the study of humanitarian intervention.

From this point of departure this paper has offered an alternative model for interpreting the behaviour and structure of the international system. A model, it is argued, which captures the essence of humanitarian intervention and has the capability to explain both how norms develop and why states would act in way not was not wholly characterised by material self-interest. For this framework Constructivism is the basis from which to understand the dynamics of humanitarian intervention. Stressing the endogenous social construction of meaning, identity and interest, Constructivism possesses the means by which to understand state behaviour in ideational terms. Furthermore it emphases the mutual constitution of the structures and actors in the international system, accounting for the causal power noted by Skinner. Expanding the framework, the introduction of Holistic Constructivism, the Norm Life Cycle and the process of legitimacy provide a way to transfer the level of abstraction of Constructivist analysis to the practical, real-life developments of humanitarian intervention. Actors develop identities and interests from the normative structural context, both domestic and international. In an effort to achieve these interests they attempt to persuade others into affecting a norm cascade- drawing on the moral, legal and the constitutional normative context as well as material power they attempt to establish a legitimate norm.

Applied to the empirical cases, this paper has tried both to validate the approach and provide a valid explanation for the two core questions: how has a norm developed, and why do states engage in humanitarian intervention. The explanation offered by the novel framework employed in this paper sees states acting out of a combination of altruistic and self-interested motivations, derived from normative structures. In Iraq, there were no doubt material considerations over peace and stability from the intervening states, yet there is undoubtedly a causal power attached to the ideational interests of the norm entrepreneurs. Drawing on the moral, legal and the constitutional contexts of the international system, they forged a consensus which saw the legitimate emergence of the norm of humanitarian intervention, which itself then became part of the normative context affecting behavioural change. Eight years later in Kosovo norm entrepreneurs attempted to legitimise the humanitarian intervention without UNSC authorisation. Again the behaviour of the norm entrepreneurs can be understood in both ideational and material terms as they both drew from the normative structure of the international system and attempted to legitimise its change. In the case of
Kosovo the actors failed to affect a significant norm development, but their actions can be understood can nonetheless be understood.

References


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