I. INTRODUCTION

The entire system of international law exists primarily for the aims of world peace and security. But what do we mean by peace; what international society do we aim to sustain? Peace scholars theorise peace in regards to harmony and successful approaches to peace-building. Within the legal framework, laws have developed to regulate the legality of wars as well as their conduct; scholars have written extensively on *Jus ad bellum*, *Jus in bello*, the Use of Force, intervention, Responsibility to Protect, etc. However, the United Nations (UN) has never defined peace; in its most common sense peace is understood to be the absence of war. Indeed ‘law is about distinguishing war from peace’. Thus under international law, war and the Use of Force are not merely legalised under certain conditions, but regulated through laws. Their distinction varies and changes in kind and degree of what is legal and illegal or ‘who could do what, when, to whom?’ Notwithstanding, some forms of force (or violence) are

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1 The purpose of the UN is to maintain international peace and security; remove and suppress threats to the peace and breaches of the peace; and bring about, by peaceful means and in conformity with the principles of justice and international law, adjustment of international disputes that might lead to a breach of the peace. United Nations, ‘Charter of the United Nations’ (1 UNTS XVI, A.1, 24 October 1945) <http://www.refworld.org/docid/3ae6b3930.html> accessed 6 January 2014.


3 Wars in themselves can be ‘justifiable’ and their conduct can be legal; thus it is regulated. So ‘if you kill this way and not that, here and not there, these people and not those – what you do is privilege. If not, it is criminal’. ibid 162 (emphasis in original); see also Simon Chesterman, *Just War Or Just Peace?: Humanitarian Intervention and International Law* (OUP 2001); David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton University Press 2004) ch 8; David Kennedy, *Of War and Law* (Princeton University Press 2006).

4 ibid.

5 ibid 164.
necessary for implementing the rule of law.\textsuperscript{6} As such, it is ‘the way of force that leads to peace’.\textsuperscript{7}

This Article attempts to step back to challenge what it is we aim to achieve through peace.\textsuperscript{8} Drawing on Critical Legal Studies (CLS) and Marxists theories of international law, the Article firstly theorises the notion of violence within the legal framework, specifically the demarcation of peace and war, to find that peace remains ambiguous and understood negatively. Following this, the Article explores Mieville’s analysis of the commodity-form theory of law, in order to demonstrate the violence embedded within the Rule of Law as the perversion of peace under international law. Thus, in the fourth Section, it draws on Foucault and David Kennedy to suggest that law is the continuation of war by other means. Consequently, it shows that emancipation and/or fundamental transformation cannot derive from law. It concludes that the perversion of peace, acting as a cosmetic mask, conceals the violent means of social relations that dominate our lives and alienate us through the application of law. Lastly, through a short analysis of post-conflict studies, it aims to demonstrate that the peace agenda under the international legal system predominantly means liberalisation of fiscal policies, imposing not merely liberal economics but a liberal ideology.\textsuperscript{9} It argues that capitalist expansion means imperialism continues, and further, it is legitimised and naturalised through international law and peace.

II. \textbf{NEGATIVE PEACE}

Peace is often seen as the absence of (direct) violence – ‘negative peace’ – however peace scholars have also coined the term ‘positive peace’ to describe transforming structural violence.\textsuperscript{10} If we only account for ‘negative peace’, what societal transformation do we seek, if any? Traditionally, peace was assumed to begin with the signing of treaties or at the end point of war, even when it was won by victory in battle, thus reflecting the power balance. In

\textsuperscript{6} Otherwise, we have anarchy. Hans Kelsen, \textit{Peace Through Law} (5th edn, The Lawbook Exchange Ltd 2007) 3.
\textsuperscript{7} ibid 6.
\textsuperscript{8} It is beyond this research to analyse laws of/in war and Marxist ideologiekritik. But there is relevance to investigate into liberal democracies waging wars. The Democratic Peace Theory, for example, has been put forward to suggest that democracies do not go to war with one another (but \textit{not} against non-democracies), although this has been critiqued on several grounds. See Sebastian Rosaton ‘The Flawed Logic of Democratic Peace Theory’ (2003) 97 American Political Science Review 585.
\textsuperscript{9} In a similar vein to the Human Rights discourse. See China Miéville, \textit{Between Equal Rights: A Marxist Theory of International Law} (Brill 2005) 303; Kennedy, \textit{The Dark Sides of Virtue} (n 3).
international law, the firm distinction of peace and war is deeply rooted and had always existed.\textsuperscript{11} Though some shift has occurred to recognise a spectrum of peacefulness (peace can also be a ‘pause’ in war)\textsuperscript{12} it is still a linear understanding of moving from one end of war to peace.\textsuperscript{13} Inasmuch as this is our reading of peace and war, their demarcation remains.\textsuperscript{14} When we talk about war, we emphasise its dichotomy from ‘normal peacetime’\textsuperscript{15} This distinction ‘establishes the legal privilege to kill’\textsuperscript{16} since, in law, the meaning of legal words is the political struggle, of whose policies will be included or excluded.\textsuperscript{17}

Thus violence is seen as external; it is done by criminals or outcasts, or simply elsewhere. Rather, force itself is regulated through the rule of law and its institutions. This view of war assumes that in liberal democracies – where the rule of law can be upheld by a supposedly independent judiciary – in peacetime (being the absence of violence) there is no violence, and peace itself is institutionalised. So peace is \textit{the move to liberalism}; as Kennedy puts it, the shift from war to peace is the shift ‘from ideologies to liberal pluralism’.\textsuperscript{18} Nonetheless, peace and war have somewhat merged – mainly because warfare has changed and ‘has become more mixed up’, whereas the legal distinction through procedures and institutions has increased.\textsuperscript{19} As Kennedy suggests, ‘It is ever less clear where the war begins and ends or which activities are combat, which “peacebuilding”’,\textsuperscript{20} explaining that this merging is also due to the increasingly fluid materials of legal doctrines and concepts.\textsuperscript{21} In other words, the doctrinal material of armed conflict is elastic in the sense that it allows for diversity of interpretation.\textsuperscript{22} CLS highlights this indeterminacy from a structural

\begin{itemize}
\item \textsuperscript{11} Philip C Jessup, ‘Should International Law Recognize an Intermediate Status between Peace and War?’ (1954) 48 American Journal of International Law 98.
\item \textsuperscript{14} See Kennedy, \textit{Of War and Law} (n 3) ch 2.
\item \textsuperscript{15} ibid 2.
\item \textsuperscript{16} Kennedy, ‘Lawfare and Warfare’ (n 2) 165.
\item \textsuperscript{17} Martti Koskenniemi, ‘International Law in Europe: Between Tradition and Renewal’ (2005) 16 European Journal of International Law 113.
\item \textsuperscript{19} Kennedy, ‘Lawfare and Warfare’ (n 2) 161.
\item \textsuperscript{20} Kennedy, \textit{Of War and Law} (n 3) 11.
\item \textsuperscript{21} Kennedy, ‘Lawfare and Warfare’ (n 2) 164.
\item \textsuperscript{22} ibid 167.
\end{itemize}
analysis of liberal legalism. Following this, Miéville argues that this is characteristic of the system: “"[F]ree competition" between interpretations … is in fact a constitutive feature of [international law]” as will be elaborated below.

### III. LAW AS VIOLENCE

The legal discipline asserts its own autonomy, independent from politics and economics. However, in applying a Marxist historical materialist analysis of the Rule of Law, productive relations must be examined to understand international law as a social reality. Further, access to, and control over, productive resources is class conflict. Read this way, the rule of law developed for enforcing the policies of the ruling class. Miéville drawing primarily on the work of Pashukanis in *The General Theory of Law and Marxism* describes the social relations of production as the contradictory foundation of liberalism that underpins international law. The legal form of both is analogous, suggesting a ‘body of rules’ that implies their ‘law-ness’; Miéville theorises ‘the specificity of the legal form itself’ which he believes lacks in other traditions of international legal scholarship. This is also where he departs sharply from CLS. He applies the capitalist logic that regulates individuals to explain that ‘states, like individuals, interact as property owners’. Miéville concludes that ‘in its very neutrality, law maintains capitalist relations’. Following, for him, to achieve change or emancipation is not to work for institutional reform but to ‘eradicate the forms of law’; thus there must be a political-economy fundamental reformulation that ‘would mean the end of law’.

Capitalism aims for violent ends, namely open markets and free trade, by violent means, namely the monopoly of force and the Rule of Law. The alienation and segregation that individuals undergo with capitalism is violence.

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25 Disputes between states are political and economic but this does not void treating them as legal. Kelsen (n 6) 24; Purvis (n 23) 114; Miéville, ‘The Commodity-Form’ (n 24) 278 (referencing Chimni).
26 Miéville ‘The Commodity-Form’ (n 24) 276.
27 See Miéville, *Between Equal Rights* (n 9) 65; Mieville, ‘The Commodity-Form’ (n 24) 281.
28 Miéville ‘The Commodity-Form’ (n 24) 274.
29 ibid 275.
30 ibid.
31 ibid 274.
33 ibid 318.
As Miéville affirms, ‘[V]iolence — coercion — is at the heart of the commodity form’, since for an exchange to occur from mine to yours, which implies exclusion, force and coercion are implicit.\(^\text{34}\) Or as Miéville highlights Marx’s articulation, ‘[B]etween equal rights, force decides’.\(^\text{35}\) To extrapolate this notion under international law, recalling that states act as individual property owners, the same exclusion and ‘self-help’ violence\(^\text{36}\) is implied. Further, under capitalist competition for resources, or accumulation of capital, the economic division is brought about by the political means of the state, and precisely through international law, the economic and political have emerged.\(^\text{37}\)

Miéville’s distinct analysis comes through in his elaboration on the legal commodity-form, that is, the structure of international law beyond its content of principles and policies.\(^\text{38}\) For him, the commodity form approximates to the legal form since it is underpinned by the same logic, and the legal subject ‘is very closely related to the commodity owner’.\(^\text{39}\) This is so due to the fact that law allows for the social relations of labour commodity-exchange to be conceived;\(^\text{40}\) thus ‘the legal form is the form of a particular kind of relationship’ from which the legal norm, i.e. the rule, can only be derived.\(^\text{41}\) This correlates back to his critique of the prediction of ‘rules as the fundamental particles of international law’.\(^\text{42}\) The emphasis here is that in a commodity-exchange, two equal private property owners who reach a dispute necessitate a formalised form of social regulation, which is the law, ‘pervasive in capitalism’.\(^\text{43}\)

IV. LAW: THE CONTINUATION OF WAR BY OTHER MEANS

Building on Clausewitz, that war is the continuation of politics by other means, Kennedy suggests that politics is legalised.\(^\text{44}\)

Law has become — for parties of all sides of even the most asymmetric confrontations — a vocabulary for marking legitimate

\(^\text{34}\) Miéville, ‘The Commodity-Form’ (n 24) 287.
\(^\text{35}\) ibid 291.
\(^\text{36}\) ibid.
\(^\text{37}\) ibid 292.
\(^\text{38}\) ibid 281.
\(^\text{39}\) Mieville, ‘The Commodity-Form’ (n 24) (quoting Pashukanis); Miéville ‘The Commodity-Form’ (n 24) 282.
\(^\text{40}\) Miéville ‘The Commodity-Form’ (n 24) 282.
\(^\text{41}\) ibid 283.
\(^\text{42}\) ibid 278.
\(^\text{43}\) ibid 282.
\(^\text{44}\) Kennedy, ‘Lawfare and Warfare’ (n 2) 163.
power and justifiable death ... [W]ar has become a legal institution — the continuation of law by other means. 45

But law has not developed to become the institutional arm of war. Rather, it developed under the discourse of such war. Indeed as Kennedy himself recognises, violence gave birth to the law, 46 and it is respectful of it as its origin and companion. 47 He goes as far as to imply that it would be hard ‘to avoid thinking that law is also the continuation of war by other means’. 48 Foucault has inverted Clausewitz to propose that ‘politics is the continuation of war by other means’. 49 To apply this inversion building on Kennedy, it is the Author’s suggestion that law is the continuation of war by other means. It is worth noting here Foucault’s analysis in detail:

... [P]ower relations ... are essentially anchored in a certain relationship of force that was established in and through war at a given historical moment that can be historically specified. And while it is true that political power puts an end to war and establishes or attempts to establish the reign of peace in civil society, it certainly does not do so in order to suspend the effects of power or to neutralize the disequilibrium revealed by the last battle of the war ... [T]he role of political power is perpetually to use a sort of silent war to re-inscribe that relationship of force, and to re-inscribe it in institutions, economic inequalities ... Politics, in other words, sanctions and reproduces the disequilibrium of forces manifested in war. 50

Continuing on the application, the entire passage can be read with law understood as power, of which the ‘legal form’ sits inseparably at the base of said power and coercion. Accordingly, law itself, established as a result of war at a given historically specified moment, and whilst it can put an end to war as the establishment of ‘peace’, does not aim to suspend the imbalance of power and its effects. Accordingly, law is to use this ‘silent war’, or embedded violence, to engrave the relations of force in its institutions, meaning law repeats the unequal forces as they were evident in war. Foucault’s thesis continues as follows:

45 ibid 162.
46 Kennedy, ‘Remarks’ (n 12) 163.
47 ibid.
48 ibid 161.
50 ibid 15-16.
… [W]ithin this ‘civil peace,’ these political struggles, these clashes over or with power, these modifications of relations of force — the shifting balance, the reversals — in a political system, all these things must be interpreted as a continuation of war. And they are interpreted as so many episodes, fragmentations, and displacements of the war itself. We are always writing the history of the same war, even when we are writing the history of peace and its institutions.51

Similarly, we can replace this understanding of power with that of the law; that legal institutions, coercion, hegemony and modification of the political relations of power — or what Mieville calls strong states’ ‘enforcement of their own interpretation of law’52 — should all be understood as a continuation of war. Indeed it is true that we are writing the history of the same war under the Rule of Law, especially when we are referring to peace. Seen in this light, legal peace is but a perverted version of war.

V. LAW’S CAPACITY FOR RADICAL STRUGGLE

Though most legal commentators have ‘faith in law’s freedom from imperialist desire’,53 CLS highlights the imperialist history of international law. However, that colonialism served the protection of the empires’ needs within a ‘humanist’54 discourse is not merely a history of international law that is to be transformed or rejected as CLS argues,55 but a structural violence, an embedded characteristic of the system. In asserting so they fail to critique the shape, or form of the law, as was developed above. Therefore, contrasting to Kennedy’s claim, legal resolution, however much expanded, cannot lead to such international transformation.56

Neither is the violent history of international law, as Third World Approaches to International Law (TWAIL) scholarship describes it, a shift from past political oppression to an economic one.57 Rather, it emerges through the

51 ibid 16.
52 Mieville, ‘The Commodity-Form’ (n 24) 294.
54 Kennedy, ‘Lawfare and Warfare’ (n 2) 160 (stating, ‘The humanist vocabulary … is mobilised as an asset in war’).
55 Law comes in certain preferences, thus we can choose between the better or worse ones, or we can conceive international law’s universal ambition without ‘civilising’. Koskenniemi (n 17) 123.
56 Kennedy, ‘Remarks’ (n 12) 169.
political economy of capitalist domination. Law itself is an Ideology as CLS suggests,\textsuperscript{58} but as posited by Miéville, to critique it on this ground is to fail to theorise the legal form.\textsuperscript{59} Thus it is asserted that law’s lack of neutrality means it cannot be reconciled. Building on B.S. Chimni, Miéville highlights that international law, being class law, does not allow for a radical struggle. But beyond being its ‘limitation’ for emancipation, Miéville does not see any potential for it.\textsuperscript{60} This notion is stressed all throughout Miéville’s work; law does not have the capacity to be a force for progressive transformation.\textsuperscript{61}

‘The power of international law is … the armed might of powerful states enforcing their interpretation of legal rules with cluster bombs and gunship … [I]t is the power of violent coercion’.\textsuperscript{62} This notion has today been updated through the Human Rights discourse of international law.\textsuperscript{63} For Kennedy, however, law remains outside the sphere of violence, or rather it is its antagonist,\textsuperscript{64} thus his theory is constrained to legal discourse that believes in law’s transformative attribute, since law continues ‘both innocent of and engaged with violence’.\textsuperscript{65} Rather than recognising that it is precisely under these conditions that the Rule of Law, and International Law specifically, came to being. Therefore, legal rules do not have the potential for progressive change.\textsuperscript{66} As Miéville so adequately concludes in his research, ‘A world structured around international law cannot but be one of imperialist violence. The chaotic and bloody world around us is the rule of law’.\textsuperscript{67}

VI. \textbf{PERVERTED PEACE}

International law tells us how violence is regulated, in a negative sense, but the conducts of war develop as the international system changes, reflecting the needs and interest of the elite. Peace, demarcated from war, remains vague and ambiguous, changing its meaning, similarly to international law itself, with the development of capitalism, or its ‘phases’.\textsuperscript{68} So the entire international system exists for the maintenance of a certain undefined status quo, or ‘peace’, as a

\begin{itemize}
  \item \textsuperscript{58} Purvis (n 23) 99-102.
  \item \textsuperscript{59} Mieville, \textit{Between Equal Rights} (n 9) 80-82.
  \item \textsuperscript{60} Miéville, ‘The Commodity-Form’ (n 24) 278.
  \item \textsuperscript{61} Miéville, \textit{Between Equal Rights} (n 9) 98.
  \item \textsuperscript{62} Miéville, ‘The Commodity-Form’ (n 24) 280.
  \item \textsuperscript{63} ibid 279.
  \item \textsuperscript{64} Kennedy, ‘Remarks’ (n 12) 163.
  \item \textsuperscript{65} ibid.
  \item \textsuperscript{66} Mieville, \textit{Between Equal Rights} (n 9) 278.
  \item \textsuperscript{67} ibid 319 (emphasis in original).
\end{itemize}
perverted form of war. In its development, international law meant western
‘civilised’ nations had the right (and duty) of waging wars against the savages
who opposed them.69

Peace in the international structure as we know it today, the UN and the
security council, ‘itself established to institutionalise the outcome of the second
world war as a system of “collective security”’.70 Thus this Article asserts that,
seen in this light, peace is but a cynical tool for imperialist domination, in
Chimni’s words, ‘[I]t is the function of dominance’.71 Moreover, it is legitimised
as order, and naturalised as universal. But the colonial development of
international law was not parallel to the development of capitalism; it was its
manifestation in the age of empire. Imperialism is embedded in the structures
that expressed international law.72 To recall Miéville’s argument, ‘Modern
Capitalism is an imperialist system, and a juridical one’,73 as both international
law and imperialism developed under and as part of capitalism. Hence the
formal aims themselves – international peace – which gave birth to the system
from the first instance, should be challenged.

Today there is less of a need to apply the laws of war and the Use of Force in
regards to international warfare ‘proper’, rather they apply to interventions,
peace and security, human rights and development discourses, through which
the ‘international community’ continues to ‘civilise the savages’. Additionally,
there is less of a need for domination through force, since it is exercised
through ‘the world of ideas’.74 Furthermore, when discussing the nature of law
and war, Kennedy asserts that an exploration of the role of law in war would
not result in ‘a great deal of time thinking of doctrines of international law
which explicitly purport to deal with warfare’ since ‘background doctrines of
property and contract … channel the legal mobilisation of violence’.75 Miéville
argues that ‘internationally there is … no body with a monopoly of violence
with which to enforce [competing claims]’.76 Peace itself, it is being argued, is
serving to legitimate the monopolisation of violence in the form of UN forces,
as well as its role in economic expansion. As Orford explains, ‘By structuring
the debate around the use of force, we never get around to talking about those

69 ‘Since they are by definition violent, barbarians are legitimate objects of violence. Civility is
for civil, barbarity for the barbaric’. ibid 32 (quoting Bauman).
70 Kennedy, Lawfare and Warfare (n 2) 161; see also D Zolo, Victor’s Justice (Verso 2009).
71 Chimni (n 68) 19.
72 Mieville, Between Equal Rights (n 9) 297.
73 ibid 293.
74 Chimni (n 68) 19.
75 Kennedy, ‘Lawfare and Warfare’ (n 2) 163.
76 Mieville, ‘The Commodity-Form’ (n 24) 293.
other issues’, 77 referring to economic liberalisation. This will be elaborated further below.

VII. PRACTICAL PEACE: ECONOMIC LIBERALISATION

Conversely, the picture that is given to us is inverted, that peace is achieved through trade, and post-conflict economic development is the cure. 78 As General Assembly Resolution 60/180 states: ‘Recognizing that development, peace and security and human rights are interlinked and mutually reinforcing’. 79 This ideological imposition, that peace is achieved by economic means, and is understood in material ‘prosperity’, is evident in the practice of peace. Thus the following Section of the Article will briefly draw on some research of post-conflict reconstruction.

Peace is seen as intertwined with development and this notion prevails all through the discourse of the international system. Outlined under the ‘responsibility of the Security Council in the maintenance of international peace and security’:

The members of the Council agree ... to address urgently all the other problems, in particular those of economic and social development ... They recognize that peace and prosperity are indivisible and that lasting peace and stability require effective international cooperation ... 80

As such, financial institutions have a major role 81 in the development of post-conflict societies and humanitarian needs of ‘failed states’ – from post-WWII Marshall Plans in Europe to IMF and WTO mandates 82 in the third world today, the discourse has remained and the same economic policies apply. Moreover,

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77 Anne Orford ‘Locating the International: Military and Monetary Interventions after the Cold War’ (1997) 38 Harvard International Law Journal 443, 481.
81 The Peacebuilding Commission ‘[d]ecides that representatives from the World Bank, the International Monetary Fund and other institutional donors shall be invited to participate in all meetings of the Commission in a manner suitable to their governing arrangements’. ibid.
82 Orford, Reading Humanitarian Intervention Law (n 53) 25-27; Orford ‘Locating the International’ (n 77).
peacebuilding, peacemaking and humanitarian interventions reinforce dependence in post-conflict peacebuilding which ‘rehearse colonial fantasies about the need for benevolent tutelage of uncivilised people’. Orford emphasises the role of economic liberalisation in the international community, which ‘appears sacrosanct’ when we consider ‘how to guarantee peace’.

Research suggests that growth in GDP indeed takes place in the aftermaths of war, due to foreign investment increasing sharply. Multi-National Corporations (MNCs) and Foreign Direct Investment are key in the international processes of post-conflict reconstruction, and though researchers found that they have a negative impact on local economies in the short term, they are seen crucial to growth and long-term technological and economic development. Thus International Foreign Institutions’ policies in the form of foreign investment, penetration of MNCs and privatisation – or put differently, international capitalist expansion is not seen as a part of the problem, but rather plays the key role in part of the solution for war-torn societies.

Moreover, even when peace is considered beyond ‘negative peace’ to include sustainable long-lasting peace, there has been a call for more economic reform and focus on developmental institutions, accompanied by the use of force as the required response to any ‘security crisis’. As Chimni emphasises, these processes widen the rule of capital and allow for the global accumulation of capital, though for him this signals a shift from a past international law. But

83 Orford, Reading Humanitarian Intervention Law (n 53) 11.
84 Orford, ‘Locating the International’ (n 77) 479.
88 Economic reconstruction is a cause of violence. See Orford, Reading Humanitarian Intervention Law (n 53) 13, 18; Orford, ‘Locating the International’ (n 77) 455-59, 480.
91 Orford, ‘Locating the International’ (n 77) 480.
92 Chimni (n 68) 9.
93 ‘No longer confined to questions of war and peace or diplomacy, international law has ... seen the adoption of a network of laws which seek to establish the legal and institutional framework favorable to the accumulation of capital in the era of globalization’. BS Chimni, ‘Marxism and International Law: A Contemporary Analysis’ (1999) 34 Economic & Political Weekly 337, 337.
as posed by Orford, how is it that economic exploitation occurs along post-conflict reconstruction, and for both to be seen as an international humanitarian intervention? Though some scholars have argued in favour of such interventions in certain circumstances, based on the above framework the discourse of peace in post-conflict reconstruction is a continuation of economic exploitation.

It can be argued that protection of property rights — a core capitalist feature of liberal freedom — itself facilitates the international monopoly of violence, as the Human Rights discourse that serves their protection also allows for justifying wars and interventions. International legal institutions specifically allow the process of transnationalisation of capital. Globally, this meant reconstitution (as internationalisation) of legal governing agencies; ‘international law now aspires to directly regulate property rights’. In addition, in transitional justice, constitutional changes maintained the protection of property rights and contributed greatly to the unequal distribution of wealth domestically. For example in post-apartheid South Africa inequality continues through securing of rights of the white, hence maintaining high levels of black poverty. Evidently, violent relations are maintained in the veil of peaceful transformation and justice.

Ultimately, how we measure peacefulness should shed light on what we indicate as factors for peace. What we find is that the picture is severe; levels of death, polity (i.e. processes of democratisation), economic growth (measured by GDP) as well as health and education, are the main sources of ‘peacefulness’ as understood in most academic research. Upon reflection though, GDP tells us about a country’s growth, not how that growth is shared or how violent the conditions for achieving this growth are. Hence, income and consumption levels become indicators of peace, instead of levels of societal harmony, equality, trust and nonviolence. That ‘liberal democratisation’ is an indicator should also tell us about the ideological imposition, that a certain liberal triumph must take place for peace to prevail. Consequently, the notion of peace is perverted.

95 See for example Christopher Greenwood, ‘Scope of Application of Humanitarian Law’ in D Fleck (ed), The Handbook of Humanitarian Law in Armed Conflicts (OUP 1995).
96 It is beyond the scope of this Article to discuss this in detail. For a projection of this theory see Robinson (n 87) 2004.
97 Mieville, Between Equal Rights (n 9) 313.
98 Chimni (n 68) 8 (emphasis in original).
100 For example, the World Bank and United Nations University studies on post-conflict reconstruction. See Chen (n 85); Turner (n 86).
In wartime, that is to say, during armed conflict or direct violence, the severity of violence is measured by the number of deaths and Human Rights violations. However, during ‘peacetime’ under capitalism, in which violent social and political relations continue to dominate our lives, we find 125,000 daily preventable deaths from hunger and disease, under the conflict of Capitalism vs. Humanity. Legally, though, this state of being is not distinguished as war. As Kennedy explains, during such ‘peacetime’ the partnership of war and law means we are left feeling that just causes are fought, whilst having no sense of responsibility for the deaths of war; thus we lose our moral compass, while politics and ethics are at bay.

VIII. CONCLUSION

This Article attempted to locate the position of the international legal scholarship and practice on the notion of peace. Evidently, we find that the notion remains unclear, complex and correlated to war and violence, in spite being the prime and most valuable aim of the entire system. It is a paradox for all international lawyers and institutions to work extensively toward a notion that remains unknown. Nonetheless, this Article found that the demarcation of peace and war draws clear lines between which violence is lawful and which is not. Applying Mieville’s analysis of international law, it has found that the violent means of the commodity-exchange are characteristic of the system itself, since it is underpinned by capitalism. That international law developed under imperialism was not by chance; it was so in part of the development of capitalism. As such, the same demarcation began to change and merge, reflecting the ends of those in power, but remained linear and continued to be told in a black-and-white discourse. Clearly, the story is told in this manner to legitimise and conceal the violence embedded within the rule of law itself.

Drawing on CLS and applying its premise to Foucault’s notion on violence, the Author suggested that law itself is the continuation of war by other means. Meaning, the violence that was at the origin of international law — that same violence that it regulates and involves itself in — remained at the core of the system in both form and content. In this sense, peace is but a perverted version of war. Finally, this Article found that in practice, the course of ‘peace’, which increasingly encompasses all kinds of ‘civilising’ processes, predominantly means economic and political liberalisation. Consequently, in every sense peace is perverted, since peace, under capitalism, is war.

101 Even then, deaths are often ‘curtained off as the function of kitsch’. See Martti Koskenniemi (n 17) 121 (drawing on Kundera).
102 Johan Galtung, 50 Years – 100 Peace & Conflict Perspectives (Kolofon 2008).
103 Kennedy, ‘Lawfare and Warfare’ (n 2) 181.
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