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## **International Law, Armed Conflict, and the Construction of Otherness: A Critical Reading of Dr. Seuss's *The Butter Battle Book* and a Renewed Call for Global Citizenship**

JOHN HURSH

*O'Brien Fellow, McGill University Centre for Human Rights and Legal Pluralism*

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International Law, Armed Conflict, and  
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ABOUT THE AUTHOR: O'Brien Fellow, McGill University Centre for Human Rights and Legal Pluralism; LL.M. candidate, McGill University Institute of Comparative Law; J.D., Indiana University Maurer School of Law; M.P.A., Indiana University School of Public and Environmental Affairs; M.A., B.A., Carnegie Mellon University. The author would like to thank New York Law School for inviting him to participate in its outstanding conference, *Exploring Civil Society Through the Writings of Dr. Seuss*. He would also like to thank the students and staff of the *New York Law School Law Review*, especially Zachary Davison, Will Bartholomew, and Sarah Prager, whose edits and revisions significantly improved this article. The author greatly appreciates their hard work. Finally, the author would like to give special thanks to McGill University law professor Mark Antaki, whose Theoretical Approaches to Law course was one of the most challenging and rewarding endeavors of the author's legal education. The author remains grateful for this enriching experience and for professor Antaki's warmth and encouragement. *Merci beaucoup!*

## I. INTRODUCTION

Theodor Seuss Geisel, more popularly known as Dr. Seuss, published *The Butter Battle Book* on March 2, 1984<sup>1</sup> in response to U.S. President Ronald Reagan's escalation of the nuclear arms race with the Soviet Union, a policy that he characterized as evincing "deadly stupidity."<sup>2</sup> While the book received significant criticism when first published,<sup>3</sup> it also received considerable praise. Writer and illustrator Maurice Sendak remarked: "Surprisingly, wonderfully, the case for total disarmament has been brilliantly made by our acknowledged master of nonsense, Dr. Seuss. . . . Only a genius of the ridiculous could possibly deal with the cosmic and lethal madness of the nuclear arms race."<sup>4</sup> Civil rights leader Coretta Scott King also praised the work, stating: "May the wisdom of this book help parents double their efforts for world peace, and may its wit help children forgive us our foolish antagonisms."<sup>5</sup> The supporters won out, as Geisel received a Pulitzer Prize the same year.<sup>6</sup> History also proved to be on Seuss's side, as the book was extremely successful and translated into more languages than any other Seuss book.<sup>7</sup>

While certainly a powerful critique of nuclear arms proliferation, *The Butter Battle Book* is perhaps even more valuable for its description of how societies progress toward armed conflict. This article examines that process through an international legal framework, questioning when—and even whether—international law generally, or international humanitarian law specifically, could intervene as two states march toward self-annihilation. This article argues that current international law fails to prevent states from reaching such military standoffs. To address this failing, it calls

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1. DONALD E. PEASE, THEODOR SEUSS GEISEL 145 (2010).
  2. JUDITH MORGAN & NEIL MORGAN, DR. SEUSS AND MR. GEISEL: A BIOGRAPHY 81 (1995); see also Hillard Harper, *The Private World of Dr. Seuss: A Visit to Theodor Geisel's La Jolla Mountaintop*, in OF SNEETCHES AND WHOS AND THE GOOD DR. SEUSS: ESSAYS ON THE WRITINGS AND LIFE OF THEODOR GEISEL 129, 133 (Thomas Fensch ed., 1997) (noting that Seuss called *The Butter Battle Book* "an attack on the arms race").
  3. THOMAS FENSCH, THE MAN WHO WAS DR. SEUSS: THE LIFE AND WORK OF THEODOR GEISEL 170 (2000); PEASE, *supra* note 1, at 147; Alison Lurie, *The Cabinet of Dr. Seuss*, in OF SNEETCHES AND WHOS AND THE GOOD DR. SEUSS: ESSAYS ON THE WRITINGS AND LIFE OF THEODOR GEISEL, *supra* note 2, at 155, 159 (noting that *The Butter Battle Book* received unfavorable comments by *The New York Times Book Review* and *The New Republic* upon publication); MORGAN & MORGAN, *supra* note 2, at 254 (noting that *The Butter Battle Book* aroused "public opinion and controversy").
  4. FENSCH, *supra* note 3, at 169; MORGAN & MORGAN, *supra* note 2, at 252 (noting that Sendak's laudatory statement was withheld from the initial printing of the book, but that it was included in subsequent printings).
  5. PHILIP NEL, DR. SEUSS: AMERICAN ICON 193 (2004) (internal quotation marks omitted).
  6. *1984 Winner and Finalists*, THE PULITZER PRIZES, <http://www.pulitzer.org/awards/1984> (last visited Mar. 15, 2014) (noting that Geisel received a Pulitzer Prize "[f]or his special contribution over nearly half a century to the education and enjoyment of America's children and their parents").
  7. PEASE, *supra* note 1, at 147. The film adaptation aired across the Soviet Union on New Year's Day 1990, leading Seuss to joke that his book ended the Cold War. See *id.*; FENSCH, *supra* note 3, at 173 (noting that *The Butter Battle Book* reached number one on the *New York Times* best-seller list and sold one million copies in the first year after its publication).

for a progressive international law concerned foremost with human dignity and global citizenship, and less so with strong state sovereignty.

Part II provides a concise history of the Yook-Zook conflict, examining the conflict's root cause, its escalation, and its unresolved conclusion. Part III discusses international law in relation to the Yook-Zook conflict. Focusing on the U.N. Charter and international humanitarian law, this Part addresses whether an armed conflict exists, the crime of aggression, and the legality of nuclear weapons. Part IV discusses a more fundamental problem that the Yook-Zook conflict illustrates: the construction of "otherness." This Part examines the process of constructing the other in relation to international law. In addition, this Part asks how a more progressive international law could address the problem of otherness by looking to the Global Peoples Assembly proposed by international law professors Richard Falk and Andrew Strauss and the jurisprudential approach of Christopher Weeramantry, a former judge of the International Court of Justice, as possible solutions. Part V concludes.

## II. A CONCISE HISTORY OF THE YOOK-ZOOK CONFLICT

This Part discusses the conflict's root cause, escalation, and unresolved conclusion.

### *A. Approaches to Buttering: The Root Cause of the Conflict*

*The Butter Battle Book* begins with a resigned, older individual leading a curious or perhaps startled child up a hill with the somewhat ominous phrase, "On the last day of summer, ten hours before fall . . ." trailing off as an unfinished statement.<sup>8</sup> On the following page, the perspective widens, revealing a large wall that divides a bucolic green landscape with virtually identical pink-roofed houses on either side of the wall. Continuing the narrative, the child states, ". . . my grandfather took me to the Wall." After standing silent before the wall, Grandfather sadly shakes his head and tells the child, "As you know, on this side of the Wall we are Yooks. On the far other side of this Wall live the Zooks." After pausing, he continues, "It's high time you knew of the terribly horrible thing that Zooks do. In every Zook house and in every Zook town every Zook eats his bread with the butter side down!" Indeed, on the following page, two Zooks, looking remarkably similar to Yooks, are enjoying their bread butter side down. In the background, a banner proclaims "Butter Side DOWN!" The next page depicts the child and Grandfather next to the wall, demonstrating that it is nearly three times Grandfather's height. Nailed to the wall is a poster that reads, "YOOKS are Not Zooks. Keep Your BUTTER SIDE UP!" Over the wall, several innocuous-looking Zook houses are visible. Against this backdrop, Grandfather states, "But we Yooks, as you know, when we breakfast or sup, spread our bread with the butter side up. That's the right, honest way!" Gritting his teeth, Grandfather concludes, "So you can't trust a Zook who spreads bread underneath! Every Zook must be watched! He has kinks in his soul! That's why, as a youth, I made watching my goal, watching Zooks for the Zook-Watching Border Patrol!"

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8. DR. SEUSS, *THE BUTTER BATTLE BOOK* (1984). All descriptions, references, and quotations within this article refer to this text.

In these few lines, Grandfather succinctly describes the seemingly trivial, but also seemingly irresolvable conflict that ultimately threatens both Yook and Zook society: whether one butters his or her bread on the top or on the bottom. At the same time, the imagery suggests the commonality of these peoples, as the Yooks and the Zooks look quite similar and live in nearly identical homes within the same landscape of tall purple trees and rolling green hills. Despite these commonalities, the entrenchment of the conflict is clear. The wall is the most obvious symbol of the conflict and it creates a physical barrier that separates these two peoples. The wall also acts as a mental and emotional barrier by contributing to an exclusionary mentality that keeps other viewpoints out. As Grandfather notes, to ensure that the wall remains unbreached, tactics of surveillance (a border patrol) are necessary. These tactics contribute to viewing those on the outside not as different, but as untrustworthy and ultimately as other. As the conflict intensifies, so too does the need to exclude. Perhaps in response, the wall increases in size. Keeping the border safe becomes paramount and no one questions the underlying rationale for erecting the barrier. Indeed, as the conflict intensifies, questioning the wall is likely tantamount to treason. Propaganda is also important to sustaining the conflict. Displayed both publicly on the Yook side of the wall and privately within the Zook home, propaganda contributes to an internalized and reactive opposition between the Yooks and the Zooks.

### *B. The Yook-Zook Conflict*

The Yook-Zook conflict contains three distinct phases: an escalating arms race marked by technological advancement and increasingly sophisticated weapons, the development of a nuclear or atomic weapon that threatens to destroy both the Yooks and the Zooks, and an unresolved conclusion, as Grandfather Yook and his longtime Zook adversary VanItch engage in a final struggle both possessing a weapon capable of total destruction.

#### *1. An Escalating Arms Race*

After explaining the conflict's root cause, Grandfather tells his grandson the conflict's history, which the reader sees through a series of events in Grandfather's past. This series begins with a youthful Grandfather patrolling the Yook-Zook border with his "tough-tufted prickly Snick-Berry Switch," noting, "in those days, of course, the Wall wasn't so high and I could look any Zook square in the eye." Striding alongside the wall, Grandfather stares menacingly at two Zooks across the border before "a very rude Zook by the name of VanItch" destroys his Snick-Berry Switch with a slingshot, thus beginning the escalation of the Yook-Zook conflict.

The employment of increasingly destructive weapons drives the conflict's escalation, as Grandfather and VanItch encounter one another repeatedly at the wall attempting to gain military advantage through superior weaponry. After losing his Snick-Berry Switch, Grandfather returns with a Tripper-Sling-Jigger: a rock-throwing device. VanItch counters with a Jigger-Rock Snatchem: a device that catches rocks and then launches them back at the firing party. Grandfather then

introduces a “newfangled kind of gun,” the Kick-a-Poo-Kid, which VanItch counters with an Eight-Nozzled, Elephant-Toted Boom-Blitz. Finally, Yook military leadership excitedly tells Grandfather that he is going to begin the Big War by flying over the wall in the Utterly Sputter, a “great new machine” that will sprinkle Blue Goo all over the Zooks. Reaching the wall, Grandfather finds VanItch in his own Utterly Sputter, taunting “if Yooks can goo Zooks, you’d better forget it. ‘Cause Zooks can goo Yooks!” Threatened by reciprocal destruction, Grandfather retreats, resulting in a stalemate between the Yooks and Zooks.

While the military encounters between Grandfather and VanItch occur at the wall, the secretive and largely unseen Boys in the Back Room are responsible for creating the weapons that Grandfather and VanItch employ. As the technology advances, the destructive capabilities of the weapons become greater and less predictable—thus the potential for collateral damage increases. As Grandfather notes of the Utterly Sputter: “This machine was *so* modern, *so* frightfully new, no one knew quite exactly just *what* it would do.” In addition, as the conflict intensifies the Yooks and the Zooks become more willing to inflict greater destruction, escalating from sticks to rocks to guns to finally the Utterly Sputter’s Blue Goo that suggests chemical warfare. Of course, the ends of technology are determined by the means of those directing its use. Here, Yook leadership, represented by the Chief Yookeroo, relies solely on military superiority to resolve the conflict.<sup>9</sup> Indeed, technology serves no purpose in this text other than to defeat an enemy. Moreover, Chief Yookeroo makes no effort toward negotiating a peaceful resolution to the conflict and places the blame entirely on the Zooks, telling Grandfather after his first encounter with VanItch that “those Zooks will be sorry they started this game.”

## 2. *The Nuclear Option*

After the Utterly Sputter stalemate, the conflict’s tone changes dramatically. When Grandfather meets Chief Yookeroo a final time, the Yook office is in disarray. Discarded papers cover the floor and desk, while an overflowing trash can and wilted flowers add to the chaotic appearance. The office walls are now a dull gray, while previously they were light green. The Chief is much less enthusiastic than he was during Grandfather’s previous visits. There are no smiles or laughter, no new uniforms and no promotions. Grandfather looks haggard, holding onto the doorframe for strength. Nonetheless, the Chief reassures Grandfather, telling him to “[h]ave no fears,” and insisting that “[e]verything is all right.”

Again, the Chief trusts technology above all else. The Bright Back Room Boys, working from the “Top-est Secret-est Brain Nest,” have replaced the Boys in the Back Room and have invented the Bitsy Big-Boy Boomeroo. Filled with “mysterious Moo-Lacka-Moo,” the Chief promises Grandfather that it “can blow all those Zooks clear to Sala-ma-goo.” The Chief, now clearly older, uses a long extension device to

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9. For example, after VanItch destroys Grandfather’s Snick-Berry Switch, Chief Yookeroo promises him a “fancier slingshot to shoot!” When this strategy fails, he notes that slingshots are “old-fashioned stuff” before providing Grandfather the Kick-a-Poo-Kid.

give Grandfather the Boomeroo while standing behind a protective partition. He then commands Grandfather to “just run to the wall like a nice little man. Drop this bomb on the Zooks just as fast as you can.” Meanwhile, he has “ordered all Yooks to stay safe underground while the Bitsy Big-Boy Boomeroo is around.”<sup>10</sup>

### C. *End Game*

The story then returns to the present and the grandson reclaims the narrative. Back at the wall, Grandfather holds the Boomeroo in one hand and his grandson’s hand in the other. Looking irritably at his grandson, Grandfather is initially upset that his grandson is here and not in the protected Yookery, but he then reconsiders and welcomes his grandson’s presence to see him make history. Grandfather stands on top of the wall ready to drop the Boomeroo, before VanItch once again emerges to thwart his plans. Surprising Grandfather, he reaches the top of the wall holding his own Boomeroo. Grandfather and VanItch face each other, separated by inches and holding Boomerooks, as the shocked grandson looks on from a tree. Having again lost his advantage, Grandfather appears more timid, and looks not directly at VanItch—who stares directly and menacingly at Grandfather—but also toward his grandson. Terrified, the grandson shouts: “Be careful. Oh, gee! Who’s going to drop it? Will *you* . . . ? Or will *he* . . . ?” Trying to regain control of the situation, Grandfather replies, “Be patient . . . . We’ll see. We will see . . . .”

The very last page of the text is blank, which could represent the destruction and erasure of both the Yooks and the Zooks. More optimistically, the blank page allows the reader to imagine a more constructive or peaceful ending. Indeed, literary and cultural critic Donald Pease suggests that the blank page is not “an open ending,” but “the site where a new history can begin after the child turns the page on the grandfather’s history.”<sup>11</sup> The use of an ellipsis is significant. Children’s literature scholar Ruth MacDonald notes that Seuss typically used ellipses to urge the reader onto the next page, as the ellipsis functioned as a “cliff-hanger . . . assisting the forward, rightward movement of the book and the pictures.”<sup>12</sup> Here, however, there is no next page. Rather, “this is the end of the book, and the final page is on the left, facing a blank right page.”<sup>13</sup> MacDonald asks whether this ending indicates total

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10. At this point in the narrative, the Yook-Zook conflict clearly parallels the development of the atomic bomb in the United States. As the Chief again places military superiority over all other considerations, he praises his Bright Back Room Boys as “brighter than bright” for inventing a gadget that is “Newer than New.” The cautionary actions of the Chief and the Bright Back Room Boys in the presence of the Boomeroo illustrate its danger. Having created a military device that mirrors the destructive capacity of an atomic or nuclear weapon, the Bright Back Room Boys working in the Top-est Secret-est Brain Nest stand in for the Manhattan Project scientists at Los Alamos. Similarly, the “Bitsy Big-Boy Boomeroo” perhaps references the atomic bombs dropped on Hiroshima and Nagasaki: “Little Boy” and “Fat Man.” Finally, the line of Yooks making their way to “Your Yookery,” an underground bomb shelter, reflects the worst-case scenario of the Cold War.

11. PEASE, *supra* note 1, at 147.

12. RUTH K. MACDONALD, DR. SEUSS 155 (1988).

13. *Id.*



destruction, or is instead like the conclusion to *The Lorax*, where the blank page presents an opportunity for the reader to imagine change.<sup>14</sup>

### III. INTERNATIONAL LAW AND THE YOOK-ZOOK CONFLICT

Part II provided a concise history of the Yook-Zook conflict. This Part examines whether current international law allows for intervention in this or a similar conflict and what legal issues might frustrate intervention. Here, intervention refers not necessarily to force, but to external action that would prevent two states from engaging in armed conflict, particularly the use of nuclear weapons or, in the Yook-Zook context, Bitsy Big-Boy Boomerangs. Specifically, this Part looks to states' rights and obligations afforded by the U.N. Charter and international humanitarian law as the two bodies of law best situated to prevent the escalation of conflict and the use of nuclear weapons. This Part concludes that international law—specifically the international treaty process, international humanitarian law, and International Court of Justice jurisprudence—fails to prevent the escalation of conflict or the use of nuclear weapons.

#### *A. International Law and the U.N. Charter*

International law governs the conduct of states.<sup>15</sup> Under international law, states enjoy specific rights and have specific obligations. Within modern public international law, the U.N. Charter is the key legal text that describes these rights and obligations.<sup>16</sup> The preamble to the charter provides two important points that apply to the Yook-Zook conflict. First, the charter seeks “to save succeeding generations from the scourge of war[,]” and second, the charter requires member states “to practice tolerance and live together in peace with one another as good neighbours.”<sup>17</sup>

Within the charter, several articles apply to the Yook-Zook conflict. Article 1(1) is perhaps the most applicable, as it requires member states:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace[.]<sup>18</sup>

Articles 2(3) and 2(4) are also applicable. Article 2(3) states: “All Members shall settle their international disputes by peaceful means in such a manner that

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14. MacDonald also notes that when asked about the ending, Seuss claimed “posing any ending would make the book propagandistic and unrealistic as well, since the answer in real life is not at all clear.” *Id.*

15. *International Law*, CORNELL U. L. SCH. LEGAL INFO. INST., [http://www.law.cornell.edu/wex/international\\_law](http://www.law.cornell.edu/wex/international_law) (last visited Mar. 15, 2014).

16. *See generally* U.N. Charter.

17. U.N. Charter pmbi.

18. *Id.* art. 1, para. 1.



international peace and security, and justice, are not endangered[,]"<sup>19</sup> whereas Article 2(4) states: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."<sup>20</sup> In addition, Article 33(1) provides: "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."<sup>21</sup> In addition to these articles, the U.N. Security Council could also take action in a Yook-Zook-type conflict through its Chapter VII powers, most notably Article 39, which requires the Security Council to "determine the existence of any threat to the peace, breach of the peace, or act of aggression" and to "make recommendations, or decide what measures shall be taken . . . to maintain or restore international peace and security."<sup>22</sup>

Two important questions arise. First, as these articles of the U.N. Charter are the most relevant to the Yook-Zook conflict, do these legal provisions allow for intervention that could prevent the escalation of conflict or a nuclear attack? Second, if these legal provisions do not allow for such intervention, is this outcome attributable to the parties (the Yooks and the Zooks), the U.N. Charter, or a combination of these and other factors?

First, consider the preamble. As noted above, the preamble requires member states to practice tolerance, live together peacefully, and act as good neighbors. Being tolerant, peaceful, and, perhaps above all, a good neighbor requires a spirit of cooperation and flexibility that a rigid rights-based approach to law does not typically provide. The Yooks and the Zooks exemplify such an approach by blindly exercising their rights rather than considering their duties and obligations. For example, when the conflict begins, neither the Yooks nor the Zooks engage in diplomatic discussion. Rather, both states move immediately to arms escalation and employ military strategies that favor belligerence over dialogue. Belligerent legal rhetoric can be understood as an emphatic assertion of rights, as such assertions demand recognition of a particular legal right regardless of the possible negative outcomes. Such rhetoric denies less aggressive but perhaps ultimately more satisfying solutions and attempts to discount or minimize the rights of other parties. Here, an actor takes action because he or she can, while discounting or perhaps not even considering the consequences. To use a very simplistic analogy, a rigid rights-based approach is akin to the child that stops a game to take his or her ball and go home, not because the game is unfair, but simply because the child does not like the way the game is going. In this example, the child has not broken a rule—it is his or her ball—but the child has violated the spirit of fair play and cooperation necessary for the game to continue. Similarly, in the Yook-Zook conflict,

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19. *Id.* art. 2, para. 3.

20. *Id.* art. 2, para. 4.

21. *Id.* art. 33, para. 1.

22. *Id.* art. 39.

neither side initially violates international law, but the aggressive and uncooperative actions of both sides violate the spirit of the U.N. Charter and sets the Yooks and the Zooks down a path that dramatically increases the chance of armed conflict, and in this example, mutually assured destruction through the exchange of Boomerangs.

Second, the Yooks, the Zooks, and U.N. member states also fail to meet the charter's legal requirements. Within the Yook-Zook conflict, collective measures to prevent and remove threats to peace promulgated by Article 1(1) are clearly absent. Likewise, the Yook-Zook conflict is far from the peaceful resolution required by the same article. Indeed, at the text's conclusion, the only resolution that appears likely is mutual destruction. Article 2(3) largely reiterates the requirements of Article 1(1), but places the burden of peaceful resolution on the member states involved in the dispute, which is obviously lacking in this example. The Yooks and the Zooks are also in clear violation of Article 2(4), which requires member states to refrain from "the threat or use of force."<sup>23</sup> Moreover, Article 33(1) provides a slew of actions that the Yooks and the Zooks have not undertaken—"negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."<sup>24</sup> Thus, the Yooks, the Zooks, and U.N. member states have clearly failed to meet their state obligations under these articles.

While the Yooks and the Zooks have failed to meet their legal obligations to find a peaceful resolution to their conflict, U.N. member states and the U.N. Security Council do not offer much assistance toward achieving a peaceful resolution or stopping the escalation of conflict. Regarding Article 33(1), Security Council intervention would require a finding of a "threat to the peace, breach of the peace, or act of aggression."<sup>25</sup> In practice, Security Council-approved military action proves to be a very difficult standard to satisfy and it is unlikely that the Yook-Zook conflict would trigger such action.<sup>26</sup> Given that the Yook-Zook conflict has produced no casualties

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23. *Id.* art. 2, para. 4.

24. *Id.* art. 33, para. 1.

25. *Id.* art. 39.

26. To take two recent examples, the current Syrian conflict has resulted in a full-fledged civil war, over 135,000 deaths, and the displacement of 9.5 million people. *See* Anne Barnard & Nick Cumming-Bruce, *After Second Round of Syria Talks, No Agreement Even on How to Negotiate*, N.Y. TIMES (Feb. 15, 2014), <http://nyti.ms/1gEx1tG>. Similarly, the recent, and perhaps still ongoing Darfur conflict resulted in death, destruction, and displacement, including a humanitarian and refugee crisis that continues to cause suffering and to produce a destabilizing effect within Sudan and surrounding states. *See generally* JULIE FLINT & ALEX DE WAAL, *DARFUR: A NEW HISTORY OF A LONG WAR* (2d ed. 2008); BRIAN STEIDLE & GRETCHEN STEIDLE WALLACE, *THE DEVIL CAME ON HORSEBACK: BEARING WITNESS TO THE GENOCIDE IN DARFUR* (2007). While the number of deaths remains disputed, the likely number is near 300,000 and the conflict remains unresolved. *See* James Copnall, *Darfur Conflict: Sudan's Bloody Stalemate*, BBC NEWS (Apr. 29, 2013), <http://www.bbc.co.uk/news/world-africa-22336600>. Although bitterly contested, neither conflict resulted in Security Council military intervention that attempted to save the lives of Syrian or Sudanese citizens. Of course, these conflicts involve an intrastate conflict, whereas the Yook-Zook conflict is an interstate conflict. Nonetheless, recent interstate examples such as the 2008 South Ossetia conflict also provide little indication that Security Council military intervention would be forthcoming. *UN Security Council Remains Deadlocked over South Ossetia*, DEUTSCHE WELLE (Aug. 9, 2008), <http://www.dw.de/un-security-council-remains-deadlocked-over-south-ossetia/a-3550565>.

and no loss of property, except for one Snick-Berry Switch, Security Council military intervention is quite doubtful. Finally, while the threat of mutually assured destruction via the Boomerangs could provide the Security Council the impetus to act as a clear “threat to the peace,” it could just as easily produce the opposite result, where the stakes of the conflict serve to reinforce the council’s prevailing reluctance to intervene.

Thus, while the Yooks and the Zooks do not satisfy the spirit or the letter of the U.N. Charter, recent state and U.N. Security Council practice shows that intervention to prevent the escalation of armed conflict is unlikely. Accordingly, it is doubtful that the U.N. Charter—the bedrock of modern public international law—can prevent the escalation of the Yook-Zook conflict. Of course, intervening to stop the escalation of conflict likely requires conflict itself, which is self-defeating if the goal is to prevent conflict. Nonetheless, the inability of the U.N. system to prevent the escalation of conflict is disappointing. This inability illustrates the shortcomings of understanding international law primarily as exercising rights and only very distantly as satisfying duties or obligations. To return to the neighbor analogy given in the U.N. Charter preamble, unlike the Yooks and the Zooks, good neighbors do not react to difference by resorting to surveillance, threats, and intimidation. Further, when encountered with different cultural practices, good neighbors, if concerned by these practices, discuss these concerns civilly. Above all, good neighbors lend a hand and look after one another. In contrast, the Yooks and the Zooks demonstrate a rigid rights-based legal approach, which pushes these states to—if not over—the threshold of legality. At minimum, they are awful neighbors. Whether a more progressive version of public international law could better prevent the escalation of conflict and recalibrate the balance of rights and duties is explored in Part IV.<sup>27</sup>

### *B. International Humanitarian Law*

While the U.N. Charter provides the general framework for state practice in modern public international law, international humanitarian law provides the specific legal rules that govern armed conflict, including armed conflict between states. The following section examines whether international humanitarian law is more likely to prevent the escalation of conflict between the Yooks and the Zooks than international law exercised under the U.N. Charter. This section also examines additional legal issues that could frustrate intervention.

#### *1. A Yook-Zook Armed Conflict?*

International humanitarian law regulates the actions of combatants during armed conflict with the goals of preventing unnecessary suffering for combatants and limiting the negative effects of armed conflict on civilian populations.<sup>28</sup> More specifically,

27. See *infra* Part IV.

28. See INT’L COMM. RED CROSS, WHAT IS INTERNATIONAL HUMANITARIAN LAW? 1 (2004), available at [http://www.icrc.org/eng/assets/files/other/what\\_is\\_ihl.pdf](http://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf). See, e.g., Sylvain Vité, *Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations*, 91 INT’L REV. RED CROSS 69, 70 (2009).

international humanitarian law provides protections to civilians and combatants no longer taking a direct part in the hostilities.<sup>29</sup> These protections aid vulnerable populations within the conflict, which works to ensure that the goals of preventing unnecessary suffering and limiting civilian harm are met.

The first step in an international humanitarian law analysis is to determine whether an armed conflict exists.<sup>30</sup> If an armed conflict exists, the next step is to determine what type of conflict exists.<sup>31</sup> International humanitarian law provides three possible characterizations of armed conflict: international armed conflict, non-international armed conflict, and internationalized armed conflict. The characterization of the conflict is important as different rights and obligations attach to each conflict type. The most significant difference arises between an international armed conflict and a non-international armed conflict. Common Article 2 of the 1949 Geneva Conventions applies to international conflicts, which includes “declared war” and “any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.”<sup>32</sup> Common Article 2 also applies to total or partial occupation of a state’s territory.<sup>33</sup> In contrast, Common Article 3 of the 1949 Geneva Conventions applies to non-international armed conflicts, or more accurately “armed conflict not of an international character occurring in the territory of one of the High Contracting Parties.”<sup>34</sup> Likewise, the First Additional Geneva Protocol (1977) supplements Common Article 2 and thus applies to international armed conflicts,<sup>35</sup> while the Second Additional Geneva Protocol (1977) applies to Common Article 3 and applies to non-international armed conflicts.<sup>36</sup> While a comprehensive assessment of the different rights and obligations applicable to each armed conflict

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29. GARY D. SOLIS, *THE LAW OF ARMED CONFLICT: INTERNATIONAL HUMANITARIAN LAW IN WAR* 202 (2010).

30. *Id.* at 149–50.

31. *Id.*

32. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 2, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 (entered into force Oct. 21, 1950).

33. *Id.*

34. *Id.* art. 3.

35. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 1(3), *opened for signature* June 8, 1977, 1125 U.N.T.S. 609 (entered into force Dec. 7, 1978) [hereinafter Additional Protocol I] (noting that the Protocol “which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions”).

36. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 1(1), *opened for signature* June 8, 1977, 1125 U.N.T.S. 609 (entered into force Dec. 7, 1978) (noting that the Protocol “develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949”).

type is outside the scope of this article, it is important to note that these differences exist and that they shape military and legal responses to armed conflict.<sup>37</sup>

Within the Yook-Zook conflict, it is unclear whether international humanitarian law would apply, as it is debatable that an armed conflict exists. One could argue that VanItch began an international armed conflict by firing his slingshot at Grandfather's Snick-Berry Switch. Not only does VanItch destroy Yook weaponry, but he also fires into Yook territory. A military official purposely firing a weapon into a foreign territory almost certainly constitutes an act of international armed conflict, at least in a strict black letter sense.<sup>38</sup> Some commentators argue, however, that a limited military exchange across international borders does not necessarily trigger the application of international humanitarian law. For example, international humanitarian law scholar Gary Solis argues that the use of force alone does not trigger international humanitarian law, but that the intent of the states involved in the incident must also be considered.<sup>39</sup> But, as one commentator notes, Solis's position seemingly contradicts the Commentary to General Article 2 of the Geneva Conventions, which makes clear that there is not a requisite duration or intensity of hostilities within an international armed conflict.<sup>40</sup> Indeed, the lack of a minimum threshold of hostilities within an international armed conflict is one major distinction between international armed conflicts and non-international armed conflicts.<sup>41</sup> Nonetheless, Solis provides several historical examples to bolster his argument, which is worth considering given the importance that state practice has in public international law.<sup>42</sup>

Whether an armed conflict exists between the Yooks and the Zooks is ultimately indeterminable given the available facts. Still, a legal analysis that finds an armed conflict to exist seems doubtful. Accepting Solis's view would certainly preclude finding that the Yook-Zook dispute reaches armed conflict status. International humanitarian law only applies once an armed conflict exists, and while finding that an armed conflict does or does not exist may do little to alter Yook and Zook actions, such a finding could provide more options for a third state or international coalition to

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37. Whether the United States' sustained cross-border military actions against organizations such as al-Qaeda amount to an armed conflict that triggers the rights and obligations of international humanitarian law is a favorite example of this point. See Vité, *supra* note 28, at 92–93.

38. "There is no need for a formal declaration of war, or for recognition of the existence of a state of war, as preliminaries to the application of the Convention. The occurrence of *de facto* hostilities is sufficient." 2 JEAN S. PICTET ET AL., INT'L COMM. RED CROSS, COMMENTARY: GENEVA CONVENTION FOR THE AMELIORATION OF THE CONDITION OF WOUNDED, SICK AND SHIPWRECKED MEMBERS OF ARMED FORCES AT SEA 28 (Jean S. Pictet ed., A.P. de Henry trans., 1960).

39. SOLIS, *supra* note 29, at 151–52.

40. Eric C. Sigmund, *Border Skirmish, No—"International Armed Conflict", Yes: The Case of Syria and Turkey*, HUMAN IN THE MIDDLE OF WAR (Oct. 6, 2012), <http://lawsofarmedconflict.com/2012/10/06/border-skirmish-no-international-armed-conflict-yes-the-case-of-syria-and-turkey/>.

41. *Id.* ("Unlike situations of non-international armed conflicts—that is internal conflicts (sometimes referred to as 'civil wars') or conflicts between non-state armed groups—international armed conflicts need not reach a minimum threshold of intensity for international humanitarian law to come into effect.")

42. SOLIS, *supra* note 29, at 170–85.

intervene. Obviously, intervention simply to prevent conflict is difficult and quite possibly oxymoronic. Moreover, in recent practice, military interventions, even with arguably good intentions, have led to substantial loss of life and the long-term occupation of states that previously were not engaged in conflict.<sup>43</sup>

This analysis, and its unsatisfactory outcome, illustrates a fundamental flaw in the ability of international law to prevent the escalation of conflict. Simply put, international humanitarian law is reactive and does not provide for the prevention of conflict. Thus, even if a third party could eliminate the Boomerangs that threaten Yook and Zook society, to do so would almost certainly violate international law. In this sense, international law allows states to stockpile weapons<sup>44</sup> and prepare for armed conflict, but only allows for intervention once the conflict is underway. If the proverbial ounce of prevention is worth a pound of international humanitarian law cure after a conflict begins, international law is indeed of little utility in this regard.

## 2. *The Crime of Aggression*

Defining the crime of aggression with the purpose of making it an internationally recognized crime is one possible response to the issues raised above. This legal action may not prevent the escalation of the Yook-Zook conflict, but if the penalty is strong enough, it may deter similar future conflicts. At the very least, criminalizing aggression would provide some measure of accountability for states and individuals responsible for beginning armed conflict. Admittedly, accountability after the fact likely provides little (if any) consolation for victims of aggression, especially in a Yook-Zook-type conflict where the loss of life and the destruction caused by an exchange of nuclear weapons would obviously outweigh the legal sanction. Nonetheless, some accountability for such crimes is better than total unaccountability or impunity.

The crime of aggression occupies a unique place in the history and development of international law. Famously, the International Military Tribunal at Nuremberg proclaimed that the crime of aggression is “the supreme international crime.”<sup>45</sup> The tribunal reasoned that to “initiate a war of aggression, therefore, is not only an

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43. The United States-led invasion of Afghanistan and then Iraq are the two most obvious contemporary examples.

44. Currently, the United Nations is working to address aspects of weapon stockpiling through the Arms Trade Treaty, which the U.N. General Assembly adopted on April 2, 2013. This treaty regulates the international trade in conventional arms, ranging from assault weapons to battle tanks, combat aircraft, and warships. See *The Arms Trade Treaty*, U.N. OFF. DISARMAMENT AFF., <http://www.un.org/disarmament/ATT/> (last visited Mar. 15, 2014); see also Rick Gladstone, *Arms Treaty Now Signed by Majority of U.N. Members*, N.Y. TIMES (Sept. 25, 2013), <http://nyti.ms/1foOnN6> (“The treaty, which took seven years to negotiate, is considered by rights advocates to be a landmark document that would for the first time impose moral standards on the enormous cross-border trade in conventional arms that fuel conflicts around the world . . .”). Likewise, Gladstone notes that the treaty “is devised to thwart sales to users who would break humanitarian law, foment genocide or war crimes, engage in terrorism, or kill women and children.” *Id.*

45. William A. Schabas, *Origins of the Criminalization of Aggression: How Crimes Against Peace Became the “Supreme International Crime”*, in *THE INTERNATIONAL CRIMINAL COURT AND THE CRIME OF AGGRESSION* 17, 29 (Mauro Politi & Giuseppe Nesi eds., 2004).



international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.”<sup>46</sup> Thus, the tribunal applied a prime mover or first cause rationale to aggression, finding that because all other crimes flow from this criminal act, it is the “supreme” or perhaps most blameworthy of all international crimes.

The International Criminal Court (ICC) recognized aggression as one of the four core crimes of international law, along with genocide, war crimes, and crimes against humanity, but unlike with those crimes, it cannot exercise jurisdiction over the crime of aggression.<sup>47</sup> This agreement has been and continues to be the source of considerable academic and political debate.<sup>48</sup> Following the Review Conference of the Rome Statute in 2010, the ICC may be able to exercise jurisdiction over aggression in 2017.<sup>49</sup> At this conference, the ICC adopted consensus amendments to the Rome Statute that prohibit aggression.<sup>50</sup> However, the conditions for exercising jurisdiction are onerous and may undermine the applicability of this amendment.

Two processes allow the ICC prosecutor to exercise jurisdiction over the crime of aggression. The more straightforward process involves Article 15ter. Under this article, a U.N. Security Council referral to the ICC involving aggression allows the prosecutor to initiate an investigation.<sup>51</sup> The more complex process involves Article 15bis. This article addresses situations involving aggression that do not stem from a Security Council referral. Under these circumstances, the prosecutor may begin an investigation through his or her own motion (*proprio motu*) only after first referring the matter to the Security Council to see if it has determined whether an act of aggression exists under Article 39 of the U.N. Charter, and then waiting for six months.<sup>52</sup> Article 15bis also allows states parties to opt-out of the ICC’s jurisdiction of aggression by declaring non-acceptance of jurisdiction with the ICC registrar.<sup>53</sup> In addition, these amendments will not enter into force until at least thirty states parties have accepted or ratified the amendments and two-thirds of states parties activate the

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46. *Id.* at 17–18.

47. *Delivering on the Promise of a Fair, Effective and Independent Court: The Crime of Aggression*, COAL. INT’L CRIM. CT., <http://www.iccnw.org/?mod=aggression> (last visited Mar. 15, 2014).

48. *See generally* CARRIE McDougall, THE CRIME OF AGGRESSION UNDER THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT (2013); Deborah Ruiz Verduzco, *Fragmentation of the Rome Statute Through an Incoherent Jurisdictional Regime for the Crime of Aggression: A Silent Operation*, in *THE DIVERSIFICATION AND FRAGMENTATION OF INTERNATIONAL CRIMINAL LAW* 389–428 (Larissa van den Herik & Carsten Stahn eds., 2012).

49. COAL. INT’L CRIM. CT., *supra* note 47.

50. *Id.*; *see* ICC Resolution RC/Res.6 (June 11, 2010), *available at* [http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/RC-Res.6-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.6-ENG.pdf).

51. Johan D. van der Vyver, *Prosecuting the Crime of Aggression in the International Criminal Court*, 1 U. MIAMI NAT’L SEC. & ARMED CONFLICT L. REV. 1, 36 (2011).

52. *Id.* at 34–35.

53. *Id.* at 43.



ICC's jurisdiction over aggression at any time after January 1, 2017.<sup>54</sup> To date, thirteen states have ratified the amendment.<sup>55</sup> More critically, the deference given to the Security Council, as well as the ability of states parties to opt-out of the ICC's jurisdiction for this crime, significantly weakens the ICC's ability to investigate and prosecute aggression.

After VanItch slingshots Grandfather's Snick-Berry Switch, there is no further violation of international humanitarian law during the Yook-Zook conflict, with the possible exception of aggression. Although the Yook military clearly demonstrates intent in developing weapons to harm Zooks, whether these actions result in aggression is uncertain. The Yooks could also claim that their military actions, at least initially, constituted legitimate self-defense arising under Article 51 of the U.N. Charter, which allows for individual self-defense in the case of an armed attack. Although moving from the destruction of a Snick-Berry Switch to a possible exchange of nuclear or atomic weapons (Boomeroots) is a rather strained argument, international law is not unfamiliar with rather creative legal rationales to justify the use of force.<sup>56</sup>

Perhaps more troubling is that despite a lack of legal violations under international humanitarian law, Yook society nonetheless develops significant animosity toward the Zooks. As MacDonald notes, "[A]s the story progresses, the Yooks, who live in peaceful coexistence with the Zooks, albeit on opposite sides of a wall, become increasingly militant, with brass bands and cheerleaders egging on their military heroes."<sup>57</sup> Although the reader sees only one side of the conflict, the same progression almost certainly holds true for Zook society regarding the Yooks. The failure of international law to address aggression effectively, coupled with the antagonism that develops between the Yooks and the Zooks as these societies engage in increasingly militaristic behavior, illustrates the limits of the law's ability to shape positive relations between states. Unfortunately, there is no legal system or set of laws that can force states to be good neighbors. A legal system can provide a framework that

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54. *Id.* at 47–48.

55. *Status of Ratification and Implementation of the Kampala Amendments on the Crime of Aggression*, GLOBAL CAMPAIGN FOR RATIFICATION & IMPLEMENTATION OF KAMPALA AMENDMENTS ON CRIME OF AGGRESSION, <http://crimeofaggression.info/2012/11/status-of-ratification-and-implementation-of-the-kampala-amendments-on-the-crime-of-aggression/> (last visited Mar. 15, 2014).

56. The U.S.-U.K. legal argument for invading Iraq is one of the more dubious examples. *See, e.g.*, Owen Bowcott, *Was the War Legal? Leading Lawyers Give Their Verdict*, *GUARDIAN* (London) (Mar. 2, 2004, 3:28 EST), <http://gu.com/p/heec/tw>.

Both George Bush and John Major took the view that [U.N. Security Council Resolution 678] did not give them any authority to go to Baghdad or invade Iraq. For our government to pin their argument for the use of force on it 12 years later, in a quite different situation, seems quite contrary to the wording and spirit of that resolution. It has always seemed a desperate attempt [to justify the war] and [] without a second resolution in February-March [of 2005], the U.S.-British case did not have the legal basis for going to war.

*Id.* (statement of Lord Alexander, chairman of the legal organization Justice and past chairman of the Bar Council of England and Wales).

57. MACDONALD, *supra* note 12, at 155.

encourages states to act as good neighbors, but it cannot force states to alter their actions when such actions do not violate the law. Likewise, while criticism of the ICC is commonplace, it is the political will of a few states, as well as budgetary and resource constraints, that hampers numerous international institutions and most undermines the ICC's ability to investigate and prosecute international criminals. In one sense, law is ultimately an expression of social and cultural values expressed through a political medium. Within international law, if states are unable or unwilling to address difficult challenges, such as prosecuting aggression, the blame rests more with uncooperative or inept political actors than with legal institutions.

### 3. *The Threat of Nuclear Weapons*

Within a Yook-Zook-type conflict, international law largely fails to prevent the escalation of conflict or the stockpiling of arms, even though the continued amassment of military weapons makes the potential conflict that much more devastating. The logic behind the continued amassment and technological advancement of military weapons reaches its conclusion in nuclear weapons, the use of which promises mutually assured destruction, quite appropriately known as "MAD."<sup>58</sup> The Treaty on the Non-Proliferation of Nuclear Weapons (1968) is perhaps the most important legal document concerning nuclear weapons.<sup>59</sup> This treaty seeks not only to prevent the spread of nuclear weapons and nuclear weapon technology, but also the complete disarmament of all existing nuclear weapons.<sup>60</sup> Thus, this ambitious treaty seeks to address a current issue, while also preventing further problems arising from the same issue. Of course, implementation has been less than ideal. Of the nine states with nuclear weapon capability, only five states are signatory members to the treaty and only three states have ratified the treaty.<sup>61</sup> As such, this treaty does not provide a strong normative commitment from nuclear-capable states that significantly impedes nuclear weapon proliferation.

Just as the international treaty process has not addressed nuclear weapon proliferation in a satisfactory way, efforts to constrain the use of nuclear weapons under international humanitarian law and efforts to ascertain the legality of nuclear weapons under international law have also proved unsatisfactory. For example, Additional Protocol I made several notable contributions to international humanitarian

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58. Henry S. Rowen, *Introduction to GETTING MAD: NUCLEAR MUTUAL ASSURED DESTRUCTION, ITS ORIGINS AND PRACTICE* 1, 3–7 (Henry D. Sokolski ed., 2004). Rowen notes, "That we averted disaster during the Cold War is considerable evidence in support of Mark Twain's saying that God protects fools, drunkards, and the United States of America." *Id.* at 12.

59. Treaty on the Non-Proliferation of Nuclear Weapons, *opened for signature* July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161 (entered into force Mar. 5, 1970).

60. *Id.*

61. *Treaty on the Non-Proliferation of Nuclear Weapons: Status of the Treaty*, U.N. OFF. DISARMAMENT AFF., <http://disarmament.un.org/treaties/t/npt> (last visited Mar. 15, 2014) (noting that there are 190 states parties and 93 signatory states, but that nuclear capable states India, Pakistan, and Israel have not signed the treaty).

law, but it failed to restrict the use of conventional or nuclear weapons.<sup>62</sup> Unsurprisingly, the United States and other nuclear-capable states sought to retain their military advantage and “vigorously and successfully contested” restrictions on the use of nuclear weapons.<sup>63</sup> The next major development in international humanitarian law, the U.N. Convention on Certain Conventional Weapons (CCW) (1981), applies only to conventional weapons.<sup>64</sup> Accordingly, this treaty does not restrict the use of nuclear weapons since chemical, biological, and nuclear weapons remain outside its scope.<sup>65</sup> While the International Committee for the Red Cross (ICRC) organized the conference that resulted in Additional Protocol I, the United Nations organized the conferences and negotiations that resulted in the CCW.<sup>66</sup> Despite different approaches taken by different international organizations, the result is the same, as nuclear weapons remain outside of the purview of either legal framework.

In 1996 the International Court of Justice (ICJ) provided an advisory opinion that many international legal scholars and practitioners hoped would resolve key questions regarding the legality of nuclear weapons. The ICJ’s advisory opinion, *Legality of the Threat or Use of Nuclear Weapons*,<sup>67</sup> failed, however, to provide a clear answer to whether international law permitted the use of nuclear weapons. Famously, or perhaps infamously, the ICJ found that:

The threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law[.] However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.<sup>68</sup>

Three ICJ judges, Mohammed Shahabuddeen, Christopher Weeramantry, and Abdul Koroma dissented entirely, finding that no exception, even the very survival of the state, provided a legal justification for the use of nuclear weapons.<sup>69</sup> Despite these dissents, the court found itself deadlocked with seven votes for and seven votes against this proposition, thereby leaving this crucial question of international law unresolved.

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62. Additional Protocol I, *supra* note 35.

63. SOLIS, *supra* note 29, at 122. Solis also notes that states ratifying Additional Protocol I are required to determine whether new weapons would violate Article 36, which forbids employing “arms, projectiles, or material calculated to cause unnecessary suffering,” but that nuclear weapons are not subject to this requirement “presumably because they could not comply with such a test.” *Id.* at 271.

64. Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, *opened for signature* Apr. 10, 1981, 1342 U.N.T.S. 137 (entered into force Dec. 2, 1983).

65. SOLIS, *supra* note 29, at 578.

66. *Id.*

67. *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226 (July 8).

68. *Id.* at 266.

69. *Id.* at 266–67.

## INTERNATIONAL LAW, ARMED CONFLICT, AND THE CONSTRUCTION OF OTHERNESS

In sum, the international treaty process, international humanitarian law, and the ICJ have failed to provide legal measures that effectively prohibit or restrict the use of nuclear weapons or require nuclear disarmament. Indeed, even the legality of nuclear weapons remains inconclusive given the ICJ's deadlocked decision. It is in this sense that Grandfather and VanItch can stand inches from one another while threatening to destroy an entire state without violating international law. In practice, a standoff similar to that of Grandfather and VanItch would almost certainly garner a response from the U.N. Security Council as well as political action. Still, "in view of the current state of international law,"<sup>70</sup> it is not clear that either Grandfather or VanItch would violate international law without unleashing the Boomeroo. Moreover, it is not even clear whether releasing a Boomeroo would constitute a violation of international law.

To many, the inability of international lawyers and judges to prohibit nuclear weapons diminishes the credibility of international law, especially as so many people throughout the world oppose nuclear weapons.<sup>71</sup> To address this issue, the following Part explores a vision of international law that is more responsive to ordinary citizens by calling for a focus on global citizenship that overrides narrow state interests.

### IV. INTERNATIONAL LAW, CONSTRUCTING THE OTHER, AND A RENEWED CALL FOR GLOBAL CITIZENSHIP

As demonstrated in Part III, international law largely fails to provide legal sanction that would prevent the escalation of conflict or the use of nuclear weapons. This Part discusses how the Yook-Zook conflict illustrates a fundamental problem that underpins conflict throughout the world: the transformation of social and cultural difference into otherness.<sup>72</sup> Otherness contributes to conflict by allowing different groups to view one another in a dehumanized manner that makes discrimination and even violence socially acceptable. Historically, lawyers and judges have contributed to this problem by translating social and political values that reduce difference to otherness into law. For example, the 1935 Nuremberg Laws classified German citizens as either Germans or Jews, while also depriving Jews of their German citizenship and prohibiting marriage or sexual intercourse between these groups.<sup>73</sup> As this example

70. *Id.* at 266.

71. See, e.g., Lawrence Wittner, *Public Mobilization for a Nuclear-Free World*, NUCLEAR AGE PEACE FOUND. (Sept. 27, 2010), [http://www.wagingpeace.org/articles/db\\_article.php?article\\_id=148](http://www.wagingpeace.org/articles/db_article.php?article_id=148) (noting a December 2008 poll consisting of more than 19,000 respondents across twenty-one states in which the respondents in twenty states showed strong support to eliminate all nuclear weapons with support ranging from 62% to 87%).

72. The concept of otherness appears throughout nineteenth- and twentieth-century continental philosophy. Hegel, Husserl, Heidegger, and Sartre all considered this concept, but Emmanuel Levinas offers the most thoughtful and detailed inquiry. See generally EMMANUEL LEVINAS, *OTHERWISE THAN BEING: OR BEYOND ESSENCE* (Alphonso Lingis trans., 1998) (1974), available at [http://chungsoolee.com/files/OB\\_wholebook\\_word.pdf](http://chungsoolee.com/files/OB_wholebook_word.pdf).

73. See *THE NAZI GERMANY SOURCEBOOK: AN ANTHOLOGY OF TEXTS* 186 (Roderick Stackelberg & Sally A. Winkle eds., 2003). Two years earlier, the 1933 *Law for the Restoration of the Professional Civil Service* had already banned civil servants of "non-Aryan descent" from participating in the German Civil Service. See *id.* at 149–52. Thus, German Jews could no longer serve as teachers, judges, or government

shows, the law can serve as an instrument of repression by codifying social and political values that transform difference into otherness, which in turn denies the newly constructed other the rights that the dominant group enjoys.

Lawyers and judges have also turned the logic of the law against such translations to help spur positive social change. A commonly cited example is the *Brown v. Board of Education*<sup>74</sup> decision, which held that the establishment of racially segregated public schools was unconstitutional.<sup>75</sup> In *Brown*, a unanimous Court concluded that “[s]eparate educational facilities are inherently unequal”<sup>76</sup> and violate the Equal Protection Clause of the Fourteenth Amendment.<sup>77</sup> As these examples show, the law can serve as an instrument for constructing or deconstructing otherness depending on the intent of those applying it. Accordingly, this Part concludes by exploring how international law premised on global citizenship, rather than an overly rights-centric approach, can resist transforming difference into otherness and provide an international legal system more capable of preventing the escalation of conflict and the use of nuclear weapons.

#### *A. Constructing the Other*

While *The Butter Battle Book* illustrates the failure of international law to halt a military strategy that ends with the mutually assured destruction of two states, it also illustrates a much more fundamental point regarding human experience: the danger of reducing difference to otherness. This section explores the construction of otherness by considering the function and symbolic value of the wall, the ideological commitments of otherness, and how exclusionary mindsets and social practices both reinforce and maintain otherness.

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officials. *Id.* at 150. Previously, former Bavarian Calvary General Konstantin von Gebsattel had advocated along with many other prominent Germans to prevent Jews from serving as teachers, judges, or government officials in a 1913 document titled *The Jewish Question*. *Id.* at 29–30; see also 1 HEINRICH AUGUST WINKLER, GERMANY: THE LONG ROAD WEST 288 (Alexander J. Sager trans., 2006).

These laws demonstrate the concerted effort of the Nazi Party to transform Jewish difference into otherness. By using the legislative and judicial systems to legalize these discriminatory social and political values, Nazi officials succeeded in cloaking exclusionary and oppressive ideology as legal reform necessary for the future of a strong German state. Moreover, even though many Germans no doubt considered these laws immoral, within a strong legal tradition such as the German civil law system, the weight of official state law was significant and provided a legitimating function that made resistance difficult. McGill University law professor Patrick Glenn suggests that there is a strong connection between otherness and legal traditions—both positive and negative. Most notably, he argues that traditions develop largely through external contact with other traditions. “Concern with identity arises from external contact; identity is then constructed by explicit or implicit opposition. The other becomes essential in the process of self-understanding. At the same time the other is an ongoing menace to internal cohesion.” H. PATRICK GLENN, LEGAL TRADITIONS OF THE WORLD: SUSTAINABLE DIVERSITY IN LAW 34 (4th ed. 2010).

74. 347 U.S. 483 (1954).

75. *Id.* at 495.

76. *Id.*

77. *Id.*

### 1. *The Wall*

While hardened cultural differences may appear as self-evident social norms, these norms are often the result of seeing dissimilar peoples and cultures not as merely different, but as “other.” Although the norm may seem apparent or always existent, specific attitudes, assumptions, and approaches to engaging those different from the majority population largely shape this perspective.<sup>78</sup> It is in this sense that otherness must be constructed.

*The Butter Battle Book* demonstrates the construction of otherness most readily through the wall that separates the Yooks and the Zooks. Here, the refusal to listen to or engage with a different society results in a literal barrier. Within the text, the wall is a physical boundary that grows steadily throughout the conflict<sup>79</sup> and must be patrolled. Constructing a wall to control a population or to gain a military advantage is a technique found within both ancient and contemporary practice. The importance of the wall within *The Butter Battle Book* is significant, as the majority of the story unfolds at this location. It is here that Grandfather and VanItch struggle for military advantage. The wall is also where Grandfather takes his grandson when trying to indoctrinate him to the Yook mindset. Lastly, the wall is where the story concludes, as Grandfather and VanItch stand atop it and threaten to unleash their respective Boomerangs that would destroy both Yook and Zook society. Thus, the wall serves as a physical barrier, a key cultural referent, and the site of military and ideological struggle.

The wall separating the Yooks and the Zooks also invites comparison to other barriers. The most obvious comparison is the Berlin Wall, especially considering the historical moment at which Seuss completed the book. The fall of the Berlin Wall, five years after the book’s publication, marked one of the most significant social and political events since World War II and began the reunification of Germany. The Berlin Wall was likely the most recognized barrier between peoples, and its demolition suggested that the use of walls to resolve conflicts was an outdated practice. More recently, technological advances such as high-resolution satellite imagery and drone aircraft further suggest that relying on walls to control populations is unnecessary, as the ability to monitor people throughout the world increases.

78. Australian National University law professor Desmond Manderson makes a similar point regarding myth in his excellent article *From Hunger to Love*, which investigates legal interpretation, the tension between obedience and responsibility, and the constitution of law through a careful reading of Maurice Sendak’s *Where the Wild Things Are*. See Desmond Manderson, *From Hunger to Love: Myths of the Source, Interpretation, and Constitution of Law in Children’s Literature*, 15 LAW & LITERATURE 87 (2003). Manderson argues that “myth[s] [aim] to reconcile the contradictory assumptions of a structure or way of thinking and, by setting them in some distant past that is before or out of time, to prevent us from asking too closely how it is that they got there.” *Id.* at 88. In addition, he finds that myths “speak of the foundational structures and divisions in language and society in a manner that presents them precisely as natural or ordained by the gods.” *Id.* at 88–89.

79. NEL, *supra* note 5, at 85–86. “The expanding wall dramatizes the growing conflict, while the identical houses and trees on either side remind us how much Yooks and Zooks have in common, and consequently how little reason they have to go to war.” *Id.* at 86. Within *The Butter Battle Book*, Grandfather’s recollection of the conflict begins with the observation that when he began working for the Zook-Watching Border Patrol, “the Wall wasn’t so high.” Initially the wall does not reach Grandfather’s shoulders, while at the text’s conclusion it is three times his height.



Within armed conflict, the continued erosion of settled battlefields away from civilian populations makes the idea of a fixed wall seem unreflective of contemporary conflicts. Likewise, politically motivated crimes that target civilians traveling on airplanes,<sup>80</sup> working in office buildings,<sup>81</sup> staying in hotels,<sup>82</sup> and shopping at malls,<sup>83</sup> as well as the retaliation against the actors responsible for such acts,<sup>84</sup> also suggest that a wall no longer accurately captures politically violent struggles. Indeed, if wars<sup>85</sup> and political violence<sup>86</sup> are now truly global, why bother building a wall?

And yet, walls and barriers persist. Israel's construction of a wall—or "separation barrier" according to Israeli officials—within occupied Palestine is perhaps the most recognized and controversial example.<sup>87</sup> Israel began building this wall in 2002 despite much criticism.<sup>88</sup> In 2004, the ICJ provided an advisory opinion on the legality of the wall. In *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the ICJ found by a vote of fourteen to one that the wall was contrary to international law.<sup>89</sup> By the same vote, the court noted that Israel's obligation to terminate its breaches of international law required Israel to cease the construction of the wall within occupied Palestinian territory.<sup>90</sup> Likewise, the court found that Israel had an obligation to make reparations for all damage caused by the construction of the wall, characterizing the situation as illegal.<sup>91</sup>

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80. In many respects, the December 21, 1988 bombing of Pan Am Flight 103 over Lockerbie, Scotland remains the most recognized example of militants targeting civilians on commercial airplanes. See Robert D. McFadden, *The Crash of Flight 103; Vigils, Tears and Grief for Victims of Disaster*, N.Y. TIMES, Dec. 23, 1988, at A17, available at <http://www.nytimes.com/1988/12/23/world/the-crash-of-flight-103-vigils-tears-and-grief-for-victims-of-disaster.html>.

81. The September 11, 2001 attacks on the World Trade Center in New York City provide a particularly dramatic example of this type of politically motivated violence.

82. Somini Sengupta, *At Least 100 Dead in Indian Terror Attacks*, N.Y. TIMES (Nov. 26, 2008), <http://nyti.ms/WKgrjG>.

83. Jeffrey Gettleman & Nicholas Kulish, *Gunmen Kill Dozens in Terror Attack at Kenyan Mall*, N.Y. TIMES (Sept. 21, 2013), <http://nyti.ms/15K7Amy>.

84. See, e.g., Robert F. Worth, *Drone Strike in Yemen Hits Wedding Convoy, Killing 11*, N.Y. TIMES (Dec. 12, 2013), <http://nyti.ms/IIG1Ar>.

85. See, e.g., Ari Shapiro, *Obama Team Stops Saying "Global War On Terror" But Doesn't Stop Waging It*, NPR: IT'S ALL POLITICS (Mar. 11, 2013, 4:38 PM), <http://n.pt/ZBeAhx>.

86. See, e.g., MIDDLE EAST MEDIA RES. INST., <http://www.memriglobaljihadnews.org/> (last visited Mar. 15, 2014).

87. See generally, RENÉ BACKMANN, *A WALL IN PALESTINE* (2006).

88. TAMI AMANDA JACOBY, *BRIDGING THE BARRIER: ISRAELI UNILATERAL DISENGAGEMENT* 25 (2007).

89. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 126, 201 (July 9).

90. *Id.*

91. *Id.* at 202.



In its reasoning, the court cited numerous international legal instruments, including U.N. Charter Article 2(4),<sup>92</sup> which prohibits the threat or use of force, and U.N. General Assembly Resolution 2625 (XXV),<sup>93</sup> which states that territorial acquisition gained through the threat or use of force is illegal. The court also cited international humanitarian law, such as the Fourth Geneva Convention,<sup>94</sup> and key international human rights conventions such as the International Covenant on Civil and Political Rights,<sup>95</sup> the International Covenant on Economic, Social, and Cultural Rights,<sup>96</sup> and the Convention on the Rights of the Child.<sup>97</sup> Applying these and other international legal instruments, the court found that the route of the wall was illegal, as it denied Palestinian self-determination and served as a de facto annexation of Palestinian land.<sup>98</sup> The court also found that the construction of the wall violated international law by destroying or requisitioning private property, restricting the freedom of movement, confiscating agricultural land, denying access to water, and impeding the right to work, the right to health, the right to education, and the right to an adequate standard of living.<sup>99</sup> Finally, the court rejected Israel's argument that its construction of the wall was necessary to attain its security objectives and concluded that Israel cannot rely on the right of self-defense to overrule the illegality of the wall.<sup>100</sup>

In addition to the ICJ's conclusion that the wall violated international law, numerous individuals and organizations have criticized the construction of the wall. The U.N. General Assembly issued a resolution in 2004 demanding "that Israel, the occupying Power, comply with its legal obligations as mentioned in the advisory opinion."<sup>101</sup> The ICRC also condemned the construction of the wall, stating, "The problems affecting the Palestinian population in their daily lives clearly demonstrate that [the wall] runs counter to Israel's obligation under [international humanitarian law] to ensure the humane treatment and well-being of the civilian population living under its occupation[.]"<sup>102</sup> Even former U.S. President George W. Bush, a staunch Israel supporter, criticized the wall. In a 2003 White House meeting with Palestinian

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92. *Id.* at 171.

93. *Id.* at 171, 199.

94. *Id.* at 153, 173–76, 183–85, 189, 192, 196.

95. *Id.* at 172, 177–80, 187–89.

96. *Id.* at 172, 180–81, 193.

97. *Id.* at 178, 181.

98. *Id.* at 181.

99. *Id.* at 189.

100. *Id.* at 193 ("The wall, along the route chosen, and its associated régime gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel, and the infringements resulting from that route cannot be justified by military exigencies or by the requirements of national security or public order.").

101. G.A. Res. ES-10/15, ¶ 5, U.N. Doc. A/RES/ES-10/15 (Aug. 2, 2004).

102. *Red Cross Slams Israel Barrier*, BBC NEWS (Feb. 18, 2004), [http://news.bbc.co.uk/2/hi/middle\\_east/3498795.stm](http://news.bbc.co.uk/2/hi/middle_east/3498795.stm).

Authority Prime Minister Mahmoud Abbas, Bush stated, “I think the wall is a problem, and I discussed this with Ariel Sharon. It is very difficult to develop confidence between the Palestinians and [the Israelis] with a wall snaking through the West Bank.”<sup>103</sup>

Despite the illegality of the wall, widespread social and political criticism, and great financial cost, the Israeli government continues to construct this wall with strong support from the majority of its citizens.<sup>104</sup> Israeli support for the wall is in part due to the security threats that Israel faces—both imminent and exaggerated. Nonetheless, political rhetoric also demonstrates how the wall maintains difference that borders on otherness between the militarily dominant Israelis and the socioeconomically devastated Palestinians. Most famously, in 1994, then-Israeli Prime Minister Yitzhak Rabin stated, “This path must lead to a separation . . . . We want to reach a separation between us and them.”<sup>105</sup> This us-versus-them mentality maintains an otherness between Israelis and Palestinians that undermines political cooperation and even empathy. Of course, Israelis and Palestinians are different peoples with different histories, different social and cultural practices, and, often, different religious beliefs. Still, difference does not automatically develop into otherness. Obviously, not all Israelis or Palestinians view one another as other, but an outspoken minority on both sides succeeds in constructing otherness rather than respecting difference. Adopting a perspective that respects difference rather than creating and maintaining otherness is a critical first step toward resolving this lingering conflict.

While the Israeli wall in occupied Palestine is the most noted and contested barrier, there are also numerous less familiar barriers in use throughout the world that serve similar exclusionary and marginalizing purposes. The Moroccan wall within Western Sahara controls the border to the last remaining colony in Africa,<sup>106</sup> while the separation barrier that divides Cyprus into Turkish and Cypriot populations essentially creates two states within one geographic territory.<sup>107</sup> Perhaps the most apt comparison to the Yooks and the Zooks, however, is the Korean Demilitarized Zone (DMZ). While the differences between South Korea and North Korea are obviously of great significance, as compared to which side of bread one butters, the separation of one ethnic people into two populations resonates with the separation of the Yooks and

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103. *President Bush Welcomes Prime Minister Abbas to White House*, THE WHITE HOUSE (July 25, 2003), <http://georgewbush-whitehouse.archives.gov/news/releases/2003/07/20030725-6.html>.

104. JACOBY, *supra* note 88, at 36, 56, 58.

105. Gerald M. Steinberg, *Unilateralism and Separation*, in THE ROUTLEDGE HANDBOOK OF THE ISRAELI-PALESTINIAN CONFLICT 185, 191 (Joel Peters & David Newman eds., 2013).

106. *See generally* TOBY SHELLEY, *ENDGAME IN THE WESTERN SAHARA: WHAT FUTURE FOR AFRICA'S LAST COLONY?* (2004). *See also* Andrew McConnell, *The Last Colony*, <http://www.andrewmcconnell.com/index.php/category/the-last-colony> (last visited Mar. 15, 2014).

107. Nicos Peristianis & John C. Mavris, *The 'Green Line' of Cyprus: A Contested Boundary in Flux*, in THE ASHGATE RESEARCH COMPANION TO BORDER STUDIES 143, 166 (Doris Wastl-Walter ed., 2011) (“Following the island-wide division of 1974, the territorial boundary became as firm as that between warring sovereign states.”).

the Zooks, who look remarkably similar and share a common language. The DMZ also resonates with the Yook-Zook example because the border serves as a buffer between two states neither completely at peace, nor engaged in conflict. The 1953 Korean Armistice halted military hostilities between North and South Korea until the countries could reach a final resolution to the conflict.<sup>108</sup> Now, more than sixty years later, this resolution remains illusive, as there is concern that armed conflict between these states is possible, if not imminent.<sup>109</sup> Within *The Butter Battle Book*, the conflict has also endured for a significant period of time, and the Yooks and the Zooks similarly remain not quite at peace and not quite at war.

In addition to maintaining a physical barrier, walls serve an important social function by creating easily defined included and excluded groups. Again, the most obvious comparison is to the Berlin Wall, often called the “Wall of Shame” by Western leaders during the Cold War. Such rhetoric serves a political purpose by condemning the leaders on the other side of the wall, but also suggests a social and cultural superiority over the people living on the opposite side. Contemporarily, the Israeli wall within occupied Palestine is again relevant, as the Israeli government refers to the structure as a “security barrier,” while many Palestinians prefer “apartheid wall.”<sup>110</sup> The U.N. General Assembly and the ICJ refer to the structure simply as a “wall,”<sup>111</sup> finding this term the most accurate—and likely the most politically neutral.

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108. Agreement Between the Commander-in-Chief, United Nations Command, on the One Hand, and the Supreme Commander of the Korean People’s Army and the Commander of the Chinese People’s Volunteers, on the Other Hand, Concerning a Military Armistice in Korea, art. 1, July 27, 1953, 4 U.S.T. 234 (noting that “[a] demilitarized zone shall be established as a buffer zone to prevent the occurrence of incidents which might lead to a resumption of hostilities”).

109. Marin Fackler, *South Koreans at North’s Edge Cope With Threat of War*, N.Y. TIMES (Apr. 5, 2013), <http://nyti.ms/ZhfzGC> (noting that South Koreans interviewed for this article were confident that “the bonds of shared ethnicity between the two Koreas would prevail over political differences, and prevent the North from following through on its apocalyptic threats”).

110. Richard Rogers & Anat Ben-David, *Coming to Terms: A Conflict Analysis of the Usage, in Official and Unofficial Sources, of ‘Security Fence’, ‘Apartheid Wall’, and Other Terms for the Structure Between Israel and the Palestinian Territories*, 3 MEDIA, WAR & CONFLICT 202, 203 (2010).

The construction of the obstacle in the West Bank has added a new layer to the conflict, and to the disputed terminological landscape. Whilst the arguing parties invent and employ different terms to refer to the obstacle, media sources and other actors striving to take non-positions in the conflict, yet provide an accurate description, face difficulties in finding the right term to name the structure. Across the media landscape, including governmental, inter-governmental and NGO sources, the words ‘fence’, ‘wall’ and ‘barrier’ are combined with the descriptive terms ‘security’, ‘separation’, ‘apartheid’, ‘anti-terrorist’, ‘West Bank’ and a few others.

*Id.* See also, Nigel Parry, *Is It a Fence? Is It a Wall? No, It’s a Separation Barrier*, ELECTRONIC INTIFADA (Aug. 1, 2003), <http://electronicintifada.net/content/it-fence-it-wall-no-its-separation-barrier/4715>.

111. See G.A. Res. ES-10/15, *supra* note 101, ¶ 5 (deciding “to reconvene to assess the implementation of the present resolution, with the aim of ending the illegal situation resulting from the construction of the *wall* and its associated regime in the Occupied Palestinian Territory, including East Jerusalem”) (emphasis added). In addition, two previous Emergency Session Resolutions also refer to the “structural barrier” as a wall. See G.A. Res. ES-10/13, ¶ 1, U.N. Doc. A/RES/ES-10/13 (Oct. 21, 2003) (demanding that “Israel stop and reverse the construction of the *wall* in the Occupied Palestinian

The above examples show how constructing a barrier between peoples is not only physically divisive, but also reinforces difference in a manner that invites otherness. Indeed, even naming the “wall” can contribute to maintaining an antagonism between those living on either side of the barrier. Moreover, by eliminating or restricting interaction between peoples, these barriers deny individuals the opportunity to share basic commonalities with those different from themselves. Doing so removes the human element from the conflict and makes exclusionary views, and even violence, more likely.

## 2. *Ideological Commitments of Otherness*

Constructing otherness requires particular ideological commitments and *The Butter Battle Book* does not shy away from criticizing such beliefs. As educator and author Rita Roth notes, there are several ideological positions within the text that readers could challenge such as “leaders make reasoned judgments for the good of society,” “technology resolves all problems,” “cultural difference is to be abhorred,” and “nationalism supersedes all other considerations.”<sup>112</sup> Roth’s insights demonstrate that *The Butter Battle Book* is not simply a cautionary tale addressing the escalation of conflict or a parable demonstrating the absurdity of nuclear weapon proliferation and mutually assured destruction. While it certainly succeeds in these modes, *The Butter Battle Book* is better understood as an illustration of a fundamental breakdown in civil society and cross-cultural dialogue. Indeed, what is most striking about the military escalation between the Yooks and the Zooks is not the elegant logic of arms escalation that results in two societies ready to destroy one another, but how the simple refusal to treat a different culture with dignity, respect, or even basic tolerance makes this logic possible. Most tellingly, the reader never learns why buttering one’s bread up or down even matters. There is no historical, social, or cultural explanation for this difference or any explication of the great importance that both Yooks and Zooks place on maintaining this difference. Rather, the difference simply *is*.

*The Butter Battle Book* illustrates how ideological commitments lead to the construction of otherness both by what the text excludes and by what it includes. For example, just as the importance of bread buttering is not explained, at no point in the text do the Yooks and the Zooks engage in dialogue or attempt to understand the one

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Territory”) (emphasis added); G.A. Res. ES-10/14, U.N. Doc. A/RES/ES-10/14 (Dec. 8, 2003) (stating that the General Assembly is “[g]ravelly concerned at the commencement and continuation of construction by Israel, the occupying Power, of a *wall* in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure from the Armistice Line of 1949, Green Line, and which has involved the confiscation and destruction of Palestinian land and resources, the disruption of the lives of thousands of protected civilians and the de facto annexation of large areas of territory, and underlining the unanimous opposition by the international community to the construction of that *wall*”) (emphasis added).

112. Rita Roth, *On Beyond Zebra with Dr. Seuss, in* OF SNEETCHES AND WHOS AND THE GOOD DR. SEUSS: ESSAYS ON THE WRITINGS AND LIFE OF THEODOR GEISEL, *supra* note 2, at 141, 149.

difference that divides their otherwise strikingly similar-looking societies.<sup>113</sup> In contrast, the text shows how propaganda contributes to the construction of otherness by creating a negative and essentialized version of a different society. Thus, the Yook banner on the wall that proclaims “Yooks are not Zooks” reminds Yook society of its irreconcilable difference with the Zooks and the logical impossibility of accepting “Zookness.” Likewise, the Zook “Butter Side DOWN!” poster featured prominently in the Zook home suggests a deeply ingrained social acceptance of Yook as other.

The use of military uniforms also contributes to the construction of otherness, as demonstrated by Grandfather and VanItch wearing increasingly ornate uniforms as the conflict progresses.<sup>114</sup> These distinctive uniforms remind Yook and Zook society that an important value is at stake. Military uniforms serve various purposes, but the most obvious function is to demarcate civilians from military personnel. Indeed, distinguishing lawful combatants from non-combatants is perhaps the fundamental legal norm of international humanitarian law, and requiring parties to a conflict to have “a fixed distinctive sign recognizable at a distance” helps uphold this crucial distinction.<sup>115</sup> By making opposing combatants aware of which members of a population are combatants and which members are civilians, uniforms protect civilians. Military uniforms also carry a decorum intended to create feelings of admiration, respect, and at times, intimidation. Likewise, who wears military uniforms in a given society speaks significantly to that society’s values. In militarized societies, more people may wear uniforms as the military encompasses a greater role within social life.<sup>116</sup> In this regard, with their “pretty new uniform” and “spiffy new suit,” Grandfather and VanItch reflect the increasing militarization of Yook and Zook society and how such societies tend to view different as other.

### 3. *Exclusionary Mindsets and Reinforcing Social Practices*

Otherness requires creating and maintaining a particular mindset that privileges some people at the expense of others. Seemingly innocuous social practices can contribute to creating such a mindset. Family relationships can also contribute,

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113. MACDONALD, *supra* note 12, at 157–58 (noting that Seuss was quite clear in his strategy for writing the book, stating, “What I was trying to say was that the Yooks and the Zooks were intrinsically the same. The more I made them different, the more I was defeating the story.”).

114. In addition to a new weapon, Grandfather receives a “fancier suit” that makes him feel “much bigger” after VanItch destroys his Snick-Berry Switch. VanItch receives a “spiffy new suit” when he outmaneuvers the Triple-Sling Jigger, while Grandfather receives a “pretty new uniform” and promotion to general before the Utterly Sputter mission commences.

115. Geneva Convention Relative to the Treatment of Prisoners of War, art. 4(A)(2)(b), *opened for signature* Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 (entered into force Oct. 21, 1950).

116. For example, General Jorge Ubico ruled Guatemala from 1931 until 1944 through what Latin American history scholar Jim Handy describes as “a carefully measured blend of terror and paternalism.” Jim Handy, *Resurgent Democracy and the Guatemalan Military*, 18 J. LATIN AM. STUD. 383, 387 (1986). General Ubico militarized numerous aspects of Guatemalan society, including giving the members of the Guatemalan Symphony Orchestra military ranks and forcing them to wear military uniforms. *Id.* at 388.

especially given the very personal nature of these relationships and the family unit's ability to reproduce social and cultural values.

In *The Butter Battle Book*, the story begins with Grandfather's attempt to create an exclusionary mindset in his grandson. Grandfather acts with a clear belief in Yook superiority. As Pease notes, "The grandfather believes that he must *inculcate* the proper understanding in his grandson, so he informs him that it's high time he knew '[o]f the terribly horrible things that the Zooks do.'"<sup>117</sup> Exclusionary mindsets are atypical to children and generally require the inculcation that Pease describes. As MacDonald notes, "Unless a child learns otherwise, the sameness of all sorts of people is more apparent than the differences."<sup>118</sup> Perhaps it is the grandson's ability to see sameness where adults see difference that led Seuss to begin and end *The Butter Battle Book* from his perspective, even though the majority of the story unfolds through Grandfather's retelling of the Yook-Zook conflict. Interestingly, while the grandson is vital to the story's plot and its unresolved conclusion, he is absent from most of the story. After the opening scene, the grandson disappears while Grandfather narrates the conflict's history. The grandson only reemerges to assert his voice at the end of the story during the zenith of the conflict. He also stands apart from all other characters in the book because of his youthful innocence. Arguably, it is this innocence that allows him to refrain from blindly adhering to the Yook mindset. In contrast, Grandfather, his nemesis VanItch, Chief Yookeroo, and the Boys in the Back Room all believe steadfastly in their cause and their actions, even though these actions escalate the conflict, increase the likelihood of violence, and raise the possibility of the eradication of Yook and Zook society.

Yook society also plays an important role in the escalation of the conflict. MacDonald argues that Yook society is the force most responsible for escalating the conflict, finding "the sentiment of the general Yook population" to be "the more invidious threat" compared to the other actors within the story.<sup>119</sup> Continuing, she writes that it is the Yook population that taunts Grandfather when he fails, forms marching bands and cheerleader squads, "make[s] the issue more than just a border skirmish," and "invoke[s] issues of honor in their songs."<sup>120</sup> She concludes that:

If only the Yook grandfather and Van Itch had been left alone to patrol the border armed with slingshots and stickle-bush whips, the issue might have remained isolated and might have been forgotten. But with the interest of the entire Yook populace, the quality of the rhetoric and weaponry escalates to extremes.<sup>121</sup>

Although MacDonald's interpretation seems to place too much emphasis on the role of Yook society, while not allocating enough responsibility to individuals or the Yook military leadership for escalating the conflict, it does demonstrate the pervasive

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117. PEASE, *supra* note 1, at 145–46 (emphasis added).

118. MACDONALD, *supra* note 12, at 158.

119. *Id.* at 160.

120. *Id.*

121. *Id.*



influence that society can have on maintaining otherness. Moreover, her interpretation also underscores the disrupting action that the grandson's interjection has on the narrative. The grandson, again perhaps because of his naiveté, is the only individual to question the logic of escalating the conflict.

Social practices contribute to the construction of otherness in various ways. Within *The Butter Battle Book*, social practices maintain otherness by reinforcing essentialized views of the other. Seuss displays this process throughout the text, as public support becomes increasingly visible as the story progresses, thereby matching the conflict's escalation. Thus, while the initial encounters between Grandfather and VanItch do not garner a public response, later encounters show a Yook crowd enthusiastically cheering on Grandfather—"Fight! Fight for Butter Side Up! Do or Die!" The phrase "Do or Die!" demonstrates the intensity of public support and underscores the either/or, us/them mindset of Yook society.<sup>122</sup> The Right-Side-Up Song Girls and Butter Up Band also illustrate the use of social practices to produce a somewhat less overt reminder of Zook otherness. The Right-Side-Up Song Girls wear matching uniforms, fly flags with a depiction of butter side up toast, and remind Yook society to "Oh, be faithful! Believe in thy butter!"<sup>123</sup> Finally, Seuss demonstrates the lasting impression that social practices can have by showing that even after Chief Yookeroo commands all Yooks to move to the underground shelter, the head of the Yook procession still carries a Right-Side Butter-Up flag.<sup>124</sup>

While constructing otherness requires creating distinct groups, this process requires more than simply separating individuals into various sets. Rather, the creation of groups requires a relational function that privileges one group at the expense of devaluing another. Thus, it is not simply that two unequal groups coexist, but that a dominant group views a marginalized group as inferior. Ethnic conflicts are rife with such examples, even if the ethnicities involved in the conflict are politically constructed manipulations.<sup>125</sup> Accordingly, creating an either/or, us/them dichotomy is a key aspect of the othering process.

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122. Seuss also depicts Yooks standing on the roofs of their houses and cheering Grandfather as he races to the wall in the Utterly Sputter.

123. Interestingly, the Right-Side-Up Song Girls are the first female characters within the story.

124. This image is striking. As the long Yook progression moves dutifully toward the Yookery, Yook faces express shock and fear. Nonetheless, while racing to the wall, Grandfather notices that "every last Yook in our land was obeying our Chief Yookeroo's grim command: They were all bravely marching, with banners aflutter, down a hole! For their country! And Right-Side-Up Butter!"

125. Essentializing Hutus and Tutsis ethnicity leading up to the Rwandan Genocide is perhaps the most notable contemporary example. See Moise Jean, *The Rwandan Genocide: The True Motivations for Mass Killings*, EMORY ENDEAVORS IN WORLD HIST., 2007, at 10, available at <http://www.history.emory.edu/home/assets/documents/endeavors/volume1/Moises.pdf>.

The ethnic myths that established the relationship between the Hutu, Tutsi, and Twa, along with the mass hostility toward the Tutsi, economic distress, the chauvinistic political mobilization of the northern Hutu, and the resulting security dilemma of the RPF [Rwandan Patriotic Front], made Rwanda a fertile ground for such a genocidal atrocity that occurred.

*Id.*



In her essay on diversity within *Dr. Seuss and Philosophy*, Tanya Jeffcoat refers to this relational function as “normative hubris,”<sup>126</sup> which she defines as “the arrogance that assumes that one way—OUR way—is the best way, not only for ourselves but for everyone else.”<sup>127</sup> Jeffcoat expands on this point by contrasting cultural difference with normative hubris.

[T]here is a difference between noticing that different communities drive on different sides of the road and making the claim that WE drive on the correct side of the road (or the more logical or morally superior side) and that everyone who does differently is wrong, illogical, mentally warped, or immoral, even if that way of doing things works just fine.<sup>128</sup>

Jeffcoat also discusses several possible options when we encounter the other. Some options are positive, as we can choose to “form friendships despite our differences.”<sup>129</sup> Conversely, some options are negative, as we can choose to “shrink back in fear and work to maintain our distance.”<sup>130</sup> Jeffcoat also notes the possibility of exploitation when encountering the other, where we treat the other “as a thing or an object for our benefit.”<sup>131</sup>

Like Jeffcoat, legal theorist Desmond Manderson considers the problem of encountering the other. Through his reading of *Where the Wild Things Are*, Manderson shows how that story’s protagonist, Max, moves from legal obedience to legal responsibility.<sup>132</sup> Manderson relies on French philosopher Emmanuel Levinas to show the ethical inadequacy of mere obedience and how to respond to otherness responsibly.<sup>133</sup> While otherness treats difference as morally wrong and socially unacceptable, Levinas

126. Tanya Jeffcoat, *From There to Here, From Here to There: Diversity Is Everywhere*, in *DR. SEUSS AND PHILOSOPHY: OH, THE THINGS YOU CAN THINK!* 93, 94 (Jacob M. Held ed., 2011).

127. *Id.*

128. *Id.* MacDonald makes a similar observation, noting that between the Yooks and the Zooks, buttering bread differently is not simply a different way of doing things, but that “[t]he issue of buttering bread becomes one of national pride and honor, to be fought over to the death.” *MACDONALD*, *supra* note 12, at 155.

129. Jeffcoat, *supra* note 126, at 95.

130. *Id.*

131. *Id.*

132. Manderson, *supra* note 78, at 99. Initially, Max’s reproduction of the law as obedience makes him feel dispirited. *Id.* at 114. Indeed, by reproducing his mother’s command and forcing the wild things to stop their rumpus and sending them off to bed without supper, Max becomes lonely and unhappy. *Id.* at 114, 119. To move from crisis to civility, Max must exchange his wolf suit for domestication, since love and citizenship are correlative. *Id.* at 120. Thus, “the promise of obedience in exchange for love establishes something like a social contract.” *Id.* at 121.

133. See Siby K. George, *Hospitality as Openness to the Other: Levinas, Derrida, and the Indian Hospitality Ethos*, 15 *J. HUM. VALUES* 29 (2007). George compares Levinas’s concept of welcoming the other as an act of “authentic openness” to India’s spirit of hospitality and tolerance. *Id.* at 30, 34, 37. Moreover, he notes that “[a]s the world becomes smaller in proportion to the expanding processes of globalization, openness to the other person as hospitality, regardless of social values imposed on her [or him], is a tremendous ethical value.” *Id.* at 42.

stresses the need “to respect difference and not to obliterate it.”<sup>134</sup> Thus, difference—not sameness—is “the necessary condition of any enduring relationship within a community.”<sup>135</sup> Legal responsibility requires this “recognition of difference,” since “the necessity of continually making judgments that attend to that difference [] marks the end of the possibility of unquestioning obedience and the true dawn of responsibility.”<sup>136</sup>

Manderson’s reading of *Where the Wild Things Are* resonates strongly with this article’s reading of *The Butter Battle Book*. Importantly, Manderson notes the tension between thinking of the law as obedience (“the suspension of judgment”) and as responsibility (“the exercise of judgment”).<sup>137</sup> Moreover, he observes the ethical inadequacy of mere obedience. “Obedience removes the obligation to think, and in particular to think of others.”<sup>138</sup> This observation is telling, as it certainly describes the mindset of Grandfather, VanItch, Chief Yookeroo, and to some extent all Yooks and Zooks depicted in the text with the exception of the grandson. This characterization of obedience also describes the now-rejected defense of respondeat superior in international humanitarian law.<sup>139</sup> This defense, commonly characterized as “just following orders,” required judges to find a defendant making a successful respondeat superior claim not guilty, and instead shift the criminal liability upward to the defendant’s supervisor who issued the orders.<sup>140</sup> This defense no longer excuses individual responsibility in international humanitarian law, but it may serve as a mitigating factor during sentencing.<sup>141</sup> Most importantly, Manderson’s distinction between obedience and responsibility details the construction of otherness between the Yooks and the Zooks. The Yooks and the Zooks strive to erase difference and create total sameness, thereby evading responsibility and a legal ethic that requires the vastly more difficult task of exercising judgment as opposed to simply following the law or following orders.

Both Jeffcoat and Manderson illustrate that the construction of otherness can allow for the dehumanization of the opposing society.<sup>142</sup> As Jeffcoat notes, “In

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134. Manderson, *supra* note 78, at 122.

135. *Id.* at 123.

136. *Id.*

137. *Id.* at 115.

138. *Id.* at 124.

139. See, e.g., Jeanne L. Bakker, *The Defense of Obedience to Superior Orders: The Mens Rea Requirement*, in 1 TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES 441, 443 (Neal J. Kritz ed., 1995) (“Even as late as 1961, when the weight of authority no longer supported the respondeat superior doctrine, Nazi fugitive Adolf Eichmann maintained (successfully) that as the recipient of orders, he was immune from responsibility and guilt[.]”).

140. *Id.* at 442.

141. *Id.* at 449 (noting that Article 8 of the International Military Tribunal did not free a defendant following the orders of a superior from responsibility, but “may be considered in mitigation of punishment if the Tribunal determines that justice so requires”).

142. See also Roth, *supra* note 112, at 148 (noting that *The Butter Battle Book* “examines the folly of xenophobia and dehumanization that can grow out of an overdependence on technology”).

treating the Other as somehow less than, we take the first step toward exploitation and dehumanization.”<sup>143</sup> The promise of international law, especially international human rights law, is to refuse otherness while respecting difference. International human rights law denies that any individual can be treated “as somehow less than.”<sup>144</sup> Although international law does not always uphold this promise, it does provide an important aspirational standard that most actors respect. The following section discusses whether a more progressive international law could better refuse the construction of otherness than current international law. Moreover, it explores how this reformulation would differ from the current understanding and practice of international law.

*B. Refusing the Construction of Otherness Through a Progressive International Law*

How can international law, a decentralized, highly complex, and constantly evolving regulatory and adjudicative legal system refuse the construction of otherness? This section addresses this question by examining the importance of cross-cultural dialogue and discussing two examples of a more progressive international law.

*1. The Importance of Cross-Cultural Dialogue*

Perhaps most significantly, international law can foster constructive cross-cultural dialogue to address specific legal issues that arise from social and political disputes. By addressing these disputes before they harden into intractable positions, conflict becomes less likely and the consequences of conflict less severe. Diplomacy provides the best forum for cross-cultural dialogue within the international legal system and therefore provides the best opportunity to engage in discussion that ultimately prevents conflict. The United Nations recognizes the importance of “preventive diplomacy,” which U.N. officials define as “diplomatic action taken to prevent disputes from escalating into conflicts and to limit the spread of conflicts when they occur.”<sup>145</sup> By seeking to engage disputing states through a variety of international and regional organizations, the U.N. preventive diplomacy model encourages “dialogue, compromise and the peaceful resolution of tensions.”<sup>146</sup> This model notes several recent successes including helping to ensure the 2011 South Sudan independence referendum proceeded as planned and helping to quell rising tensions between Rwanda and the Democratic Republic of the Congo in 2008.<sup>147</sup>

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143. Jeffcoat, *supra* note 126, at 95.

144. Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. GAOR, U.N. Doc. A/810, art. 1 (Dec. 10, 1948) (“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”).

145. *Preventive Diplomacy Report: Q&A*, U.N. DEP’T POL. AFF., [http://www.un.org/wcm/content/site/undpa/main/issues/preventive\\_diplomacy/qa\\_preventive](http://www.un.org/wcm/content/site/undpa/main/issues/preventive_diplomacy/qa_preventive) (last visited Mar. 15, 2014).

146. *Id.*

147. *Id.*

As discussed above, of all the actions that the Yooks and the Zooks take throughout the conflict, the one action that they do not undertake is simple conversation. Certainly, it would seem easier to discuss why buttering bread on the top or on the bottom creates such impassioned feelings of moral correctness compared to planning for chemical warfare (the Utterly Sputter) or a nuclear attack (the Bitsy Big-Boy Boomeroo) that forces the Yook—and presumably Zook—population to retreat to an underground bunker. There are of course no Yook or Zook diplomats within the story, and throughout the text there is no real dialogue between the Yooks and the Zooks. The only communication between Yook and Zook society is the back-and-forth threats offered by Grandfather and VanItch, communication that is anything but constructive. Accordingly, diplomacy could provide a useful approach to resolving the conflict, or at least preventing its escalation. Diplomacy is one of the oldest forms of international law,<sup>148</sup> and taking the simple first step of having a discussion may help to prevent violence. Of course, diplomacy may fail to resolve conflict, but diplomatic conversation at least attempts to prevent violence. At the very least, diplomatic conversation slows the march toward armed conflict.

Perhaps a larger problem is the inability of state diplomacy to represent the views of ordinary citizens. Diplomats are state officials and they represent the views of the state. At best, diplomats represent ordinary citizens through promoting political and policy values that they endorse through their elected officials. At worst, the government views promulgated by diplomats fail to represent the values and concerns of ordinary citizens entirely. In practice, the truth is somewhere in between. The next section looks at two examples that attempt to reduce this democratic deficit between state and citizen.

## 2. *Toward a Progressive Model of International Law*

Outside of diplomacy, how could international law intervene in a Yook-Zook-type conflict before threats turn to violence? One possibility is to reshape international law to make it more accessible to all states and all people. This section argues that reconstructing international law to focus foremost on human dignity and global citizenship,<sup>149</sup> and conversely less on strong state sovereignty and a rigid rights-based approach to law, will make international law more accessible to more people. Two approaches that attempt to reconstruct international law in this manner—thereby making inclusive global citizenship the core principle of international law—are a Global Peoples Assembly proposed by professors Richard Falk and Andrew Strauss, and the jurisprudential approach of former ICJ judge Christopher Weeramantry.

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148. Geraldo E. do Nascimento e Silva, *Diplomatic and Consular Relations*, in *INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS* 437 (Mohammed Bedjaoui ed., 1991) (noting that one commentator concludes “diplomacy is as old as nations themselves”); *see also* Vienna Convention on Diplomatic Relations, *opened for signature* Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95 (entered into force Apr. 24, 1964) (“Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents[.]”).

149. *See also* Manderson, *supra* note 78, at 100–01 (“Love and responsibility emerge in our lives together; we cannot be good legal citizens without them.”).

a. *A Global Peoples Assembly*

Richard Falk and Andrew Strauss first proposed a “Global Peoples Assembly” in 2000.<sup>150</sup> Falk and Strauss began this ambitious project by asking a simple question: “If democracy is so appropriate in the nation-state setting, why should *not democratic* procedures and institutions be extended to the global setting?”<sup>151</sup> Indeed, if one takes democracy seriously and believes that it is the best or the most legitimate form of governance, to allow non-democratic procedures to dominate international law and international relations is nonsensical and hypocritical.

Falk and Strauss argue that a Global Peoples Assembly (GPA) is a conceptual possibility that is feasible and deserves serious consideration. They base this argument on the accomplishments of global civil society throughout the 1990s, citing the role of civil society in establishing the U.N. Climate Change Convention (1992),<sup>152</sup> the Convention Outlawing Anti-Personnel Land Mines (1997),<sup>153</sup> and the Rome Statute that led to the creation of the International Criminal Court (1998).<sup>154</sup> To Falk and Strauss, each example demonstrates that, albeit imperfect, global civil society “is capable of promoting significant global reform.”<sup>155</sup> Relatedly, Falk and Strauss claim that a GPA could succeed as “popular sovereignty” is increasingly seen as “the foundation for governmental legitimacy in today’s world.”<sup>156</sup> Finding that classic sovereignty and state consent are outdated, they argue for “contemporary sovereignty” that reconciles the state system with democracy and human rights.<sup>157</sup> Most importantly, they argue that it is the citizen that forms the basis for political and legal legitimacy. “Because the citizenry rather than the sovereign is the fundamental source of political authority, citizens can bypass their sovereign intermediaries and act directly to create an international organization.”<sup>158</sup>

Structurally, Falk and Strauss envision the GPA working similarly to the U.N. General Assembly.<sup>159</sup> They provide a scenario where the GPA would eventually attract state participation and perhaps become even more influential than the United Nations.<sup>160</sup> Criticizing current international organizations, Falk and Strauss emphasize the lack of citizen participation in these organizations, as well as their

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150. Richard Falk & Andrew Strauss, *On the Creation of a Global Peoples Assembly: Legitimacy and the Power of Popular Sovereignty*, 36 STAN. J. INT’L L. 191 (2000); see also Andrew Strauss, *Overcoming the Dysfunction of the Bifurcated Global System: The Promise of a Peoples Assembly*, 9 TRANSNAT’L CONTEMP. PROBS. 489 (1999).

151. Falk & Strauss, *supra* note 150, at 191 (emphasis added).

152. *Id.* at 196–99.

153. *Id.* at 199–201.

154. *Id.* at 201–03.

155. *Id.* at 203.

156. *Id.* at 206–07.

157. *Id.* at 208.

158. *Id.* at 209.

159. *Id.* at 211.

160. *Id.*

dearth of accountability to the global citizenry. In contrast, they argue that citizens want to participate, and international organizations recognize that without greater citizen participation their actions will continue to lose legitimacy.<sup>161</sup> Finally, they argue that citizen participation could create law in a number of ways, such as a “spiraling effect” that would eventually transform non-binding resolutions into binding international law.<sup>162</sup>

Despite the novelty of this argument, Falk and Strauss are not overly idealistic or utopian in their proposal. Indeed, they spend considerable time detailing possible difficulties that a GPA would entail, such as logistics and cost.<sup>163</sup> At the same time, they remain confident that sufficient commitment can overcome these challenges.<sup>164</sup>

*b. A Truly Universal International Law*

Like Falk and Strauss, former ICJ judge Christopher Weeramantry advocates for a more inclusive version of international law. In 2004, Weeramantry published *Universalising International Law*,<sup>165</sup> in which he discusses his inclusive approach to international law.<sup>166</sup> Weeramantry’s text demonstrates a comprehensive understanding and appreciation of international law, which one would expect from a former ICJ judge. Interestingly, and less expectedly, Weeramantry raises points similar to those raised by Falk and Strauss regarding the role of the global citizenry in international law. Noting that the sources of international law are rather narrow, Weeramantry argues that certain sentiments shared by the majority of people in the world deserve recognition as law.<sup>167</sup> “*Vox populi* has special sanctity in the language of politics. *Vox humanitatis* should have that sanctity in the discourse of international law.”<sup>168</sup> He points to nuclear weapons as an example where “the voice of humanity speaks out loud and clear but yet international law takes no note of it.”<sup>169</sup> Rejecting the proposition that states alone may speak for individuals within international law, he proposes that an “*opinio humanitatis*” be considered a source of law.<sup>170</sup> As international law professor Roger Clark observes, Weeramantry put this proposition into practice during his time on the ICJ bench. “In his dissent to the Court’s advisory opinion in

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161. *Id.* at 211–13.

162. *Id.* at 216.

163. *Id.* at 218.

164. *Id.*

165. C.G. WEERAMANTRY, *UNIVERSALISING INTERNATIONAL LAW* (2004).

166. For a concise, but excellent review of Weeramantry’s book that includes a reference to *The Butter Battle Book*, see Roger S. Clark, *Recent Books on International Law*, 99 AM. J. INT’L L. 298, 298–302 (2005). See *id.* at 300–01 nn.10–11 for *The Butter Battle Book* reference.

167. WEERAMANTRY, *supra* note 165, at 145.

168. *Id.*

169. *Id.*

170. *Id.* at 146; see also *id.* at 205 (“The entire concept of sovereignty needs careful reappraisal in the context of the future needs of international law.”).



the *Legality of the Threat or Use of Nuclear Weapons* . . . Judge Weeramantry took note of well over three million signatures on declarations of public conscience concerning nuclear weapons,” which he described as “not without legal relevance.”<sup>171</sup>

In addition to extending the sources of international law and taking the global citizenry seriously, Weeramantry advocates for using international law as an instrument of peace. Indeed, he makes four suggestions for using international law to pursue peace that are directly relevant to *The Butter Battle Book*: stressing legal prevention rather than cure,<sup>172</sup> emphasizing duties rather than remaining preoccupied with rights,<sup>173</sup> addressing intergenerational rights,<sup>174</sup> and abolishing nuclear weapons.<sup>175</sup> The common theme throughout these suggestions is to make international law more inclusive and more equitable. In the context of *The Butter Battle Book*, Falk and Strauss’s GPA or Weeramantry’s inclusive approach to international law would likely resolve the conflict before it approaches anything near the potentially deadly ending that Seuss describes. At the very least, these possibilities would allow ordinary Yook and Zook citizens the ability to discuss the conflict and its escalation, a discussion entirely lacking in Seuss’s text.

## V. CONCLUSION

*The Butter Battle Book* demonstrates, perhaps above all else, the negative consequences that the construction of otherness entails. The inability of the Yooks or the Zooks to treat cultural difference with respect results in a military standoff that threatens the very existence of both societies. Through the absurdity of the dispute, the text illustrates the danger of blindly obeying the state, as well as the harmful consequences of exclusionary and inflexible ideologies.<sup>176</sup>

Seuss completed *The Butter Battle Book* thirty years ago, and while the threat of full-fledged nuclear war has lessened, the construction of otherness continues to create inequality, suffering, and conflict throughout the world. Currently, international law does not meet its promise of refusing the construction of otherness. Reconstructing international law to be more inclusive and more likely to spur constructive cross-cultural dialogue is necessary to fulfill this promise. This reformulation will not be easy, but the examples provided by Falk, Strauss, Weeramantry, and others<sup>177</sup> suggest that it can be done. Until then, we must continue

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171. Clark, *supra* note 166, at 299 n.3.

172. WEERAMANTRY, *supra* note 165, at 412–13.

173. *Id.* at 414.

174. *Id.* at 416–17.

175. *Id.* at 423–24. The prohibition of nuclear weapons is extremely important to Weeramantry as demonstrated by his dissent in the *Legality of the Threat or Use of Nuclear Weapons* and his decision to conclude this text with a lengthy chapter that treats nuclear weapons very critically. *Id.* at 462–520.

176. PEASE, *supra* note 1, at 144 (“The madness of taking up intractable positions was one of his favorite topics for the books that Dr. Seuss wrote during the cold war.”).

177. *See, e.g.*, SIENHO YEE, TOWARDS AN INTERNATIONAL LAW OF CO-PROGRESSIVENESS (2004). Yee describes “human flourishing” as the ultimate goal of the international law of co-progressiveness. *Id.* at

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to dismantle the construction of otherness and remember that as global citizens we have the power and the ethical obligation to do so.

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23, 26. Moreover, Yee notes that the international law of co-progressiveness “is all encompassing, preoccupied with advancements in moral and ethical terms” and a law that “will no doubt help to make the world a better one.” *Id.* at 26.