

# INTERNATIONAL SOCIETY AND EXCLUSION

## Outlaw States and the Question of Legitimacy

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Tytti Erästö, PhD Student, University of Tampere, Finland;  
visiting research student, University of Wales, Aberystwyth, the UK

### **Introduction**

For the past 15 years or so, no speech or document dealing with global security has been complete without mention of terrorism, proliferation of weapons of mass destruction, environmental degradation or international crime. There is, however, one member in this “new” threats’ category whose definition has been more controversial internationally, namely, a certain group of states situated outside the bounds of international community and its rule of law. This group has been labelled by the US administration as ‘rogues’, ‘outlaws’, ‘renegades’, ‘pariahs’ and ‘the axis of evil’, to mention but some expressions. Although the ousting of Saddam Hussein's regime in Iraq eliminated the prototypical rogue state, the label has prevailed to this day in references to Iran, North Korea and Syria. The most topical issue in this regard is the American missile defence project, which has been justified by the threat posed by Iran and North Korea.

The internationalisation of this originally American concept makes it of interest to English School and other approaches that conceptualise international relations through the notion of international society. In this paper, I will look at the outlaw state concept and related policies in the light of international society’s history of exclusion, and also consider the international legitimacy and potential implications of those policies. This is done by combining English School theory to other theoretical approaches, most notably the recent work by Gerry Simpson as well as the classical writings by Carl Schmitt. A central question emerging from the discussion concerns the tension between the idea of universal international society and the exclusive notion of an outlaw state.

## ‘Anti-Pluralism’ in the 19<sup>th</sup> Century: Standard of Civilisation

As Ian Clark argues, the criteria of rightful membership in international society have historically involved not only issues of formal, legal or diplomatic recognition but also more subtle and informal aspects<sup>1</sup>. While the Peace of Westphalia had emphasized the concept of equality, exclusionary practices were reintroduced in the 19<sup>th</sup> century with the distinction between small and great powers. By the late 19<sup>th</sup> century, as secular liberal ideas were gaining ground in Europe, full membership of the new non-European and non-Christian states was denied based on the so-called standard of civilization.<sup>2</sup> As Hedley Bull wrote in 1984, this concept, “defined by Europeans, in relation to which such ancient cultures as those of China, Egypt, or Persia were to be measured and found wanting, was deeply insulting to representatives of non-European civilizations [...] and strikes us today as arrogant and presumptuous”<sup>3</sup>. He also wrote about “the disappearance [...] of the distinction between full and partial membership of international society, i.e. the distinction between those states which had and those which had not met the standard of ‘civilization’” in the 20<sup>th</sup> century<sup>4</sup>.

In recent years, however, it seems that the standard of civilization has been re-imposed<sup>5</sup>. The presence of new standards for membership is perhaps nowhere as clear as in the identification of the so-called rogue or outlaw states. This has also prompted Gerry Simpson to write a book titled *Great Powers and Outlaw States* (2004). There he argues that the identification and exclusion of international outlaws represents a historical continuity and that the tendency for exclusion – or, in his terms, *anti-pluralism* – is in fact a constitutive feature of international society: as Simpson explains, the estrangement and demonisation of the figure of an outlaw state from the community of nations “has long been required as part of the project of creation and enforcing international ‘society’”<sup>6</sup>.

According to Simpson, anti-pluralism represents one of the three principal traditions or forces contributing to international legal order. More specifically, it refers to “[t]he practice of making legal distinctions between states on the basis of external behaviour or [moral] characteristics”<sup>7</sup>. Anti-pluralism thus creates hierarchy within the international legal order. In that sense, it is similar to the second of the three traditions identified by Simpson, *legalised hegemony*, which refers to the tendency of great powers to exercise their prerogatives through legal forms, most notably by intervening in the affairs of other states<sup>8</sup>. The two traditions are closely related, for as the title of Simpson’s book suggests, it is the former that are mostly responsible for identifying the latter. Simpson also explains that the anti-pluralist tradition has waxed and waned throughout the modern history of international law: in addition to the 19<sup>th</sup> century standards of civilisation,

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<sup>1</sup> Clark 2005, 27.

<sup>2</sup> Cf. Simpson 2005, 233.

<sup>3</sup> Bull in Gong 1984, viii.

<sup>4</sup> Bull in Gong 1984, ix.

<sup>5</sup> See e.g. Clark 2005.

<sup>6</sup> Simpson 2005, xi.

<sup>7</sup> Simpson 2004, xii, 4 & 5.

<sup>8</sup> Simpson 2004, 67-68.

bandit or uncivilised status was subsequently assigned to Weimar Germany, Bolshevik Russia and China<sup>9</sup>. Of these, it is the exclusion of Weimar Germany that is in many ways the most significant for the present discussion, and I will turn to it in what follows.

## **Interwar period: introduction of ‘state criminality’**

The Versailles settlement was restricted to the victors of World War I: for the first time great powers that used to be central to the European states system were excluded from peace negotiations<sup>10</sup>. Whereas Russia was simply not included, the defeated Germany was treated as a *criminal state*<sup>11</sup>. Particularly the punitive treatment of Germany and the idea of state criminality attached to it represented a major departure from earlier practices of exclusion<sup>12</sup>. As Ian Clark explains, since those times, “the preferred model of the ideal international society has been one in which there is not a balance of power but rather an imbalance in favour of the forces of peace and justice”<sup>13</sup>. These high goals also began to define the new criteria for membership in international society more generally: as Clark writes, democratic domestic order began to be seen as a condition for international inclusion after World War I<sup>14</sup>. The underlying rationale had to do with the liberal idea of democratic peace, involving the conception that the two sides of international legitimacy – rightful conduct and rightful membership – were intimately connected<sup>15</sup>. The new practices of exclusion were thus accompanied by an unprecedented degree of solidarity and universalism, which were most vehemently articulated by Woodrow Wilson<sup>16</sup>.

It was this contradictory situation between greater inclusion and exclusion that also prompted Carl Schmitt’s famous critique of the League of Nations at the time. More specifically, Schmitt’s criticism was directed at the outlawry of war and the related new way of defining the political enemy in legal terms: Schmitt explained that in contrast to the past, the enemy was now defined asymmetrically as ‘foe’, meaning that it was no longer seen as being morally on the same level but made into a disturber of world peace and therefore a state criminal, an ‘outlaw of humanity’<sup>17</sup>. Schmitt pointed to the dangers of such definition, remarking that humanity as such can have no enemies and the whole idea of an enemy of humanity is an oxymoron that does not make sense unless understood as being an inhuman or subhuman foe<sup>18</sup>. Naturally, Schmitt’s comments were motivated by the fact that the excluded non-member and state criminal of international

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<sup>9</sup> See Simpson 2004, 4-7.

<sup>10</sup> See Clark 2005, 125 & 128.

<sup>11</sup> Simpson describes Bolshevik Russia as an outlaw and Germany as a criminal state (Simpson 2004, 21).

<sup>12</sup> Simpson 2004, 235.

<sup>13</sup> Clark 2005, 228.

<sup>14</sup> Clark 2005, 116.

<sup>15</sup> Clark 2005, 131.

<sup>16</sup> According to Clark, Wilson “proceeded on the basis of the domestic analogy and his task was to obliterate any distinction between the real society of individuals within states and the rudimentary society that was international” (Clark 2005, 113).

<sup>17</sup> Schmitt 1997, 94-95; Schmitt 1975, 79 and Schwab 1975, 11 and Schmitt 1975, 79.

<sup>18</sup> Cf. Schmitt 1975, 54.

society at the time happened to be Schmitt's own home country. Nevertheless, or perhaps precisely because of it, he deals with a very central problematic in the history of international exclusion.

Significantly for the present discussion, Schmitt viewed the League as a failed attempt to form a *supra-state political community*. The failure was due to the League's lacking hierarchy and political legitimacy.<sup>19</sup> In other words, because Europe was still defined by politics in the sense of friend-enemy distinction – rather than by politics in the sense of governance and policing – the identification of a supposedly 'internal enemy' (as suggested by the domestic idea of criminality) did not have enough rhetorical force and legitimacy and would instead be interpreted as identification of 'external enemies', and therefore, as invitation to political conflict (cf. Germany's role in World War II). Furthermore, Schmitt pointed to the paradox in that the League claimed to be universal while at the same time being federal in nature, arguing that this paradox would become clear as soon as the organisation achieved the political unity which it still lacked, for then it would constitute a world power whose mere existence was bound to create friend-enemy groupings. The reasoning behind this was that the more effective the League would become, the sharper the distinction between members and non-members, and the more explicit the distinction between friend and enemy.<sup>20</sup>

To sum up, while the first of the above arguments has to do with the (il)legitimacy of the idea of an *internal enemy* within the borders of a supra-state political community, the second one deals with the tendency of a sub-global grouping of states to give rise to *external enemies* outside its borders. These arguments will be discussed more in the following chapters.

## Cold War Ideas of Exclusion

It is common knowledge that the League eventually collapsed and was followed by the UN. Related to the dynamics of international inclusion and exclusion, Gerry Simpson sees the UN as expression of the pluralist, inclusive strand of liberalism; for him, the UN Charter stood as the highest expression of what Simpson calls *sovereign equality*, representing the third and final tradition in international law and referring to the egalitarian principle in international relations which “posits a community of equals engaging in relations through juridical forms”<sup>21</sup>. The UN thus represented the abolition of the standard of civilisation<sup>22</sup> and made the anti-pluralist tradition seem like a thing of the past<sup>23</sup>.

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<sup>19</sup> Ulmen 2003, 16 & 22.

<sup>20</sup> Cf. Ulmen 2003, 16 & 22.

<sup>21</sup> Simpson 2004, xii.

<sup>22</sup> See Simpson 2004, 4-7.

<sup>23</sup> See Simpson 2004, 4-7.

In reality, however, the world after 1945 was far from an inclusive universe. As Hedley Bull explains, the Americans and Soviets tended to speak of each other as “heretics or outcasts beyond the pale rather than as members of the same international society”<sup>24</sup>. Nevertheless, it is clear that the relationship between these two superpowers was symmetrical, whereas that between a great power and outlaw is defined by asymmetry.

### *Sub-global inter-state societies*

To continue with the Cold War division, it can be said that exclusion at the time was not so much from or within one universal international society but it rather existed as a mutual rejection of two alternative conceptions of international society. The Cold War blocks can therefore be best described in Barry Buzan's terms, seeing them as different *sub-global interstate societies*<sup>25</sup>. The concept is meant to draw attention to the fact that although it was possible to speak of international society in the singular during the Cold War, that society was unevenly developed: as Buzan explains, “although nearly all the states belong to a thin, pluralist interstate society, there are sub-global and/or regional clusters sitting on that common substrate that are both much more thickly developed than the global common, and up to a point developed separately and in different ways from each other”<sup>26</sup>. That is to say that while sub-global interstate societies might show considerably high degrees of solidarity in the sense of shared values, the universal international society is better understood as a pluralist arrangement.

Here I would like to bring Schmitt back to the discussion, for I think Buzan’s idea of a sub-global international society is very close to the former’s notion of *Grossraum*, which represents a departure from Schmitt's earlier, state-based thinking: although once a fervent supporter of state-based order, Schmitt had come to think that the new global *nomos* would in the future be comprised of different *nomoi* which would no longer be states but larger, supra-state units or systems. Reminiscent of Buzan’s notion of *vanguard*<sup>27</sup>, Schmitt also explains that the *Grossräume* had empires in their midst to perform military interventions and thus remove political bottlenecks that hampered the maintenance of a particular order within their respective spheres<sup>28</sup>. In other words, Schmitt seemed to accept – as part of his departure from the state-centered world-view – that the principle of non-intervention had to be compromised and, in the name of order within a ‘*Grossraum*’, it would be justified to engage in imperial policies aimed at homogenisation and eventual depoliticisation.

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<sup>24</sup> Bull 2002, 41.

<sup>25</sup> Buzan 2004, 218-19.

<sup>26</sup> Buzan 2004, 208.

<sup>27</sup> A central part of Buzan’s idea of a sub-global inter-state society is the notion of *vanguard*. By *vanguard* Buzan means an “idea common to both military strategy and Leninist thinking that a leading element plays a crucial role in how a social movement unfolds”. (Buzan 2004, 222) The sub-global “vanguard, whether composed of a concert of Great Powers or a single superpower, can try to impose its values by coercion but it can also operate more socially – others might emulate or be overawed or persuaded” (Buzan 2004, 225).

<sup>28</sup> Cf. Schmitt 1987, 80-81, and Ulmen 2003, 16 & 22.

Schmitt considered the Western Hemisphere, created by the Monroe doctrine, to be the prime example of a *Grossraum*. Significantly, he saw it as resembling a federation or a confederation of states<sup>29</sup>. It was a federation based on two criteria: it functioned as the guarantee of a status quo in the region and, what is more important, it managed to achieve ideological homogeneity among the participating states. Ignoring the fact that here Schmitt clearly overstated the degree of homogeneity and legitimacy of American hegemony in Latin America, it is evident that his idea of *Grossraum* implies a fairly cohesive international society and not merely a sphere of influence in the common realist understanding<sup>30</sup>. This cohesion, however, was not based on “a treaty between legal subjects; its meaning was defined, interpreted and implemented by its political subject – that is, the United States [in case of the Monroe Doctrine] – alone”<sup>31</sup>.

It is perhaps needless to say that, following the logic of the political, the large spaces, like states, would be based on the friend-enemy distinction. As Mika Luoma-aho explains, *Grossräume* were regions “dominated by a power representing a distinct political idea, which was formulated with a specific opponent in mind – that is, the distinctions between friend and enemy were determined by this particular political idea”<sup>32</sup>. This was also central to Schmitt’s ideal of a world order: the kind of a global pluralist order that Schmitt had in mind would not be based on any cosmopolitan sense of universal solidarity or consensus – which seems to be at least the normative, even if admittedly utopian ideal even in the more pluralist English School writings – but on a rather loose global society or system formed by a limited number of bounded, *Grossräume* / sub-global international societies. Much in the same way as the borders between states in the 19<sup>th</sup> century European order – the demise of which Schmitt nostalgically lamented – the borders between *Grossräume* would “not constitute an exclusion, but rather mutual recognition, above all the fact that neighbouring soil beyond the border was sovereign territory”<sup>33</sup>.

Importantly, the *Grossraum* theory relates with Schmitt's earlier critique of the League of Nations, for he had described the League as an American attempt to extend the Western hemisphere to Europe and the entire globe. As already mentioned, he thought that the failure of that attempt resulted from political illegitimacy and the lack of homogeneity within the participating states. Consistent with the reality of separate blocks around the Soviet Union and China during the Cold War, Schmitt argued that the eventual consolidation of the Western space was bound to give rise to external enemies and create other similar groupings<sup>34</sup>.

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29 Cf. Schmitt 1987, 80-81.

30 According to Gary Ulmen, Schmitt thought that the Western Hemisphere was “a true community of states” (Ulmen 2003, 15).

31 Luoma-aho 2007, 40.

32 Luoma-aho 2007, 39.

33 Cf. Colombo 2007. This quote from Colombo is out of context in the sense that Colombo writes about the state, not *Grossraum*. Nevertheless, it is clear that Schmitt’s *Grossraum* theory expanded the idea of sovereignty beyond the state borders: as Luoma-Aho (2007) explains, “[t]his [the *Grossraum* theory] is where Schmitt broke free from his earlier work on state sovereignty: *Grossraum* was a political form claiming supremacy over territorial and national absolutes of interstate politics”.

34 Cf. Schmitt 1987, 80-81, and Ulmen 2003, 16 & 22.

Now, going back to the theme of international exclusion and recalling the first part of Schmitt's argument on the League of Nations (concerning the legitimacy of internal enemies or state criminals within such supra-state groupings of states), one could think of the superpower interventions during the Cold War in terms of policing international outlaws. However, the concepts of an outlaw or state criminal fit uneasily with the Cold War context. Schmitt, too, did not seem to make a comparison between the Cold War interventions and the idea of state criminality during the interwar period, for as mentioned earlier, he seemed to accept superpower interventions based on the fact that they took place within a limited (supra-state) political community.

It can indeed be argued that there is a qualitative difference between the identification of outlaws and the policing and military interventions by Americans and Soviets during Cold War, for the latter were legitimated not so much in terms of correcting law-breakers than by an external revolutionary threat that their conflicting ideologies posed to each other. One could also say that interventions and other policing measures at the time were more of a political than legal kind.

### ***International outlaws within the Western Block***

Were there, then, any cases where the label of international outlaw or state criminal would have been given and also acquired at least some degree of international legitimacy during the Cold War? One obvious case of international outlawry would seem to be the treatment of Germany and other defeated parties of war right after World War II. As Simpson explains, however, the criminalization of states and their consignment to outlaw status was formally rejected in Nuremberg: while a regime of individual responsibility was imposed on Nazi leaders, Germany as a nation was not to be excluded but *rehabilitated* to international society<sup>35</sup>. The criminal Nazi regime was, so to speak, conceptually decoupled from the still developable German state. Indeed, based on Simpson's account, it would seem that the concept of outlaw state was largely absent during the Cold War period<sup>36</sup>.

However, according to Robert S. Litwak, who has studied the use of the word 'rogue' and related terms in American political rhetoric, there was a new understanding of international outlaw that emerged in the 1970s: namely, states such as Idi Amin's Uganda and Pol Pot's Cambodia were described the terms 'outlaw' and 'pariah' to signify disapproval of their repressive domestic politics<sup>37</sup>. This new concept was thus motivated by *humanitarian* concerns. In addition, Litwak remarks that the term 'pariah' received a somewhat different meaning in the late 1970s as a few American political scientists used

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<sup>35</sup> Simpson 2004, 228-229.

<sup>36</sup> In his discussion on the Cold War period, Simpson only names one international outlaw, that is, Vietnam in 1979. Simpson 2004, xiii.

<sup>37</sup> Litwak 2000, 49-50.

it to refer to a small group of Western-oriented Third World countries, fearing that their vulnerable international position might lead them to seek nuclear weapons<sup>38</sup>.

Litwak explains that the modern concept of rogue state only emerged during the Reagan era. What was characteristic of it was that it emphasized certain states' threatening foreign policy behaviour as perceived by the American administration: Reagan labelled the governments of Iran, Libya, North Korea, Cuba and Nicaragua as outlaws on the grounds that they supported terrorism directed against the US. As Litwak explains, it was the connection with terrorism that became the central part of the Reagan era concept of rogue states. As the Cold War moved closer to its end, the criteria was supplemented by another behavioural trait, namely, the search for WMD or, more specifically, the *search for WMD by countries hostile to the US*.<sup>39</sup>

## **Exclusion in contemporary international society**

After the end of the Cold War and particularly since the Clinton administration, the concept of rogue state has become one of the most central themes in US security thinking and rhetoric. During this period, countries such as Iraq, Iran, North Korea, Libya – and, more recently, Syria – have been labeled as rogues. A basic assumption since the older Bush administration has been that abstract theories of deterrence or engagement do not work on these states and therefore the appropriate way to deal with them is containment, isolation or, in the most extreme case, regime change. Rogue states are thus seen to form an exceptional category to which normal rules – either the rule of law of the so-called civilised nations or the rational laws of realism (deterrence) – do not apply. The underlying argument in American rhetoric has been that such states will remain outcasts of international society until they integrate to the rest of the world, either by learning or by the use of force.

While the Reagan era idea of outlaw states was clearly rooted in US politics and reflected the specific relations of enmity that prevailed at the time between the US and certain small states of the Third World, the post-Cold War definition involves a strong claim of being universally applicable. It carries the meaning that rogue states are outside the entire (universal) international society and its rule of law. These states have also been presented as criminal, evil, and irrational, and seen to embody enemies of civilization and humanity. The close conceptual link between the idea of outlaw states and that of international society is evident in the terminology: the terms 'rogue', 'renegade', 'outlaw' and 'pariah' all receive their meanings from opposition with the notions of community, society or group. The words speak for themselves: pariahs are an inferior social group, marginalised from the mainstream for one reason or another, renegades have deserted their group and outlaws do not follow the rules and norms of their society and therefore no dot deserve the protection of those rules and norms themselves. These states are

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<sup>38</sup> The group included Israel, Taiwan South-Korea and South-Africa. Liwak explains that there was no need to demonise these countries because they posed no direct threat to the US (Litwak 2000, 50-51).

<sup>39</sup> Litwak 2000, 52-54.

simply not fit to belong, either because they do not want to or because they are not able to. Still, all these problem cases are situated *within* the boundaries of society – simultaneously outside and inside.

Despite the American origins of the concept – and the fact that he regards today's unilateralism as a particular tradition of legalised hegemony<sup>40</sup> – Gerry Simpson dissociates the emergence of the new category of outlaw states from the particularities of US foreign policy: he emphasises that such thinking is not only restricted to US policy-makers but it finds theoretical expression in the writings of many influential liberal thinkers and international law theorists, such as John Rawls, Fernando Tesón, Thomas Franck and Anne-Marie Slaughter, all of whom make the distinction between liberal and illiberal states and show a lack of tolerance for the latter<sup>41</sup>. Even more significantly, Simpson also points out that new 'outlaw' categories have been established by the UN Security Council and in the International Law Commission<sup>42</sup>. Simpson also speaks of "legal structures that designate and treat states as outlaws or criminals or failed states, and "deprive this small proportion of states of their sovereign rights"<sup>43</sup>.

Simpson thus sees the phenomenon primarily as part of the development of international law; as said at the beginning, he thinks that the identification of outlaw states after the Cold War reflects a *resurgence of the anti-pluralist tradition*. More particularly, Simpson explains that the tradition has this time taken a form of *liberal anti-pluralism*, which is the counter-pole of liberal pluralism and which emphasises "the norm of democracy" as a defining quality of international society. In this connection, Simpson also speaks of "(neo-)liberalism with a moralistic fervour", "intolerance of the illiberal", "fixed dogmatic liberalism", "profoundly illiberal conformitarianism" and "liberalism that can be exclusive and illiberal in its effects".<sup>44</sup> Simpson also points out that today's anti-pluralism functions to divide the world into two spheres: first, "a solidarist international society composed of a core of liberal states [...] whose common values and interests support a deepening constitutionalism within that society", and second, another sphere where "outlaws or outsiders [are] subject to a repressive criminal law and denied the benefits of full sovereign equality"<sup>45</sup>.

In a similar manner, Ian Clark sees the identification and treatment of rogue states as symptomatic of a "*paradigm shift* currently being experienced in *international society's conception of rightful membership*". The internationalisation of the rogue state concept is only part of a wider change that also involves the identification of failed states and the related policies of humanitarian intervention and regime change.<sup>46</sup> Clark also speaks of "a more restrictive concept of international society" and argues that "within the still universal ideal of international society, there has increasingly been articulated the

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<sup>40</sup> Simpson 2004, x.

<sup>41</sup> Simpson 2004, 78 & 294.

<sup>42</sup> Simpson 2004, 21-22.

<sup>43</sup> Simpson 2004, 55.

<sup>44</sup> Simpson 2004, 78 & 81.

<sup>45</sup> Simpson 2004, 231.

<sup>46</sup> Clark 2005, 160.

doctrinal rationale for an inner grouping entitled to the fullest enjoyment of the rights of membership”<sup>47</sup>. This represents “the re-emergence of civilizational tests, once more being imposed by the inner core of international society”<sup>48</sup>. Clark argues that the re-emergence of the standard of civilisation is the most contentious aspect of contemporary international legitimacy<sup>49</sup>. Barry Buzan makes a similar argument, arguing that the war against Iraq in 2003 could easily be read as old style coercive imposition of a standard of civilization”<sup>50</sup>. He also says that it will be a very interesting test of whether coercion can change values<sup>51</sup>.

To be sure, the re-emergence of standards of civilization can also be seen in a more positive light. For example, Donnelly (1999) points to the standard as the basis of today’s notion of universal human rights<sup>52</sup>. The connection between the standard of civilization and solidarism can also be found in the classical English School writings, where it is widely accepted that the kind of universal international society that emerged in the 20<sup>th</sup> century would not have been possible in the first place without the history of European imperialism. Coercive imposition of standards of civilisation can thus be seen as a *legitimate exception* to international law, at least as far as it succeeds in achieving *order*. This kind of transgression of international rules which is not due to the absence of society but for the sake of it, is referred to, for example, by Hedley Bull in his statement that “international law can sometimes hinder the maintenance of international order”, or in his quote from Oppenheim, according to which the law of nations can exist only if there is balance of power and, to preserve that, one often has to break the rules<sup>53</sup>. More recently, it has been argued that exceptions to the rule of non-intervention can be made to achieve *justice* in severe cases of humanitarian emergency<sup>54</sup>.

The idea of making exceptions to existing rules brings us back to Schmitt, whose theory of sovereignty can be said to revolve around the concept of exception. In Schmitt’s thinking, however, the task of deciding about exception is reserved for the *sovereign* of a political community; according to the repeatedly quoted line from Schmitt, it is the sovereign who decides on the exception. The most extreme case of exception is the decision about going to war, and it is preceded by a prior decision as to who the enemy of a given political community is<sup>55</sup>. This fundamental decision characterises the essence of sovereignty: as Luoma-aho argues, Schmitt thought that “political subjectivity – that is, the authority to make the friend/enemy distinction and the power to enforce it territorially – was a conceptual marker for indicating sovereignty in international relations”<sup>56</sup>.

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<sup>47</sup> Clark 2005, 159.

<sup>48</sup> Clark 2005, 40.

<sup>49</sup> Clark 2005, 159.

<sup>50</sup> Buzan 2004, 152.

<sup>51</sup> Buzan 2004, 224.

<sup>52</sup> Clark 2005, 46.

<sup>53</sup> Bull 2002, 104 & 138.

<sup>54</sup> See e.g. Wheeler 2002.

<sup>55</sup> Schmitt 1975), 29-30 & 35.

<sup>56</sup> Luoma-aho 2007, 38.

Invoking this kind of logic at the level of international society therefore points to a paradox, for international relations is conventionally thought of as the realm of anarchy where it is common knowledge that no universal authority comparable to his absolute sovereign exists. Applying the Schmittian idea of exception to i.r. invites readers to consider whether “universal sovereignty” really does, should or even can exist, or whether exceptional policies should rather be considered excessive and illegitimate<sup>57</sup>. Indeed, there has emerged a particular stand of critical writing in contemporary IR that focuses on “international politics of exception” and mostly refers to the transgressions of international law under the War on Terror as concrete examples of exceptional policies<sup>58</sup>.

I would argue that from a Schmittian point of view it is not only the policies under the war on terror or the particularly exceptional war on Iraq in 2003 that are to be seen as exceptional, but the very definition of rogue states as enemies of international society, as well as the various policies on rogue states throughout 1990s<sup>59</sup>. These policies suggest that there is, if not universal sovereignty, at least a strong claim to it in the contemporary world. Rogue state policies can thus be seen as symptoms of a *systemic change* that represents the gradual fulfillment of Schmitt’s horror scenario of a world state: after all, during the Cold War Schmitt had changed his earlier argument that a universe was not feasible, and he finally came to think it possible to “conceive of the political unity of humanity through the victory of one industrial superpower over the other or through the union of both with the goal of politically subjugating the total industrial power of the earth”. Nevertheless, he concluded that “[t]he day world politics come to the earth, it will be turned into a world police power”, emphasising that approaches toward world political unity could not avoid the enormous task of state legislation, and that because things do not administer themselves, this would require world-embracing economic and technical organization, and therefore terrifying power.<sup>60</sup> Considering the contemporary rogue state policies in Schmittian terms, however, should not only make one lament the dangers of universe; it can also lead one to think about the political nature and limits of today’s international society.

Here I would again like to recall the notion a *Grossraum* / sub-global interstate society. Conceptualizing the systemic change behind the present normative change (of which the categorisation of rogue states forms one part) through the evolution of sub-global interstate societies, one could say that after the dissolution of the differentiation among Cold War blocks, only one vanguard was left, surrounded by the Western core within the more pluralist international society. At the same time, the American view of the world and related threat perceptions have come to define the whole of international society. The fact that there is only one, increasingly solidarist center easily creates the impression that the universal international society as a whole has become more solidarist.

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<sup>57</sup> Jef Huysmans has introduced this peculiar expression, saying that Kagan “justifies US dominance by means of a decisionist political theory that posits the continuing need for a *universal sovereign* in global normative orders”. The term originally comes from Etienne Balibar. (See Huysmans 2006, 147 & 150)

<sup>58</sup> See e.g. Agamben 2005, Prozorov, Sergei 2005, Walker, R.B.J. 2006 and Huysmans, Jef 2006.

<sup>59</sup> As examples of exceptional policies on rogue states, one could mention the punitive regime imposed on Iraq throughout the 1990s (including ‘Operation Southern Watch’ and no-fly zones), as well as the extraterritorial sanctions of the Iran-Libya Sanctions Act, imposed by the Clinton administration in 1996.

<sup>60</sup> See Schmitt 1987, 80 and Schmitt 1975, 53&57.

Alongside the (liberal pluralist) rhetoric and project of producing an inclusive, universal international society, however, there is an influential rival interpretation that draws from liberal anti-pluralist thinking. The resultant dualist world-view has perhaps been most clearly expressed by Francis Fukuyama, who – in addition to rejoicing the coming of the end of history – noted that the world was still divided; instead of the Cold War ideological divisions, it was now divided into those that had reached the end of history and those who had not. Whereas peace, interdependence and a sense of community characterised international relations in the ahistorical world, the historical one was still plagued by anarchy and underdevelopment. The two worlds were also connected through what Fukuyama called axes, along which they also sometimes clashed. As it could be assumed that the historical world was more prone to instability and aggression, the harsher methods of political realism still applied in the liberal world's dealings with it. These measures could be teleologically justified as serving the ultimate aim of bringing the regressive rest to the happy state of the end of history.<sup>61</sup> In this worldview typical of neo-conservative thinking, the category of rogue states is clearly situated the Hobbesian world of exception<sup>62</sup>.

The liberal world thus needs to defend itself from the Hobbesian world and, at the same time, it must ultimately seek to eliminate it through integration. Indeed, according to Simpson, the present international order can best be understood as a struggle between the pluralist and anti-pluralist conceptions<sup>63</sup>. This situation, involving the contradictory goals of exclusion and integration, brings to mind Schmitt's argument about the paradox between universalism and federalism and, at least based on Schmitt's theory, it does not look like a sustainable basis for universal international society. On the contrary, it seems that the liberal Western world – like the League in the interwar period – is trying to extend its sphere in areas where its political and ideological legitimacy do not reach, thus creating resistance and political conflict. At the same time, reminiscent of Cold War, many in the liberalist world continue to articulate their political idea with a specific opponent in mind.

It can be argued that the paradox between exclusion and integration, as well as the question of legitimacy of the present universal conception of international society, culminates in the rogue state concept and related policies. On the one side, the problem is of a legal and philosophical kind: in this sense, it has to do with the degree of solidarism within international society as to whether states in general ought to be treated like criminals. As Simpson has noted, there is unprecedented agreement on this issue within the present international society; many feel that there are indeed recalcitrant rogue states (even if that exact term is not used) and promote the goal of ultimately including and *integrating* them into the Western-based liberal democratic international society (even if they may disagree among themselves as to how this should be done).

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<sup>61</sup> Cf. Fukuyama 1992, 277-279.

<sup>62</sup> For example Robert Kagan, describing his country's unique position between the two worlds, argues that the US is thus alone in defending the Western liberal paradise in the clashes with the "Saddams and ayatollahs, the Kim Jong IIs and the Jiang Zemins" of the historical world (Kagan 2002, "Power and Weakness", *Policy Review*, 13: 3-28: 25).

<sup>63</sup> Simpson 2004, 231.

On the other side, the question is about the blatantly political nature of the rogue state concept, for the stigmatisation of certain states as outlaws or the rhetoric on the global threat posed by an unidentified category of outlaws has clearly been motivated not only by legal or humanitarian concerns but also by the particular American relations of enmity and view of the world that are not universally shared. It is this aspect of rogue state policies that has the greatest potential to create resistance and political conflict. This potential comes to the fore in concrete instances of identification and treatment of outlaw states, and it was most clearly visible in the 2003 war on Iraq. Related to the earlier, Schmittian argument about sub-global interstate societies' being based on the friend-enemy distinction, the presentation of outlaw states as enemies of the liberal world also necessarily begs the question as to whether "the idea of a universal sense of community [...] a sense of being 'We' requires an 'Other' against which to define itself?"<sup>64</sup>.

In order to look deeper into these problems, the question of international legitimacy needs to be addressed empirically by assessing the degree of solidarist agreement / pluralist resistance with regard to the labelling and treatment of certain states as outlaws. Most recently, such international attitudes have been expressed in connection with the extension of American missile defence project to Europe – an undertaking that has been justified primarily by the threat coming from Iran. As examples of agreement and disagreement one could mention the UK and Russia. The former has generally been sympathetic with the American perception of rogue state threat and its link with missile defence. For example, the Prime Minister's spokesman said in 2001 that the UK understands that the nature of the threat facing the US is very different from the Cold War one and that it now stems from rogue states. He continued that the UK understands that the nature of the deterrent needed to be reconsidered accordingly. The spokesman also said that there was a real threat from countries, such as Iraq and North Korea, which had the capacity to develop WMD<sup>65</sup>. Russia, on the other hand, regards the threat from states like Iran or North Korea as exaggerated<sup>66</sup>. The Russian dislike for the American term 'rogue state' has been clearly articulated by the former prime minister and advisor to Putin, Yevgenii Primakov, who has said that the meaning of the word 'rogue' is difficult and that some countries have been given the label only because they do not subject themselves to the policy of other states<sup>67</sup>. The chairman of the international affairs committee of the Russian Duma, Konstantin Kosachev, has also openly said that he does not accept the term 'rogue' and that he does not regard Iraq, Iran or North Korea as rogue states<sup>68</sup>.

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<sup>64</sup> Buzan 2004, 75.

<sup>65</sup> "Briefing from the prime minister's Spokesman on NMS/Europe/Kyoto, PES, Defence and Race" Press Briefing May 1, 2001. 10 Downing Street Website.

<sup>66</sup> "Missile Base Row Renews Cold War Animosity". *Guardian* April 23/2007.

<sup>67</sup> Primakov, Yevgenii. Nel' zya otvechat' terrorom na terror. 15.9.2001. Moskovskii komsomolec; translation by Sirke Mäkinen.

<sup>68</sup> Kosachev also believed there would be a long-term disagreement between Russia and the US regarding states which the US calls rogues. (Kosachev, Konstantin, Os' russkogo globusa. Naskolko krut nash povорот k Zapadu? 5.12.2001. Moskovskii komsomolec; translation by Sirke Mäkinen).

## Conclusions

This paper shows that the contemporary rogue state concept is not entirely new but represents a historical continuity. This is a continuity of a particular kind of international exclusion defined by asymmetrical relations between great powers that belong to the inner core of international society and smaller states that are denied full membership. The contemporary concept can be said to reflect a re-introduction of the standard of civilisation that originated in the 19<sup>th</sup> century. At the same time, it represents an offshoot of an earlier notion of state criminality, first introduced at Versailles in 1919.

Apart from continuity, the rogue state concept also represents a major departure from older forms of exclusion. First of all, it is the product of a new kind of ideologically-based exclusion which is characteristic the present era and which Gerry Simpson calls liberal anti-pluralism. This new standard of civilisation, as well as the idea of state criminality, marks a change from the Cold War days when both notions were at odds with the prevailing attitudes. Second, today's rogue category is not defined by a concert of great powers but by a single and the only existing superpower. In this new American version, the grounds for outlawry are much less clear than in 1919: indeed, only in one occasion – that is, in connection with the Iraqi occupation of Kuwait in 1990 – has the rogue concept been used to condemn a war of aggression. Today's criteria are less clearly legal and more openly political: the arguments for presenting certain states as global threats mainly rely on their alleged support of international terrorism, hypothetical assumptions about their irrationality and evil intentions, or accounts on their human rights violations. The contemporary outlaw state concept thus reflects not only the prevailing legal and moral standards in the present international society but also the specific American world-view and relations of enmity.

In this paper, I have used Carl Schmitt's theory to argue that the paradox between exclusion and integration, as well as the question of legitimacy of the present universal conception of international society, culminates in the rogue state concept. The legitimacy of rogue state policies can be seen as an important test concerning the degree of political cohesion within the present international society. Although there seems to be unprecedentedly broad agreement today on labelling certain kind of international behaviour as criminal, the concrete cases of outlawry and treatment of international outlaws have the potential to draw dividing lines within a seemingly universal and apolitical international society. These lines might not be recognised as political because the kind of inter-state political community promoted by liberal anti-pluralism denies its political nature by conceptualising external opponents in legal terms as internal enemies.

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