

ROAD BLOCKS, BLIND SPOTS, SPEED BUMPS

THE POST-9/11 LANDSCAPE FOR NGOS

PROFESSOR JULIE A. MERTUS, AMERICAN UNIVERSITY

3/22/08

For the 2008 Annual Meeting of the International Studies Association

NOT FOR CITATION WITHOUT PERMISSION

Contact: mertus@american.edu

This paper is part of a larger project examining the impact of the terrorist actions against the United States on September 11, 2001 concerning international human rights systems and mechanisms. Within the context of this larger project, which includes both European and American scholars, I have been tasked with considering how the post 9/11 political and legal climate has impacted the ability of nonstate actors to influence the development and implementation of international human rights law. For the purpose of this discussion, I focus on nongovernmental organizations (NGOs) concerned with women's human rights. The short answer is, "absolutely." The post-9/11 landscape has created new challenges for human rights NGOs, especially for those who remain unable or unwilling to accept a "security" framework for their activities.

Are the 1990s really that far away? In the early and mid-1990s, nongovernmental organizations (NGOs) in all their wonderful, colorful, confusing diversity appeared to be well suited for the role of international norm provocateur – or, if you prefer, norm entrepreneur. Emerging from the doldrums of the static 1980s, often with considerable domestic advocacy experience in hand, NGO advocates were ready and willing to remind states of their international political agenda. Although differing from NGO to NGO, these efforts inherently involved a demand for greater dispersion of power – away from the state and down to them.

The rapid succession of world human rights meetings – in Nairobi,¹ Vienna,² Cairo³ and Beijing⁴ – showcased NGO organizing talent and brought the NGO challenge to state power to the fore. If new norms of international law were to emerge from these meetings, it clearly would not be without heavy NGO influence. To take but one illustration, the provisions in the government document emerging from the 1993 United Nations Conference on Human Rights (the Vienna Declaration and Platform for Action)⁵ calling for more attention to the issue of violence against women did not suddenly emerge from the minds of diplomats and magically flow from their pens. Rather, the unprecedented attention devoted to violence against women was the product of years of dedicated NGO advocacy at the domestic level, creative networking at international

¹ Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, World Conference, July 15-26, 1985, Nairobi, Nairobi Forward-Looking Strategies for the Advancement of Women, ¶ 10, U.N. Doc. A/CONF.116/28/Rev.1 (1986), available at <http://www.un.org/womenwatch/confer/nfls/Nairobi1985report.txt>

² World Conference on Human Rights, Vienna, Declaration and Programme of Action, June 25 1993, para. 38, U.N. Doc. A/CONF. 157/23, reprinted in 32 Int'l Legal Materials 1661(1993).

³ International Conference on Population and Development, Sept. 5-13, 1994, Cairo, Programme of Action of the International Conference on Population and Development, ¶ 4.24, U.N. Doc. A/CONF.171/13 (Oct. 18, 1994).

⁴ Beijing Declaration and Platform for Action, ¶¶ 15, 17, 30, U.N. Doc. A/CONF.177/20, (Oct. 17, 1995).

⁵ World Conference on Human Rights, Vienna, Declaration and Programme of Action, June 25 1993, para. 38, U.N. Doc. A/CONF. 157/23, reprinted in 32 Int'l Legal Materials 1661(1993).

stages, wide-ranging leadership training institutes, revealing investigative reports, and ongoing educational campaigns.⁶

The 1990s were heady times for women's rights advocates from the "North" in particular, who attracted the attention of donors and networked successfully with women of the "South."⁷ Together, they declared a global campaign directed at improving the status of women everywhere, based on the simple slogan "Women's rights are human rights."⁸ With each well-publicized successes, from the mere act of "getting women on the agenda" at the UN Human Rights Conference in Vienna,⁹ to the post-Vienna creation of a highly visible Special Rapporteur on Violence Against Women,¹⁰ they grew confident about their expanding role in standard setting and implementation of international norms.¹¹ Certainly, states would remain the most important element in the

⁶ See Julie Mertus and Pamela Goldberg, "A Perspective on Women and International Human Rights After the Vienna Declaration," *New York University Journal of International Law and Politics*, vol. 26: 201 (winter 1994).

⁷ Center for Women's Global Leadership documents on file with author.

⁸ Buttons, stickers, fliers and other artifacts on file with author.

⁹ Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, 1993, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993) at http://www.stopvaw.org/The_International_Legal_Framework_The_United_Nations.html.

¹⁰ Special Rapporteur on Violence against Women, its Causes and Consequences, Human Rights Council 7 th session (March 2008) - Report of the Special Rapporteur on Indicators on Violence against Women and State response (A/HRC/7/6) <http://www2.ohchr.org/english/issues/women/rapporteur/>

¹¹ The 1993 World Conference on Human Rights is said to have set a precedent in mainstreaming by including women's rights in the main body of its final documents. See Tomasevski, 'Women's Rights', in Symonides (ed.), *Human Rights: Concepts and Standards* (Aldershot: Dartmouth Ashgate, 2000), 249 at 250.

Westphalian system, but NGOs would grow in prominence. As donor dollars reached all-time highs, advocates appeared to be limited only by their own imaginations.

The events of September 11th2001 had a direct and immediate impact on advocacy NGOs as the world's attention turned almost exclusively to countering terrorism. Advocacy NGOs concerned with issues not framed as "security matters" suddenly appeared archaic and irrelevant. The tense socio-political landscape created an obstacle course to meaningful participation by nonstate actors, governed by new rules of the road that prevent many advocates from even starting their journey, and that challenge advocates with blind spots (where issues are overlooked) and speed bumps (where NGO progress is slowed down). Only by confronting these obstacles can nonstate actors continue to impact the identification, interpretation and application of international human rights norms. This paper outlines each obstacle in turn and concludes with questions for further research.

1. Rules of the Road

The main "rule of the road" governing modern international law is the equality of states. The United Nations Charter in Article 2(1) proclaims that it is "based on the principle of the sovereign equality of all its Members." Before 9/11, a discernable gap existed between this rhetoric and the reality. States were equal, but some states were more equal than others. Since 9/11, the equality of states remains the declared rule of the road, but the principle actually guiding behavior has shifted closer and closer to what has been termed "hegemonic international law," (HIL) that is international law made and

enforced in the interests of the most powerful states, often at the expense of all other states.

Hegemons are easiest to critique when they act as unabashed playground bullies, flexing their military muscle and dangling economic prizes, as incentives for other states to follow rules that the hegemon would never itself observe.¹² And, indeed, advocacy NGOs have a strong record of monitoring and reporting on this kind of conduct. However, successful hegemons are rarely self-proclaimed law-breakers.¹³ Rather, they defiantly insist that their behavior is well within the boundaries of law. This tactic works, as Chris Borgen reminds us, because “hegemony is not only about physical power, it is about the control of ideas, of norms. It is not just about domination but, to use Max Weber's term, it is about legitimate domination...”¹⁴ Once operating in the realm of the legitimate, states become less susceptible to criticism.¹⁵ Hegemonic states thus can be defined in positive terms as being supported by "universal norms, institutions, and mechanisms which lay down general rules of behavior for states and for those forces of civil society that act

¹² G. John Ikenberry & Charles A. Kupchan, *Socialization and Hegemonic Power*, 44 *Int'l Org.* 283, 285 (1990).

¹³ But see John R. Bolton, “Is There Really ‘Law’ in International Affairs?,” *Transnational Law and Contemporary Problems*, vol. 10: 48 (2000)(suggesting that we “should be unashamed, unapologetic, uncompromising American constitutional hegemonists”).

¹⁴ Christopher J. Borgen, “Whose Public? Whose Order? Imperium, Region and Normative Friction,” *Yale Journal of International Law* vol 32, 337 (2007)(citing Max Weber, 1 *Economy and Society* 213 (Guenther Roth & Claus Wittich eds., 1978).

¹⁵ Detlev F. Vagts, “Hegemonic International Law,” *American Journal of International Law*, vol. 95: 843 (2001).

across national boundaries."¹⁶ To the extent that global HIL exists, it springs not just from any bad state behavior, but rather “from the privileged position accorded to the hegemon under the existing rules and institutions of international law.”¹⁷

The negative implications of HIL are nonetheless substantial. Hegemonic states operate unilaterally, in their own self-interest, frustrating the equal application of international norms and thwarting many potential forms of dispute settlement.¹⁸ As Jose Alvarez explains:

HIL jettisons or severely undervalues the formal and de facto equality of states, replacing pacts between equals grounded in reciprocity, with patron-client relationships in which clients pledge loyalty to the hegemon in exchange for security or economic sustenance. The hegemon promotes, by word and deed, new rules of law, both treaty based and customary, It is generally averse to limiting its scope of action via treaty; avoids being constrained by those treaties to which it has adhered; and disregards, when inconvenient, customary international law, confident that its breach will be hailed as a new rule. Substantively, HIL is characterized by indeterminate rules--whose vagueness benefits primarily (if not solely) the hegemon--recurrent projections of military force, and interventions in the internal affairs of other nations.¹⁹

Hegemons use their power to manipulate and control to their own advantage the decisional processes of the international legal system, including the UN Security

¹⁶ G. John Ikenberry & Charles A. Kupchan, “Socialization and Hegemonic Power,” *International Organization*, vol. 44: 283, 288 (1990).

¹⁷ Jose Alvarez, “Hegemonic International Law Revisited,” *American Journal of International Law*, vol. 97, 873 (2003).

¹⁸ See, e.g., Julie A Mertus, *Bait and Switch: Human Rights and U.S. Foreign Policy, Second Edition* (New York: Routledge, 2008).

¹⁹ Alvarez, *supra*.

Council.²⁰ That the sources of hegemon's strength are nontransparent, advocacy NGOs have a difficult time monitoring these developments.

It is through hegemonic power struggles that NGOs have been squeezed out of influence over changes in three extremely important areas of normative development, that is the international law pertaining to the: (i) lawful humanitarian intervention, and/or the right to forceful change of non-democratic regimes;; (ii) extended right of states to self-defense; and, (iii) preemptive use of force. Taken together, this triad of actions creating more opportunities for the use of force are known as the "Bush Doctrine."²¹

Traditionally, states have claimed the right to act in self-defense under Article 51 of the United Nations Charter when they respond to an "armed attack" by another state. Terrorist group activities historically were excluded from Article 51, as they were regarded merely as criminal acts which did not justify such a forceful response. This was especially the case when the terrorist action in question had not yet occurred. By advocating for the right to engage in *preemptive* self-defense against terrorists and their supporters of *past and future* violence, the Bush doctrine expands the scope of self-defense considerably. Rather than overtly challenging existing laws and norms, or overtly

²⁰ Henry J. Richardson III, "U.S. Hegemony, Race, and Oil in Deciding United Nations Security Council Resolution 1441 on Iraq," *Temple International and Comparative Law Journal*, vol. 17,. 27 (2003).

²¹ See White House, *The National Security Strategy of the United States of America 6* (2002), available at <http://www.whitehouse.gov/nsc/nss.html>.

seeking to change them, US policy is to assert that their behavior fits within the existing regulatory framework²²

2. Blind Spots

The second way in which human rights NGOs have declined in influence in normative development post 9/11 pertains to the ongoing struggle over “framing.” This refers to the attempt of government policymakers and advocacy NGOs (of all political persuasions) attempt to create “patterns of understanding” that influence the way problems are understood and addressed.²³ Frames call attention to an issue and refract it through a particular lens that suggests certain understandings and outcomes.²⁴

Frames reinforce and emphasize some ideas while ignoring others. NGOs attempt to “frame” normative ideas in a way that resonates with existing norms and with the interests of the target audience. Certain words are chosen in the framing process because of their cultural significance, their memorable and emotionally charged nature.²⁵ In the United States, the inclusion or exclusion of the words championed by the Bush

²²Michael Byers, "Preemptive Self-Defense: Hegemony, Equality and Strategies for Legal Change." *The Journal of Political Philosophy* 11(2): 171-90 (2003).

²³ Michael R. Lissack, “The Redefinition of Memes: Ascribing Meaning to an Empty Cliché,” 2004 *Journal of Memetics - Evolutionary Models of Information Transmission*, http://cfpm.org/jom-emit/2004/vol18/lissack_mr.html

²⁴ Kathryn Sikkink, “A Typology Of Relations Between Social Movements And International Institution,” *American Society of International Law Proceedings*, vol. 97: 301 (2003).

²⁵ Ibid.

administration to explain counter-terrorism strategies – favorites such as “freedom” and “liberty” – and the exclusion of the use of “human rights” carries great significant influence in the process of frame-building.²⁶ The resulting frames become tools to mobilize support for a particular response, and to persuade a target audience of the appropriateness of a proposed normative response.

The work of NGOs on framing issues thus serves to give causes a name and activists an identity.²⁷ Through effective framing, human rights activists, for example, create the image of “human wrongs” and “human rights” in the public’s awareness and, subsequently, the identification of some governments as “human rights promoter” and others as “human rights violator,” while demarcating individuals as victims and violators. Accordingly, over time, reference to human rights deepens and widens, becoming nearly automatic under many circumstances.²⁸ All aspects of decision making are affected by

²⁶ P. Norris, et al., eds., *Framing Terrorism* (New York: Routledge, 2003).

²⁷ Jeffrey T. Checkel, “International Institutions and Socialization in Europe: Introduction and Framework,” *International Organization*. vol. 27: 59: 801-826.

²⁸ Michael D Young and Mark Schafer, “Is There Method in Our Madness? Ways of Assessing Cognition in International Relations,” *Mershon International Studies Review* vol. 42 (1):63-96, 64.

this framing process: the problem-definition,²⁹ the formulation of options, and moral evaluation, and/or treatment recommendations."³⁰

Framing has always been highly contested and deeply political, offering multiple and often conflicting ethical choices, appealing to competing collective identities and shifting alliances. Post 9/11, the struggle of groups and individuals to dominate human rights framings has become particularly intense. The Bush administration successfully defined 9/11 as a “war” of good versus evil, innocent target vs. culpable target. While all wars are scary, the 9/11 war is particularly terrifying as it pits honor and goodness against a crafty and illusive enemy, in an epic struggle that will claim the lives of many innocent noncombatants and, most likely, never be won.

To perpetuate the belief that Americans need a strong leader to save them from an apocalypse, President Bush used pessimistic language intended to fan panic and disable people from feeling they can solve their problems. Immediately after the 9/11 attacks, President Bush told the nation that “Americans should not expect one battle, but a lengthy campaign, unlike any other we have ever seen.... I ask you to live your lives, and hug your children. I know many citizens have fears tonight.... Be calm and resolute, even

²⁹ Voss, James F. Voss, “On the Representation of Problems: An Information-Processing Approach to Foreign Policy Decision Making,” In *Problem Representation in Foreign Policy Decision Making*, edited by Donald A. Sylvan and James F. Voss (Cambridge: Cambridge University Press. 1988).

³⁰ R. N. Entman, “Framing: Toward Clarification of a Fractured Paradigm.” *Journal of Communication*, 43(4): 51-58, 52 1993.

in the face of a continuing threat.”³¹ Other fear producing statements on terrorism have included such statements as: “Some ask how urgent this danger [in Iraq] is to America and the world. The danger is already significant, and it only grows worse with time... Iraq could decide on any given day to provide a biological or chemical weapon to a terrorist group ...”³²

This kind of fear mongering serves the Bush administration in three inter-related ways. First, the spreading of fear is of great assistance in convincing the American public that they need a tough-talking president who is not afraid to go it alone.³³ Second, the magnitude of the danger and the terrifying randomness of the “war’s” impact on civilians reinforces the notion that we live in unusual times – times in which security demands the sacrifice of some liberty, and the regular rules of war are suspended – at least for the United States and all those allied with the U.S. as fellow protectors of civilization.³⁴ Third, fear creates a “rally around the flag” attitude which demands

³¹ President George W. Bush addressing a Joint Session of the U.S. Congress September 20, 2001. <http://usinfo.state.gov/journals/itgic/0902/ijge/ijge0902.htm>

³² President George W. Bush Remarks at the Cincinnati Museum Center 07 October 2002 www.whitehouse.gov/news/releases/2002/10/20021007-8.html

³³ See Address to a Joint Session of Congress and the American People, The White House, United States Capitol Washington, D.C. September 2001 <http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html>. See also 'We Refuse to Live in Fear': President Bush Speech on Iraq, October 7, 2002 Disarmament Documentation, The Acronym Institute, <http://www.acronym.org.uk/docs/0210/doc02.htm>.

³⁴ See Richard C. Leone, *The War on Our Freedoms: Civil Liberties in an Age of Terrorism* (New York:: Public Affairs, 2003), pp 256. See also Andrew W. Neal,

patriotic submission to White House directives and tolerates little deviance from the announced plan.³⁵ These three by-products of fear – dependency on a strong protector; a willingness to suspend regular rules; and extreme pressure for conformity in support of the White House – have served to create an extremely politically polarized environment that human rights organizations must negotiate in order to survive.

Post 9/11, the spotlight fell on the few NGOs that were already oriented toward security, such as those with substantial projects dedicated to Security Council Resolution 1325 (mandating inclusion of women in peace processes),³⁶ as well as those who just happened to already have “security” in their mandate.³⁷ To catch up, many NGOs quickly attempted to reconstitute themselves, adjusting their identities, interests and expectations in line with the more urgent matters of a post-9/11 times. Their untidy re-configuring left feminist insistence on complexity and multiple truths behind,³⁸ a luxury for safer days.

“Discourses of Liberty and Security since 9/11,” Department of War Studies, King’s College, London, Political Science Association (PSA) 2007 available at <http://www.psa.ac.uk/2007/pps/Neal.pdf>.

³⁵ See Marc J. Hetherington and Michael Nelson, “Anatomy of a Rally Effect: George W. Bush and the War on Terrorism,” *Political Science & Politics*, vol. 36:1, 30 January 2003, pp 37-42.

³⁶ Women <http://www.peacewomen.org/1325inaction/index.html>

³⁷ The main Women in International Security Web Site is: <http://wiis.georgetown.edu/>

³⁸ See Hilary Charlesworth, “Feminist Methods in International Law,” *American Journal of International Law*, (April 1999), 379.

Instead of challenging the security sector, today's NGOs sought to join the security sector. The mission statement of the Initiative for Inclusive Security (formerly Women Waging Peace) now reads:

The Initiative for Inclusive Security advocates for women as members and overseers of the security sector. Through research, advocacy, and training, Inclusive Security prepares women to assume greater roles and responsibilities in security institutions worldwide.³⁹

The goals of the program all assume the desirability of joining the security sector. The goals are stated in concrete terms as follows:

1. Increase the number and influence of women throughout the security sector
2. Gather best practices and recommendations on outreach, recruitment, and training
3. Train police, military officials, and civilians to increase women's inclusion in security
4. Assist women in government and civil society to collaborate with security sector actors.⁴⁰

This over-reliance on security has created blind spots for NGOs. To be sure, security is an important topic, but by focusing so heavily on security, NGOs risk missing other issues. Many of the NGO activities of the 1990s have gone by the wayside: networking and coalition-building rarely occurs outside a security topic; leadership

³⁹ http://www.huntalternatives.org/pages/7689_security_sector.cfm

⁴⁰ Ibid.

programs become rare; feminist efforts to dismantle the public/private split are submerged and efforts to devote state attention to “private sphere” issues such as domestic violence receive scant attention; and everything that could possibly be cast in terms of security receives that appellation: HIV/AIDs, refugee flows, poverty, early childhood education, etc. Close scrutiny of Ford Foundation Annual Reports, for example, provide evidence of this trend.⁴¹ The failure to challenge the preeminence of the notion of human security has put some human rights NGOs on the defensive, limiting their potential for undertaking more proactive work. The failure to challenge the preeminence of the notion of human security has put some human rights NGOs on the defensive, limiting their potential for undertaking more proactive work.

3. Speed Bumps

All nonprofits in the U.S. today face great obstacles in navigating the U.S. regulatory bureaucracy. As one comprehensive study on philanthropy post 9/11 concluded, “despite of a complete lack of hard evidence that nonprofits are the

⁴¹ In 2000, grants categorized as “human rights and international cooperation” totaled \$250 million, a little more than a third of the total grant dollars distributed. By 2006, human rights grants totaled only a little more than \$103 million, a 59% decrease over 5 years, not adjusting for inflation. That amount equaled only 18% of the total grants distributed. The total amount of grants distributed declined substantially between 2000 and 2006 (from \$691 million to \$563 million), which accounts for some of the decline, but not all. Funding shifted to categories such as “Education, Knowledge and Religion” (which was expanded to include “sexuality” after the “Reproductive Health” category was discontinued after 2002), which had 20% increase between 2000 and 2006.⁴¹ Some of these funds were given to cover new security studies or Islamic studies at various universities.⁴¹ More grants were given in the “Government and Civil Society” category, including new grants to the World Security Institute in Washington, DC for research into various security concerns and many others like it.⁴¹

source of any systematic or widespread violations of law or connections with terrorism, the entire sector has been saddled with major restrictions.”⁴² Human rights organizations are no exception. They, like all nonprofits organizations, face enhanced scrutiny, more burdensome restrictions and more intrusive regulations. These new measures act as both as “speed bumps” to slow down their effective human rights campaigns and, at least in some cases, as “roadblocks” that restrict certain actions altogether.

The kinds of obstacles facing human rights NGOs in the United States today can be classified in five categories:

1. Prohibitions: *“Thou shall not...”*
2. Restrictions *“You can do it, but do it this way (or else)...”*
3. Conditionality: *“You can do it, but only if you exclude/include, refuse/accept, according to our rules...”*
4. Selective enforcement: *“We have authority to act but won’t necessarily tell you the rules for selection and application...”* (a tactic that could be useful in launching politically-motivated audits, investigations and designations).

⁴² Nancy Billica, “Philanthropy and Post-9/11 Policy Five Years Out: Assessing the International Impacts of Counterterrorism Measures, 1, December 2006, http://www.ombwatch.org/npa/Philanthropy-Post_9-11.pdf.

5. Targeted threats: *“We have the power and will not hesitate to use it against you if we don’t like you or what you’re doing...”*⁴³

While a comprehensive survey of all post 9/11 NGO human rights activities is beyond the scope of this paper, an overview of the general obstacles they face is helpful to understanding the climate in which they must operate.

The hostile environment facing human rights NGOs is shaped by the White Houses’ proliferation of a record number of Executive Orders and other unilateral executive steps designed to avoid legislative and judicial checks. Less than two weeks after the attacks on September 11, 2001, President Bush issued Executive Order 13224, “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism.”⁴⁴ This Executive Order sought to disrupt the financial support network for terrorists and terrorist organizations by authorizing the U.S. government to designate and block the assets of foreign individuals and entities that commit, or pose a significant risk of committing, acts of terrorism. To this end, one of the main purposes of the Executive Order was the creation of a listing of designated “foreign individuals and entities that commit, or pose a significant risk of committing, acts of terrorism.”⁴⁵ Executive Order 13224 also gave states the authority to freeze assets

⁴³ Ibid.

⁴⁴ <http://www.state.gov/s/ct/rls/fs/2002/16181.htm>

⁴⁵ Executive Order 13224 is the source of the most widely-used list of “Specially Designated Nationals” (SDN) maintained and updated by the Treasury Department’s

of organizations associated with terrorist activities—even when the organizations did not have knowledge of the link.

Less than a month after Executive Order 13224 made its appearance, the U.S. Congress did its part to protect U.S. organizations and individuals from the terrorist threat. With very little discussion, it enacted the so-called “USA PATRIOT Act.” Among other measure, this law amended existing counterterrorism laws to expand federal government powers to investigate flows of money, mandate information sharing, and require reporting by financial institutions of suspicious activities.⁴⁶ The grant of sweeping surveillance powers to government was made permanent in the USA PATRIOT Improvement and Reauthorization Act.⁴⁷

Of all the Departments of the U.S. government, the U.S. Treasury Department has played an increasingly important role in post 9/11 regulations. Significantly, he “banned list” is maintained by The Office of Foreign Assets Control ("OFAC") of the US

Office of Foreign Assets Control (OFAC), and available at <http://www.ustreas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>, 1.

⁴⁶ USA PATRIOT Act of 2001, Public Law 107-56 (115 Stat. 272), the “Uniting for Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism” Act, signed into law on 26 October 2001. <http://news.findlaw.com/cnn/docs/terrorism/hr3162.pdf>

⁴⁷ Public Law 109-177 (120 Stat. 192), enacted 9 March 2006. The original and revised enactments are commonly referred to as simply “the Patriot Act.” To date, the U.S. Treasury has designated 48 charitable organizations as supporters of terrorism. Of these, five are U.S.-based organizations. For the current list of designated charities, see the Treasury’s list at http://www.ustreas.gov/offices/enforcement/key-issues/protecting/charities_execorder_13224-p.shtml#p.

Department of the Treasury.⁴⁸ The OFAC is charged with administering and enforcing economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction.⁴⁹

Although the rhetoric against terrorism is strong, and the potential ambit of the office is great, it has since 1994 collected just \$9,425 in fines for terrorism financing violations – a small amount as compared to the more than \$8 million in fines since 1994, mostly from people who sent money to, did business with or traveled to Cuba without permission.⁵⁰

The Treasury Department has also made its mark on the post-9/11 regulatory format with its “Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities”⁵¹ The stated goal of the Guidelines was “to assist charities that attempt in good faith to protect themselves from terrorist abuse.”⁵² Billed as “voluntary guidelines,” the Anti-Terrorist Guidelines, a strong argument could be made that, because other federal agencies have adopted the recommendations, the Guidelines have lost their

⁴⁸OFFICE OF FOREIGN ASSETS CONTROL SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS, September 27, 2007 <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>

⁴⁹ <http://www.treasury.gov/offices/enforcement/ofac/>

⁵⁰ John Solomon, “More Agents Track Castro than Bin Laden,” Associated Press, April 29, 2004 <http://www.commondreams.org/headlines04/0429-12.htm>

⁵¹ <http://www.treas.gov/offices/enforcement/key-issues/protecting/charities-intro.shtml>

⁵² Ibid.

“voluntary nature.”⁵³ This was only one of several criticisms of the Guidelines. On December 5, 2005, Treasury released a revised draft Guidelines for public comment and requested comments on revisions.⁵⁴

The revised guidelines, like their predecessor, attracted considerable criticism.⁵⁵

As one major coalition of U.S.-based NGOs concluded its review of the new text:

the revised Guidelines include provisions that may create the impression that charitable organizations are closely tied to the U.S. government. This threatens the safety of humanitarian workers who may be targeted as a result of their perceived lack of independence from the government.⁵⁶

The coalition suggested that the Guidelines forced charitable organizations to run a gauntlet of information collection and reporting procedures that exceed due diligence practices which are routinely followed by organizations and which have proved adequate to prevent the unintentional diversion of assets to terrorist uses.⁵⁷

⁵³ One case in point is the incorporation of the Guidelines into the memorandum accompanying the regulations for the 2006 Combined Federal Campaign (CFC), issued by the Office of Personnel Management (OPM). See <http://www.treas.gov/offices/enforcement/key-issues/protecting/docs/response.pdf>

⁵⁴ http://www.treas.gov/offices/enforcement/key-issues/protecting/docs/guidelines_charities.pdf

⁵⁵ <http://www.independentsector.org/programs/gr/TreasuryComments.pdf>

⁵⁶ Ibid.

⁵⁷ Independent Sector, InterAction, the Council on Foundations, and the Day, Berry & Howard Foundation released a handbook to help nonprofits and foundations meet new U.S. requirements for preventing their funding or activities from inadvertently being used for illegal acts, such as terrorist activities. [The Handbook on Counter-Terrorism Measures: What U.S. Nonprofits and Grantmakers Need to Know](#), (PDF) discusses the

A specific federal program illustrating the new political regulatory climate is the Combined Federal Campaign (CFC).⁵⁸ This program enables federal employees to contribute money from their paychecks to nonprofit organizations. Following the recommendations of the U.S. Treasury Department, in 2004 the CFC program began required all organizations seeking to participate in the CFC program to sign a certification. that every employee had be screened for inclusion on the “blocked list.”⁵⁹ This measure was just one of many that has served as a “speed bump” in slowing NGO progress in their advocacy efforts.

laws, regulations and enforcement measures in place in the post-September 11, 2001, environment.

⁵⁸ The mission of the CFC is to promote and support philanthropy through a program that is employee focused, cost-efficient, and effective in providing all federal employees the opportunity to improve the quality of life for all. CFC is the world’s largest and most successful annual workplace charity campaign, with more than 300 CFC campaigns throughout the country and internationally to help to raise millions of dollars each year. Pledges made by Federal civilian, postal and military donors during the campaign season (September 1st to December 15th) support eligible non-profit organizations that provide health and human service benefits throughout the world. The Director of OPM has designated to the Office of CFC Operations (OCFCO) responsibility for day-to-day management of the CFC. From CFC Memorandum 2005-13, Combined Federal Campaign, U.S. Office of Personal Management. available <http://www.opm.gov/cfc/opmmemos/2005/2005-13.asp> viewed October 13, 2007

⁵⁹ CFC Memorandum 2005-13, Combined Federal Campaign, U.S. Office of Personal Management. available <http://www.opm.gov/cfc/opmmemos/2005/2005-13.asp> viewed October 13, 2007.

Conclusion

Writing nearly a decade ago, I professed that “I am particularly interested in how the process of norm definition and enforcement demonstrates who we are as a society, what we value, how power is distributed and how relationships are regulated.”⁶⁰ At that time, I sought to explore how constructivist International Relations theory could combine with feminist insights on power and structural change to shed light on nonstate actor involvement in the norm diffusion process. Specifically, I was interested in identifying and analyzing the role of NGOs working on “women’s issues” in influencing shifts in identities, interests and normative expectations of various actors (state and nonstate) and, ultimately, in prompting long-term structural change. I assumed that, on balance, the structural change supported by NGOs would be positive for women (i.e., promoting their empowerment; dismantling structural inequities). What I was less interested in at the time, but what became increasingly clear was the flip side of this phenomenon: that is, how changes in identities, interests and normative expectations could lead to negative results for these NGOs and their constituency: structural regression, the solidification of power imbalances, co-option and disempowerment.

⁶⁰Julie Mertus, “Considering Nonstate Actors in the New Millennium: Toward Expanded Participation in Norm Generation and Norm Application,” *New York University Journal of International Law and Politics*, vol. 32(1): 537-559 (2000), 560. See also Julie Mertus, “From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society,” *American University International Law Review* vol. 14: 1335 (1999); Julie Mertus, “Human Rights and the Promise of Transnational Civil Society,” in *The Future of International Human Rights* 433 (Burns H. Weston & Steven P. Marks eds., 1999).

This paper has suggested ways in which post-9/11 changes have negatively impacted the ability of NGOs to influence the direction of international human rights law. Finding space for resurrecting feminist IR thinking and revitalizing NGO work on the identification and implementation of international norms will not be easy. NGOs have always had to struggle to exert influence over international norms, but the task became almost insurmountable post-9/11. Future research in this area could more systematically investigate how advocacy NGOs are responding to pressure to frame their activities in terms of security, and how they are negotiating the roadblocks set to deter their progress. Case study analysis could draw attention to the particular strategies of NGOs and donors and make suggestions for future challenges,