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## **Cyberspace and State Sovereignty**

### **I. Introduction**

In April of 1996 the United States Institute for Peace conducted a conference on “Virtual Diplomacy,” exploring the interaction between new information technologies and international conflict management. During the conference many speakers observed that information technology threatens traditional political institutions. One panel explored the possibility that information technology threatens sovereignty itself.

Ordinary citizens as well as diplomats have instantaneous access to information about world events as they occur—through CNN sooner than through the CIA. Ordinary citizens interested in environmental protection or human rights can reach out and touch counterparts in other countries through the Internet, bypassing international treaty negotiators appointed by their own governments.

Overlapping revolutions in information technology and the convergence of communications, broadcast and data technologies into a single digital network of networks typified by the Internet, have undermined old political institutions and simultaneously made new international institutions likely because they make it feasible to reach across geographic political boundaries.<sup>1</sup>

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<sup>1</sup> Jessica T. Mathews, *Power Shift*, 76 *FOREIGN AFFAIRS* 50, 66 (1997) (information technology will favor non-state entities).

This article explores two interrelated questions arising in this changing environment. First, how do information technologies threaten old forms of political intermediation in the international arena? Second, what roles will information technology play through international law, and international legal institutions,<sup>2</sup> in the new world order, shaping new forms of political and legal intermediation to replace the old? The article emphasizes the Internet's role, explaining why it is a revolutionary information technology with potentially greater consequences than the telegraph, telephone, radio or television.<sup>3</sup>

While most of the themes are global in character, the article emphasizes Central and Eastern Europe. The author's engagement in the issues considered in the article began with construction of a Rule of Law in Bosnia. Many of the assertions about the role of information technology in building institutions for the New World Order are based on the author's experience in Bosnia and in other former Communist countries to enhance the functioning of state-based and international legal institutions through the Internet.<sup>4</sup>

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<sup>2</sup> See Stanley Anderson, *Human Rights and the Structure of International Law*, 12 N.Y.L. SCH. J. INT'L & COMP. L. 1 (1991) (explaining that the decentralization of lawmaking, adjudication and enforcement functions marks international law as still relatively primitive in its evolution).

<sup>3</sup> It is appropriate to distinguish the second question from other questions frequently asked about the Internet and related technologies. The question addressed by this article is how can governance occur *through* the Internet? Two other questions, beyond the scope of this article, but addressed in two other articles forming a kind of trilogy with this one are (2) how can traditional law and government assert control over the Internet? and (3) can the Internet govern itself? The question addressed in this article and the third question clearly are related. The distinction is that the question addressed by this article concerns the use of the Internet to perform governmental and legal functions with respect to the corporeal and tangible world, while the third question is more self referential—whether the Internet can provide governance for the phenomena that itself has produced. This article also follows logically from Jessica T. Mathews' article in *FOREIGN AFFAIRS*, arguing that the global civil society is arising from new forces, including non-governmental organizations, whose activities are facilitated by modern information technologies. Mathews, *supra* note 1, at 50.

<sup>4</sup> Project Bosnia is a student-faculty initiative organized by the author and centered at the Villanova University School of Law. It seeks to accelerate the development of a Rule of Law and Civil Society in Bosnia by connecting legal and civic institutions to each other and to the World Community through the Internet. In addition to its technological focus, Project Bosnia externs assisted the Bosnian Property Commission in order to improve procedures for adjudicating property

## II. Threats To the Old World Order

The impact of information technology on the power of sovereign states is well recognized.<sup>5</sup> Without televised pictures of the casualties in Vietnam, the course of that war certainly would have been different. Television images and e-mail communication in the waning days of the Soviet Union altered reaction in other capitals with respect to coup attempts undermining the coup. CNN's broadcast of the violence in Tiananmen Square in China resulted in a level of world reaction that surely would not have occurred in the absence of that means of information dissemination. Without television's access to the violence in Bosnia, the world almost certainly would not have involved itself.<sup>6</sup>

Three generations earlier, new ideologies and new forms of totalitarianism made effective use of cinema and radio broadcasting. Three centuries before that the first stirrings of democracy found outlets through print media. New channels of political awareness and forms of political action always have arisen as information technology has changed. Now the Internet's potential to forge new links at the expense of old ones is beginning to be recognized.

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claims by victims of ethnic cleansing, and organized workshops on open government and freedom of information in Bosnia. The Eastern and Central European Network (ECEULnet) is a joint activity of the University of Chicago Law School and the Villanova Center for Information Law and Policy, aimed at promoting constitutionalism in former Communist countries in Eurasia by linking their constitutional courts to the Internet. The Central and East European Civic Institution Locator (CEECIL) complements Project Bosnia and ECEULnet by developing and assisting civil institutions to deploy compatible case management, electronic publishing and virtual library functions implemented through the Internet's World Wide Web.

<sup>5</sup> See generally JOHN DUNN ET AL., *CONTEMPORARY CRISIS OF THE NATION-STATE?* (John Dunn ed. 1995); but see Francis Fukuyama, *Recent Books on International Relations*, 74 *FOREIGN AFFAIRS* 160 (Sept./Oct. 1995) (reviewing *MEDIA AND REVOLUTION: COMPARATIVE PERSPECTIVES* (Jeremy D. Popkin ed., 1995) (showing the impact of information technology on state sovereignty is not explored systematically)). Other authors have predicted the end of the nation state for a variety of reasons, prominently including globalization of markets. See KEN OHMAE, *THE END OF THE NATION STATE* (1995).

<sup>6</sup> James F. Hoge, Jr., *Media Persuasiveness*, 73 *FOREIGN AFFAIRS* 136 (1994) (new media technologies are truly revolutionary in their impact on foreign policy and the role of political officials).

### A. *Why Is the Internet Different?*

The Internet, of course, is not the only information technology with the potential to change the way legal institutions function. The telegraph, telephone, radio, broadcast and cable television, and satellite television all have similar potentials. It is useful to consider briefly each of these non-Internet technologies, comparing and contrasting each with the Internet and drawing inferences about whether the Internet may have greater—or at least different—potential.

The telephone and telegraph had revolutionary potential because they permitted conversations without inherent geographic limits. Nevertheless, until recently, they were used mostly within nation states, and enjoy only limited use even there as mainstream tools for political or legal functions, aside from political fundraising and get-out-the-vote drives. They also play invisible but powerful roles in mobilizing interest groups to participate in the rulemaking process, keeping clients and counsel informed in the adjudicatory process and in organizing enforcement resources. These uses strengthen state-based political institutions. Because both telephone and telegraph technologies rely on physical circuits that are easily controlled at national borders, they only recently have become international tools. Also, because of high barriers to entry and regulatory programs that protect monopolies, prices have remained high for international services and the rate of innovation based on competitive exploitation of new technology developments has been limited. Recent WTO negotiations on liberalization of trade in telecommunications services may ease some of the limits.<sup>7</sup>

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<sup>7</sup> On 15 February 1997, 55 schedules of commitments representing 69 WTO member governments had been agreed to. These schedules are annexed to the Fourth Protocol to the General Agreement on Trade in Services which will remain open for acceptance until November 30, 1997. The commitments will enter into force on January 1, 1998. The new agreement covers all telecommunications services both public and private that involve end-to-end transmission of customer supplied information, including voice telephony, data transmission, telex, telegraph, facsimile, private leased circuit services (i.e. the sale or lease of transmission capacity), fixed and mobile satellite systems and services, cellular telephony, mobile data services, paging, and personal communications systems. The new agreements do not formally cover on-line data processing, on-line data base storage and retrieval, electronic data interchange, e-mail or voice mail. Such “value-added services” are already included in 44 schedules (representing 55 governments) that are in force as a result of the Uruguay Round. *WTO Agreement on Basic Telecommunications Services, Telecommunications Services Covered by the Agreement* (visited Nov. 4, 1997) <<http://www.analysys.co.uk/products/regulat/wto/telecoms>>.

### 1. *Radio*

Radio broadcasting was the first electronic information technology that significantly affected mass political action. Franklin Roosevelt, Churchill, Hitler and Mussolini all understood and used this potential. Originally organized on a national or regional basis, use of higher frequencies led to significant use of radio as a propaganda tool during the Cold War. Radio Free Europe and Voice of America are examples. A significant reaction to this phenomenon was the widespread practice of jamming by both Soviet and U.S. interests during this period.<sup>8</sup> The jamming technology was developed as a way of limiting the transborder effects of undesired information dissemination through radio.

### 2. *Television*

Television broadcasting is more powerful than radio because it provides visual as well as audio signals, but the technology is inherently short range.<sup>9</sup> Transborder issues have involved adjacent countries only, although the use of television within national markets to impact rulemaking decisions through political advertising, lobbying, and political organization has been profound. Its use in adjudication is almost nonexistent,<sup>10</sup> but one could argue that television is used as an enforcement tool through public service ads that promote compliance with rules and specific decisions. Cable television has the potential of extending the geographic reach of broadcast television, but relies on physical infrastructure that is easily controlled at national boundaries. There is, thus, no reason to suppose that cable television is a significant independent tool for international law and institutionalization.

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htm>; *WTO Agreement on Basic Telecommunications Services* (visited Nov. 4, 1997) <<http://www.analysys.co.uk/products/regulat/wto/agreemens.htm>>; *Summary of Commitments Made by Signatories* (visited Nov. 4, 1997) <<http://www.analysys.co.uk/products/regulat/wto/summary.htm>>.

<sup>8</sup> See generally *Jamming—a technical response to a political problem* (visited Nov. 4, 1997) <<http://voa.his.com/jamming.html>> (description and examples of jamming VOA broadcasts).

<sup>9</sup> Television requires higher bandwidth than radio broadcasting. The higher bandwidth is available only at higher frequencies whose range is limited by the line of sight.

<sup>10</sup> But see Henry H. Perritt, Jr., *Video Depositions, Transcripts and Trials*, 43 EMORY L.J. 1071 (1994) (reviewing practice of videoconferencing and witness presentation through closed circuit television). Also occasionally in the adjudicatory context, television is used in aid of class action lawsuits.

Satellite television, on the other hand, has enormous potential to relax the geographic limitations of broadcast television,<sup>11</sup> and its potential is widely recognized and feared by totalitarian regimes and those wishing to protect indigenous cultures. While satellite broadcast so far has stayed relatively docile within constraints set by international treaty mechanisms,<sup>12</sup> perhaps because of the enormous economic barriers to entry into the business, legal uncertainties make investors and organizers of satellite television initiatives exceptionally fearful.<sup>13</sup>

### 3. *Internet*

The Internet is now fairly well known, though frequently misunderstood. The Internet is an international network of computers and computer networks connected to each other, sharing a common name and address space. One can communicate with any computer connected to the Internet simply by establishing a connection to another computer connected to the Internet. The Internet is not a corporation or administrative arrangement; it is a method for connecting computer systems, and the phenomenon of very widespread adherence to that method. There is no such thing as a president or board of directors of the Internet. The Internet's private, cooperative, virtual, and decentralized character makes it a tantalizing model for organizing other forms of human activity through technology.

The World Wide Web is a method for organizing information distributed across the Internet. It facilitates unbundling because editors or publishers interested in collecting resources related to a particular subject need not obtain or maintain actual copies of the resources' content; they can make their knowledge available simply by writing a Web document that contains pointers to the identified references and information about the sig-

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<sup>11</sup> See, e.g., *MED-TV: Kurdish Satellite Television* (visited Sept. 27, 1997) <<http://www.med-tv.be/med/www.intro.htm>> (describing a satellite channel that broadcasts to Kurdish communities all over Europe, North Africa, and the Middle East); *FAQ 1* (visited Sept. 27, 1997) <<http://www.chinese-channel.co.uk/faq1.html>> (describing a Chinese satellite broadcasting channel, including instructions for reception).

<sup>12</sup> See Council of the European Communities, Oct. 3, 1989 (directive on television without borders which aims to co-ordinate certain legal, regulatory and administrative aspects of Member-States on television broadcasting activities).

<sup>13</sup> See *The International Impact of MED-TV* (visited Spring 1996) <<http://www.med-tv.be/med/www/impact/intro.htm>> (explaining that the Kurdish satellite television broadcasting operations is an exception. It stimulated considerable pressure to halt Med-TV transmission from Turkey on the governments of Britain and Belgium resulting in raids on MED-TV facilities).

nificance of the resources. The clearest example is a typical law review footnote or citation in a legal brief. One can make the case or statute cited to available simply by pointing to it in the brief or law review article, and a user reading the brief or law review article can retrieve the full text pointed to simply by clicking on the footnote or citation. Because the Web unbundles the elements of information products it greatly reduces the cost of publishing and accessing information in electronic form.

What about the Internet distinguishes it from other information technologies and media? The Internet has inherently global reach, and thus is unlike television, telegraph, and telephone, and more like short wave radio. It has both the one-to-one characteristics of telephone and telegraph and the one-to-many characteristics of television and radio and thus is both a conversational and a mass medium.

Because of its packet switching rather than circuit switching character, it is far more difficult to impose physical border controls on the Internet than on other terrestrial wire-based or terrestrial microwave-based technologies.<sup>14</sup>

But the most important differentiating characteristic of the Internet is its extremely low barriers to entry. Because it uses other underlying physical communications infrastructures, a new Internet enterprise need not build a radio transmitter, string wire, or lay cable. All it takes to be an Internet publisher is a \$2,000 personal computer and a \$12.95 per month subscription to an Internet service provider. All it takes to be an Internet service provider is about \$50,000, most of which goes for labor costs and a high bandwidth connection between the terminal server and router into the larger Internet. This is far less than what it takes to become a radio broadcaster, a print publisher or a telephone service even when there are no regulatory barriers to entry into those industries. Moreover, every user of the Internet is also a potential supplier of content; the Internet does not have the economic asymmetry of the radio or television technologies, where it is very cheap to receive information, but very expensive to broadcast it.

Finally, because of the way the Internet was developed, it has its own culture, which mistrusts traditional geographic, legal and political institutions. The Internet culture is quick to embrace new ideas for govern-

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<sup>14</sup> Nevertheless, border controls on the Internet are not absolutely impossible, as Singapore and China are proving. See generally Henry H. Perritt, Jr., *Packet Borders* (visited 1996) <[http://www.vcilp.org/vls/student\\_home/courses/computer-law/BORDERS2.HTM](http://www.vcilp.org/vls/student_home/courses/computer-law/BORDERS2.HTM)> (note on enforcing borders through Internet Protocol routers).



ance—as long as they do not suggest intrusion by traditional political institutions. There was nothing like this in the early days of telephony or radio or television broadcasting. The net culture can exert an influence of its own in shaping new political and legal institutions.<sup>15</sup>

The Internet is a revolutionary phenomenon. It is not just a technology, but a way of organizing and connecting human activity, which emphasizes decentralization, specialization, and global cooperation. It is not merely a means for facilitating existing market and political institutions, but a way of redefining them altogether. The Internet is a new kind of market. It can be an electronic town hall in which rules are made, or an electronic courthouse in which disputes are decided. Unlike traditional sovereign states which are tied to geographic boundaries,<sup>16</sup> the Internet is inherently global and indifferent to geographic political boundaries. Its international character facilitates the development and extension of international political and legal institutions. The evolution of the Internet as a set of virtual legal institutions, as a market, and as a political entity, has enormous implications for the evolution of international law.

The Internet stimulates, as well as shapes, new legal institutions. International law must deal with the Internet, with a world in which the markets operate instantly to afford a choice among every single producer of a good or service, one in which new products are popularized and purchased through World Wide Web advertising and salesrooms, and one in which “virtual firms” are organized, raise capital and coordinate production entirely through the Internet. In this world, new monetary systems operate through cybermoney on the Internet, potentially freeing capital markets. Such markets create new interdependencies, in which the costs of war and social unrest are greater. Economics always drives politics, and the same technologies that make markets more efficient also can make democracy

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<sup>15</sup> Such a role is roughly analogous to the role played by the scientific community in ending the nuclear arms race and opening up the Soviet Union. Furthermore, this role may be analogized to the building of new international institutions by the merchant culture in the middle ages, including not only the trading system itself, but also the Law Merchant, admiralty, and commercial law as substantive bodies of law.

<sup>16</sup> See *Seventh International Conference of American States, Montevideo, Uruguay, December 3-26, 1933*, Convention on Rights and Duties of States, art. I, reprinted in 28 AM. J. INT'L L. 52, 75 (Supp. 1934) (“the state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states.”).

more general through markets serving as a conduit for the spread of democracy.

### *B. How Does the Internet Threaten Intermediaries?*

The Internet already is reorganizing political interaction because it makes new forms of political intermediation possible. New forms of political intermediation threaten old forms.

The Internet's revolutionary potential arises from its enabling of new forms of intermediation. In this respect, it is qualitatively different from television. Television exposed masses to information, thus diluting the control of some traditional political intermediaries, but it did not make major new forms of intermediation possible. The Internet is different. While it permits anyone with a PC and a \$12.95 a month connection to access anything in the world, it is not yet and may never be a mass medium. Instead, it is a technique for organizing those with shared interests. It permits members of relatively specialized diaspora to find each other anywhere in the world. It permits those affected by apparently innocuous legislative proposals to discover the threat and organize their opposition. It permits existing interests to focus and strengthen their activities (e.g., to oppose an Internet access charge proposal before the FCC or to promote environmental protective measures).

Political intermediation in complex societies has long been a source of challenge. That has been true for several thousand years, as Plato, Aristotle, Rousseau, Locke, and a host of other political philosophers have struggled to define institutional structures and political and legal process to determine the boundaries of public consent and the public interest. The Internet threatens existing political intermediaries because it provides new channels between sources of information and ordinary members of the public. No longer must a citizen depend on a newspaper or a television network to learn about a president's latest announcement, the citizen can get the announcement directly and immediately from the White House World Wide Web site. No longer must a lawyer wait for legal publishers to make the text of a new legislative act available; the lawyer may get it immediately and directly from the Thomas World Wide Web site at the United States Congress. No longer must the process of galvanizing public support for new political initiatives through the electoral process depend on political parties and speeches by candidates at rallies or expensive political advertising on television; now not only the candidates, but also affected interests can mobilize their past and future constituencies through the World Wide Web and e-mail.

Intermediaries in modern societies take various forms. Some, such as parliaments, are explicitly political. Some, such as stock exchanges, are private and focused exclusively on economic relationships. Some, such as newspapers and television stations, are private and focus on a combination of economic and political transactions. The Internet threatens all of them.

The Internet threatens civic institutions such as the press, old interest groups, and professions (including the bar). It threatens the press because it lowers the cost of functions that the press performs. No longer does ownership of a printing press or a corporation employing reporters and editors give one exclusive control over distribution of promotion. Now anyone with a personal computer connected to the Internet can "publish" information to the world. The Internet threatens established interest groups because it makes their techniques of recruitment, organization, and maintenance of membership solidarity less relevant, as new factions within old organizations can spring into life more easily and challenge the value of the old organizations in the minds of their members. It challenges professions because it makes possible new kinds of affiliations between individual professionals, thus jeopardizing the relevancy of old firms of affiliations such as law firms and accounting firms, while also enabling new kinds of client relationships.

The Internet also threatens market institutions such as stock exchanges. The possibility of selling securities directly over the Internet makes specialists on the New York Stock Exchange less relevant and thus undermines the power of the exchange as a means of regulating securities markets. Because it makes possible new kinds of payment mechanisms,<sup>17</sup> it threatens the role of banks and existing financial networks.

These changes affect the role of the state itself.<sup>18</sup> Historically, the state had a monopoly on two important functions.<sup>19</sup> It protected nationali-

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<sup>17</sup> See Henry H. Perritt, Jr., *Legal and Technological Infrastructures for Electronic Payment Systems*, 22 RUTGERS COMPUTER & TECH. L. J. 1 (1996).

<sup>18</sup> I appreciate this insight from my colleague, Joseph W. Dellapenna, offered in a faculty colloquium on an earlier draft of this article.

<sup>19</sup> "National sovereignty is the undivided power of a people and their government within a territory, and a nation draws on that power when it acts in relationship to other nations. The sovereign power does not depend on a particular form of internal or domestic governmental organization. Thus, regardless of how power is organized and divided within a nation's territory, inherent in national sovereignty are the overarching rights of a nation to defend itself from outside threats, to act in relation to other nations, and to secure its territory and assets." See generally, *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 315-18 (1936)

ties and their cultures from foreign intrusion and it organized markets. Since information technology makes it feasible to organize new legal institutions to protect human rights including nationality rights, the first role of the state diminishes in relative importance. Information technology increases the globalization of markets, making the state's role in organizing markets less essential as well. As the European Union has matured, producers in the Netherlands look less to the Hague and more to Brussels to protect them against unfair competition from Sweden or Spain. The result is a relative diminution in the saliency of the Dutch government as a protector against market abuse and a commensurate enhancement of European Community institutions.

The citizens of Yugoslavia shared two things. They all were Slavs, and they had been under foreign rule by Austria-Hungary and the Ottoman Empire for 400-500 years. Yugoslavia protected them from foreign domination. When it became apparent to Slovenia and other Yugoslav republics that they could get from the European Union all the economic benefits formerly available only from the state of Yugoslavia<sup>20</sup> they began to think about seceding. The thought spread, and Yugoslavia fell apart.

In a larger sense, the Internet threatens traditional political intermediation because it threatens governmental control. Not only do the civic and market institutions lie at the heart of political organization (political parties are one kind of interest group, and much regulation is carried out through market organizations), but the Internet also directly challenges governmental control over information and political affiliation.

No longer can totalitarian regimes or plotters of military coups ensure themselves a safe environment by controlling the newspapers and the television stations. As the collapse of the Soviet empire, the failure of

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(explaining that the United States' power to act as a sovereign nation is defined "not in the provisions of the Constitution, but in the law of nations"). From the sovereign's power to protect itself is derived its power to exclude harmful influences, including undesirable aliens, from the sovereign's territory, *id.* at 318; *United States v. Montoya de Hernandez*, 473 U.S. 531, 544 (1985), as well as its power to prohibit the export of its currency, national treasures, and other assets. *United States v. Oriakhi*, 57 F.3d 1290, 1296-97 (4<sup>th</sup> Cir. 1995) (upholding border search that revealed heroin in outbound container).

<sup>20</sup> SUSAN L. WOODWARD, *BALKAN TRAGEDY: CHAOS AND DISSOLUTION AFTER THE COLD WAR* 97 (1995) (stating that Slovenian moves to independence from Yugoslavia accelerated after 1985 with increased opportunities for trade, finance and political association with Western Europe); *Id.* at 158 (stating that eventual membership in EU was one of driving forces behind Yugoslav conflict).

the military coup in Russia, the siege of Sarajevo, and the continued voice of Serbia's Radio 92, show, the word leaks out through e-mail and the Internet regardless of what is on state television or the front page of the party newspaper.

The Internet as a new publishing medium has huge implications for a free press. Progress toward democracy depends on a free and independent press. Given the demonstrated ease of blocking traditional broadcast and print technologies, a free and independent press increasingly draws on new information technologies, particularly the Internet.<sup>21</sup>

The current struggle in Serbia reflects the role of the Internet in promoting a free press. The Internet has played an essential role in circumventing the Serbian Government's suppression of freedom in the media.<sup>22</sup> The voice of opposition is heard on the streets of Belgrade daily as opposition leaders fight the current government's refusal to recognize the elections of November 14, 1996. The Serbian government sought to stifle this message by shutting down traditional media such as newspapers, television and radio. For example, B92, the popular Serbian opposition radio station, was shut down by the government and other communications were jammed daily. But when these traditional media outlets were jammed, the Internet freely relayed media reports to the world. It did so not only through the Web and e-mail—largely text-based applications; it also allowed distribution of audio files containing content and programming ultimately disseminated to the general public by local radio and television stations. It exposed the suppression of individual communication and revealed the overt governmental effort to invalidate the will of the Serbian people. As the Serbian experience shows, the Internet permits underground political movements to flourish more easily because of its distributed decentralized technology, which makes it more difficult for censors to find bottlenecks essential for censorship. But for the Internet, lack of freedom in the media would have

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<sup>21</sup> Governments also recognize its potential. The government of North Korea, well known for its totalitarian inclinations, recently established a Web site. See *Korean News* (visited Nov. 5, 1997) <<http://www.kcna.co.jp/>>.

<sup>22</sup> Although the focus of this article is Europe, it is fair to mention China and Singapore in the context of governmental efforts to control new media. China shut down television for 12 hours after the conflict at Tiananmen Square. Faxes to the outside world continued for a while, but gradually came under governmental control. E-mail through the Internet continued unabated. Singapore, famous for a while in 1996 for channelling all Internet communication through one router, relaxed controls in early 1997, while posting restrictive rules for Internet use. See *Sing. Broadcasting Authority, Internet Content, Guidelines* (visited Sept. 28, 1997) <<http://www.gov.sg/sba/netreg/annexc.htm>>.

subverted the democratic process for which the opposition leaders are fighting.

In Serbia and elsewhere, emerging opposition groups are using the Internet as a tool of organization, enhancing their ability to organize political operations, improving the dissemination of information to activists and to the voting public while circumventing the government operated media outlets. The Internet facilitates the creation of a campaign network of activists. The opposition can create an e-mail list of supporters to receive the daily campaign message. Those supporters can then take that message to the streets of the towns and villages in which they reside. This human network of supporters, linked by the Internet, easily extends beyond geographic boundaries that prevent person-to-person organizational efforts.

The outputs of the Internet are not only informational. Like other communication and transportation technologies, they change the way in which tangible activities can be organized, making it possible to alter production and distribution of goods, as well as to raise armies in new ways.

Some observers infer from these phenomena that political intermediation is dead, and that the Internet is launching a new world in which town hall mass democracy will be the only form of governance for the entire world. Such an inference is naive in the extreme. All the Internet does is make it possible for people to be "present" virtually without having to be present physically. It does little by itself to shape group dynamics in desirable directions, or to make large assemblies more capable of dealing with a vast array of issues, some of which are matters of passion only for certain members of the assembly. The imperatives of specialization and delegation will continue to operate in the new technological environments as well as in the old. Town hall democracy is not always effective, regardless of the technology used. Demand for intermediation functions will not evaporate.<sup>23</sup>

More, not less, hard thinking about political intermediation is appropriate. What will the press function look like when governments and political opponents can make their views available directly to the public on the Internet; reporters can publish their stories directly to the public without sending them through editors; the World Wide Web performs the printing, sorting, binding, and distribution functions with miniscule cost, thereby ensuring that it will eventually supplant the printing press, the folder, the binder, and the delivery truck? What happens to the function of the story

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<sup>23</sup> See ROBERT DAHL, *POLITICAL THEORY, AND THE VICIES OF MASS PLEBISCITES*.

conference, the make-up editor, and the editor at the daily newspaper? What happens to the role of the television network anchorperson as someone who sorts a thousand events and tells us what we want to pay attention to and helps us understand them?

What will interest groups, political parties, and personal election campaign organizations look like under the influence of the Internet and the World Wide Web? Will reduced costs for launching political movements make more Lawyers for Human Rights, American Civil Liberties Unions, Friends of the Earth, Common Causes and Amnesty Internationals spring into life, or will it result in so many narrowly focused, uncompromising specialized interest groups—as in the 44 political parties in the initial run up to Bosnian elections—that it frustrates rather than facilitates choice?

What happens to the role of the lawyer, the judge, and of other professional cadres or elites who now mediate between the law and the people? New information technologies affect the way that clients obtain access to lawyers, the way that lawyers represent clients before courts and other institutions, and the way that lawyers do research to support advice to clients. The Internet affects the way that lawyers think, and law schools increasingly embracing the Internet and other information technologies, teach their students how to think like lawyers.

One clear example of these new forms of political intermediation is the growing influence of nongovernmental organizations (NGOs). NGOs have “grown spectacularly,”<sup>24</sup> and exercise major influence in the formulation of international law and policy, especially in the human rights and environmental fields.<sup>25</sup> NGOs provide independent sources of information to be used by official organizations, evaluate and assess state compliance

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<sup>24</sup> ABRAM CHAYES & ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS* 250 (1995).

<sup>25</sup> See generally Steve Charnovitz, *Participation of Nongovernmental Organizations in the World Trade Organization*, 17 U. PA. J. INT’L ECON. L. 331 (1996) (explaining how NGOs represent particular interests in international controversies); Michael H. Posner & Candy Whittome, *The Status of Human Rights NGOs*, 25 COLUM. HUM. RTS. L. REV. 269 (1994) (explaining role of NGOs in promoting human rights); Gregory W. MacKenzie, *ICSID Arbitration as a Strategy for Leveling the Playing Field Between International Non-Governmental Organizations and Host States*, 19 SYRACUSE J. INT’L L. & COM. 197 (1993) (explaining how arbitration designed for investment disputes can allow NGOs to obtain meaningful relief against corrupt state that frustrate humanitarian food distribution); A. Dan Tarlock, *The Role of Non-Governmental Organizations in the Development of International Environmental Law*, 68 CHI.-KENT L. REV. 61 (1992).

with international regimes, provide technical assistance to developing countries to enable them to participate in treaty negotiation and administration, and perform mediation and facilitation services.<sup>26</sup> “Where there is noncompliance, they are key to public exposure, shaming, and popular political response. In a real sense, they supply the personnel and resources for managing compliance [with international treaties and “regimes”] that states have become increasingly reluctant to provide to international organizations.”<sup>27</sup>

This burgeoning array of NGOs is the one element of the system that is not even in theory subject to governmental control. They define their objectives, generate resources, and make commitments through their own internal processes. They have their own vision of compliance that may or may not coincide with that of the parties. They remain free to critique or attack the regime managers, national or international. It is therefore not surprising that they are not already appreciated by the states and international organizations that have official responsibility for managing the [treaty] regime.<sup>28</sup>

As explained elsewhere in this article, and emphasized by recent commentators,<sup>29</sup> the Internet enormously facilitates the functioning and therefore the power of NGOs.<sup>30</sup>

Mass communication technologies such as the Internet are already widely recognized as important political tools in the NGO community, especially the environmental community. They reduce the transaction costs of discovering common concerns, crystallizing positions, aggregating interests, and organizing entrepreneurship and maintenance. In other words, the Internet facilitates political action. The literature of collective action<sup>31</sup> and

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<sup>26</sup> CHAYES, *supra* note 24, at 251.

<sup>27</sup> *See id.*

<sup>28</sup> *Id.*

<sup>29</sup> *See* Mathews, *supra* note 1, at 50 (arguing that national governments are losing autonomy and sharing power with businesses, international organizations, and nongovernmental organizations).

<sup>30</sup> *Id.* at 63 (“As the computer and telecommunications revolution continues, NGOs will become more capable of large-scale activity across national borders.”).

<sup>31</sup> *See* MANCUR OLSEN, *THE LOGIC OF COLLECTIVE ACTION* 125-31 (1971).



of public choice<sup>32</sup> emphasizes the role that transaction costs play in developing interest groups and therefore the role they play in determining which political views and interest get presented effectively. Internet technologies change the transaction costs.

Under the Dayton Accords, NGOs have played a major role in rebuilding Bosnia and in building a Rule of Law. In some areas of Bosnia NGOs are more active and command more resources and political influence than international and national governmental organizations, and surely more than the Bosnian government.

As NGOs become the most effective way to mobilize narrowly focused interests in negotiation of treaties, and detecting and punishing non-compliance, the relevance of traditional state institutions diminishes further. Better understanding of the NGO intermediation phenomenon is therefore appropriate.

Of course the Internet's potential is not entirely in favor of peaceful international institutions. The Internet promotes political organization. Because it lowers barriers to entry, it makes it feasible to organize smaller or narrower groups. It thus can become a force for polarization, doing more to facilitate organization of neo-Nazi and extreme nationalist groups than broader international constituencies for peace. Conversely, the self-consciousness of early Internet designers and participants was noted in the analysis of how the Internet differs from other information technologies. This self-consciousness can make cyberspace advocates an effective interest group in their own right, thus influencing the process of rulemaking, not only through technology, but also through the force of their opinions.<sup>33</sup>

Moreover, the mere possibility of political institutions at the state level becoming less important does not mean that their importance *necessarily* will diminish. There is a growing realization in the minds of opinion leaders and ordinary citizens that globalization of markets is not an unmixed blessing. George Soros recently wrote that civil society is not necessarily achieved by complete *laissez faire* abandonment of all the soci-

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<sup>32</sup> See JAMES M. BUCHANAN & ROBERT D. TOLLISON, *THEORY OF PUBLIC CHOICE: POLITICAL APPLICATIONS OF ECONOMICS* (1972).

<sup>33</sup> In this regard, it is notable that the author participated in two independent conferences on Internet regulation over the week of Thanksgiving, 1996. Both were heavily populated by Internet advocates, who out-talked more traditional regulatory experts and in the end, forced conclusions toward self-regulation and relative abstention of traditional legal institutions with respect to Internet phenomena that were characterized as "misuse" of the net by everyone except the net aficionados.

etal decisions to free markets.<sup>34</sup> Government and law also have a role to play, and an ideological purity in pursuit of capitalism can be as bad as an ideological pursuit of Communism, and almost as inimical to the goal of a civil society.<sup>35</sup> Journalists William Greider and Robert Kuttner have opined similarly in recent books.<sup>36</sup>

Closely associated with perceived costs of undue reliance on open markets is the fear of losing national identity and other cultural values. These concerns animate French opposition to the rush to embrace the Internet and justify the Chinese position on human rights, to give just two examples of a widespread phenomenon.<sup>37</sup>

That these concerns exist does not determine the nature of intermediation. It does, however, raise the question, "what kind of Rule of Law?," even as former Communist countries commit themselves to develop a Rule of Law. That question relates to substantive law regulating markets and to the configuration of legal institutions. Both substantive law and the architecture of legal institutions change the relative political power of various elites and interest groups, thus profoundly affecting the shape of political intermediation. Through this mechanism, the Internet changes the nature of intermediation indirectly and defensively as political forces erect new institutional mechanisms to protect against perceived capitalist abuses in global markets.

### III. Frameworks: Legal, Political and Intellectual

As the previous section argued, the revolutionary potential of the Internet does not make all human knowledge about politics irrelevant. Human beings have been building political institutions, struggling to accommodate competing human aspirations and to resolve disputes for thousands of years. What they have learned in the course of their development about political and legal process is not swept away by the introduction

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<sup>34</sup> George Soros, *The Capitalist Threat*, THE ATLANTIC MONTHLY, Feb. 1997, at 45.

<sup>35</sup> *Id.* at 53. Soros argues that Russia's system of "robber capitalism" may drive the Russian people to embrace a charismatic leader promising national revival at the cost of civil liberties. *Id.*

<sup>36</sup> See WILLIAM GREIDER, *ONE WORLD, READY OR NOT* (1997); ROBERT KUTTNER, *EVERYTHING FOR SALE* (1997). But see Paul Krugman, *We Are Not the World: Blame Politics, Not Global Markets, for a Nation's Economic Woes*, N.Y. TIMES, Feb. 13, 1997, at A33.

<sup>37</sup> Roger Cohen, *For France, Sagging Self-Image and Esprit*, N.Y. TIMES, Feb. 11, 1997, at A1.

of the Internet or any other technology. Political theory and rules of thumb for shaping legal institutions have not suddenly become irrelevant. Rather, the mature student asks simply whether different, and perhaps better, answers to age-old questions now are possible because of specific changes in cost, immediacy, and long distance participation—changes wrought by the Internet and related technologies. It is that mode of analysis that the third current, discussed below, is meant to encourage.

Political theory accepts the importance of international institutions as frameworks for international affairs. While realists emphasize the anarchic character of relations among unitary states, therefore denying the effect of norm-based international law, they nevertheless accept the possibility of institutions, including legal institutions, as instruments of state power.<sup>38</sup> Institutionalists in international relations emphasize the influence of institutional arrangements, but still view states as the only relevant units of interaction.<sup>39</sup> Liberalism is an evolving alternative that is normative and also probes within the shell of the state, considering international relations as influenced by domestic political dynamics and the interaction of groups, constituencies and political entrepreneurship across state boundaries.<sup>40</sup>

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<sup>38</sup> Anne-Marie Slaughter, *Liberal International Relations Theory and International Economic Law*, 10 AM. U. J. INT'L L. & POL'Y 717, 721-22 (1995) (explaining realism as dominant theory of international relations for two millennia). "Both Realists and traditional international lawyers agree that the primary actors are states, and define states as monolithic units identifiable only by the functional characteristics that constitute them as states. Neither would take account of domestic political ideology or structure, or of the multiplicity of sub-state actors that determine state policy at the domestic level." *Id.* at 723.

<sup>39</sup> *Id.* at 724-25 ("all international lawyers are Institutionalists"). See also Robert O. Keohane, *AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY* 7 (1984) (describing realist and institutionalist perspectives).

<sup>40</sup> Slaughter, *supra* note 38, at 727-28 (crediting Andrew Moravcsik). "Where Realists view states as 'opaque single units,' Liberals begin with individuals and groups operating in both domestic and transnational civil society. These are the primary actors in the international system. State behavior is in turn determined not by the international balance of power, whether or not mediated by institutions, but by the relationship between these social actors and the governments representing their interests, in varying degrees of completeness. State preferences are derivative of individual and groups preferences, but depend crucially on which individuals and groups are represented. Finally, the outcome of state interactions is a function, at least in the first instance, not of relative power capabilities, but of the configuration and intensity of state preferences." *Id.* at 728. [footnote references omitted]. This article, while focusing on international law and thereby reflecting an institutionalist perspective, emphasizes the capacity of information technology to revolu-

International law, informed by the institutionalist and liberalist schools of international relations theory, provides a language for talking about frameworks for political interaction, for Rule of Law, interstate dispute resolution, and collective security. The Internet has a role to play in this effort, by providing virtual libraries, case management and electronic publishing capabilities for existing institutions, and by facilitating the globalization of markets. More profoundly, the Internet makes new types of institution possible.

The Internet and international law thus can become partners in shaping new forms of sovereignty. International law will crystallize norms of human rights, forms and procedures for interstate dispute resolution, and possibilities for new collective security structures.<sup>41</sup> The Internet will provide the mechanisms for giving these ideas substance in the activities of real people, channeling public opinion and the market interactions.<sup>42</sup> International law and political science's institutionalism and liberalism movements have enhanced appeal because of threats to the structures on which realism was built.<sup>43</sup>

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tionize the way political interaction occurs, thereby embracing the liberalist perspective. Keohane distinguishes between the inside-out (liberalist) and outside-in (realist and institutionalist) viewpoints. Keohane, *supra* note 39, at 25 (explaining need to simplify system conceptualization by treating states as units).

<sup>41</sup> The U.N. Charter envisions force as a last resort, emphasizing greater reliance on other means of resolving international disputes. It thus reinforces the development and improvement of interstate dispute resolution mechanisms. Furthermore, the U.N. Charter should also embrace collective security arrangements because they represent peaceful mechanisms for enhancing security and make the use of force on a large scale less likely, while channeling occasional small scale applications of force through U.N. Security Council approval.

<sup>42</sup> "Even the most powerful states find the marketplace and international public opinion compelling them more often to follow a particular course." Mathews, *supra* note 1, at 50.

<sup>43</sup> This article's focus on international law is unabashedly institutionalist in its international relations perspective, while seeking to explore the relationship between international law and political phenomena best explained by realist perspectives. But as noted *supra*, the analysis of political intermediation currently reflects the Liberalist perspective. "[R]ealism, liberalism, and institutionalism [are] the 'three principal schools of international relations theory . . .'" 17 MICH. J. INT'L L. 411, 430 n.86 (quoting Slaughter, *supra* note 40, at 718). "Slaughter defines institutionalism as a theoretical perspective reflecting 'the belief that 'rules, norms, principles and decision-making procedures' can mitigate the effects of anarchy and allow states to cooperate in the pursuit of common ends . . .'" *Id.* (quoting Slaughter, *supra* note 40, at 724-25). "She classifies the U.N. Charter and

### A. *Themes and Currents*

Three legal and political currents have emerged from the search for a New World Order to replace the Cold War. First, former communist countries seek to replace one-party authoritarianism with a Rule of Law and a Civil Society.<sup>44</sup> Second, the world community, especially the West, has sought new interstate dispute resolution mechanisms to deal with the larger universe of disputes produced by and between (and sometimes within) fragmented political entities. Third, new collective security structures are being designed to contain violence provoked by unresolved disputes and to enforce decisions made by international institutions dealing with Rule of Law and interstate disputes. "In an ideal system of collective security, the aggression by any state against another is to be resisted by the combined action of all other states."<sup>45</sup> Collective defense protects a group from

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its collective security system as belonging to institutionalism rather than liberalism . . . . [T]he very ideas of international organization and collective security form key parts of the liberal tradition of thinking about international relations. Slaughter's own definition of liberal internationalism includes 'effective international organization.' I see "institutionalism" as part of the liberal tradition rather than an entirely different theory. Slaughter acknowledges that her use of institutionalism differs from other international relations scholars, like Robert Keohane, who place institutionalism within the liberal tradition." *Id.* (citing and quoting Slaughter, *supra* note 40, at 724 n.25). Professor Anne-Marie Slaughter Burley has been particularly active and articulate in exploring the relationship between international law and theories of international relations. *See* Slaughter, *supra* note 40; Anne-Marie Slaughter Burley, *International Law and International Relations Theory: A Dual Agenda*, 87 AM. J. INT'L L. 205 (1993); Anne-Marie Slaughter Burley, Book Review, 86 AM. J. INT'L L. 415 (1992) (reviewing LOUIS HENKIN, *CONSTITUTIONALISM, DEMOCRACY, AND FOREIGN AFFAIRS* (1990)).

<sup>44</sup> Rule of Law is not universally admired. Muslim societies and China reject certain aspects of the initiative, especially those associated with human rights, as Western ideas, ill suited for other cultures. *See* SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* 57-62 (1996) (criticizing advocates of universal approaches). Rule of Law also can have different meanings. Richard H. Fallon, Jr., "The Rule of Law" as a Concept in Constitutional Discourse, 97 COLUM. L. REV. 1 (1997). Professor Fallon, Jr. explores four different conceptions of Rule of Law: (i) historicist, (ii) formalist, (iii) Legal Process, and (iv) substantive. *Id.* at 5. He concludes that the most useful understanding of a Rule of Law combines aspects of all four conceptions. *Id.*

<sup>45</sup> Sean D. Murphy, *The Security Council, Legitimacy, and the Concept of Collective Security After the Cold War*, 32 COLUM. J. TRANSNAT'L L. 201, 252 (1994) (defining collective security).

outside attack; collective security protects the members of a group from each other.

Even for Western Europe, security has not become an obsolete concern, replaced with economic integration. Chancellor Kohl cautioned, "Who among us five years ago would have believed that the Balkans would have fallen so rapidly into fratricidal war, to ethnic hounding, to rape, murder and death?"<sup>46</sup> Indeed German reunification was facilitated by keeping Germany in NATO, reducing potential threats from an unanchored unified Germany by keeping it "tied down" in a multilateral institutional Web.<sup>47</sup>

Building a structure for peace in the new Europe, one containing a reunified Germany and the new democracies of the former Eastern Bloc, requires not only eventual economic integration through the European Union, a Rule of Law supported by the Council of Europe, and dispute resolution mechanisms through the Organization for Security and Cooperation in Europe; it also requires an intraregional security framework, focused on the premise of collective security.<sup>48</sup> The Czechs, Poles and Hungarians are as worried about Germany as about Russia; the Croats and Bosnians obviously are worried about Serbia and vice versa. Collective security, focused inward, is an important institutional response.

The three currents overlap. Rule of Law and interstate dispute resolution complement each other when nationalities are dispersed across state boundaries, as are the Serbs, Croats, Hungarians, Russians, Albanians and Muslims, among others. Rule of Law in Romania assures Hungarians living in Romania of fair treatment. Interstate dispute resolution is necessary if Hungary encourages ethnic Hungarians to secede from Romania—or Serbia encourages ethnic Serbs to secede from Bosnia. The same currents overlap when failure of Rule of Law in one country, such as Bosnia, pro-

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<sup>46</sup> Robert J. Art, *Why Western Europe Needs the United States and NATO*, 111 POL. SCI. Q. 1, 2 (1996) (quoting Kohl as reported by Alan Cowell, *Kohl Casts Europe's Economic Union as War and Peace Issue*, N.Y. TIMES, 17 Oct. 1995), available in <<http://epn.org/psq/robtart.html>>. Robert J. Art is director of the International Studies Program at Brandeis University.

<sup>47</sup> *Id.* at 12, 19 (explaining French motivation to involve Germany in European security structure of some kind, whether WEU, Eurocorps or NATO).

<sup>48</sup> Regionalism has consistently been a part of the collective security idea under the United Nations system. See Murphy, *supra* note 45, at 282-83 (explaining relationship between regional and global approaches to collective security under U.N. Charter).

duces refugee flows that burden another, such as Germany.<sup>49</sup> In sum, the burdens on interstate dispute resolution become greater when Rule of Law is inadequate to resolve disputes within states.

Interstate dispute resolution and collective security overlap when peaceful dispute resolution fails, as it did in the former Yugoslavia. Security frameworks such as NATO or U.N. peace enforcement contain violence produced by disputes across state boundaries. More ambitiously, security frameworks come into play to give “teeth” to Rule of Law and interstate dispute resolution institutions, as has been demanded with respect to NATO stabilization force’s (SFOR) execution of arrest warrants for war criminals in the former Yugoslavia.

### *B. International Law’s Role*

Maturation of the human rights movement and its crystallization in a growing number of treaty instruments has transformed international law from a body of norms and procedures confined to relations between traditional states into a body of law that is also available to address relations between individuals and states,<sup>50</sup> making international law a repository for political power lost to traditional sovereign states. That transformation makes international law available as a source of Rule of Law<sup>51</sup> and makes it more flexible in shaping institutions for interstate dispute resolution and collective security.

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<sup>49</sup> Similarly, breakdown of Rule of Law in Albania has burdened Italy with an influx of refugees.

<sup>50</sup> In this respect, human rights law is to traditional international law as liberal international relations theory is to realist international relations theories. *See generally* Slaughter, *supra* note 38 (liberal international relations theory considers international affairs not only in terms of relations among states, but also in terms of the international political dynamics of states).

<sup>51</sup> Rule of Law is not, strictly speaking, mostly a matter of international law. Rather, it focuses on the establishment of a civil society *within* states. But establishment of a Rule of Law draws on common international themes of constitutionalism, and draws directly on international human rights law. International human rights law supplies both substantive norms; *see* International Covenant on Civil and Political Rights, Dec. 16, 1966, arts. 1-12, 999 U.N.T.S. 171, 173-76 [hereinafter ICCPR] and process norms; *see* ICCPR art. 14, thereby strengthening the Legal Process and substantive conceptions of Rule of Law identified by Professor Fallon. *See* Fallon, *supra* note 44, at 18-22 (describing two conceptions).

Traditionally regulating only relations among states,<sup>52</sup> international law increasingly regulates relations between states and their citizens or subjects, through human rights law, and thus becomes available to shape Rule of Law domestically. Historically, public international law concerned only the relations among states, not between states and individuals. Traditionally, even those norms apparently relating to individuals, basically norms relating to treatment of aliens by states, were derivative of relations between the acting state and the state of whom the aliens were citizens. Human rights law is different.<sup>53</sup> It directly concerns itself with the relationship between a state and its own citizens.<sup>54</sup> And, because human rights norms are binding not only on states but also on individual actors, human rights law ultimately can concern legal relations between individual actors and individual victims. The human rights movement has reinforced constitutionalism, to create a body of law external to and higher than purely state law.<sup>55</sup>

Constitutionalism is probably the most prominent feature of Rule of Law initiatives in the former communist countries, including Russia. Constitutionalism envisions a source of law superior to ordinary law enacted by majorities in parliaments, perhaps dominated by a single party. The superior source of law is a written constitution and also, in virtually every former communist country, international human rights law. Described thus, constitutionalism is an idea not an institutional framework. The idea gains

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<sup>52</sup> Dualist theory, see MARK W. JANIS, *AN INTRODUCTION TO INTERNATIONAL LAW* 71 (1988).

<sup>53</sup> See generally Joseph W. Dellapenna, *Jurisdiction in Human Rights Cases: Is the Tel-Oren Case a Step Backward?*, 79 AM. SOC'Y INT'L L. PROC. 361 (1985).

<sup>54</sup> Hans Kelsen noted: "[T]o give the tribunal any substantial measure of jurisdiction over disputes between individuals and States . . . is the first effective step to the super-State." HANS KELSEN, *THE LEGAL PROCESS AND INTERNATIONAL ORDER* 27 (1935).

<sup>55</sup> See Gerhard Caspar, *European Convergence*, 58 U. CHI. L. REV. 441, 446 (1991) (predicting that constitutionalism in Eastern Europe will follow the American "higher law" of constitutions, which accompanied by judicial review by constitutional courts on the Austrian, German, and Italian model, impose a higher set of values to constrain domestic legislatures). Both constitutionalism and international law constrain political and legislative decisionmaking at the state level. Professor Perez extends constitutionalism to international federalism under implied amendments to the U.N. Charter. See Antonio F. Perez, *On the Way to the Forum: The Reconstruction of Article 2(7) and Rise of Federalism Under the United Nations Charter*, 31 TEX. INT'L L. J. 353, 375-76 (1996).



expression through constitutional courts, established everywhere (except for Estonia) throughout the region on the Austrian model.

To its body of individual human rights norms, and to the ideas of constitutionalism, international law is adding promotion of democracy, and increasing legitimating mechanisms to assure free and fair elections in new states. The human rights movement in international law also reinforces information technology's threats to sovereignty.<sup>56</sup> The principle of self-determination in international law<sup>57</sup> legitimates at least some of the nationalist self consciousness that finds voice through the Internet, and makes it difficult to reject the claims of any nationality<sup>58</sup> to secede and set up its own political units.

International law, even without going beyond its traditional focus on relations among states, provides much of the intellectual capital for new interstate dispute resolution ideas. Even as old political structures have disappeared, international law is maturing as a source of new stability in relations among new nationally oriented states.

Finally, international law is evolving to face the challenges presented by the growing need for collective security arrangements. It is the language through which new collective security arrangements are expressed and made predictable and accountable. It is crystallizing the grounds for intervention into affairs formerly the exclusive domestic province of sover-

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<sup>56</sup> Of course neither international law nor the Internet completely determines any of the three currents. There are important aspects of international politics, and domestic law in defining the currents. Nevertheless, international law's influence is profound in all three currents, and all three currents have the potential to redefine international law in important respects. *See generally* David P. Fidler, *Caught Between Traditions: The Security Council in Philosophical Conundrum*, 17 *MICH. J. INT'L L.* 411 (1996) (distinguishing "liberal internationalism," "liberal realism," and "liberal globalism"). Liberal internationalism emphasizes international organization as the most important means of maintaining international peace and security. *Id.* at 447. Liberal realism emphasized the balance of power, but acknowledged that international organizations can be useful in maintaining the balance of power. *Id.* at 448. Liberal globalism emphasizes economic interdependence, but welcomes international organization as a means of achieving economic ties. *Id.* at 448.

<sup>57</sup> *See* U.N. Charter art. 1, para. 2, art. 55; ICCPR, *supra* note 51, arts. 1-27; "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." ICCPR, *supra* note 51, art. 1, para. 1.

<sup>58</sup> Terminology regarding national or ethnic conflict is potentially confusing. "Nationality" is used in this article to refer to an ethnic group with national consciousness. "State" refers to a political entity.

eign states. It is expressing the justifications for use of international forces to execute arrest warrants from human rights tribunals such as the Hague War Crimes Tribunal.<sup>59</sup> It must legitimate OSCE involvement in local election controversies. International law and collective security institutions are interdependent. Collective security arrangements not only must be justified under international law; they reinforce international law and provide the "muscle" so that the coercive element Hans Kelsen claimed to be necessary for any legal system is more apparent in international law.<sup>60</sup>

The collective security framework envisioned by the U.N. Charter does not focus only on military force. Before the Security Council can authorize military force under Article 42, it must believe that measures authorized by Article 41 have proven inadequate or that they "would be inadequate."<sup>61</sup> Article 41 authorizes a variety of measures not involving the use of armed force, including "complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."<sup>62</sup> The language of Article 52 regarding regional arrangements for dealing with maintenance of international peace and security is not limited to military arrangements, and thereby impliedly encompasses economic sanctions. The same thing is true of Article 53's language, requiring the Security Council to utilize regional arrangements for enforcement action under its authority when "appropriate."<sup>63</sup> Whether the requirement under Article 51 for Security Council involvement in exercise of the inherent right of individual or collective self defense applies to economic measures taken in self defense is not entirely clear from the text. Whether the privilege of self defense extends to economic sanctions depends on whether economic sanctions are

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<sup>59</sup> "International law on intervention in internal conflicts or civil wars is uncertain and the subject of sharp debate." John F. Murphy, *Force and Arms in UNITED NATIONS LEGAL ORDER* 247, 265 (Oscar Schachter & Christopher Joyner eds., 1995). See also Anthony Lewis, *Force Backing Up Diplomacy*, N.Y. TIMES, Jan. 17, 1997, at A31 (reporting on speech by and interview with outgoing Secretary of State Warren Christopher, emphasizing appropriateness of modest sized American military forces to back up diplomacy, but saying that use of international peace enforcement forces to arrest those indicted for war crimes "is one of the prime issues to be addressed in 1997"). "There's a determined effort [in Washington now] to find a better method: a force supported by the international troops that would lead to the arrests." *Id.*

<sup>60</sup> See KELSEN, *supra* note 54.

<sup>61</sup> U.N. Charter art. 42.

<sup>62</sup> U.N. Charter art. 41.

<sup>63</sup> U.N. Charter art. 53, para. 1.

illegal under international law absent a privilege such as self defense. One author suggests a trend toward an international law norm prohibiting certain types of economic coercion, but there is hardly a consensus.<sup>64</sup>

Of particular importance in guiding the collective security current is defining an international police function with greater clarity. It is not enough for international law to define the circumstances under which international military forces such as NATO's IFOR or SFOR can be used to execute warrants and other processes of international tribunals. Those circumstances are reasonably well defined under the U.N. Charter, the statute and rules of the Hague Tribunal, and the language of the Karadzic and Mladic arrest warrants themselves; yet no arrests have occurred. More intellectual capital must be developed on what kinds of forces, under what supervision, should execute legal process in what range of circumstances.<sup>65</sup> All of the controversies that now swirl around extradition disputes must be addressed.<sup>66</sup>

It is not enough for international law to mature in a normative sense. International law functions through international legal institutions, and most of the success or failure of the New World Order depends on institutional innovation, and the Internet is central to that innovation.

#### IV. The Internet's Role

International law can use the Internet to help define and to deal with the New World Order. The Internet is the technological matrix for the three currents shaping the New World Order.

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<sup>64</sup> See Wallace F. Warriner, *The Unilateral Use of Coercion Under International Law: A Legal Analysis of the United States Raid on Libya on April 14, 1986*, 37 NAVAL L. REV. 49, 69 (1988) (characterizing international law's treatment of economic coercion). Another commentator suggests, without extensive analysis that economic sanctions are permissible only if privileged under the self defense norm. Domingo E. Acevedo, *The U.S. Measures Against Argentina Resulting from the Malvinas Conflict*, 78 AM. J. INT'L L. 323, 332 (1984) (articulating preconditions necessary to legitimate economic sanctions).

<sup>65</sup> See generally Jarat Chopra, *Achilles' Heel in Somalia: Learning from a Conceptual Failure*, 31 TEX. INT'L L. J. 495 (1996) (explaining how multinational military intervention can be successful if properly integrated with efforts to achieve political stability).

<sup>66</sup> See Jimmy Burns, *Extradition to Germany Is Challenged*, FINANCIAL TIMES, Jan. 17, 1997, at 12 (regarding refusal by Ireland and Britain to extradite Irish terrorist to Germany).

The possibilities can be understood more clearly, the questions made more concrete, by considering information technology's contributions to each of the three currents.<sup>67</sup> Moving from first to third represents movement from the narrowest view of the Internet as merely a collection of information technologies to a broader view of the Internet as an exemplar of a new type of human community, a novel framework for a New World Order and for international law. It also represents movement from the most immediate to the most revolutionary applications of the Internet. The three currents are not distinct; rather the second and third build on the first, and the third builds on the second.

In all of these currents the Internet is a medium for new forms of international law. The currents represent channels and structures for regional and global cooperation, giving direction to the evolution of existing international institutions such as constitutional courts, NATO,<sup>68</sup> the Organization for Security and Cooperation in Europe,<sup>69</sup> the International Monetary Fund,<sup>70</sup> the World Bank,<sup>71</sup> the World Trade Organization,<sup>72</sup> the International Court of Justice,<sup>73</sup> NAFTA, and the European Court of Human Rights. The Internet, by relaxing the strictures of time and space, can facilitate their development. In facilitating the development of these institutions, the Internet shapes the first (Rule of Law)<sup>74</sup> and second (inter-state dispute resolution) currents. In making possible entirely new international institutions and forms of political intermediation, the Internet shapes

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<sup>67</sup> Interestingly, after the author had developed these currents, he discovered that they correspond neatly to predictions another commentator recently made about the impact of information technology on international law. See John K. Gamble, *International Law And The Information Age*, 17 MICH. J. INT'L L. 747 (1996).

<sup>68</sup> See (visited Nov. 8, 1997) <<http://www.nato.org>>.

<sup>69</sup> See Ugo De Vito, *Switzerland - Member of the OSCE Troika 1995-97* (visited Sept. 28, 1997) <<http://www.fsk.ethz.ch/osce>>.

<sup>70</sup> See *International Monetary Fund* (visited Sept. 28, 1997) <<http://www.imf.org>>.

<sup>71</sup> See *The World Bank Group* (visited Sept. 28, 1997) <<http://www.worldbank.org>>.

<sup>72</sup> See *WTO OMC* (visited Sept. 28, 1997) <<http://www.wto.org>>.

<sup>73</sup> See *The International Court of Justice* (last modified March 6, 1997) <<http://www.un.org/Overview/Organs/icj.html>>.

<sup>74</sup> This corresponds to Gamble's example of improving the functioning of the World Court through information technology. See Gamble, *supra* note 67, at 780. The large number of Web sites cited in this article indicate the broad range of international legal materials already available on the Internet's World Wide Web.

the second and third currents.<sup>75</sup> In particular, the Internet changes the possibilities for mobilizing mass political support for economic sanctions and military intervention, a sine qua non for any practicable collective security mechanism.

It is important to understand that the Internet need not be either a global or a mass phenomenon for its influence on all three currents to be significant. The Internet can promote a New World Order regionally, within Samuel Huntington's "West" and not inter-civilizationally. Even when other information technologies such as direct broadcast television are more important than the Internet as mass communication media, the Internet may also have profound influence on the organization and behavior of crucial political elites.<sup>76</sup>

*A. Strengthening a Rule of Law Through Virtual Libraries, Case Management, and Electronic Publishing*

In the first current the Internet is a means to make existing public institutions more effective.<sup>77</sup> Using the Internet to make constitutional courts more effective has implications beyond simple improvements in efficiency, showing how human rights law can be harmonized and internalized into state legal systems, and how world opinion can become a practicable enforcement method. This current can hasten the harmonization of human rights law in an environment in which close to fifty constitutional courts, many coming from the civil law tradition, now are obligated to follow precedent from other national or international institutions applying common sources of human rights law. The current may have implications far broader than these particular institutions. Existing institutions such as the

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<sup>75</sup>This current corresponds to Gamble's use of information technology to accelerate multilateral negotiations. Gamble, *supra* note 67, at 784.

<sup>76</sup>See Huntington, *supra* note 44, at 59 (characterizing Ronald Dore as saying that higher communications density increases fellow feeling among diplomats, or maybe the middle class, or maybe even nations). Huntington argues that at most, new communications techniques will harmonize elites, and not the masses. One way in which the Internet affects the functioning of political elites is by facilitating the policy development process. Now, as the citations to Web pages for information by and about international organizations earlier in this article, especially those for the NATO Review, demonstrate, scholarly literature can be made available much more quickly and to a broader audience of students of public policy.

<sup>77</sup>"Effective" signifies improvements in democratization and legitimacy as well as improvements in efficiency. Often, efficiency conflicts with democratization and legitimacy. Transparency usually impairs efficiency, in the short run at least.

ombudsmen, strengthened by the Internet, may show how public opinion now can be a much more effective weapon in the arsenal of law enforcement because of easier access to underlying legal decisions and the empowerment of a decentralized web of specialists around the world to direct the attention of various constituencies to data, and to explain significance.

The first current obviously includes connecting the constitutional courts to the Internet. For these new instruments of constitutionalism, the Internet functions as a virtual library, as a case manager and as a medium for electronic publishing.<sup>78</sup>

The virtual library and electronic publishing functions are interdependent. The extent of the virtual library depends on the scope of electronic publishing of relevant materials. John Dawson in his classic, *THE ORACLES OF THE LAW*,<sup>79</sup> explained how the wide availability of legal texts promoted the unification of legal systems. The Internet, by making it easier for lawyers and different legal cultures to access information about other cultures, similarly promotes unification. Constitutionalism and human rights is ripe for that kind of unification, and the restricted set of authoritative texts—about a dozen new constitutions and three treaties<sup>80</sup>—and relatively limited output of specialized courts should enhance the feasibility of constructing a complete electronic information system encompassing all relevant precedent. There is at least the possibility that these institutions will develop a common case law, not necessarily in the *stare decisis* sense that a case from the Czech Republic will bind the Slovenian court, but in the sense that all of the state decisions within the United States make up a common case law. Such harmonization would make constitutionalism and human rights law a truly international set of norms rather than a patchwork differing from state to state.

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<sup>78</sup> Electronic publishing is considered in all three currents: in the first as a technique for improving the functioning of courts and other existing institutions, in the second as an example of the transformation of information markets, and in the third as an influence giving rise to new political intermediaries.

<sup>79</sup> JOHN P. DAWSON, *THE ORACLES OF THE LAW* (1968) (explaining importance of dissemination of legal texts and decisions through law reports). “One main theme that will recur throughout this study is that the reasoned opinion, issued by the judge as a function of his office, is modern product. I will also contend that the assumption by judges of a duty to publish their own official statements of reasons has transformed their relationship to other agencies for the declaring and making of law.” *Id.* at xii.

<sup>80</sup> The three treaties are the Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights, and the European Convention on Human Rights. The constitutions are those of the former Communist countries.

More generally, to work out Kennan's new structure for Europe,<sup>81</sup> national courts and legislatures must be tied to supranational ones; an ECHR decision or an OSCE finding cannot influence a national judge or legislator if he does not know about it. That is where the Internet comes in; it makes it easy for him to find such a decision.

A new international court, or a national one trying to enhance principled decisionmaking, need not have these aspirations frustrated by a poor traditional law library. A rich variety of national materials from the same country, national materials from other countries, and international materials from the ECHR are available through the Internet's World Wide Web. Access to them can be organized easily and cheaply by constructing specialized Web pages oriented toward the types of cases in the areas of law most frequently of interest to a particular tribunal.

The Venice Commission,<sup>82</sup> introduced *supra*, recognizes the potential of such an information infrastructure for the constitutional courts by publishing their opinions and developing a conceptual topology or thesaurus to index opinions according to their subject matter. ECEULnet seeks to ease the transition of the Venice Commission publishing activity to the Web.

The virtual library function also enhances legitimacy of the institutions using it. A controversial case by the constitutional court in the Czech Republic may be more difficult to vilify if it is virtually identical and decided the same as a case involving the same source of law decided by a constitutional court in Slovenia—if the analogous case is known and pointed out by the Czech judges.

The case management function permits documents filed anywhere to be available from everywhere the court desires. New constitutional courts need not establish regional court houses or be integrated with a hierarchy of trial courts in order to be accessible to individual claimants. Also, as in the case of the Constitutional Court in Bosnia, a case can be filed in Sarajevo and immediately be available to the three judges who maintain their offices in Brussels, Belgium, Lagos, Nigeria and Damascus, Syria. The case management function also permits confidential deliberations

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<sup>81</sup> GEORGE F. KENNAN, *AT A CENTURY'S ENDING: REFLECTIONS 1982-1985* 170 (1996).

<sup>82</sup> The European Commission for Democracy through Law (the Venice Commission) is an advisory body on constitutional law, set up within the Council of Europe.

among the judges, and conferences with counsel without all of them having to be in the same place at the same time.

Using the Internet in this fashion—to automate adjudication and to link it to an increasingly unified body of substantive law—does not require any change in the formal organic or procedural documents for the potential institutional users in Eastern and Central Europe. All that is necessary is to provide the hardware, Internet connectivity, and training to the institution and then to let the world community, particularly similar institutions elsewhere, and the human rights community know about the new source of information. Utility of electronic publishing, case management and virtual library functions can be enhanced by development of templates for similar Web pages, by software for case management, and by collecting and organizing pointers to virtual library material with appropriate reliance on substantive typologies and indexing arrangements.<sup>83</sup>

Electronic publishing is a tool to promote compliance as well as increasing efficiency and legitimacy. The Bosnian Ombudsman is a creature of the Dayton Accords,<sup>84</sup> and is the central feature of a rule of law with respect to human rights. Someone alleging a human rights violation may file a complaint with an ombudsman, triggering the ombudsman's duty to investigate. If settlement is achieved the ombudsman's job is complete. If it is not achieved, the ombudsman then can follow two courses of action. The ombudsman may publicize the human rights violation, seeking to mobilize domestic and world opinion to induce the offending governmental entity through political means to resolve the dispute and to mend its ways.

Inherent in the ombudsman tradition and nomenclature is the idea that informal means, particularly public opinion, can be an effective alternative to more traditional and formal court judgments and coercive enforcement and execution of them. That is where the Internet comes in. The Internet is a startlingly effective new tool for mobilizing public opinion through electronic publishing.

A finding of a human rights violation by the military police in Sarajevo or by irregular municipal police in Banja Luka can be made available

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<sup>83</sup> The Council of Europe's Venice Project has constructed a "thesaurus" that is a good starting point. CEECIL is working with constitutional courts to harmonize their indexing schemes with that of the Venice Commission.

<sup>84</sup> A similar office was established under the constitution for the Federation of Bosnia-Herzegovina, see Paul Szasz, *The Protection Of Human Rights Through the Dayton/Paris Peace Agreement on Bosnia*, 90 AM. J. INT'L. L. 301, 308-09 (1996), which bridges differences between Croat and Muslim nationalities within Bosnia.



to the world community simply by transferring one file to a computer in Bosnia, as long as that computer is connected to the Internet. Not only that, the vast network of interested nongovernmental organizations and human rights advocates around the world can focus public attention by adding their own indices, and analytical frameworks to raw material developed and published by the ombudsman. The need for translations into other languages need not delay publishing. The basic findings can be posted in the native language of the ombudsman with anyone else anywhere in the world performing the translation function through the World Wide Web.

Using the Internet to automate the Hague war crimes tribunal is advantageous, although the Internet cannot solve the most serious problems confronting the Tribunal. The international tribunal for the prosecution of war crimes in the former Yugoslavia—the “Hague Tribunal,” is a limited model for an international criminal court and enjoys growing support in the international law community.<sup>85</sup> For the Hague Tribunal as for other courts, the Internet and World Wide Web links can enable justices sitting in different countries to deliberate, can facilitate the acceptance and transfer within the court of documents pertinent to cases, and can provide for instant publication of court orders and opinions. In a general and indirect way, the Internet’s capabilities can assist the functioning of international criminal courts, like other legal institutions, thereby increasing the perceived legitimacy and the likelihood that national authorities will cooperate in their functioning.

But ultimately executive instrumentalities such as the police and SFOR in Bosnia must have the political will to execute arrest warrants issued by an international criminal tribunal.<sup>86</sup> The court itself can do little to overcome the power of those that provide sanctuary or otherwise prevent the apprehension of an international fugitive. That requires more fundamental international institutional development within the second (interstate dispute resolution) and third (collective security) currents.

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<sup>85</sup> Henry T. King Jr., *The Judgments And Legacy of Nuremberg*, YALE J. INT’L. L. 213, 220 (1997).

<sup>86</sup> Of course, information technologies can place some role in that enforcement process, for example by improving the efficiency with which writs of execution and warrants of arrest are managed, and by publicizing the existence of warrants to make it more difficult for fugitives to hide. See Peter Truell, *When High Fliers Become Frequent Fliers*, N.Y. TIMES, Jan. 16, 1997, at D1. “Because of technological advances in international police work—chiefly the explosive growth in computer data bases and the lightning-fast transmission of photos—those fugitives are finding that they can hide, but not run, at least not easily after the initial flight.” *Id.* at D1.

Electronic publishing, especially, is of profound importance in preserving a rule of law and enhancing democracy. Freedom of information is an essential feature of responsive government. In the past, freedom of information meant a right in the press and the public to obtain information on paper upon request. Now, freedom of information means more. It means the possibility of accessing virtually the entire stock of public information generated by governments at the click of a mouse button on an Internet client.<sup>87</sup> This is significant not only for the convenience of citizens and their representatives who can get specific information items much more quickly and cheaply. It also is significant for governments who can disseminate information much more cheaply. Now, even small countries like Croatia and Slovenia can expect their information resources to be widely available even though the market for government information from such small countries is likely to be too thin for traditional publishing initiatives. Because the Internet reduces costs, it lowers barriers to entry and makes it easier for even smaller bodies of information to be made available.

### ***B. Strengthening Interstate Dispute Resolution By Building Transnational Markets***

The Internet shapes the second current by strengthening private interstate dispute resolution mechanisms centered in markets. The Internet already is becoming a market: a market in which virtual business associations can be formed and operate, a product market in which new technologies embodied in new products could be sold to customers around the world, a financial market to facilitate the development of new kinds of money, monetary policy management and payment systems, and an information market in which electronic publishing flourishes.<sup>88</sup> Development of these markets relates to the evolution of a Eurocurrency and other regional or international financial mechanisms, and of international institutions such as the WTO, the WIPO and the World Bank.<sup>89</sup> The Internet also contributes to interstate dispute resolution by facilitating the erection of new trade-oriented private institutions that make, apply and enforce rules with impor-

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<sup>87</sup> See generally Henry H. Perritt, Jr., *Sources of Rights to Access Public Information*, 4 WM. & MARY BILL RTS. J. 179 (1995).

<sup>88</sup> This currently includes Gamble's second example, of using information technology to revolutionize the sources of international law. Gamble, *supra* note 67, at 782.

<sup>89</sup> "International financial institutions, too, have inserted themselves more into states' domestic affairs." Mathews, *supra* note 1, at 60 (noting trend toward attaching significant policy strings to financial assistance).

tant interstate implications. Collective security also is strengthened, through webs of commercial interactions that supplement military webs.

The Internet can be a product market in which new technologies embodied in new products (particularly including information products) can be sold to a world market. It can be a capital market in which new kinds of business associations are formed, financed, and managed. It can be a financial market for flows of new kinds of money, monetary policy management, and payment systems. It can be a labor market.<sup>90</sup>

The Internet's potential as a market will hasten development of international law and international institutions related to monetary, banking, and commercial regulatory functions.

Information technology is reducing all kinds of transaction costs for trade. Bill Gates writes that he launched the PC revolution as a response to the question "What if computing were free?" and embraced the Internet as a response to the question "What if communications were free?"<sup>91</sup> Of course neither computing nor communication can ever be completely free, and Bill Gates knows that. But the Internet does radically change transaction costs for most of the activities that occur in markets—organizing firms, advertising and promotion, shopping, sales transactions, production and delivery (of certain services and information products). As trade in services becomes relatively more important than trade in tangible products, the scope of electronic markets is potentially greater, encompassing actual delivery of the thing desired by the purchaser as well as advertising, ordering and payment. In principle, there is no need for any physical delivery or face-to-face contact to accompany travel agent services, legal services, financial services and certain forms of health care services.

Ronald Coase and many others<sup>92</sup> observed that changes in transaction costs alter the organization of economic activities.<sup>93</sup> Depending on relative transaction costs, coordination of economic activities may be performed by bureaucratic mechanisms of firms, or outside of those mecha-

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<sup>90</sup> See *INTRACOM'S President Mr. Socrates Kokkalis addressing speech at the informal EU Industry Ministers' Council in Hague* (visited Nov. 1, 1997) <<http://www.intranet.gr/newhome2/f20.htm>> (report on barriers to "telework" within Europe).

<sup>91</sup> BILL GATES, *THE ROAD AHEAD* 18 (1995).

<sup>92</sup> See generally Ronald H. Coase, *The Problem of Social Cost*, 3 J. L. & ECON. 1 (1960); Oliver Williamson, *Transaction Cost Economics: The Governance of Contractual Relations*, 22 J. L. & ECON. 233 (1979).

<sup>93</sup> Coase also argued that the role of law in regulating markets should be determined by the nature of transaction costs. Coase, *supra* note 92 at 27.

nisms by markets. Of course, the transaction costs of firms change as well as the transaction costs of external transactions in the market. It may be that the Internet will make "virtual business associations" sufficiently attractive that the boundaries encompassing "internal" markets may widen rather than narrowing.

Electronic publishing through the Internet can revolutionize markets even for products and services not actually delivered through the Internet. Such products and services can be advertised, compared with alternatives, bought, sold, guaranteed, and serviced, in many cases, through the Internet. There are opportunities to explore the limits of the Internet as a market for tangible products.<sup>94</sup>

The Internet improves market-related decisions by lowering the costs of market information. Such efforts improve information available to market decisionmakers, and thus improve market function. Tools could be made available through the Internet to interact with data made available from multiple sources through the Internet with the results made available through the same medium. Access to public information is part of this picture. No one would locate a new plant in a foreign country without finding out about competition, commercial law, taxes, liability rules, and labor law. Corporate registries, comparative analyses of commercial law, reports of decisions on liability claims, tax codes, and terms of labor agreements all are more accessible because of global markets for electronic publishing of legal materials.

Whatever the limits of the Internet as a market are for tangible products, they do not apply to financial and capital markets in the second current. Money *can* be delivered through the Internet. One of the great accomplishments of post World War II international diplomacy and law has been the design and operation of international financial institutions to moderate the effects of exchange rate fluctuations, manage payments deficits, and facilitate the handling of payments for commercial and governmental purposes that cross national boundaries. The International Monetary Fund, the World Bank, the European Bank for Reconstruction and Development, emerging Eurocurrency mechanisms, and elaborate, but less known, private banking settlement networks handle trillions of dollars in international monetary exchanges very effectively. Information technology always has been

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<sup>94</sup> One can be skeptical about the feasibility of selling consumer capital goods such as automobiles on the Internet. Nevertheless, one of the largest national realtors is allowing those shopping for a new home to do so over the Internet. See Coldwell Banker Corporation and Interrealty Corp., *Coldwell Banker Online* (visited Nov. 8, 1997) <<http://www.coldwellbanker.com>>.

important to payment systems. Already, much of the world's payments are made not by the physical exchange of a gold coin or a paper bank note, but by simple transfers of balance adjustments in computer databases.

"Wholesale" financial transactions long have been made through computer networks. Now, the Internet and the World Wide Web are about to take off as consumer marketplaces complete with payment systems. Merchants and customers are refining their preferences among a variety of recently available on-line credit card and cybercash payment systems.

Credit card and cybercash payments through the Internet raise a variety of interesting, but manageable, legal issues and some more profound policy questions with regard to banking regulation.<sup>95</sup> Regional and global payment mechanisms are essential to the stabilization of politics and diplomacy on regional and international levels.<sup>96</sup> Improvements and extensions in the flows of money permit the extension of commercial interdependence, which in turn creates disincentives to warfare, violence, and destruction. Furtherance of an Internet-based worldwide payment system extends trade and other economic interdependencies that already promote constructive behavior in a world community.

The Internet's potential to revolutionize markets has as many implications for world order as the changes in markets have in the past. In the past, increasing geographic scope of markets has put competitive pressure on traditional political units, forcing them to cooperate or to federalize if they wanted to regulate market transactions. The same pressures exist from internationalization of markets, whether because of the Internet or other underlying phenomena.

Healthy markets are inseparable from healthy political systems. That proposition was the motivating force behind establishment of the European Economic Community, the World Bank and the International Monetary Fund, three of the most successful international governance structures now in existence. Using the Internet as a new market to facilitate trade across political boundaries raises the costs of political disruption of those trade flows, and thus is an incentive to peaceful resolution of international political disputes. The second current thus enhances Rule of Law because merchants insist on a Rule of Law for predictable, fair competitive markets within states. The second current enhances interstate dispute reso-

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<sup>95</sup> See Henry H. Perritt, Jr., *Legal and Technological Infrastructures for Electronic Payment Systems*, 22 RUTGERS COMP. & TECH. L. J. 1 (1996).

<sup>96</sup> See George Soros, *Can Europe Work? A Plan to Rescue the Union*, FOREIGN AFFAIRS, Sept. 19, 1996, at 8.

lution because it forces development of private and commercially oriented mechanisms for resolving financial and trade disputes.

Samuel Huntington expresses doubt about whether expanding trade reduces conflict.<sup>97</sup> It may expand conflict, he says, and does nothing by itself to provide institutional mechanisms for conflict resolution through rulemaking, adjudication, or enforcement. Nevertheless, by expanding markets, the Internet can increase the potential of market forces to improve choice, and equalize bargaining power, therefore making it less necessary for there to be regulatory intervention.<sup>98</sup> When markets are expanded in scope, each consumer has available a wider range of alternatives and thus can “vote with his feet” changing from a disfavored supplier to one more favored. In this regard, the market can be an effective mechanism for regulation and thus at least to a limited extent an institution of international governance.

Increased interdependence through global markets encourages states to participate in rather than withdrawing from international legal and political structures. A state that rejects international norms faces economic isolation as a sanction. If it wishes to respond militarily, it must obtain hard currency to supplement its military resources, or it must become self-sufficient in the resources necessary for military effectiveness. The former is influenced by trade. The latter is burdensome and impossible for all but the largest states. In other words, globalization of markets increases interdependence and reduces economic self sufficiency for all states participating in the global markets. Reducing self sufficiency increases the need for collective security because no one state can provide for its security needs unilaterally. Security depends not only on keeping the markets healthy through more effective interstate dispute resolution for economic conflicts; it also encourages building new political structures for collective security.

### *C. Strengthening Interstate Dispute Resolution Through a Free Press and Other New Forms of Political Intermediation*

The Internet has implications for international dispute resolution in two other respects: increasing the flow of information about governments at all levels and by facilitating international rulemaking.

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<sup>97</sup> Huntington, *supra* note 44, at 218.

<sup>98</sup> *But see* discussion of political reaction to “robber capitalism” and globalization’s threat to local culture in the section on the third current.

By revolutionizing publishing, the Internet can and should play a significant role in opening up governments and making government information of all kinds more widely accessible to government officials, political parties, the press and the public. Electronic publishing contributes to the Rule of Law current by increasing international scrutiny of domestic conduct undermining Rule of Law, as merchants insist on predictability and conformity to general norms of commercial law.

The Internet threatens existing mechanisms of intermediation, but it also can be a source of new forms of intermediation. It thus should stimulate new inquiries into how mass opinion can best be translated into political decisions and action.

Beyond freedom of information, the Internet can strengthen international rulemaking. International law's greatest weakness as a comprehensive legal system is the manifest absence of any international legislature. While a variety of adjudicatory dispute resolution mechanisms exist for applying norms, no continuing mechanism exists for establishing norms. Instead, international norms are developed through practice under the concept of customary international law, and through negotiation of multinational treaties. The arrangements for negotiating treaties can benefit significantly from the Internet. This is one of the greatest potential contributions of information technology to interstate dispute resolution.

The utility of the Internet's virtual library, electronic publishing and case-management functions are not limited to adjudication and fact finding. They can be extended easily to aspects of international rulemaking in treaty making. Paul Szasz has dissected the treaty making process into five major and some twenty subordinate tasks or "stages."<sup>99</sup> Many of these can be sped up and made more effective by use of the Internet. In the Initiation stage, assessing the likelihood of success and developing estimates of schedule and costs can be enhanced by virtual libraries and by electronic surveys of member governments—a modified case management activity. In the second stage, when the text of a multilateral treaty is formulated, preliminary studies of the state of law can be enhanced by virtual library functions, the completed studies and analyses can be distributed through electronic publishing, and group drafting can use the same deliberation tools used by judges of constitutional courts to draft opinions. When governmental consultations are necessary, drafts can be made available through electronic publishing, and comments received through secure deliberation software, part of case management. In the adoption stage, deliberation

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<sup>99</sup> PAUL SZASZ, *GENERAL LAW MAKING PROCESSES IN UNITED NATIONS LEGAL ORDER 70-94* (Oscar Schlachter & Christopher Joyner eds., 1995).

software can increase the options for consensus formation and voting. During the ratification (“entry into force”) stage, virtual library functions can ease the burdens of smaller less developed countries, and can organize reservations made by individual states. Once the treaty enters into force, placing treaty depositories on the Internet—an electronic publishing function—improves compliance.<sup>100</sup>

By reshaping political dynamics and political intermediation, the Internet facilitates creation of new institutional mechanisms for interstate dispute resolution as well as for Rule of Law. The Internet is inherently democratic in its character, making mass participation easier, facilitating the election process and election monitoring, and making a range of parliamentary functions more efficient and responsive. It is likely to enlarge the envelope of institutional possibilities for interstate dispute resolution, while facilitating more direct and focused involvement by constituencies in interstate disputes—sometimes, no doubt, making the disputes more difficult to resolve. The NGO phenomenon is at the center of the international institutional shake out. NGOs, organized and expressing themselves through the Internet, already have great influence on the treaty negotiation process. As the Internet blurs the lines between domestic interest groups and international NGOs further, it strengthens the ability of individual and small-group interests to be expressed and given fulfillment through international institutions.

Not only that, it makes it easier for NGOs to influence domestic politics. It is no accident that China’s growing restrictions on political freedom in Hong Kong have limited the role of international organizations in politics. International organizations, especially in the human rights area, already play an active role in creating embarrassment for existing domestic political institutions.

The Internet’s role in electoral politics need not stop with NGOs and party organization. Elections also can be held electronically.<sup>101</sup> Permitting registration and balloting through the Web can reduce fraud, reduce costs, facilitate monitoring by international organizations, make it easier to disseminate materials to inform voters about their choices, including graph-

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<sup>100</sup> Szasz observes that the availability of treaties is woefully inadequate. *Id.* at 107. Dawson, *supra* note 79, observed that legal publishing enhances observance of the published legal norms.

<sup>101</sup> See generally ANTHONY CORRADO & CHARLES M. FIRESTONE, EDs., *ELECTIONS IN CYBERSPACE: TOWARD A NEW ERA IN AMERICAN POLITICS* (1996) (report by the Aspen Institute Communications and Society Program and the ABA Standing Committee on Election Law (1996)).



ical and audio clips where literacy is a problem, and enfranchise nationality diasporas, potentially reducing isolation in countries like Serbia or Bosnia where many of the best-educated and moderate citizens fled war or nationalist extremism. Already, nationalist consciousness in Armenia, Croatia, Hungary, and elsewhere, encourages giving the franchise to members of the relevant diaspora. That internationalizes political decisionmaking within a state. As the Internet makes it easier to franchise absentee voters, it strengthens this phenomenon.

#### *D. Enabling Collective Security Arrangements*

The virtual library and electronic publishing functions discussed in connection with the Rule of Law current also support collective security arrangements by providing the adjudicatory triggers for use of coercive measures and by facilitating international databases and publicity important to tracking down international fugitives. More fundamentally, the Internet can strengthen collective security arrangements by making it easier to build support for intervention, and by improving the effectiveness of economic sanctions and multinational military forces.

##### *1. Building Support for Intervention*

The Internet and the Web enlarge the possibilities for international intervention in local crises because they make it easier for the international community to understand humanitarian, refugee and other security threats resulting from the crisis. International political consciousness, of course, is a function of more local political interaction. While it is useful for the study of international law and international relations to consider states as fungible and impermeable units of interaction, the position of states and their political will is determined by internal interaction of interest groups and national political systems.<sup>102</sup>

The Internet and the World Wide Web fundamentally change the possibilities for mobilizing these interest groups and focusing their power on political choices taken by individual states. Erosion of the U.S. commitment in Vietnam, Lebanon, and Somalia resulted from the impact of messages conveyed by modern information technology to domestic U.S. political audiences. Support in the U.S. and elsewhere in the west for intervention in Bosnia was driven largely by scenes of ethnic cleansing and

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<sup>102</sup> See Celestine Bohlen, *Italian Coalition Faces Revolt on Plan to Send Troops to Albania*, N.Y. TIMES, Apr. 9, 1997, at A5 (describing dissension in Italian parliament over government's commitment to contribute 2,500 Italian soldiers to U.N.-approved international stabilization force in Albania).

civilian targeting in Dubrovnik and Sarajevo. Pressure for intervention in Albania similarly is influenced by information technologies capacity to connect national or local political audiences around the world with events far away. No longer is the choice of intervention solely the province of political elites and professionals in diplomacy; now, because of information technology it is a mass political question. Because the Internet eases access to the channels of communication to these world wide audiences, it fundamentally alters the balance of power between different political actors.

The Internet makes it easier to organize and maintain interest groups, both within and across state boundaries. This has large implications for collective security because it contemplates more robust interaction between those seeking external intervention and those opposing it. The Armenian diaspora is generally perceived as largely determining U. S. policy toward Armenia, and the Croatian diaspora is credited with shaping German policy toward Slovenia and Croatia after they seceded from Yugoslavia. Information technology makes such phenomena far more likely, under the third current, and thus can reinforce maintenance of and action by collective security institutions. The resources necessary for collective security will be state-based for the foreseeable future.<sup>103</sup> Fulfilling collective security commitments requires political will, derived in turn from domestic political support in the states with the resources. Public reaction to the siege of Sarajevo, to ethnic cleansing in Bosnia, and to Serbian suppression of municipal election results are early examples.

The Internet can strengthen collective security because it makes international norms more prominent in the rhetoric that underpins any collective security initiative.<sup>104</sup> Information technology, especially the Internet makes it easier to refer to international norms because it makes them more accessible to those wishing to make such reference. It also makes political audiences more receptive because they know about the international norms, which are more accessible. Norm-based rhetoric and information technology supporting the rhetoric is more important in the absence of the bipolar political structures defining the Cold War because the absence of those

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<sup>103</sup> See generally Anthony DePalma, *Canada Accuses 47 of Misconduct in Bosnia*, N.Y. TIMES, Jan. 18, 1997, at A6 (reporting that Canada's "65,000 strong army [has] shifted [its] military mission . . . from national defense to [international] peacekeeping.").

<sup>104</sup> See Martti Koskenniemi, *The Place of Law in Collective Security*, 17 MICH. J. INT'L L. 455, 468-69 (1996) (explaining role of rhetoric linked to norms of international law in shaping responses in security council and in domestic support for those responses).

structures makes norm-based decisionmaking more likely than traditional interest-based patterns of decisionmaking.<sup>105</sup>

Even when other information technologies such as direct broadcast television are more important than the Internet as mass communication media, the Internet may have profound influence on the organization and behavior of crucial political elites.<sup>106</sup> The crucial political elites in many instances of international intervention are not the traditional state-based ones, but newer, private, interest-based ones.

## 2. *Mobilizing and Enforcing Economic Sanctions*

Earlier portions of this Article explain that collective security arrangements should, under the U.N. Charter, address economic sanctions as well as military intervention. The Internet already has demonstrated its capacity to empower economic sanctions of an informal nature in connection with the boycott against Myanmar (the former Burma).<sup>107</sup> Student groups have organized a boycott of Pepsi Co. to force it to withdraw from Myanmar.<sup>108</sup> They also are pressuring their universities to disinvest in Myanmar.<sup>109</sup> The Free Burma Coalition lists corporations withdrawing from Burma, reports on an Australian tourism boycott and a European Union call for an embargo, and summarizes AFL-CIO political initiatives to impose sanctions on Burma.<sup>110</sup>

These are examples of private initiatives to impose economic sanctions for human rights violations. The Internet's role in organizing such movements is further evidence of its ability to diminish the exclusive role that official political institutions have in conducting foreign policy. At the same time, the Myanmar boycott also shows how the Internet can be used to reinforce official policies. The Myanmar boycott after all reinforces an official policy of the European Union. As state institutions become more fully aware of the Internet's potential as a tool of foreign policy, they can use it to increase popular and corporate support for economic sanctions.

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<sup>105</sup> *Id.* at 468 (explaining changes in dynamics of security council decisionmaking after the end of the cold war).

<sup>106</sup> See Huntington, *supra* note 44.

<sup>107</sup> See generally William Glaberson, *A Guerilla War on the Internet*, N.Y. TIMES, Apr. 8, 1997, at B1.

<sup>108</sup> See Marjorie Kelly, *U.S. Companies Doing Business in Myanmar are Pro-test Targets* (May 27, 1995) <<http://danenet.wicip.org/fbc/files/article20.html>>.

<sup>109</sup> *Id.*

<sup>110</sup> See *Free Burma Coalition* (visited Nov. 4, 1997) <<http://danenet.wicip.org/fbc/freeburma.html>>.

The Internet also can be a tool for economic sanctions in another sense. Article 41 envisions interruptions of “telegraphic, radio, and other means of communication” as a type of economic sanction.<sup>111</sup> As more economic activity moves to the Internet, cutting off access to the Internet can itself be an important sanction. While the decentralized character of the Internet ordinarily makes it difficult to isolate a geographic area from the Internet, ironically, a state’s effort to limit the flow of information and thus to limit development of a civil society may make it easier to impose sanctions on it by cutting it off from those parts of the Internet it wishes to access.

### 3. *Facilitating the Effectiveness of Multinational Forces*

The Internet also is a tool of pacification. It permits multinational intervention forces to open up some channels of communication, and to monitor others.

Developers of military doctrines agree on two propositions relevant to the Internet’s role in facilitating the effectiveness of multinational forces. First, they agree that multinational operations are likely to become the norm for military action.<sup>112</sup> Second, they agree that communications command and control is a central challenge to effective organization of multinational forces.<sup>113</sup> The Internet has an important role to play as a conceptual model for communications and information management in multinational operations. The premise that the Internet is important does not mean that military commanders and their troops should use exactly the same Internet resources and World Wide Web applications that may be useful to civilian legal institutions or newspaper editors. Instead, the Internet is important because of the abstractions that define it:

- nonproprietary standards for interoperability
- international scope of adherence to these standards
- common name and address space
- decentralized information management
- distributed computing functions
- implementation on top of generic telecommunication systems.

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<sup>111</sup> U.N. Charter art. 41.

<sup>112</sup> UNITED STATES DEPARTMENT OF THE ARMY, THE ARMY IN MULTINATIONAL OPERATIONS, FIELD MANUAL 100-8 [hereinafter FIELD MANUAL].

<sup>113</sup> *Id.*

Collectively, these features mean that participants in multinational military operations can achieve compatibility and interoperability of communication systems more easily, and that they can focus their energies on mission specific applications, taking for granted other aspects of the overall information management system, which are supplied by other participants in the Internet. For example, the designer of a battle space visualization application can rely on basic packet switched networking layers, connection management layers, security features, end user client software, database management software, and name and address management features designed and implemented by others. He need not necessarily worry about distributing client software, if he can write battle space visualization features that work through existing Web browsers—a reasonably likely possibility.

The point is not that the Web browser of the future will be profoundly different from today's Netscape Navigator; rather the point is that tomorrow's browser is likely to be standard and to have a modular relationship with other parts of the overall data network and information management system just as today's browser does.

But these concepts of information system and computer network design originated in the national security arena. Military planners do not need civilian Internet enthusiasts to introduce them to these concepts. The point is that these concepts have a special role to play in new environments for military operations.

In the past, military command control and communications professionals could perceive as much as management information specialists in a large corporation. They could design an information management system from the ground up, using proprietary techniques for systems tailored to the needs of a particular country's armed forces without having to worry much about what other countries or corporations were doing. That is no longer in the military setting any more than it is in the corporate setting. Compatibility and interoperability of communications and information systems are crucial to the success of multinational military operations.<sup>114</sup> The Internet model provides a foundation of interoperable communications and information exchange functionality for multinational operations. It exists independent of any particular coalition, and military planners need not devote their energies to designing and implementing those aspects already provided by the generic Internet.

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<sup>114</sup> *Id.*

Further, effective multinational peace enforcement requires effective interaction with NGOs<sup>115</sup> and private volunteer organization (PVOs). As the U.S. Army's Field Manual 100-8 notes:

The primacy of political considerations in multinational operations demands a recognition of the importance of non-military organizations. NGOs and PVOs are frequently on scene before military forces and are willing to operate in high-risk areas. They will most likely remain long after military forces have departed. Short-notice deployments and dynamic environments intensify the requirement to clear command structure and formal relationships with NGOs and PVOs. The sheer number of lives they affect and resources they provide enables the NGO and PVO community to wield a great deal of power. Because of their capability to respond quickly and effectively to crisis, NGOs and PVOs can lessen the civil-military resources that a commander would otherwise have to devote to an operation. In the final analysis, activities and capabilities of NGOs and PVOs must be factored into the commander's assessment of conditions and resources and integrated into the selected course of action.<sup>116</sup>

Multinational military intervention has a stronger political dimension than conventional war operations. Often, the political will within a particular country to intervene is fragile. The relatively small scale of crisis triggering intervention make it easy for opponents to question whether the crisis implicates essential security or economic interests of that country. In addition, the multinational nature of operations means that political will must be managed across multiple political systems, possibly resulting in the political will of the overall operation being driven by the political will of the least enthusiastic partner. This is a least common denominator effect that must be recognized. U.S. military doctrine recognizes this reality:

Information operations must carefully account for how the GIE [Global Information Environment] affects operations. Public perception can put political pressure on nations to modify their participation in the effort. Many countries and their political decision makers do not get the same amount

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<sup>115</sup> The pervasiveness and growing influence of NGOs was considered in Part IV.C *supra*.

<sup>116</sup> FIELD MANUAL *supra* note 112.

of information because they do not have the same communication technology that is available to the US. As a result, their frame of reference may be what they see on television. Information operations must expand the MNF frame of reference both technologically and intellectually.<sup>117</sup>

During the period of U.N. supervision of international military forces in Bosnia, one problem undermining the effectiveness of the intervention was "information laundering." Interested parties and their sympathizers planted information intended for new broadcast by western media outlets to shape western political opinion.<sup>118</sup>

Older media such as television obviously play a role in conditioning relevant political perceptions. Improvements in satellite communications technology make it easier for television to carry up to the minute coverage of developments in the area of multinational intervention. But the Internet significantly enlarges sources of information and commentary and dissemination mechanisms into relevant political communities. Organizers of intervention that focus only on television and print media and ignore the Internet are likely to be surprised by Internet-stimulated changes in the political climate.

Effective coupling of political factors to military and security needs requires that operational managers of multinational intervention forces make effective use of Internet resources to communicate information from their own perspectives. They should have Web sites and facilitate access by the press and other intermediaries to basic Internet resources so the appropriate story can get out. The military public information function in multinational operations must shift significantly towards the Internet as a channel.

Moreover, there are two audiences that must have access to Internet based resources: the foreign press, crucial to conditioning political support for participation by coalition partners; and local press and other political intermediaries, crucial to shaping the local environment within which intervention pursues its goals.

Finally, the Internet is an important source of intelligence. Because of its decentralized character and low barriers to entry, access to the Internet

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<sup>117</sup> *Id.*

<sup>118</sup> Timothy L. Thomas, *United Nations Crisis Management in Bosnia: Problems and Recommendations* ¶ 40 (Dec. 19, 1994) <<http://leav-www.army.mil/fmso/geo/pubs/unbos.htm>>.

by intelligence components of the multinational intervention force makes available to the intelligence operatives many more small sources of intelligence than otherwise would be possible. As noted earlier in this paper, the Internet's decentralized character makes it difficult for government censors to control what gets disseminated, and this also can enhance the quality of intelligence by freeing intelligence analysts from a single point of view imposed by censors of a particular government or opposition group.

Virtually all participants agree that the combined joint task force (CJTF) concept approved in a meeting of defense ministers during the spring of 1995 is a sound concept and that it supports further development of a command structure for NATO appropriate for new security situations.<sup>119</sup> CJTF headquarters concepts are being developed primarily for non-article V operations "including operations in which nations outside the alliance could participate."<sup>120</sup> Members of the Partnership for Peace who are not members of NATO may in the future participate in the full range of NATO's new missions.<sup>121</sup>

NATO's commitment to support OSCE and NATO-authorized peace keeping and peace enforcement activities required development of new command and control concepts, particularly including adaptation to the right of each member nation to decide whether or not to participate in the given operation, possible need to integrate non-NATO forces, and additional logistic, engineering and communications support needed to operate differently from NATO infrastructure.<sup>122</sup> CJTFs are based on multinational tri-service headquarters capable of incorporating elements from NATO and non-NATO nations who are not part of integrated NATO force structures.<sup>123</sup>

NATO's new mission envisions tighter integration with political initiatives including preventive diplomacy, conflict prevention, post-conflict rehabilitation and regional security cooperation. In this regard, NATO planners embrace a close working relationship with the Helsinki organization, the Organization for Security and Cooperation in Europe. OSCE qual-

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<sup>119</sup> Sir Richard Benson, *The Brussels Summit: A Military Perspective*, 42 *NATO REVIEW* 7, ¶ 4 (Feb. 1994) <<http://www.nato.int/docu/review/article/9401-2.htm>>.

<sup>120</sup> *Id.* at ¶¶ 10-11.

<sup>121</sup> *Id.* at ¶ 13.

<sup>122</sup> *Id.* at ¶¶ 8-9. NATO is not alone in confronting the need to assemble forces on an ad hoc basis. See S. C. Res. 1101, U.N. SCOR, 52<sup>nd</sup> Sess, March 28, 1997, U.N. Doc., S/Supplements (1997) (authorizing multinational stabilization force in Albania); see also Bohlen, *supra* note 102.

<sup>123</sup> Benson, *supra* note 119 at ¶ 10.



ifies as a regional arrangement under chapter 8 of the United Nations charter and is developing a security model for the twenty-first century.<sup>124</sup>

#### 4. *Rethinking the Role of Professions*

Modern states and modern markets depend on key professions to organize their activities, maintain their legitimacy, and shape their institutional forms. The legal profession plays such a strategic role with respect to political institutions such as constitutions, legislatures, and courts. The accounting profession plays such a strategic role with respect to markets, especially capital markets, by regularizing and monitoring the quality of essential information necessary for national economic decisionmaking. The Internet enables—and perhaps requires—re-engineering of both professions. Virtual law firms are possible as individual lawyers can collaborate easily without being in the same suite of offices. National and international law practices become easier to build because clients anywhere in the world can contact a lawyer once they find his Web page.

Accountants face similar new organizational possibilities, and they also have new techniques available for financial reporting, including the possibility that those desiring financial information about a firm, simply can access the firm's own database on an ongoing basis.

Because the scope of activities potentially “belonging” to the professions is changing, the professions' hold on these activities may become diluted. Non-lawyers may perform activities that supplant those historically performed only by lawyers, and the same thing may be true with financial matters historically controlled by the accounting profession.

Moreover, technology is revolutionizing professional education in law schools and business schools. Professional education is one way that any profession defines itself; law school is not only a way of imparting information about legal doctrine and procedure to would-be lawyers, it also is a socialization process and a rite of passage that shapes professional attitudes and cultures.

It is far from clear how the possibilities for interaction between technology and the professions will become reality. It is clear, however, that the possibilities exist. One who would determine the future of the legal or accounting profession, and one who would wish to ease the paths toward democratization, rule of law, and market economies must mobilize technol-

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<sup>124</sup> See also Flavio Cotti, *The OSCE's Increasing Responsibilities in European Security*, 44 *NATO REVIEW* 7 (Nov. 1996) <<http://www.nato.int/docu/review/article/9606-2.htm>>.

ogy's potential for reshaping the professions and professional education so that their goals are enhanced rather than undermined.

Lawyers and accountants are not alone—journalists also face redefined futures. Journalism as a distinct profession could become extinct, as self-publishing replaces publishing through intermediaries. That, however, is unlikely for the reasons discussed earlier in this article—the role in selection and quality control that journalism always has played will continue to be necessary. But new journalists, like new lawyers and new accountants, must have different skills. All must understand the Internet as much as they understand television broadcasting and newspaper publishing technologies. They must be willing to collect information in new ways, to organize it in all of the ways made possible by Web technology, and to distribute it into new markets made accessible by the Internet.

New skills will be needed by all new professional intermediaries. For example, both Web publisher and constitutional lawyer will need to understand the law as well as Web-based techniques for linking legal texts pertinent to the same doctrinal issue. Political organizers will need to understand not only how to put material on a Web site, but also may need to understand enough about the packet switching protocols that underlie the Internet to avoid jamming and “border controls” by totalitarian regimes.

## V. Conclusion

The Internet is part of a revolution that is sweeping away old political and economic structures. The revolution involves creation of a Rule of Law, evolution of interstate dispute resolution institutions, and invention of new collective security frameworks. The revolutions can produce a world in which new ombudsmen and new constitutional courts protect against national violations of internationally recognized human rights by mobilizing world opinion. The revolution may produce a world in which world markets operate instantly to afford a choice among every single producer of a good or service—paid for through new cybermoney systems on the Internet—a world in which political institutions are kept in check by an open information marketplace. It may produce a world in which mass democracy becomes a reality while avoiding the curses of ethnic cleansing.

The revolution's work is most visible in Eastern and Central Europe, where the end of the bipolar world order presents some acute challenges. International law is struggling to supply a new world order, one including Rule of Law in former Communist countries, new mechanisms for interstate dispute resolution, and new collective security frameworks. In revolutionary times, even more than in ordinary times, it is essential to

think about the new order, in that region, even more than elsewhere. The Internet is part of that new order.

Information technology will reduce traditional state sovereignty regardless of American policy. American policy can make a big difference, however, in realizing the potential of the Internet to reshape the world order in constructive directions. For that to occur, American leadership must not only embrace and educate others about technology's potential; it must also recognize the currents of international law and international relations through which technology benefits can be realized. Not only must America's existing commitment to rule of law and interstate dispute resolution continue and be strengthened; America must also be more articulate in stressing the need for strong collective security arrangements.

American leadership is crucial to realizing a new world order and a new Europe. America's role as an honest broker of differences among Western European states has been important in shaping the response to German reunification and to the fragmentation of Yugoslavia. The American Internet has become the dominant computer networking technology and everyone looks to American experience in developing their own visions of Cyberspace. American intellectual capital is necessary to shape Rule of Law, interstate dispute resolution, and collective security through the Internet.