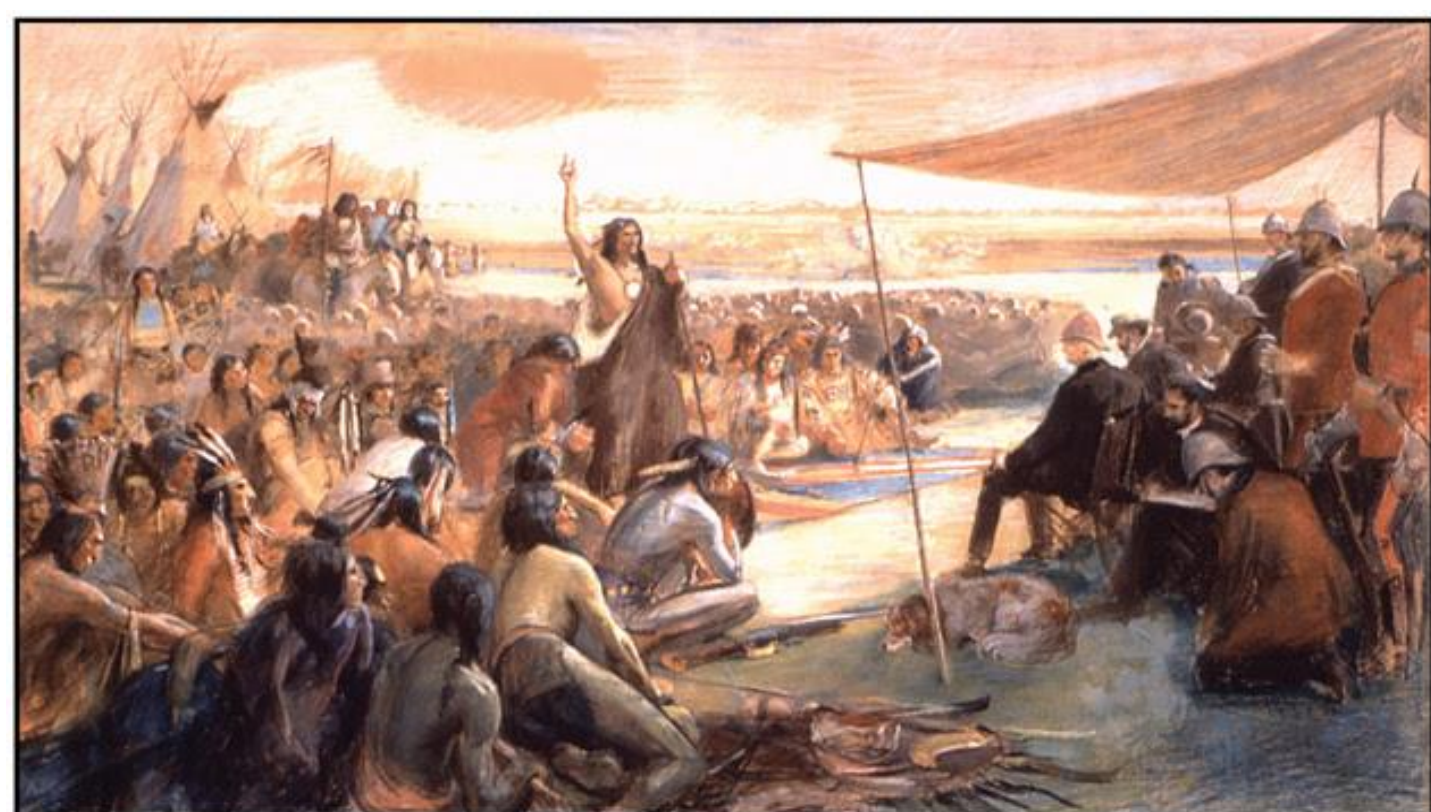


State legitimacy and mobility-related human rights

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Abstract

New states or governments often seek international recognition and legitimacy as previous governance structures are dismantled and replaced by ones that alter the privileges and powers given to various groups and individuals. In cases, for example, of colonialism, military coups, or other illegal methods of acquiring power, this search for international recognition is often simultaneous with serious violations of human rights, particularly rights related to mobility: individuals and families are expelled and denied return, people are taken captive as prisoners of conscience, and refugees are at risk within their home or host countries.



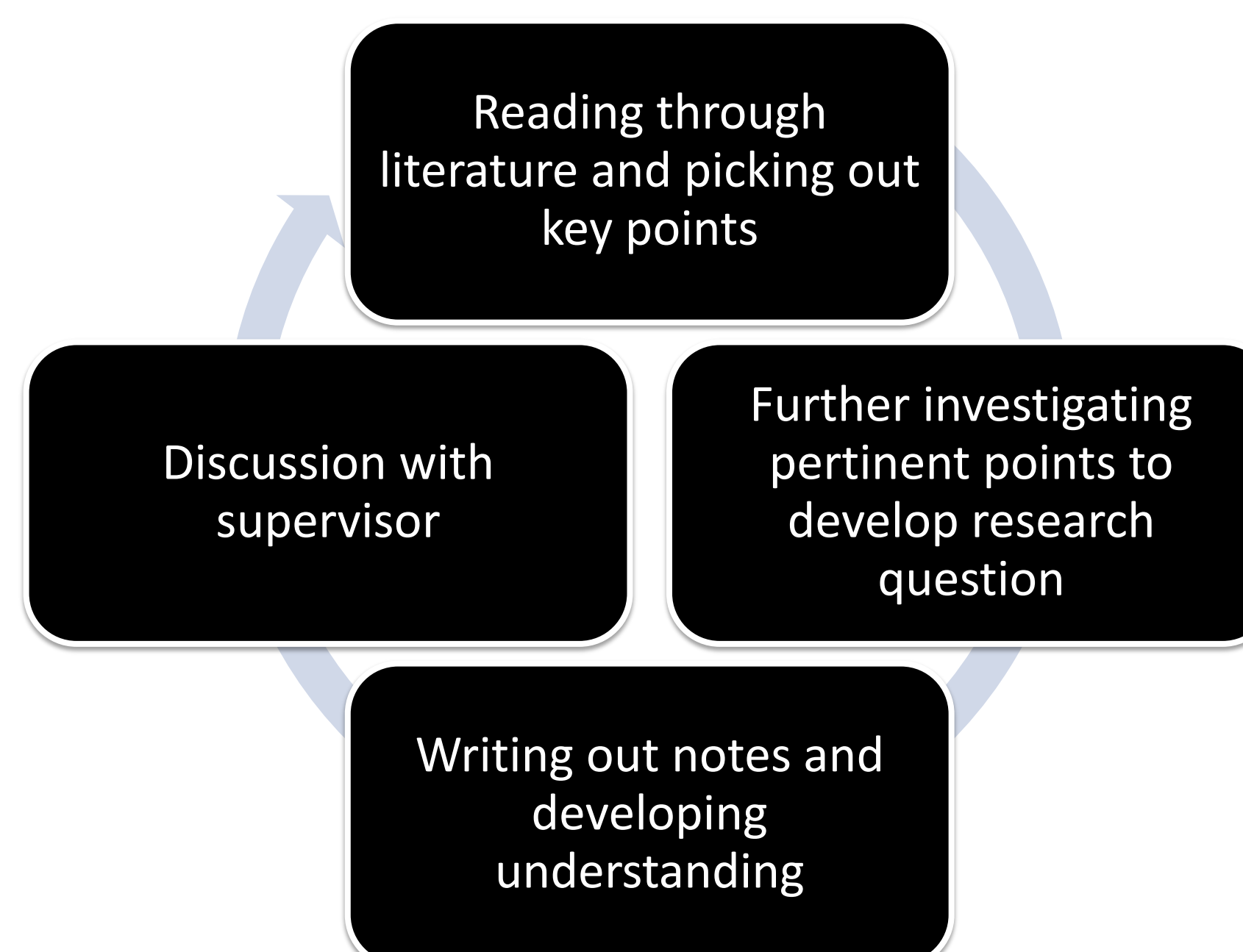
Colonialism. Digital Image. *Mohawk Nation News*. Web. 17 Jan 2014. <<http://mohawknationnews.com/blog/>>. A brief review of the literature reveals that international public legal scholars argue for compliance with international law to play a stronger role in the initial and continued recognition of any particular state. This research pays particular attention to this argument in the context of mobility rights restriction and violation, and considers the repercussions of two possible courses of action by the international community: (1) if recognition is made conditional on adherence to international law, particularly with respect to mobility-related human rights, or (2) if recognition is not considered as a form of pressure or enforcement of international law and mobility rights. In the review and analysis of the literature, therefore, attention is given to examples of state or government transitions in which clear compliance with or violation of mobility-related human rights takes place concomitantly with an active search for international recognition and legitimacy. A key finding to date of this literature review is that even when the first course of action (that recommended by international public legal scholars) is taken, new states or governments can find ways to give the appearance of compliance while in fact upholding violations. The implication of this research, therefore, is that the international community must take seriously the multiple voices emerging in the immediate and long-term aftermath of state or government shifts, especially in the case of shifts with colonial or otherwise illegitimate/illegal overtones.

Introduction

Throughout history, there have been numerous examples of states violating human rights yet still gaining legitimacy in the international community. Even today, this problem is highly pertinent as we look at countries such as Syria, Egypt and Iraq where people are at risk of internal conflict in their own countries, denied return to their own homes and flee from conflict situations in their countries. The interest of this research is to look at how states gain or lose legitimacy in the international community even when violating human rights related to mobility and freedom of movement.

A qualitative approach is used as the framework for this research. Literature on international law, international relations and public relations were analyzed. The research has only just begun, and below are some of the preliminary results.

Methods



Results

Three articles on recognition of states were analyzed and a brief summary of the results from the articles is shown below.

In the article on collective legitimization as a function of the United Nations, Claude Inis states that the United Nations organ uses the process of collective legitimization to recognize and declare statehood. He argues that collective legitimacy relies much more heavily on a political process of legitimization rather than the legal process. Therefore, when politics and relations are emphasized, there is no guarantee that political institutions will declare legitimacy based on justice or wisdom. This becomes dangerous as states seeking legitimacy may be inclined to change their behavior to what the political aspect will permit, rather than adhering to what the law permits.

In Thomas Grants book on the recognition of states, he analyzes the constitutional versus the declaratory doctrines of state recognition. Under the constitutional doctrine, recognition is a requirement for statehood or in other words, recognition forms the state. The constitutional doctrine seems to have no way to regulate state behavior, and seems to minimize the role of law in the process of recognition. Under the Declaratory doctrine of legitimization, statehood is independent of recognition; recognition simply acknowledges that a state has fulfilled all of the criterion for statehood. It is automatic based on the fulfillment of the criteria, and based much more on legal principles. Although Grant recognizes that neither of these doctrines represents how recognition is sought today, they are still critical tools for analysis.

Background image: UN symbol. Digital Image. *United Nations Convention on Rights of the Child*. Web. 17 Jan 2014. <<http://www.adoptionbirthmothers.com/>>.



United Nations Flags. Digital Image. *un.org*. Web. 17 Jan 2014. <www.un.org/>.

Grant also talks about the criteria for statehood. The Montevideo convention gives four criteria for a state to be recognized: it must have a permanent population, a defined territory, a government, and the capacity to enter into relations with other states. To this, four more criteria known as the “addenda to the Montevideo convention” were added. These four criteria are self-determination, democracy, minority rights and constitutional legitimacy. The four criteria protect against human rights violations, but looking back in history, many colonial states that did not fulfill any of the addenda criteria were still recognized in the international community.

Grant also states that recognition or non-recognition should have no impact on the security and protection against aggression of a state. In reality and seen in numerous examples, non-recognized communities suffer violence and aggression rarely seen in recognized communities.

Conclusions

In conclusion, from the preliminary research it seems that the UN is trying to make recognition conditional on adherence to international law, and to be used as enforcement and pressure for adherence to international law and mobility rights. In the examples seen in the literature, states continue to seek international recognition while violating human mobility and freedom rights by appearing to comply, and gaining legitimacy through “illegal” and “illegitimate” practices. Some initial theory and examples were analyzed and the results touched on in the above section, but much further research is still needed to be able to develop a complete understanding of the question at hand.



Refugees. Digital image. *Al Awda - The Palestine right to return coalition*. Web. 17 Jan 2014. <www.al-awda.org/facts/>.

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