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ARTICLE 51 SELF-DEFENSE AS A NARRATIVE: SPECTATORS AND HEROES IN INTERNATIONAL LAW

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I. INTRODUCTION

> They have started hitting the bridges again. Jumhuriya Bridge is now apparently in three pieces. Countless industries, textile factories, flour mills and cement plants are being hit. What do they mean when they say they are only hitting military targets? These are not military installations. As for "our aim never goes wrong" . . . who will save us from these big bullies?[1]

> The atmosphere in our hangar was jovial and lively. The Regiment hadn't been massed like this since the Second World War. It was wonderful . . . . I felt like a bricklayer who had spent my entire life knocking up bungalows and now somebody had given me the chance to build a skyscraper.[2]

In these quotes there are segments of diverse accounts of the first few days of the 1990 Gulf War. The first was written by Nuhi al-Radi, a Western trained Iraqi artist, as she witnessed the war from her home north of Baghdad.[3] The second was written by Andy McNab, a British elite serviceman who worked as an SAS operative in Iraq.[4] In Western cultures, Andy McNab's accounts are well-marketed and

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1. NUHA AL-RADI, BAGHDAD DIARIES: A WOMAN'S CHRONICLE OF WAR AND EXILE 29 (2003).

2. ANDY MCNAB, BRAVO TWO ZERO 6–7 (1993).

3. *See* Al-Radi, *supra* note 1.

4. McNab is not the real name of the author of *Bravo Two Zero*, however, it is suggested for security reasons the author used this pseudonym. He has since written an autobiography of his life, eight fictive accounts of conflict and runs a training facility for journalists working in conflict zones.

generally well-known. Al-Radi's autobiography is less well-known, yet as easily obtained. McNab's terse, expletive driven and macho style contrasts greatly with the mixture of intimacy and daily routines that bind Al-Radi's days together as her family and friends suffer during the aerial bombing of Baghdad. This paper considers a third narrative of the 1990 Gulf War, that is, the narrative offered by international law condoning the use of force in self-defense under Article 51 of the United Nations (UN) Charter.[5] However, I continually use social narratives alongside legal narratives to explore the crossover between legal and social discourses. Unlike the narrative accounts of Al-Radi and McNab, law tends to avoid the particular, the intimate, or the local in an attempt to generalise standards for behaviour over multiple events.[6] For example, Article 51 can be used by a state to justify violent behaviour whenever an armed attack has occurred. In this paper, I seek out the story of that violence, as contained in the Charter and customary law driven constructions of events. Under international law, violence must be judged legal or illegal, justified or unjustified with dramatic and often dangerous consequences for the citizens of a state using force. I interrogate that legal narrative, in the form it is offered to Western states by Western jurists.

Crucial to the legal narrative that is Article 51 self-defense is the regulation of violence perpetrated by states. Cover suggests three sites where law and violence overlap, so that "[v]iolence . . . provides the occasion and method for founding legal orders, it gives law (as the regulator of force and coercion) a reason for being, and it provides a means through which law acts."[7] Cover's identification of the nexus between law and violence helps us dissect the meaning of the force/violence distinction contained in Article 51. Force is understood as violence justified by law and thus no longer violence or illegal.[8] Violence, then, is force that does not receive justification—that which remains a contravention of international standards.[9] This distinction between force and violence by the international legal system is important and aids the narrative that some acts of international aggression can be justified, normalized, and legalized while others remain the acts of rogue states. Drawing the line between the two is a key concern of this paper. To overlay Cover's analysis on to the force/violence dichotomy, we can see force represents Cover's third site of violence—the means through which law acts. Violence, then, repre-

5. *See* U.N. Charter art. 39–51.

6. For example, contrast Al-Radi and McNabs's account with Christopher Greenwood, *New World Order or Old? The Invasion of Kuwait and the Rule of Law*, 55 MOD. L. REV. (1992).

7. LAW'S VIOLENCE 3–4 (Austin Sarat & Thomas R. Kearns eds. 1992).

8. *See* Robert Cover, *Violence and the Word*, *in* NARRATIVE, VIOLENCE, AND THE LAW 203, 213–14 (Martha Minow et al. eds., 1992).

9. *Id.*; *see also* HANNAH ARENDT, ON VIOLENCE 51–52 (1970).

sents Cover's second site—the means for law's existence.[10] This is because Cover perceives acts condoned by law as enforcement as inherently coercive and violent. Underlying, and unanswered by this paper, is a question: without force and without violence, is there no legal order?[11] Cover's work would suggest the law's narrative is the justification of some violence that is thus rendered force and the attempted containment of all other violence. Consequently, exploring the narrative of force and violence in Article 51 is a crucial means to understanding the purpose, form, and future of the international legal system.

Furthermore, Cover's approach allows us to question the private right of states to enforce the illegality of a prior violent action in the international arena. If force can be justified to contain other violence, there remain questions in the international legal system about the broad enforceability rights that Article 51 self-defense has come to stand for outside of the Security Council system of authorization.[12] This raises unanswered questions about decision making processes in the UN system and the viability of a system that allows private enforcement of what is characterized as public violence.[13]

The subsequent three parts of this article take the following form. Part II introduces Article 51. Part III considers the manner in which Article 51 produces a narrative of spectatorship for the West. I draw on Al-Radi's narrative to highlight the massive gap between the narratives of Article 51, as it is perceived in mainstream academic accounts of Operation Desert Storm, and the reality of living with the consequential force. I am particularly concerned with the legal features of proportionality, collective self-defense, and the state as a "self" defending. In Part IV, I use the work of McInnes, Orford, and Salecl to demonstrate how the West use a form of self-projection to become both spectator and hero in internal cultural narratives.[14] Drawing on the methodology developed by Gunning, I attend to the inherent essentialism of these narratives rather than attempting to offer alternative non-Western narratives.[15] Finally, in Part V, I return to

10. *See* LAW'S VIOLENCE, *supra* note 7, at 3–4.

11. *See* Thomas M. Franck, *Who Killed Article 2(4)?*, 64 AM. J. INT'L LAW 809, 810 (1970); *see generally* Jacques Derrida, *Force of Law: "The Mythical Foundation of Authority"*, 11 CARDOZO L. REV. 919 (1990) (discussing the role of force and violence in the administration of world justice).

12. *See infra* p. 135.

13. *See generally* Franck, *supra* note 11 (giving an alternative account of the U.N.'s system of allowing private enforcement of public violence).

14. *See* COLIN MCINNES, SPECTATOR-SPORT WAR: THE WEST AND CONTEMPORARY CONFLICT 143, 147–49 (2002); ANNE ORFORD, READING HUMANITARIAN INTERVENTION: HUMAN RIGHTS AND THE USE OF FORCE IN INTERNATIONAL LAW 161 (2003); *See* RENATA SALECL, THE SPOILS OF FREEDOM: PYSCHOANALYSIS AND FEMINISM AFTER THE FALL OF SOCIALISM 139 (1994).

15. *See* Isabelle R. Gunning, *Arrogant Perception, World Traveling and Multicultural Feminism: The Case of Female Genital Surgeries*, *in* CRITICAL RACE FEMINISM:

the force/violence distinction contained in Article 51. How does this regulator of force as legal, and violence as illegal, interact with recent claims that there is also "legitimate" force that can be used, for example, to halt humanitarian crises? I take the words of Arendt and question the shift from force as justified to force as legitimate, to conclude with further questions about emerging narratives of force that currently preoccupy Western cultures.[16]

II. ARTICLE 51

Article 51 provides a justification for the use of force by a state or, collectively, by a group of allied states.[17] The UN Charter contains two other provisions directly governing the use of force; the first is Article 2(4), which prohibits the use of force and the second, Article 42 permits the Security Council to authorize force.[18] Thus, there exists a prohibition, a justification, and a power of authorization constituting the central laws on the use of force under the UN Charter. This paper focuses primarily on the justification of Article 51 that states:

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.[19]

The text of Article 51 indicates the features of the international law on self-defense. Firstly, the article distinguishes between armed attacks, which remain illegal, and the use of force in self-defense, which can be justified. That is, this law designates the line between force (legal aggression) and violence (illegal aggression) in the international system. This can be judged as akin to the private right of self-defense that, at least in common law countries, is constructed around a rational act of (defensive) force to repel irrational violence.[20] Secondly, the text makes clear the role of the Security Council as an adjunct to the pri-

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A READER 352, 357–58 (Adrien Katherine Wing ed., 1997); *see* CHANDRA TALPADE MOHANTY, FEMINISM WITHOUT BORDERS: DECOLONIZING THEORY, PRACTICING SOLIDARITY 222 (2003); *see also* Rosi Braidotti, *The Exile, the Nomad, and the Migrant: Reflections on International Feminism*, 15 WOMEN'S STUD. INT'L F. 7 (1992).

16. *See* ARENDT, *supra* note 9, at 52; *see infra* Part V.

17. ANTONIO CASSESE, INTERNATIONAL LAW 365 (2d ed. 2005).

18. *See id.* at 55, 322–24.

19. U.N. Charter art. 51.

20. *See infra* Part III.

vate right of states to act in self-defense.[21] Although ultimately ambiguous, Article 51 finds states must act publicly (*i.e.* report acts of self-defense to the Security Council) and that the right only exists until the Security Council intervenes.[22] While these aspects of Article 51 have been interpreted in multiple ways, a strict reading of this text affirms the role of the Security Council and the need for transparency to states' defensive actions.[23] Article 51 achieves this without dislodging the location of the initial decision to act defensively from states. Furthermore, state practices and mainstream interpretations continue to emphasize the importance of states having free range on the decision to act defensively. Thirdly, Article 51 presents a distinct departure from interpersonal self-defense through the inclusion of collective self-defense, and finally, Article 51, through the inclusion of the term "inherent," alludes to the role of customary international standards as integral to Article 51. Consequently, the doctrine of proportionality and the doctrine of necessity are considered as customary standards that states using force in self-defense need to abide by.[24] For the purposes of this paper, I focus on the doctrines of proportionality and necessity, the right of states to act collectively in self-defense, and the inherent relevance of interpersonal self-defense on the international right. I provide a description of each of these features before considering the narratives that have been constructed through their interpretation.

A. *The Doctrines of Proportionality and Necessity*

The International Court of Justice (ICJ), in the *Legality*[25] case, emphasized that acts of self-defense must be in response to an armed attack and be demonstrated as both proportionate and necessary to satisfy international law.[26] The concept of proportionality in self-defense limits defensive actions temporally and spatially, confining them, for the most part, to the region of the armed attack and not beyond the cessation of hostilities.[27] Additionally, proportionality can be invoked to protect third parties and possible neutral states, impacting on the choice of targets and weapons used in defense and gov-

21. *See* OSCAR SCHACHTER, INTERNATIONAL LAW IN THEORY AND PRACTICE 138 (1991).

22. *See* CASSESE, *supra* note 17, at 324.

23. *See* Military and Paramilitary Activities (Nicar. v. U.S.), 1986 I.C.J. 14, 105 (June 27).

24. *See id.*

25. Legality of the Threat or Use of Nuclear Weapons, 1996 I.C.J. No. 95 (July 8).

26. *See id.* at paras. 38–43.

27. *See* Christopher Greenwood, *Self-Defense and the Conduct of International Armed Conflict*, *in* INTERNATIONAL LAW IN A TIME OF PERPLEXITY 273, 275–78 (Yoram Dinstein & Mala Tabory eds., 1989).

erning belligerent reprisals within the wider scope of the defensive conflict.[28]

In the *Oil Platforms*[29] case, the ICJ emphasized the need for the proportionality of self-defense to be judged in terms of the military campaign as a whole rather than in terms of individual acts marking the difference from proportionality *jus in bello*.[30] Long-term implications of military strategies and the impact on the target population's daily survival is not part of this equation. For example, during Operation Desert Storm the targeting of Iraq's power stations and communications facilities was perceived as a proportionate and necessary measure to assist in the removal of Iraq forces from Kuwait territory.[31] The Iraq power supply integrated military and civilian output so that the attacks resulted in long-term consequences for civilians alongside the military.[32] This was a consideration subordinated to military necessity and thus, could be conceived as proportionate.[33]

As it is likely that both states involved in aggressive conduct will claim their acts are defensive, in many conflicts the *jus ad bellum* limitations of proportionality and necessity will be applicable to both parties to a conflict.[34] Yet the use of Article 51 to govern the acts of both parties to a conflict negates the role of self-defense law in separating legal from illegal force. Greenwood acknowledges this discrepancy but finds that if a government does step outside the limits imposed by self-defense "it would become increasingly difficult to convince other states that the action was lawful self-defense."[35] Even accepting the political and economic incongruence of the international system, this counteracts the underlying rationale and structure of Article 51 raising questions as to why a self-defense model is used to justify force in international relations if it functions so poorly when mapped onto actual conflicts.

Additionally, proportionality is not seen to equal symmetry. This was emphasized in the ICJ advisory opinion of the *Legality* case that refrained from finding the defensive use of nuclear weapons illegal.[36]

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28. *See id.* at 278–85.

29. Oil Platforms (Islamic Republic of Iran v. U.S.), 2003 I.C.J. No. 90 (Nov. 6).

30. *See id.* at ¶¶ 76–77. *Jus in bello* refers to the laws and rules which are applicable to armed conflict and are sometimes referred to as the laws of war. *Jus ad bellum*, in contrast, considers the laws and rules which govern the naming and framing the resort to force (war or armed conflict).

31. Greenwood, *supra* note 6, at 174; *See generally* Greenwood, *supra* note 27, at 278–81 (discussing the importance of a proportionate and necessary self-defense response).

32. *See* Judith Gardam, *Proportionality as a Restraint on the Use of Force*, 20 AUSTL. Y.B. INT'L L. 161, 171 (1999).

33. *See* Greenwood, *supra* note 27, at 287–88.

34. *See id.* at 287.

35. *Id.* at 288.

36. Legality of the Threat or Use of Nuclear Weapons, 1996 I.C.J. No. 95, ¶ 43 (July 8).

Although considered unlikely, the Court acknowledged the extreme possibility of a state's existence being under threat during a belligerent attack necessitating the use of nuclear weapons within the confines of proportionality.[37] Although not symmetrical, proportionality does still involve some weighing up between the actions of one party in response to another. The task of weighing up is largely left to the party required to act proportionately, and with the methods of warfare impossible to scale against each other (how to weigh taking a life in one manner over another), the end result of the proportionality requirement is a measure of freedom for stronger states in their defensive actions once the necessity of those actions is established. As a consequence, the principle of proportionality tends to favor the acts of strong states that have access to modern "smart" weaponry such as airpower and precision bombers.[38] This feature of Article 51 thus plays a role in the narrative of Western states' use of the right to act forcefully. As long as superior means can be assessed within the proportionality feature, Western weaponry, particularly the superior airpower of the United States, provides a narrative of fairness and responsible force; a narrative that masks the destructive reality of that force.

The feature of necessity in self-defense refers to whether an armed attack merits the use of armed force in response and is assessed at the beginning of the conflict only. The standard international formulation for necessity is drawn from the *Caroline*[39] incident and limits a state's right to act in self-defense to when the situation is "instant, overwhelming, leaving no choice of means, and no moment of deliberation."[40] Schachter suggests that a state need not explore less violent means of halting the use of force, as the armed attack will itself provide the necessity of an armed response.[41] Schachter advises that to require otherwise, for example, that states should exhaust peaceful measures before embarking on a military campaign, would "in effect nullify the right of self-defense."[42] Furthermore, once it is clear that the situation requires an armed response, necessity requirements shift to *jus in bello* standards for the duration of the conflict.[43]

Integral to the *Caroline* standard is the requirement of temporal proximity between the armed attack and the defensive counter-mea-

37. *See id.* at ¶¶ 42–43; *see also* Greenwood, *supra* note 27, at 281 (explaining that one party may defend itself with use of the same weapons as those used against it).

38. *See* McINNES, *supra* note 14, at 95.

39. R.Y. Jennings, *The* Caroline *and McLeod Cases*, 32 AM. J. INT'L L. 82 (1938).

40. *Id.* at 89.

41. *See* SCHACHTER, *supra* note 21, at 152.

42. *Id.*

43. *See generally* Judith Gardam, *Necessity and Proportionality in* Jus Ad Bellum *and* Jus In Bello, *in* INTERNATIONAL LAW, THE INTERNATIONAL COURT OF JUSTICE AND NUCLEAR WEAPONS 275 (Laurence Boisson De Chazournes & Phillipe Sands eds., 1999) (discussing the different standards and requirements of necessity during armed conflict).

sures as an adjunct to the principles of proportionality and necessity. The emphasis on the immediacy of a defensive counter attack to gain legitimacy narrows the parameters of self-defense. The consequence of this feature is that it shapes the right as state centered and other groups, which may be weaker politically or lack full legal status in the international order, may find the immediacy requirement difficult to invoke and to gain self-defense as a cloak of legality to acts against aggressors. Additionally, understanding of this is ultimately governed by the broader concept of reasonableness, shifting any definitive understanding of what this requirement is. The domestic analogy is often the best understanding Western commentators can offer, so that Franck writes:

> international law is gradually emulating national legal systems in developing, around its codex of strict rules, a penumbra of reasonableness. . . . [I]nternational, like national, legal institutions seek to narrow the gap between what, on the one hand, is required by the letter of the law and what, on the other, is a generally perceived requisite of fairness.[44]

Feminist analysis of the standards of reasonableness, proportionality, and necessity under common law questions the merit of an uncritical acceptance of these concepts.[45] I assess the importance of the doctrines of proportionality and necessity in the production of Western narratives around the use of force in Part III.

B. *A Collective Right*

The ICJ in the *Nicaragua*[46] case defined the conditions required for collective self-defense to occur. Once an armed attack has been established to have occurred, the Court found the victim of such an attack must believe it had been attacked and it must publicly declare such a view for the collective right to be relied on by a third state.[47] The role of reportage to the Security Council thus becomes crucial in establishing a right of collective self-defense and suggests that, although a corollary to the private right to self-defense, collective self-defense must occur with some transparency.[48] There remain tensions between the collective, private, and reportage aspects of Article 51 as a consequence.

According to Gray, two readings of a right to collective self-defense can be made; however, both emphasize the material and military ine-

44. THOMAS M. FRANCK, RECOURSE TO FORCE: STATE ACTION AGAINST THREATS AND ARMED ATTACKS 184–85 (2002).

45. *See* NICOLA LACEY & CELIA WELLS, RECONSTRUCTING CRIMINAL LAW (2d ed. 1998).

46. Military and Paramilitary Activities (Nicar. v. U.S.), 1986 I.C.J. 14 (June 27).

47. *See id.* at 103–04.

48. *See* CHRISTINE GRAY, INTERNATIONAL LAW AND THE USE OF FORCE 141–42 (2d ed. 2004).

quality that currently exists between states.[49] One, a cynical view, holds collective self-defense "as a threat to world peace" offering "a risk of internationalization of civil conflicts and the expansion of interstate conflicts."[50] Taking this view is to regard collective self-defense as a tool of the powerful in international relations and questions the motives of powerful states exercising the right to collective self-defense. The more moderate reading suggests collective self-defense offers a "useful means to protect small states."[51] This is also a reading that offers power to strong states and their allies. Small states (or those states without significant military strength regardless of territorial size) require the collective support of more powerful states to invoke Article 51. Indeed these states are feminized, as their claim to legitimately exercise defensive violence is frustrated by a lack of physical capabilities. The diminished autonomy of states that need to rely on collective security arrangements is thus an interesting narrative that emerges within the concept of sovereignty defined by the application of Article 51. Collective defensive rights maintain the possibility of defensive acts in a political order where formal equality is not matched by material or military equality.

C. *The Domestic Analogy*

In addition to the positive features of international self-defense law, international jurists tend to attribute normative value to Article 51 through an analogy with the interpersonal right to self-defense.[52] For example, Dinstein, under the heading "The Meaning of Self-Defence,"[53] finds that the normative justification of self-defense has "its roots in inter-personal relations" that have been "sanctified in domestic legal systems since time immemorial."[54] Similarly, Cassese acknowledges that the public prohibition against force contained in Article 2(4) exists "to safeguard peace as much as possible" and describes self-defense as "the '*private*' right of each State to protect itself against aggression . . . ."[55] The separation of the public prohibition in Article 2(4) and the private right to self-defense in Article 51 allude to the personal right of self-defense and justify the development of similar features in the two legal systems. The salient aspect of both levels of the right is the identification of the self/state as the legal subject who gains access to legitimate private violence when acting in self-defense.

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49. *See id.* at 156–57.
50. *Id.*
51. *Id.* at 156.
52. *See* D.W. GREIG, INTERNATIONAL LAW 68 (1970). For a study of the normative implications of the analogy see DAVID RODIN, WAR AND SELF-DEFENSE (2002).
53. YORAM DINSTEIN, WAR, AGGRESSION AND SELF-DEFENCE (2d ed. 1994).
54. *Id.* at 176.
55. CASSESE, *supra* note 17, at 361.

The proportionality and necessity principles, although ostensibly confining defensive acts of states, also grant states, in the first instance, a rational capacity to choose how to defend, to control the defensive measures within law's parameters, and some moral standing to implement the right.[56] Like the individual under the common law system the state exercising self-defense is granted this capacity through the attributes of statehood, which also closely mimics common law subjects, where an emphasis on bodily (territorial) integrity and rational, and autonomous decision making are perceived as universal attributes of the legal subject.[57] International self-defense laws use this construction to narrow the scope of self-defense (armed attacks must for the most part be by recognised legal subjects, *i.e.* states only, in the international system), the methods of self-defense (self-defense should occur through regular armies and with proportionality) and most importantly, the subject of self-defense claims (states alone).[58] The consequence of this construction is discourse that emphasise state subjectivity through relationships and connectivity that are excised from the law's narratives. The state under Article 51 self-defense is perceived as a rational, autonomous legal subject.

The normative justification for shifting the warden of legitimate violence from the broader legal system (*i.e.* the police or the Security Council as enforcement arms of municipal and international legal systems respectively) to the individual (person or state) in international and municipal cases lies in an identification of the right to bodily integrity, life, and territorial closure over relational and dependency claims.[59] The state, thus, becomes the central normative force in a right to international self-defense with a location of sovereignty and boundaries that mimic the legal subject of interpersonal self-defense. This is despite self-defense in international law involving a quite different form and different consequences from personal self-defense. States invoking self-defense have a much longer time to deliberate on the best course of action then in the classic interpersonal act of self-defense. In addition, the consequences of a state self-defending—multiple loss of life to the populations of both states in addition to the associated economic and social impact—are dramatically magnified from the personal self-defense scenario.

III. SPECTATOR NARRATIVES

I will now look at how the features of Article 51 have been constructed to provide a spectator narrative for Western cultures. This

56. *See* Greenwood, *supra* note 27, at 273.

57. *See* SEXING THE SUBJECT OF LAW 257–63 (Ngaire Naffine & Rosemary J. Owens eds., 1997).

58. *See* HILARY CHARLESWORTH & CHRISTINE CHINKIN, THE BOUNDARIES OF INTERNATIONAL LAW 260–62 (2000).

59. *Id.*

narrative implicates the domestic analogy, the positive features of Article 51 (collectivity, proportionality, necessity, etc.), and the means of modern warfare.

A. *The Innocent and Rational Self-Defending Legal Subject*

International law does not develop its use of the "domestic analogy" to appreciate the complexity, limitations, and challenges to interpersonal self-defense that exist.[60] For example, in common law countries, the notion of self-defense has faced severe criticism from feminist theorists who have identified its gendered underpinnings. As the Canadian Supreme Court noted:

> The law of self-defense is designed to ensure that the use of defensive force is really necessary. It justifies the act because the defender reasonably believed that he or she had no alternative but to take the attacker's life. If there is a significant time interval between the original unlawful assault and the accused's response, one tends to suspect that the accused was motivated by revenge rather than self-defense. In the paradigmatic case of a one-time barroom brawl between two men of equal size and strength, this inference makes sense.[61]

The Supreme Court goes on to examine the inadequacy of the defense for women who find their life threatened by violent partners and who use force to repel that violence.[62] The laws on self-defense in common law countries have faced increasing scrutiny as a consequence of this type of analysis, and changes have occurred through acts of the judiciary and legislatures in many common law countries.[63] Without suggesting an answer for framing international self-defense in feminist challenges to domestic self-defense laws, I do wish to suggest that the currently perceived mutability of self-defense in domestic systems has repercussions for the international framing of the justification. If the concept of self-defense is contingent—on gender or on culture or any other axis of difference—then a rethinking of self-defense at both the domestic and international level is required. In failing to accommodate the experiences and response of over half of the world's population self-defense loses its status as an assumed and "inherent" right of legal subjects.

In terms of the international right to self-defense, this is further complicated by the inadequacy of a self-defense derived model to the nature of international conflict, which is not a simple "barroom brawl" model of unlawful aggressor and innocent self-defender. The civilians that constitute a state also need to be taken into account as well as the

60. *See* RODIN, *supra* note 52; *see* GRIEG, *supra* note 52, at 671.
61. R. v. Lavalee [1990] 1 S.C.R. 852.
62. *Id.*
63. *See* Law Commission, http://www.lawcom.gov.uk/criminal.htm (last visited Oct. 14, 2005).

ongoing and complex relationships of states. So it can be seen domestic self-defense laws, which stand as an integral element of the telling and functioning of international law, have certain features that may be questioned as closer to particular domestic narratives rather than universal norms. One means to re-imagining international self-defense is to respond to the law as a narrative—mutable and changeable reflections of social norms.[64]

Currently, Article 51 reinforces the self-defense paradigm of an innocent self-defending rational subject reacting to the irrational violence of the "other" state. As a consequence, self-defense laws construct a spectator narrative by deploying the same dualism between a legal subject, who is held at the centre of the spectator's gaze, and the objectified other, which although not central to the narrative must exist as a negative representation of the subject. Collective self-defense, like that deployed in Operation Desert Storm, occurs without undue risk to the spectators in the West yet with a narrative that allows the spectator to identify with the main protagonist.[65]

B. *Airpower, Proportionality and Collective Force*

Al-Radi reminds the reader that the self-defended during the Gulf War was the state of Kuwait.[66] The extension of the right of self-defense to Kuwait's allies was necessary for Kuwait to have the capabilities to defend against the Iraqi invasion.[67] However, collective self-defense has no counterpart in the interpersonal right. In fact, collective self-defense would most likely be regarded as revenge, requiring some pre-meditation and extension beyond immediacy under common law self-defense. I am not challenging Kuwait's need to defend, or have some form of reliable enforcement against the Iraqis after the 1990 invasion, rather challenging the international standard (self-defense), which is premised on connecting the self—as the state—with the citizen self. If the analogy holds, then collective force would be untenable in the international system. Furthermore, if we return to state practice, collective self-defense has remained the right of powerful states, mostly Western states, thus further disrupting its plausibility.[68] These questions over the plausibility of collective self-defense lead to further questions over the enforcement of proportionality of acts of international self-defense.

Al-Radi writes, on Day 23 of the first Gulf War, "[t]he equivalent of five Hiroshimas have already been dropped on us."[69] To balance a

64. *See* ROMANCING THE TOMES: POPULAR CULTURE, LAW AND FEMINISM 16 (Margaret Thorton ed., Cavendish Publ'g 2002).
65. *See* SALECL, *supra* note 14, at 139.
66. *See* AL-RADI, *supra* note 1, at 28.
67. *See* Greenwood, *supra* note 6, at 164.
68. *See* GRAY, *supra* note 48, at 157.
69. AL-RADI, *supra* note 1, at 30.

proportionality claim, this massive orchestration of force ought to be assessed against the annexation of Kuwait and the means necessary to shift the Iraqi forces out of Kuwait. Returning again to the idea of narrative, it is within Al-Radi's latter statement that we can perceive the spectatorship of the West. The foreignness and dislocation of such a claim for Western communities—"dropped on us"—highlights the trouble Western analysis of justificatory laws, such as self-defense laws, has in understanding the central selves, players, and concerns are not Western communities. Western territories remain outside the narrative and the experience of the Western scholar, state, or spectator needs to be transposed on to the conflict; as the spectator before emerging as the hero of the narrative.

The international customary law requirement of proportionality seems frustrated by Article 51's collective aspect. During the first Gulf War, the use of force against Iraq was regarded by Western states as an act of collective self-defense that gained increased legality under Security Council Resolution 678,[70] in addition to the inherent right of Kuwait to invoke Article 51.[71] For many commentators, the identification of Desert Storm as either authorized Security Council force or Article 51 defense is crucial.[72] All acknowledge that regardless of the status of the force within Chapter VII Security Council authorization, there was a clear right for Kuwait to call on its allies in collective self-defense.[73]

As long as the force is regarded as within Article 51, the measure of proportionality is, therefore, by customary international law standards; which by definition are fluid norms. For Western states providing defensive allied force this has increasingly been read as a test of fairness.[74] In the 1990 Gulf War the consequence of this Western narrative was that force was conducted primarily through the means of airpower.[75] McInnes suggests there is an insidious aspect to airpower superiority that implicates it in the spectator narrative, as airpower suggests "force may be used without undue risk."[76] That is, without undue risk to foreign civilians or Western military personnel. Assessing proportionality in this manner, that is, whether an intended use of force gives the appearance of playing "fair," enhances the narrative in the West that the use of force is something that happens away from

70. S.C. Res. 678, U.N. Doc. S/RES/678 (Nov. 29, 1990).

71. SC Resolution 678 Authorizes Member States "to use all necessary means" to bring Iraq into compliance with previous Security Council resolutions setting the 15 January 1991 as the deadline for Iraq's compliance. *See id.* at ¶ 2.

72. *See* Greenwood, *supra* note 6, at 164.

73. *Id.*

74. *See* McINNES, *supra* note 14, at 81.

75. *See* Colin McInnes, *Fatal Attraction? Airpower and the West, in* DIMENSIONS OF WESTERN MILITARY INTERVENTION 28, 28 (Colin McInnes & Nicholas J. Wheeler eds., 2002).

76. *Id.* at 29.

Western territories and is an economically attractive option. The capacity to concurrently watch and analyze events as they are represented by Western media, then, functions to further the narrative. McInnis suggests: "Sports spectatorship, however, is more than mere entertainment. It is not simply a passive activity whereby those watching have no impact upon events on the field of sport and merely react to what happens. Rather spectators create the *norms* by which the sport is played."[77] If we return to Al-Radi's account of the Gulf War the difference between airpower as fairness and airpower as disproportionate advantage emerges, she writes, "[t]he score today is 76,000 Allied air raids versus 67 Scuds."[78] The Iraqi (in)capacity to defend against the superiority of US airpower is further recorded by Al-Radi as she describes the launching of an Iraqi scud missile close to her home:

> Suddenly there was a terrible noise and a bright light coming closer and closer, a sun homing into us through the kitchen windows, a white, unreal daylight illuminating us all. The floor was shaking so violently that we thought the house was coming down on our heads. We crouched on the floor and suddenly, without our knowing how, the door opened and all six of us were outside in the garden. An immense fireball was hovering over us, a fireball that appeared to be burning the tops of the palm trees. Suddenly this giant flaming object tilted, turned upwards over our heads and went roaring up into the night sky.[79]

This "immense fireball" and threat to the Al-Radi family was launched by the Iraqi army, the incompetence of the attack questioning the necessity of the prolific air attacks by the US over the course of the defense of Kuwait. There is no question of the illegality of the Iraqi annexation of Kuwait, indeed Al-Radi herself states, "[o]ur big mistake was not to move out of Kuwait by 15 January."[80] Al-Radi further draws the readers' attention to the fact that she could understand "the Kuwaitis hating us but what did we do to you, George Bush . . . ?"[81] Later she reveals, "[t]he one thing that no one bet on was that Baghdad was going to be bombed and hit like this. They were suppose to be freeing Kuwait. Maybe they need a map?"[82]

Western narrative relies on the shifting of the subject of the "drama," in the use of force in question, from Kuwait to the Western subject. A narrative of self-defense can only function if the reader is able to identify with the key protagonist. So the self-defense of Kuwait is written as the Western defense (rescue) against a rogue state. The hero, the subject, during the event is the Western male. The

77. MCINNES, *supra* note 14, at 149.
78. AL-RADI, *supra* note 1, at 38.
79. *Id.* at 43.
80. *Id.* at 38.
81. *Id.* at 25.
82. *Id.* at 28.

Western narrative, reinforced by the legal narrative, moves between spectatorship and heroics, where the Western state (territory) is safe yet remains the focus of the heroic journey.

Which leads us to ask, is international law myopically viewed by Western scholars? Is the internationalism of international law undermined by the continual propensity of powerful states and allies to shape norms to their benefit? How can the West challenge the inherent imperialism of this spectator role? How to challenge this unwritten essentialism of international laws that reads best through Western narratives? How to shift the focus from primarily Western interpretations, concerns, and legal fictions? How to analyze, hear, shape, and form norms in response to the people suffering, fighting, dying, and living with conflict in their homes? In the next section, I take these questions and draw on the types of solutions offered by feminist jurisprudence when it has suffered from criticisms of essentialism and myopia while further considering the "heroics" of the international self-defending legal subject.

The spectator sport narrative facilitates understanding of self-defense laws as an aspect of a larger sense of self within which the West operates. I now add to McInnes's narrative the specifically feminist approach of Orford.[83] This addresses the implicit masculinity of McInnes's spectator and the power of the gaze this spectator implicitly owns, as well as the need for spectator to identify with the subject while concurrently requiring objectification of the other.

IV. HERO NARRATIVES

While McInnes's study provides a powerful image of the inherent imperialism of much of Western culture, his narrative model ignores a further aspect of the Western interpretation of self-defense laws; that is, the assumption of the spectator as male. Self-defense laws aid identification of the spectator as male. The hero for the West must be identifiable to the spectator; in fact, the spectator reads (or misreads) the hero in the image of the spectator's self.[84]

The spectator narrative also informs understanding of the sexing of heroic self-defense narratives. A necessary part of the spectator's role is to provide the gaze that locates both the subject and object of legal (or narrative) discourse. Although she uses a narrative method to read the use of force justified as humanitarian intervention, Orford offers a short account of what her own understanding of the narratives of self-defense might be:

> The fact that the reader is invited to identify with a white, violent, masculine hero limits the capacity of international law to address the ways in which the hero's journey of action and self-validation

83. *See* ORFORD, *supra* note 14, at 160.
84. *See id.* at 38.

> affects the lives of the human beings caught up in that quest. . . . As a consequence, violence becomes a logical form of self-defence. The self that is being defended . . . . is the competitive, irresponsible and brutal self of white, imperial masculinity, reproduced unendingly in the heroic narratives of militarist internationalism.[85]

Orford goes on to suggest that the military intervention in Kuwait has not significantly advanced the freedom of the Kuwaiti people, "those people have instead seen one form of domination replaced by another. . . . [F]or women struggling for political rights in postwar Kuwait, the Gulf War means they are now 'faced with patriarchal barriers . . . blessed militarily.'"[86]

The lack of concern over the quality of government in the Kuwait state, post-Operation Desert Storm, can only occur when the focus is not on Kuwait as the "self" defender. That is, the transposition of the spectator (Western cultures) into the hero of the Gulf War narrative allows a convenient ignorance, in the West, of the conditions of life in Kuwait. This has profound repercussions for Kuwaiti women, non-nationals, and the people of Bedoon ancestry.[87] Offering a narrative on this, from the perspective of Western cultures, is difficult, if not impossible. It is important, however, as it illustrates how the massive focus on the quality of governance in Iraq and the discrimination against the Kurdish people by Saddam Hussain's regime has been a selective enterprise in the narratives of statehood that emerge after the self-defense of Kuwait.[88]

Orford alludes to the lack of suffrage for Kuwaiti women, yet she ignores the narratives other data on Kuwait might provide that offers a less impoverished view of women in Kuwait.[89] It is true that at the time of writing (over a decade after the first Gulf War) women in Kuwait are still dependent on men in power changing the law to include women's political enfranchisement.[90] They also lack full nationality rights and guardianship rights of children, which rest with

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85. *Id.* at 180.

86. *Id.* at 22 (quoting CYNTHIA ENLOE, THE MORNING AFTER: SEXUAL POLITICS AT THE END OF THE COLD WAR 176 (1993).

87. CHARLESWORTH & CHINKIN, *supra* note 58, at 262; *see also* Human Rights Watch, Kuwait: Promise Betrayed, http://www.hrw.org/reports/2000/kuwait/kuwait-04.htm (last visited Oct. 12, 2005).

88. *See* CHARLESWORTH AND CHINKIN, *supra* note 58, at 262.

89. *See* ORFORD, *supra* note 14, at 22.

90. *See* Online Women's, Suffrage, http://www.onlinewomeninpolitics.org/suffrage.htm (last visited Sept. 25, 2005). In March 2005 the Kuwaiti Parliament did approve a Bill granting women suffrage, however this law will be subject to Islamic Law. The next parliamentary election will be held in 2007 and it is unclear what role women will have. *See Kuwait Hastens Women's Vote Bill*, BBC NEWS, Mar. 7, 2005, http://news.bbc.co.uk/1/hi/world/middle_east/4325207.stm.

fathers.[91] However, women in Kuwait also represent about 70 per cent of university students.[92] Al-Kharafi writes:

> Undoubtedly, women's sustained educational advancement, together with ever widening opportunities for higher education and employment, are significantly altering the social scenario, where women are making a critical difference in occupying significant positions of responsibility, hitherto considered the male prerogative. For instance, women are holding distinct academic positions in various faculties in Kuwait University, rising to the rank of Professors, while executive cadres have already seen women occupying such distinct positions as Kuwait University President, Vice President . . . in addition to working as doctors, engineers, lawyers, planners, pharmacists, etc.[93]

To judge the standard of Kuwaiti women's lives on a Western model of political rights denies the agency Kuwaiti women have through their access to education and their cultural norms. This belittles the agency of women who have an active role in shaping Kuwait business, family life, and educational institutions (although not the upper strands of the political process). What this illustrates is the limited ability of a Western feminist analysis to provide a narrative of the actual experience of women outside a Western feminist's cultural influences. For example, while this paper presents two easily found perceptions of Kuwaiti women, it by no means represents all understandings of women's lives, politics, or aspirations in Kuwait.[94] *A reading from a Western standpoint can only offer an analysis of the representation those images receive in Western culture.*

Rather than supplying a narrative of Kuwaiti women, Orford's model is invaluable for envisioning the first element of Gunning's model that is, "seeing oneself in historical context."[95] More powerful than providing understanding of Kuwaiti women is to turn the gaze to the self and question what the narratives of self-defense offer one's own culture. Orford's use of law as narrative opens up the possibility of considering the narrative supplied by the Kuwaiti defense from the

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91. The Human Rights Watch Report focuses on Kuwait and the discrimination and lack of legal rights afforded to the Bidun. *See* Human Right Watch, Kuwait: Promises Betrayed, ch. IV http://www.hrw.org/reports/2000/kuwait/kuwait-04.htm (last visited Oct. 12, 2005); *see also* Aziz Abu-Hamad, Human Rights Watch, The Bedoons of Kuwait: "Citizens Without Citizenship" (1995).

92. *See* Faizah Al-Kharafi, Higher Education in Kuwait: A Perspective on Women's Development, Arab International Women's Forum (October 22–24, 2003), http://www.aiwfonlinf.co.uk/downloads/dr%20fayzah.pdf.

93. *See* Faizah Al-Kharafi, Higher Education in Kuwait: A Perspective on Women's Development, Arab International Women's Forum (October 22–24, 2003), http://www.aiwfonlinf.co.uk/downloads/dr%20fayzah.pdf (last visited Oct. 21, 2005).

94. *See* Taghreed Alqudsi-Ghobra, *Women in Kuwait: Educated, Modern Middle Eastern: As a Middle Eastern Woman, What I Would Change in My Country—Three Views*, http://www.kuwait-info.org/Kuwait_Women/women_in_Kuwait.html (last visited Oct. 7, 2005).

95. Gunning, *supra* note 15, at 358.

position of the West, where the subject is not the Kuwaiti state or even the Kuwaiti people, but instead what Orford categorizes as the "white knight."[96] Under this approach, it is vital that those people who define themselves as Western consider how they collude in this narrative to the detriment of others and, indeed, to maintain their "otherness."

For Orford, focusing on the "heroics" of the states that "liberated" Kuwait from the Iraqi occupation is central to the Western self-mirroring, which ignores the history of the region and places Western self-references as central in the narrative rather than the victim state.[97] Using Orford's approach, exposition of the situated and particularity of this narrative can be unraveled. People should be critical of their need to place Western (powerful) states, themselves, as the main protagonists who assume male personas, not only powerful physically (through airpower) but rationally acting in the face of irrational violence. The states intervening on Kuwait's behalf use their "white knight" status to constitute a positive political image within their own culture and to maintain the hegemony of Western democratic states, so that these states become, "characters given agency, and with whom identification is invited, [and] include the UN, the Security Council, the 'international community,' NATO and the USA. Those largely interchangeable characters are portrayed as the heroic agents of progress, democratic values, peace and security, who shape target states through their interventions."[98] The characters Orford designates as self-appointed agents are also the characters McInnes allocates as spectators. The dual position of the prime legal subject as both defining the conflict (spectator) and as the primary agent in the conflict (hero) grants Western states their power in legal discourse and legal narratives.[99] The defense of the Kuwaiti state is positioned in Western narratives as a right of Western states to impose US/Western approved democratic sovereignty (although technically undemocratic when only 14 per cent of the Kuwait populace is entitled to vote).[100] The UN Charter and customary international law make no judgments on the nature of the political independence to be protected by Article 51 and, thus, assist the Western narrative.[101]

Kuwait becomes a feminized state in this narrative. De Elwis describes the metaphor of a feminine state invoked in times of crisis that

96. *See* ORFORD, *supra* note 14, at 165, 180.

97. *See id.* at 180.

98. *Id.* at 166.

99. *See* MCINNES, *supra* note 14, at 151; ORFORD, *supra* note 14, at 180.

100. Orford records that men over the age of 21 who can trace their lineage to the state that existed in the 1920s were entitled to vote in the post-Gulf War elections and this amounted to 14% of the population. *See* ORFORD, *supra* note 14, at 22 n.70.

101. *See* CASSESE, *supra* note 17, at 53–55.

is perceived as both nurturing and vulnerable.[102] The feminine state cries for protection, requiring the violence of the identifiable male "hero" to save her from the aggression of the deviant male state. Once the feminine state is "saved" issues about her agency and strength are no longer considered to be a problem and can be ignored. So, in addition to the uneasy questions about women's suffrage and position in lower status professions, the quality of restored democracy in Kuwait is no longer on the agenda of international law. Indeed, the Kuwaiti form of democracy includes some violent exclusions of its own.[103] For example, the further intersections of race, culture, and gender are ignored with respect to the Bedoon people in Kuwait.[104]

Most Bedoons were born in Kuwait, and their families have lived in the region for many generations.[105] The Bedoons account for around one-third of the Kuwaiti population.[106] Yet the Bedoons in Kuwait have neither recognized citizenship nor any functioning political status in Kuwait.[107] This is because the Bedoon people have been judged stateless people by the Kuwaiti government since 1991.[108] The women in the Bedoon culture remain invisible on a national and international, political and economic agenda.[109] The first Gulf War resulted in recognition of some of the claims of Kurdish people in Northern Iraq and yet did not recognize the Bedoon. This analysis is over-simplified (as it ignores the differences between the two groups, Bedoon and Kurdish peoples, and denies the multiplicity of positions that might be reflected within them), yet it still highlights the invisibility of the one's own assumptions and beliefs in the construction of a powerful narrative around self-defense. When the West uses force to "save" another state, it is not the Bedoon or the Kurdish people for whom the narratives are written: *the narratives are stories and histories for the West to reflect back its own image.* In the mid-2000s, the claims of Kuwaiti women for suffrage, along with nationality and marriage rights, still await a male parliament to change the law. The Bedoon remain classified as stateless people by the Kuwaiti government, have been the victim of increasingly repressive laws since the "liberation" of Kuwait, and as a consequence of their statelessness, lack immigration and asy-

102. *See* Malathi de Alwis, *Moral Mothers and Stalwart Sons: Reading Binaries in a Time of War*, *in* THE WOMEN AND WAR READER 254, 254–55 (Lois Ann Lorentzen & Jennifer Turpin eds., 1998).

103. *See* Abu-Hamad, Human Rights Watch, *supra* note 91.

104. *Id.*

105. *Id.* at 12. However, there remains a lack of reliable data, and it may be assumed that this is a conservative estimate.

106. *Id.* at 111. This figure does not include expatriates (foreigners) living in Kuwait who account for approximately 60% of residents.

107. *Id.*

108. *Id.*

109. *Id.* at 80–81.

lum rights globally.[110] Finally, the claims of the Kurds may be said to be overshadowed by the more recent US led offensive in Iraq. These legal violences remain outside the ambit of self-defense concerns and narratives.[111]

The laws on self-defense, with their emphasis on the sovereignty of states and the comfortable reflection of common law concepts, work to create an unchallengeable normative framework for global violence that meets the criteria of self-defense. They are also able to provide a narrative for particular cultures: cultures that thrive on gender binaries and hierarchies as well as power imbalances masquerading as objectivity, disguised by a model of formal equality. This is the narrative of the Western world that offers a collective strength to its allies for the purpose of self-defense. It is not a reflection of a monolithic culture, but it does encourage a particular model of thinking through a "crisis" moment in international relations. This is a rational legal model grounded in the notion of sovereign equality that denies the long-term implications of the dominant culture. Histories of non-violent social change are overlooked in the narrative, as are the prior interventions in the community in crisis by Western and international corporations, organizations, and institutions.

Chinkin contrasts the reliance of self-defense narrative on "the statist orientation of international law" with the underlying causes of conflict in the region during the first Gulf War:

> the underlying causes of both the bilateral dispute between Iraq and Kuwait and the wider dispute between Iraq and most of the international community are the continuing consequences of colonialism and the economic importance of oil, matters that undermine the statist model. . . . The realization that many potential causes of international conflict both transcend State boundaries (economic interests, environmental concerns, claims of peoples, the spread of AIDs) and lie within those boundaries (violations of human rights, seizures of and threats to hostages, genocidal regimes) may require a rethinking of the primacy of political independence and territorial integrity . . . .[112]

From the position of powerful states, self-defense presents a narrative that frames Western forms of justice as legitimizing international mili-

110. See Refugee Status Appeals Authority Database, Refugee Appeal No. 72635/01, http://www.knowledge-basket.co.nz/refugee/Fulltext/72635-01.htm (last visited Sept. 25, 2005), which provides the text of a New Zealand dismissal of a Bedoon claim for refugee status. This appeal finds that owing to the Bedoon's statelessness they are in no danger of persecution in Kuwait (because they would be denied entry) and therefore, can be justifiably denied status as a refugee in foreign states.

111. For justification of the no fly-zone in Iraq as the protection of the Kurds see Thomas M. Franck, *Interpretation and Change in the Law of Humanitarian Intervention*, *in* HUMANITARIAN INTERVENTION: ETHICAL, LEGAL, AND POLITICAL DILEMMAS 220–21 (J.L. Holzgrefe & Robert O. Keohane eds., 2003).

112. Christine Chinkin, *A Gendered Perspective to the International Use of Force*, 12 AUSTL. Y.B. INT'L L. 279, 291–92 (1992).

tary actions; so that the narratives read in the West are provided as a universal and a normatively closed category. This is despite the increasing awareness of the unsatisfactory nature of self-defense within common law criminal codes and of feminist interrogations of international law, such as is found in the work of Orford and Chinkin.

V. CONCLUSIONS

In her book, *The Demon Lover*,[113] Robin Morgan writes, "[w]ithout the propaganda of the hero myth, murder is a sordid business. *With* the hero myth, any act of violence is made not only possible but inevitable."[114] She then compares the "hero myth" to the facts of many women's lives and particularly women's ability to give birth and the painful, dramatic process of labour and birth: "This is not regarded as an adventure. This is not termed the mission of a hero."[115] In this paper, I have considered how the idea of the male hero is a crucial narrative that emerges in international laws on the use of force. To understand the use of this narrative we can see self-defense laws also work with a spectator narrative that shapes Western stories of conflict. This, in turn, is facilitated by the idea that airpower represents fairness akin to proportionality and the emphasis in international relations on the collective nature of self-defense.

To conclude, I would like to throw open two new questions. Firstly, how does the movement towards force justified on humanitarian grounds, such as in Kosovo in 1999, intersect with the spectator and hero narrative? Secondly, how do the events of September 11, 2001 in New York, the 2004 Madrid bombings, and the 2005 London bombings disrupt the spectator narrative?

The 1999 NATO use of force in Kosovo to halt the emerging humanitarian crisis has been regarded by many NATO states and Western commentators as a legitimate, although not legal, use of force.[116] Defining "legitimate force," then, opens a new arena of international scholarship and challenges prior interpretations of the UN Charter.[117] Although self-defense laws may be assessed as unsatisfactory for many of the reasons discussed in this paper, there has been an underlying assumption that force and violence fall into a dichotomy of legal or illegal. The move towards state rights to intervene on humanitarian grounds claims a third space for legitimate acts. Is this further evidence of the spectator re-emerging as the hero in international relations?

At a conceptual level, the notion of legitimacy refers to the source of a legal system, which is the first site in Cover's three sites of vio-

113. ROBIN MORGAN, THE DEMON LOVER: THE ROOTS OF TERRORISM (1989).
114. *Id.* at 56.
115. *Id.* at 68.
116. *See* Franck, *supra* note 111, at 46.
117. *See* FRANCK, *supra* note 44, at 24.

lence: the occasion and method for founding legal orders.[118] The source of a legal system and the acquiescence of a population (of states or people) in accepting the legal edifice are thus distinct from the justifiability of individual acts of force by a legal system. Consequently, the decision to use force cannot be claimed as legitimate, although it can be justified. Arendt writes:

> Power springs up whenever people get together and act in concert, but it derives its legitimacy from the initial getting together rather than from any action that then may follow. Legitimacy, when challenged bases itself on an appeal to the past, while justification relates to an end that lies in the future. Violence can be justifiable, but it never will be legitimate. Its justification loses in plausibility the farther its intended end recedes into the future. No one questions the use of violence in self-defense, because the danger is not only clear but also present, and the end justifying the means is immediate.[119]

This paper suggests that the formation of international self-defense laws need to be re-assessed in terms of what the narratives associated with the proposed ends offer some cultures in preference to others. These un-assessed conceptual discrepancies in international self-defense laws have laid open the space for claims of legitimate acts of force in the international arena. We need to ask whether this conceptual slippage is directly connected to a lack of concert, and perhaps legitimacy, in the current international system.[120] A narrative approach allows us to pose these questions that might otherwise be excluded from mainstream forms of legal knowledge.

Finally, McInnes's evaluation of terrorism and the narratives provoked by it in the West tends to develop rather than dismantle the spectator sport imagery. The spectator model relies on the assumption that the spectator is safe from the direct effects of conflict; that is, death or suffering.[121] McInnes writes:

> Not only did the citizens of the West watch the twin towers collapse, many of them watching live on television, but the popular reaction suggested that a norm had been broken. The attacks had been on Western territory, against the citizens of the West, with no effort to minimize the damage caused or the risk to the protagonists. The assumption not only prior to 11 September but in the aftermath was that spectators should not suffer; when they did on 11 September the reaction was one of outrage and a sense that something had to be done.[122]

118. *See* LAW'S VIOLENCE, *supra* note 7, at 4–5.

119. ARENDT, *supra* note 9, at 52.

120. *See* GERRY SIMPSON, GREAT POWERS AND OUTLAW STATES 328–29 (2004).

121. *See* MCINNES, *supra* note 14, at 3.

122. *Id.*

We can now add the London and Madrid terrorist attacks to McInnes's analysis. For those living in New York, Madrid, and London these events suddenly made real the spectator narrative and changed the dynamics of our relationship to international uses of force. For McInnes, these events would affirm the spectator narrative as they demonstrate the assumed distance from the threat of force Western cultures have been drawn to believe in. This seems to highlight the vast gap of "us and them" that Western approaches to international uses of force have perpetuated. At this stage, it is difficult to fully appreciate the narrative that is emerging. I would suggest that reflecting back on the narratives of self-defense is a first step in starting to write new narratives for Western cultures. Narratives, and legal standards, need to appreciate the multi-ethnic self of which Western states are composed. In addition, there needs to be Western narratives that better respect the undeniable connection to humanity that has all people filled with the potential for acts of good and acts of evil. The line between legal and illegal, force and violence must be the starting point for enhancing the legitimacy of the international legal system and reconceptualizing notions of justifiable force.