



# **The Ethics of Foreign Policy**

*Edited by*

**David B. MacDonald, Robert G. Patman**

*and*

**Betty Mason-Parker**

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# The Ethics of Foreign Policy

*Edited by*

DAVID B. MACDONALD,  
ROBERT G. PATMAN AND BETTY MASON-PARKER  
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**ASHGATE**

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## Introduction

# The Ethical Context of Foreign Policy

David B. MacDonald and Robert G. Patman

Around the world, the interest in ethics and its relationship to foreign policy is clearly growing. In this vein, Rosenthal and Gelb have observed: ‘Morality, values, ethics, universal principles – the whole panoply of ideals in international affairs that were once almost the exclusive domain of preachers and scholars – have taken root in the hearts, or at least the minds, of the American foreign policy community.’<sup>1</sup> Given that the US is the world’s sole superpower, this trend not only affects US foreign policy, but also influences much of the global environment. With this in mind, this volume explores the impact of ethics on foreign policy questions such as military intervention, peacekeeping and international policing, the globalization of the media, trade and regional community building, and international law.

In the context of this volume, we define foreign policy as the area of politics that seeks to bridge the boundary between the nation-state and its international environment. It refers to decisions and actions that involve relations between an independent actor (usually a state) and other actors in the international arena.<sup>2</sup> In comparison to the domestic policy sphere, the makers of foreign policy are often concerned with matters over which they have limited control, and in which their knowledge is often less than perfect. In principle, foreign policy represents the way a state co-ordinates and prioritises its externally oriented interests, and projects the values it considers significant. It often results in actions to shape the state’s external environment, to produce outcomes positive to the state and its allies. Foreign policy can also imply an absence of action. Thus a western lack of will to prevent the Rwandan genocide tells us as much about foreign policy as pro-active decisions to halt similar tragedies unfolding in Yugoslavia.

But what does the term ethics mean? It can be usefully defined as ‘a complete and coherent system of convictions, values, and ideas that provides a grid within which some sorts of actions can be classified as evil, and so to be avoided, while other sorts of actions can be classified as good, and so to be tolerated or even pursued.’<sup>3</sup> Ethical systems normally meet some sort of formal criteria. They are not random and haphazard but are rooted in a particular society and time. An ethic, as Peter Haas

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1 Leslie H. Gelb and Justine A. Rosenthal, ‘The Rise of Ethics in Foreign Policy: Reaching a Values Consensus’, *Foreign Affairs* (2003).

2 J. Frankel, *The Making of Foreign Policy: An Analysis of Decision-Making* (London, 1963), pp. 1–3.

3 Peter J. Haas, *Morality After Auschwitz: The Radical Challenge of the Nazi Ethic* (Philadelphia, PA, 1992), p. 3.

usefully explains, constitutes a standard of conduct ‘against which adherents can declare certain goals to be good or bad and so judge particular types of actions to be right or wrong’. An ethical system works best when it is ‘coherent and non-self-contradictory’, and must to those who embrace it appear to be ‘intuitively correct’. At the same time there is some level of interest involved. It must also ‘in some way be perceived as advancing individual or group values and interests’. By contrast ‘a collection of beliefs and values that apparently work against a community’s survival or welfare will ultimately be rejected by that community as improper’.<sup>4</sup>

If ethics involves a choice between what is morally right and what is morally wrong, it has to be acknowledged that the possibilities for ethical action in foreign policy have proven in the past to be quite limited. It has recently been calculated that there has only been a 29-year period in all of human history during which there was no recorded warfare undertaken somewhere in the world.<sup>5</sup> But while conflicts seem to stretch back to the very earliest human civilizations, we also have an equally ancient history of laws and treaties designed to stop aggression, as well as laws and rules to bring about peace, cooperation and justice between states, from the Hebrew book of Deuteronomy to the Roman *jus gentium*.

While moral concerns have rarely been the main driving force of foreign policy making, the broadening of horizons during the past two decades through the end of the Cold War and deepening globalization have begun to erode the conventional wisdom that there is a stark juxtaposition between ethics and interests. Moreover, if this trend continues, it raises the possibility that elements of morality and interests may converge in a re-defined concept of national interest in the new world of the twenty-first century.

In this introductory chapter, we explore the evolving relationship between ethics and foreign policy. The chapter proceeds in five stages. The first section examines the early emergence of the ethical dimension in global politics. The second considers the paradoxical development of foreign policy ethics during the Cold War. In the third part, we consider the impact of the end of the Cold War and deepening globalization on moral concerns about foreign policy. The fourth section shows how the post-9/11 period has increased moral competition in the realm of foreign policy. Finally, we ponder the ethical implications of the changing global context for foreign policy.

## **The Emergence of the Ethical Dimension**

From very early times, there have been conventions covering the initiation and conduct of war. The ancient Egyptians, Romans, Greeks, Mesopotamians, Indians, as well as the fourth century BC Chinese military strategist Sun Tzu, devised rules on the management of war.<sup>6</sup> Saint Augustine subsequently argued that an act of war needs a just cause, inaugurating a mode of inquiry that continues to have repercussions in International Relations today. The seventeenth-century English

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4 Ibid. pp. 4–5.

5 Samuel Hynes, *The Soldier's Tale: Bearing Witness to Modern War* (London, 1998), p. xi.

6 Gelb and Rosenthal, ‘The Rise of Ethics in Foreign Policy’, p. 3.

philosopher, Thomas Hobbes, held that human life was bound to be ‘solitary, poor, nasty, brutish and short’ without the domain of a sovereign state, and that war was a necessary evil for states to protect the security and welfare of their citizens.<sup>7</sup>

It was during the Thirty Years War that the Dutch jurist Hugo Grotius published his now famous work, *On the Laws of War and Peace*. Often called the father of modern international law, Grotius argued that the natural state of human beings was to live in peace. War violated the principles of natural law, and was only to be used in self-defence. In time, Grotius’ ideas became the cornerstone of the international system.<sup>8</sup> The German philosopher Immanuel Kant advanced the hypothesis in the sixteenth century that a system of perpetual peace could be constructed through a lawful system of *liberal* states. Moreover, Karl von Clausewitz, a Prussian officer, propagated the idea in the eighteenth century that wars should be limited and essentially disciplined by the political interests of the state they are supposed to serve. These and many other figures played a role in creating a system of international law, and laid the basis for the type of international morality we witness today.

But the debates on ethics often occurred on the periphery of international practice and related more to the rights of the aristocracy and the sovereign state than to a universal set of values. Indeed, the structure of the international arena was a central obstacle to the mainstreaming of ethics in foreign policy. After the Treaty of Westphalia, which ended the Thirty Years War in 1648, sovereign states became the major players on the international stage. The rise of the sovereign state meant that perceived national interests often took precedence over broader international concerns. However, states by the early 19th century began creating a coherent framework of reciprocal rights and obligations during war.

Napoleon’s defeat in 1815 heralded the Congress of Vienna, which for the first time introduced rules for diplomatic procedure to help create a political climate for negotiating rather than fighting. The Conference of Paris in 1856 laid down provisions for how neutral countries should be treated when caught up in war around them. When Francis Lieber found himself caught in the middle of the American civil war, he became increasingly concerned for the treatment of civilians and captured soldiers on both sides. In 1863, he submitted a draft version for what was eventually the first official code of regulations for the US military, known as ‘*General Orders Number 100*’ or the *Lieber Code*. Lieber’s code condemned cruelty, unnecessary violence, and unnecessary destruction of property, and it soon became a highly influential document, influencing the founding of the Red Cross by Henri Dunant and the later Geneva Conventions.<sup>9</sup>

By the 1880s, the precedent of intervening in the domestic affairs of another state to protect civilians was established. British Prime Minister William Gladstone became

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7 Thomas Hobbes, *Leviathan* (Oxford, 1946), p. 82.

8 See Stephen Neff, *War and the Law of Nations: A General History* (Cambridge, 2005).

9 Geoffrey Robertson, *Crimes Against Humanity: The Struggle for Global Justice* (London, 2000), pp. 15, 191–5. See also Francis Lieber, ‘Laws of War: General Orders No. 100’ (1863), The Avalon Project: Yale University <http://www.yale.edu/lawweb/avalon/lieber.htm>.

concerned about the discrimination of Bulgarian Christians in the Ottoman Empire. In 1898, he sent British forces to protect Christians from slaughter at the hands of Turkish Bashi-Bazouk mercenaries. The key lesson here was that if the rights of co-religionists were under threat, the west had a duty to protect the vulnerable. In the same year, America went to war against the Spanish Empire, arguing that the Empire was mistreating its subjects. While there were clear geopolitical objectives here, American leaders argued that Spanish behaviour ‘was shocking to the conscience of mankind’.<sup>10</sup>

The Hague Conventions of the late nineteenth and early twentieth centuries, the precursors of the Geneva Conventions, set out ‘laws of war’ with the aim of protecting combatants and non-combatants alike. They outlined rules for the treatment of prisoners and the wounded, and prohibited certain weapons and battlefield techniques. These new guidelines helped make war somewhat more humane but did not address the ethics of larger foreign policy questions. And some of these issues were taken up on a targeted basis by trans-national organizations in the nineteenth century. Thus, the Quakers in the United Kingdom and the United States joined hands in an anti-slavery movement, and women around the world united to champion women’s suffrage.

Rights were by and large either granted by a sovereign to his or her people, or negotiated and fought for by a group of élites operating against the power of the sovereign. Rights were granted on the basis of perceived rationality, not humanity. Even after the Enlightenment, political leaders and philosophers who spread doctrines of equality and human rights had no problem excluding large segments of humanity. They did this on the basis that some people were irrational, mentally inferior, or did not possess sufficient property or wealth to exercise opinions worth considering.

This began to change after the carnage of World War I, and the devastation caused by total war in Europe. As Jonathan Glover has argued, history for early twentieth century Europeans was an ‘unpleasant surprise’.<sup>11</sup> Following the deaths of some 8.5 million Europeans in their first experience of total war, changes to the international system followed. Woodrow Wilson was the first modern world leader to put ethics and universal values at the heart of a nation’s foreign policy. Wilson called for making matters such as national self-determination and democracy equal to the rights of man. Despite the perceived failure of Wilson to take the US into the fledgling League of Nations, the inter-war years were characterised by the prominence of a perspective known as idealism. This contended that internationalism, rooted in moral values and legal norms, was the key to a more peaceful world order. The Kellogg-Briand Pact of 1928, for example, attempted to outlaw war as an instrument of foreign policy. It was signed by 65 countries.<sup>12</sup>

But the events of the 1930s, epitomised by Imperial Japan’s militarism in China and Nazi Germany’s brutal aggression against its neighbours, challenged the

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10 Shelley Wright, *International Human Rights, Decolonisation and Globalisation: Becoming Human* (New York, 2001); Robertson, *Crimes Against Humanity*, pp. 14–15.

11 J. Glover, *Humanity: A Moral History of the Twentieth Century* (London, 1999), pp. 2–4.

12 P.A. Reynolds, *An Introduction to International Relations* (London, 1980), p. 100.

basic tenets of idealism. By 1939, E.H. Carr launched a sustained attack on the 'utopianism' of the idealists and advocated the adoption of what he called Realism. Here, he argued that the insecurity and the narrow pursuit of national interest in the international arena undermined optimistic attempts at creating stability through international cooperation.<sup>13</sup> To emphasise the point, Carr dichotomised utopia or idealism and reality, and presented them as mutually exclusive aspects of foreign policy. He identified idealism with values, morality and ethics, and realism with facts, power and politics.

Nevertheless, idealism experienced a limited revival during World War II. Franklin Roosevelt's Four Freedoms speech and his subsequent stewardship of the creation of the United Nations reflected moral concerns, but fell short of Wilson's lofty ideals. The UN at its core was based far more on great-power politics than on universal principles. Perhaps the boldest single effort to extend moral values came with the Nuremberg trials of 1945–46. Unprecedented human brutality epitomised by the Holocaust, the systematic genocide of six million Jews, meant that the Second World War was not merely a struggle for military victory, but also a quest to build a new international order that would 'never again' allow such horrors to be perpetrated. The Nuremberg Trials introduced a new category of crime into international law. The concept of 'crimes against humanity' presumed a generic and universal set of norms thought applicable to all human beings. In addition, the 1945 Charter of the United Nations affirmed, in its preamble, 'faith in fundamental human rights,' and Article 1.3 included, among the purposes and principles of the organisation, promotion of such rights and freedoms.<sup>14</sup>

It was against this background that the Universal Declaration of Human Rights and the Genocide Conventions were adopted by the UN General Assembly in December 1948. Prior to the post-World War II era, moral concerns, in so far as they were acknowledged, were broadly subsumed under the domestic jurisdiction of states in accordance with the post-Westphalian ideas about sovereignty and its corollary, non-intervention. The Declaration was the first time in history that an international organization had attempted to define a comprehensive code for the internal governance of its members. The notion that human beings have rights because they are human beings and not because they are citizens of state A or state B was, in terms of the contemporary practice of world politics, a novel departure.<sup>15</sup>

The status of the Universal Declaration is unique. Unlike other significant documents such as Magna Carta, the French Declaration of the Rights of Man and the American Declaration of Independence, it is concerned with the rights and freedoms of people everywhere. This constituted a break from the past. According to Robertson, in the period before World War II: 'It dawned on no political leader,

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13 E.H. Carr, *The Twenty Years' Crisis 1919–1939: An Introduction to the Study of International Relations* (London, 2001).

14 Charlotte Bretherton, 'Universal Human Rights: Bringing People into Global Politics?', in Charlotte Bretherton and Geoffrey Ponton (eds.), *Global Politics: An Introduction* (Oxford, 1996), p. 249.

15 Mary Robinson, 'The Universal Declaration of Human Rights: A Living Document', *Australian Journal of International Affairs*, 52/ 2 (1998), p. 118.

even after the carnage of the First World War, that international institutions might tell states how to treat their nationals.’ ‘Human rights’, he advances, mattered little until ‘Hitler made them irrelevant’.<sup>16</sup>

This new broad enumeration of ethical standards, however, was soon overshadowed by the growing climate of hostility and rivalry that developed between the Western (non-communist) and Eastern (communist) blocs in what became known as the Cold War, a term coined by journalist Walter Lippmann in 1947.

### **Ethics, Foreign Policy, and the Cold War**

The advent of the Cold War helped to consolidate Realism’s status as the dominant intellectual framework in foreign policy. Sometimes known as the power-politics model, Realism was sceptical that a permanent international peace was possible. Wars of the early twentieth century showed that the ‘will for good’ was more often than not trumped by the ‘will for power’, as Neibuhr argued in his *Moral Man and Immoral Society* (1932).<sup>17</sup> Morgenthau’s *Politics Among Nations* also built on the work of Neibuhr and Carr, and helped lay the basis for the Realist belief that states pursue ‘interests defined in terms of power’.<sup>18</sup> Human nature was deemed to be driven by a lust for power; war and violent conflict were seen as perennial features of an anarchic international system. Moreover, in the absence of any higher authority, sovereign states had no alternative but assume ultimate responsibility for safeguarding their interests. As an upshot, states, democratic as well as non-democratic, tended to make a clear distinction between what was morally acceptable in domestic and foreign policy.

The Cold War pitted a totalitarian system against a much freer Western democratic system, but the moral gloves came off on both sides in the course of this global struggle. For example, the US and its allies were prepared to align themselves with some very repressive regimes in order to prevail against what was seen as a greater evil, namely, Soviet style communism. Jeanne Kirkpatrick famously outlined America’s willingness to promote authoritarian regimes over communist led regimes of the totalitarian variety. A number of repressive rights-abusive regimes benefited in this way. Ferdinand Marcos in the Philippines, ‘Papa Doc’ Duvalier in Haiti, Park Chung-Hee in South Korea, Mohamed Reza Pahlavi in Iran, Augusto Pinochet

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16 Robertson, *Crimes Against Humanity*. Robertson provides a useful outline of human rights legislation in his ‘Preface’. See pp. xiii–xiv. For an excellent description of the evolution of Human Rights norms and legislation after World War II, See Louis Henkin, ‘Human Rights: Ideology and Aspiration, Reality and Prospect’, in Samantha Power and Graham Allison (eds.), *Realizing Human Rights: Moving From Inspiration to Impact* (New York, 2000), pp. 7–18.

17 For a discussion of Neibuhr’s influence see David Little, ‘The Recovery of Liberalism: Moral Man and Immoral Society Sixty Years Later’, *Ethics & International Affairs*, 7 (1993).

18 Hans Morgenthau, *Politics Among Nations. The Struggle for Power and Peace* (New York, 1948).

in Chile, Haji Mohammad Suharto in Indonesia, and Mobutu Sese Seko in Zaire certainly fell into this category.

For its part, the Soviet Union denied civil and political rights to its own citizens and engaged in a series of anti-humanitarian interventions in the international arena. The 1956 intervention in Hungary was a classic example. As well as imposing a repressive Soviet model in Central and Eastern Europe, Moscow provided all-round support for a number of brutal dictatorships in the Third World. These included regimes like those of Mengistu Haile Mariam in Ethiopia, Saddam Hussein in Iraq, Hafez Assad in Syria, Fidel Castro in Cuba and Kim Il-Sung in North Korea.

Yet the Realist approach to foreign policy made it seem that states were merely reactive entities, responding to an anarchical environment rather than an arena where states and individual leaders decisively shaped their environment. As Kraig has argued, 'Tremendous human suffering can be rationalized away as the inevitable product of the impersonal international system of power relations. World leaders are actively encouraged by the realists to put aside moral pangs of doubt and play the game of international politics according to the established rules of political engagement.'<sup>19</sup> National interests prevailed over the need to stop genocide from unfolding, or a rise in poverty or authoritarianism within states. One is reminded here of George Kennan's well known denunciation of the 'assumption that state behaviour is a fit subject for moral judgment.' For Realists, state interests superseded moral considerations.

But if the Cold War served to de-emphasise the moral component of foreign policy, it was also a period in which moral norms became institutionalised in international affairs. In 1966, after 18 years delay, the United Nations Commission on Human Rights (CHR) finally completed the codification of the fundamental rights enshrined in the Universal Declaration. The Covenants came into force in 1976.<sup>20</sup>

At the same time, a number of Conventions elaborated or extended moral norms in the international human rights field. These include the Convention on the Status of Refugees (1951), the Convention on the Political Rights of Women (1953), International Convention on the Elimination of all Forms of Racial Discrimination (1966), the Convention on Humanitarian Law (1977), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and the Convention of the Rights of the Child (1989). Furthermore, various declarations endorsed by the UN General Assembly expanded the normative architecture of human rights. Among the most significant of these were: the Declaration in the Granting of Independence to Colonial Countries and Peoples (1960), Universal Declaration on the Eradication of Hunger and Malnutrition (1974),

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19 Robert Kraig, 'The Tragic Science: The Uses of Jimmy Carter in Foreign Policy Realism', *Rhetoric & Public Affairs*, 5/1 (2002), p. 21.

20 *New Zealand Handbook on International Human Rights* (Wellington, 1998), pp. 59–63.



Declaration on the Elimination of All Forms of Intolerance Based on Religion or Belief (1981), and the Declaration on the Right to Development (1986).<sup>21</sup>

The formal acceptance of human rights as an appropriate subject-matter of UN affairs was consolidated by the first UN global conference on human rights in Teheran in 1968. All 84 states in attendance voted *inter alia* that ‘the Universal Declaration of Human Rights...constitutes an obligation for the members of the international community’.<sup>22</sup>

At the same time, the last two decades of the Cold War era witnessed the gradual elevation of the significance of human rights in foreign policy. In 1975, the Helsinki Final Act made human rights a legitimate subject in an East-West treaty for the first time in the Cold War. In 1977, President Carter described human rights ‘as the soul of US foreign policy’ and explicitly incorporated this idea into US foreign policy. While Carter’s moralistic foreign policy often attracted substantial criticism at home for either being too unrealistic or too selective in application, and abroad for being ‘a gross interference in the internal affairs’ of other states, it brought an enduring change in US foreign policy thinking, a point which became evident during President Ronald Reagan’s two terms in the 1980s.

Another important trend during the Cold War was the rise to prominence of human-rights non-governmental organizations (NGOs). Amnesty International, which was founded in 1961 and received the Nobel Peace Prize in 1977, became perhaps the best-known such organization. In the US, Human Rights Watch and the Lawyers Committee for International Human Rights were also instrumental during the Cold War in putting human rights on the agenda. Other NGOs of note include the International Commission of Jurists, headquartered in Switzerland; Article 19; and the Federation Internationale des Liges des Droits de l’Homme. Besides monitoring violations and publishing studies, these organizations hold demonstrations, file legal actions, organize petitions and letter-writing campaigns, and testify before national and international committees. Although there are differences in philosophy, focus, and tactics between the groups, there is a great deal of co-operation between them as well.

On balance, the Cold War years witnessed the steady expansion of the institutionalization of moral norms in international relations and began to reduce the traditional immunity of sovereign states from international scrutiny of the manner by which a government exercises its authority within its territory. But the realities of superpower ideological rivalry certainly limited the scope for incorporating these norms at the level of national foreign policy making.

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21 Richard Falk, ‘A Half Century of Human Rights’, *Australian Journal of International Affairs*, 52/3 (1998), p. 269.

22 David P. Forsyth, ‘The UN and Human Rights at Fifty: An Incremental but Incomplete Revolution’, *Global Governance*, 1/3 (1995), p. 298.

## The Post-Cold War Era, Globalization, and the Rise of the Morality-Power Nexus

With the end of the Cold War in the late 1980s, the international system began a turbulent and prolonged transition to a new order, the nature of which has yet to be fully determined. Nevertheless, there was a general recognition that the post-Cold War world was distinctive in at least three respects. First, there were no longer military confrontations of a system threatening kind. During the Cold War, a conflict between the US and the Soviet Union could have threatened the entire world with nuclear oblivion. But after 1989, it was difficult to conceive of likely conflicts of the same magnitude. Second, the US emerged from the Cold War as the world's sole superpower with no real geopolitical or ideological competitors in sight. For the first time in the modern era, the US could theoretically operate on the global stage without the constraints of other great powers.

Third, the post-Cold War world was subject to deepening globalization. This process encompassed the rapid development of complex interconnections between societies, institutions, cultures and individuals on a world-wide basis. This trend implied 'a shift in geography' as borders increasingly porous and a re-definition of the sovereign state.<sup>23</sup> With the end of the Cold War, globalization began to 'thicken' or deepen, a process largely overseen by America and its allies.<sup>24</sup> Globalization, according to one recent definition, has involved 'rapidly expanding trade, investments, financial flows, travel information and other forms of worldwide communication.'<sup>25</sup> Keohane and Nye further describe it as 'a state of the world involving networks of interdependence at multicontinental distances. The linkages occur through flows and influences of capital and goods, information and ideas, and people and forces, as well as environmentally and biologically relevant substances...'<sup>26</sup> The authors distinguish four different types of globalization: economic, military, environmental, and social/cultural.<sup>27</sup> In this new globalized environment, states faced new challenges and new imperatives. Defending the state from attack was no longer enough. The conception of an anarchical environment was thrown into doubt. As Monshipouri and Welch argue of the globalizing world: 'in addition to providing for the security of the people residing within its territory, states must consider the safeguarding and promotion of

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23 Jan Scholte, 'The Globalization of World Politics', in John Baylis and Steve Smith (eds.), *The Globalization of World Politics: An Introduction to International Relations* (Oxford, 2001), p. 14.

24 On "thickening", see the now classic work David Held, Anthony McGrew, David Goldblatt and Jonathan Perraton, *Global Transformations: Politics, Economics and Culture* (Cambridge, 1999). Domestically, the welfare systems in many countries were weakened by the increasing internationalization of capital and labor. Richard Devetak and Richard Higgot, 'Justice Unbound? Globalization, States and the Transformation of the Social Bond', *International Affairs*, 75/3 (1999), p. 488.

25 Stein Tonnesson, 'Globalising nation states', *Nations and Nationalism*, 10/1–2 (2004), p. 179.

26 Robert Keohane and Joseph Nye, 'Globalization: What's New? What's Not? (And So What?)', *Foreign Policy*, 118 (2000), p. 105.

27 Ibid. pp. 106–7.

the rights of minorities as well as considering their role in wide-ranging international agreements.<sup>28</sup>

In general, globalization has raised questions about the future of state sovereignty. As Falk laid out the issue: ‘The question is whether the state will function in the future mainly as an instrument (emphasis added) useful for the promotion and protection of global trade and investment or whether, by contrast, the state can recover its sense of balance in this globalizing setting so that the success of markets will not be achieved at the expense of the well-being of peoples.’<sup>29</sup> Even the World Bank observed in 1997 that while the ‘state still defines the policies and rules for those within its jurisdiction ... global events and international agreements are increasingly affecting its choices.’<sup>30</sup> McCorquodale and Fairbrother argue: ‘Developments in technology and communications, the creation of intricate international economic and trade arrangements, increasing activity by international organizations and transnational corporations (such as McDonald’s), and the changes to international relations and international law since the end of the Cold War have profoundly affected the context within which each person and community lives as well as the role of the state.’<sup>31</sup> Further: ‘In broader human rights terms, globalized economic institutions often implement plans that hurt those whose economic rights are most vulnerable.’<sup>32</sup>

Global openness to trade, the improvement in communications technology through the internet, and other forms of increased global awareness created fresh opportunities for ethical action at the international level. The old Cold War trade off between security and ethics no longer seemed so plausible, and a moral foreign policy seemed more possible. Elazar Barkan explained in *The Guilt of Nations*:

No longer does the brute and immediate existential need for security form the sole legitimate justification or motive in formulating foreign policy. Instead, opposition to genocide, support for human rights, and the fear of being implicated in crimes against humanity (even by inaction) have become practical, not merely lofty, ideals. These ideals increasingly shape political decisions and the international scene.<sup>33</sup>

Since the superpowers had, for Cold War reasons, been supporters of repressive regimes, the removal of this structural condition also helped create an international climate that was conducive to the promotion of human rights. A new wave of democratization and liberalization erupted in Eastern Europe in 1989 spread to the former Soviet Union and extended to parts of Africa, Asia, and the Middle East in the 1990s.

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28 Mahmood Monshipouri, ‘The Search for International Human Rights and Justice: Coming to Terms with the New Global Realities’, *Human Rights Quarterly*, 23/2 (2001), p. 374.

29 Ibid. p. 373.

30 Robert McCorquodale and Richard Fairbrother, ‘Globalization and Human Rights’, *Human Rights Quarterly*, 21/3 (1999), p. 737.

31 Ibid. p. 736.

32 Ibid. p. 745.

33 Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (New York, 2000), pp. I, xi.

In addition, the profile of moral concerns within the UN system increased during the post-Cold War period. The 1993 UN World Congress on Human Rights in Vienna which, *inter alia*, noted that ‘the promotion and protection of all human rights is a legitimate concern of the international community’ was a landmark event.<sup>34</sup> One result of this conference was the mandate to establish a UN High Commissioner for Human Rights. That outcome helped to ensure both budgetary support and agenda salience for human rights with the UN, notwithstanding rationalization pressures.<sup>35</sup>

More directly, the UN took a series of steps to protect the rights of people through the use of humanitarian intervention in Iraq, Somalia, Haiti, Bosnia-Herzegovina, and Kosovo. Humanitarian intervention is perhaps the most dramatic example of the new power of morality in international affairs. The notion that states could invade the sovereign territory of other states to stop massive bloodshed (call it genocide or ethnic cleansing) was nearly inconceivable until the 1990s, although Vietnam justified its invasion of Cambodia on this basis. In the 1990s, works by Hobsbawm and Brzezinski highlighted the 187 million people killed as a result of political violence in the twentieth century.<sup>36</sup> The right of states or groups within states to mutilate and kill fellow citizens on a mass scale seemed very often was treated an internal affair. But in the space of a few years, this pillar of international politics was badly shaken. The humanitarian interventions of the 1990s could be seen as evidence of a shift away from the sanctity of the state as the central focus in situations where there is widespread violation of moral norms.

The 1990s witnessed the re-emergence of a determination on the part of the UN to address war-time behaviour that violates the fundamental rights of the person. The UN has established war crimes tribunals to prosecute those who committed atrocities in Yugoslavia and Rwanda, and British authorities arrested former Chilean dictator Augusto Pinochet on charges of mass executions, torture, and other crimes against humanity. Even though these prosecutions would not deter all would-be killers, some justice was seen to be better than no justice at all. These prosecutions appear to be symptomatic of a rediscovered universalism that had its roots in the Second World War.

As for the promotion of democracy, it now became a major feature of American foreign policy, albeit a strategy applied somewhat selectively. The Clinton and Bush administrations have both promoted democracy around the world but said relatively little or nothing about the need for it in places such as China, Egypt, and Saudi Arabia.

Nevertheless, the view that the ethical basis of foreign policy had expanded after the Cold War was strongly contested. In many ways, the profoundly disappointing US-led humanitarian intervention in Somalia in 1992–93 served as a stimulus for the resurgence of the *realpolitik* approach to foreign policy. When US troops became embroiled in hostilities with warlord General Aideed’s faction, President Clinton, under pressure from Congress over the US’s growing casualty list, announced

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34 Forsyth, ‘The UN and Human Rights at Fifty’, p. 302.

35 Falk, ‘A Half Century of Human Rights’, p. 270.

36 M. Levene, ‘Why is the Twentieth Century the Century of Genocide?’, *Journal of World History*, 11/2 (2000), p. 305.

in October 1993 the withdrawal of all US troops within six months. There were domestic critics like John Bolton and Charles Krauthammer who contended that the Clinton administration had taken a multilateralist line that had ‘no conceivable connection to the US national interest’.<sup>37</sup> These observers simply did not believe that failed or failing states were geo-strategically important to the US.

The Clinton administration sought to quell these domestic concerns. In May 1994, Presidential Decision Directive (PDD) 25 was passed. This directive said the US would only participate in UN peacekeeping operations if they were in the national interest.<sup>38</sup> That did not mean a complete return to Cold War thinking. But it did signal the reinvigoration of the Realist view that the essential characteristics of the Cold War world, a dangerous situation of international anarchy that penalises states that fail to look after their vital national interests, remained part of the natural international order.

While the post-Cold War security environment has been characterised by the rise of intra-state strife, this trend did not signal the decline in the security function of the sovereign state. Realists argued that the decisions to launch or not to launch UN-backed humanitarian interventions were largely determined by key states on the Security Council. Furthermore, the ‘new wars’ of the post-Cold War era marked a reconfiguration of the system of states, rather than its demise. They signalled a shift from a bipolar to multipolar or unipolar security environment which could still be conceptualized within neo-realist Kenneth Waltz’s seminal *Theory of International Politics*.<sup>39</sup> Indeed, many of these civil conflicts involved the use of force to carve out new sovereign states from existing ones. Thus, according to the Realists, the norms of statehood remain both very real and a key motivation for intra-state conflict. Far from enhancing the moral basis of foreign policy, the end of the Cold War had created a ‘new world disorder’ characterised by ethnic cleansing, genocide, and nationalist violence.

Thus, in the wake of the unsuccessful US-UN operation in Somalia, there was a determination in Washington not to cross ‘the Mogadishu line’ and engage in peace operations that had the potential to expand into armed nation-building actions containing the attendant risk of taking casualties. It was ‘the Mogadishu line’ mentality that paralysed UN Security Council decision-making in the face of two brutal genocides in the mid-1990s. Politically reluctant to risk US casualties, the Clinton administration opposed an early deployment of UN peacekeepers in Rwanda.<sup>40</sup> At the same time, Washington declined to take an active leadership role in Bosnia until Serbian forces overran one of the UN-designated ‘safe areas’ at Srebrenica in July 1995 and slaughtered upwards of 8,000 Bosnian Muslim men and

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37 John R. Bolton, ‘Wrong Turn in Somalia’, *Foreign Affairs*, 73/1, pp. 56–66.

38 George Ward, ‘Peacekeeping: an Essential Tool’, *New Zealand International Review*, XIX/3 (1994), pp. 23–25.

39 Kenneth N. Waltz, *Theory of International Politics* (New York, 1979).

40 Harry Johnston and Ted Dagne, ‘Congress and the Somalia Crisis’, in Walter Clarke and Jeffrey Herbst, *Learning from Somalia: The Lessons of Armed Humanitarian Intervention* (Boulder, 1997), p. 191.

boys.<sup>41</sup> The Markdale Market bombing in Sarajevo and the shelling of the UN safe haven in Gorazde the year before had provoked little interest.<sup>42</sup>

A lack of western interest took its toll. At the war's end, 60 per cent of Bosnia's inhabitants were forced from their homes, and more than 1.3 million people (some 30 per cent of the population) were dispersed in 63 countries.<sup>43</sup> This was in addition to a death toll of 280,000.<sup>44</sup> To this we can add another 800,000 deaths in Rwanda, and a further 4 million casualties during the civil war in the Congo, in part caused by the Rwandan genocide and the breakdown of Mobutu's regime.<sup>45</sup>

Nevertheless, the Clinton administration moderated its post-Somalia national interest stance once it realised that the 'new wars' of the 1990s could be major international security problems. The massacre at Srebrenica was a catalyst in this regard. Fears of a widening war in the Balkans, along with the pressures of an upcoming US presidential election, triggered a more assertive US policy in Bosnia. In the first serious use of Western military power in Bosnia, NATO conducted two weeks of air-strikes on Serb targets in the first half of September 1995.<sup>46</sup> That military pressure brought Serb forces to the negotiating table. US diplomats subsequently pushed through the Dayton Accords in December 1995, and 60,000 heavily armed troops, mostly from NATO (with 20,000 from the United States), arrived in Bosnia to maintain a reasonably stable ceasefire.

At the same time, the Clinton administration firmly supported the establishment of ad hoc tribunals charged with the indictment and prosecution of individuals accused of crimes against humanity and genocide in the former Yugoslavia and Rwanda. Indeed, in a visit to Rwanda in August 1998, President Clinton publicly apologised for US inaction during the 1994 genocide.<sup>47</sup> The NATO humanitarian intervention in Kosovo and the Australian-led International Force East Timor (INTERFET) operation in 1999 seemed symptomatic of a broader approach towards security. Thus, by the late 1990s, the US adopted a middle road position in relation to the traditional dichotomy between morality and power in the area of foreign policy.

## September 11, the War on Terror, and the Struggle for Moral Clarity

After George W. Bush became president in January 2001, there was a clear strengthening of US unilateralism. This perspective strongly rejected the notion of 'nation-building', embraced the traditional view that security was fundamentally

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41 J. Honig and N. Both, *Srebrenica: Record of a Crime* (London, 1996).

42 Richard Holbrooke, *To End a War* (New York, 1999), p. 91.

43 David Campbell, *National Deconstruction: Violence, Identity, and Justice in Bosnia* (Minneapolis, MN, 1998), p. 221.

44 For a discussion, see Glover, *Humanity*, pp. 127–9.

45 Nicolas de Torrente, *Forgotten War: Democratic Republic of the Congo* (de.MO, 2005).

46 David Halberstam, *War in a Time of Peace: Bush, Clinton, and the Generals* (New York, 2002), pp. 348–350.

47 William Schabas, 'The Genocide Convention at Fifty', Special Report, United States Institute of Peace, 7 January 1999, pp. 6–7.

determined by the military power of sovereign states, and sought to promote 'a distinctly American internationalism'. Prior to 9/11, the Bush administration renounced the Kyoto Protocol on climate change, unsigned the Rome treaty creating an International Criminal Court, withdrew from the Anti-Ballistic Missile (ABM) treaty and rejected the Comprehensive Nuclear Test Ban Treaty.<sup>48</sup>

It would be difficult to imagine, therefore, a more traumatic event for the Bush administration than the transnational terrorist attacks of September 11. Declaring an all-out 'war' on what was called global terrorism, President Bush subsequently characterised the conflict as a struggle between 'good and evil' and said the US now had a responsibility 'to answer these attacks and rid the world of evil.'<sup>49</sup> Bush pledged to spend 'whatever it takes, whatever it costs' to win that struggle. As Weigl submits, after 9/11 'Americans discovered, or rediscovered, moral absolutes', since 'Some things *must* be off the board if there is to be any civilized society. Some acts are evil in themselves, and no putatively mitigating combination of intentions and consequences can possibly justify them.'<sup>50</sup>

The assumption that it is possible to wage a war with terrorism implied it was essentially a military problem to be dealt with through state-on-state actions. Viewed in this way, the Bush administration could claim some impressive gains in this new war. It swiftly toppled two governments it considered to be rogue regimes backing terrorism, first in Afghanistan, then in Iraq. At the same time, a number of key al-Qaeda operatives have been arrested by the US or its allies during recent years.

However, by pursuing a predominantly military-oriented national security approach to the war on terror, the Bush administration has been seen by many to have neglected the ethical aspect of the struggle. As the President stated in 2002 when laying out a new doctrine of 'preempt[ing] emerging threats', 'our best defense is a good offense'.<sup>51</sup> Many jurists and many western leaders, however, did not agree. While acting preemptively is legitimate if the state is faced with an obvious threat to its border (Israel in 1967, for example), preventative or anticipatory war (where the mere possession of Weapons of Mass Destruction is seen to justify invasion) was roundly condemned as illegitimate.<sup>52</sup>

Several aspects of the new war on terror have reinforced concerns about the moral direction of foreign policy. First, the Bush administration declared war on global terrorism after 9/11 without clearly defining who or what was the enemy. Yet without a clear identification of the adversary, Mr Bush's zero-sum formula that 'either you are with us or you are with the terrorists' has been a recipe for eroding external support. His administration appears unable or unwilling to distinguish

48 Forsyth, 'The UN and Human Rights at Fifty', p. 977.

49 President George W. Bush, 'National Day of Prayer and Remembrance for the Victims of the Terrorist Attacks on September 11, 2001', The National Cathedral, September 14, 2001, <http://www.opm.gov/guidance/09-14-01gwb.htm>.

50 George Weigl, 'The Just War Tradition and the World after September 11', *Logos: A Journal of Catholic Thought and Culture*, 5/3 (2002), pp. 14–15.

51 George W. Bush, 'The National Security Strategy of the United States of America', The White House (17 September, 2002) [www.whitehouse.gov/nsc/nss.pdf](http://www.whitehouse.gov/nsc/nss.pdf).

52 Chris Brown, 'Self-defense in an imperfect world', *Ethics & International Affairs* 17/1 (2003), p. 3.

between what might be called ideology-driven terrorists like Osama bin Laden and territorially-motivated insurgents that oppose perceived foreign occupation in places such as Chechnya, the Palestinian territories, and Kashmir.

But the failure to make such distinctions strongly implies that the Bush administration will back any government, however repressive, if they sign up in the war against terrorism. Certainly, there is a growing international concern that states with disaffected population groups, including Pakistan, India, Israel, China, and Russia, are cynically backing President Bush's war on terror to justify the use of harsh measures against separatist groups.

Second, by declaring 'war' against terrorism, the Bush administration fuelled an expectation and demand for spectacular military action against an identifiable foe. Yet military victories in Afghanistan and Iraq are hollow if they entail a relatively high loss of civilian life and boost the standing of terror networks in those countries. The US approach in Afghanistan and to a lesser extent, Iraq, drew heavily on the old Powell-Weinberger doctrine of overwhelming force. Has this really been the most effective way to bring the likes of bin Laden and other terrorists to account? One observer said the strategy of bombing in a conflict against terrorism was 'like trying to eradicate cancer cells with a blow torch'.<sup>53</sup>

It is instructive that the 2003 invasion of Iraq and its associated doctrine of pre-emption were simultaneously backed *and* opposed on ethical grounds. Some observers believed the war against Saddam Hussein's regime was just because it was intended to liberate an oppressed people and depose a brutal dictator. The Iraqi people were to be liberated from decades of torture and other forms of systematic abuse by the Hussein regime, while being taught democracy.<sup>54</sup> This ideal of 'liberation' seems to have reflected a desire, propounded by some neoconservatives (notably Niall Ferguson), to create a 'liberal empire'. Here, America as the world's 'indispensable nation' would, perhaps with European help, 'use their power to impose on the world's failed and failing states the institutions and norms of political and economic freedom – even if in some cases this requires direct and extended colonial administration'.<sup>55</sup>

Yet others portrayed the Iraq invasion as American bullying, an undermining of the United Nations and a disastrous loss of focus in the wider war on terror that was declared after the events of 9/11. In his edited work on ethics and US foreign policy, Gibney wryly comments that Americans 'have been taught to believe that our actions do good in the world, and apparently we are willing to accept a large number of dead foreigners for this good'.<sup>56</sup>

Third, the Bush administration's efforts to strengthen national security after September 11 have apparently trumped fundamental moral concerns such as human

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53 Michael Howard, 'Mistake to Declare This a "War"', *News & City*, 31 October 2001, [http://www.thisislondon.com/dynamic/news/story.html?in\\_id+470295&in\\_review\\_text\\_id+424158](http://www.thisislondon.com/dynamic/news/story.html?in_id+470295&in_review_text_id+424158).

54 Simon Chesterman, 'Occupation as Liberation: International Humanitarian Law and Regime Change', *Ethics & International Affairs*, 18/4 (2004).

55 Larry Diamond, 'Building Democracy After Conflict: Lessons from Iraq', *Journal of Democracy*, 16/1 (2005), p. 16.

56 Theodore S. Orlin, 'Five Uneasy Pieces: American Ethics in a Globalized World' (review), *Human Rights Quarterly*, 28/1 (2006), pp. 285, 287.



rights and the rule of law. These principles arguably lie at the heart of the liberal democratic system and play a key role in legitimising and distinguishing democratic rule from the activities of terrorist groups such as al-Qaeda, which are dedicated to destroying such norms. Critics contend that the Bush administration has diminished America's moral authority by disregarding these key principles on several fronts.

For instance, the Patriot Act, rushed through in the wake of the attacks of September 11, defined terrorism to include direct action by protestors, widened the use of wire-tapping on telephone calls and emails, and also authorised the Attorney General to detain foreign nationals, on mere suspicion, without any of the legal protections of the US Constitution.

As an upshot, 650 alleged al-Qaeda and Taliban suspects have been held since late 2001 at a US military base at Guantanamo Bay, Cuba, without trial, charge or access to lawyers.

Externally, the Bush administration has insisted on its sovereign right to dispense 'American justice' in the war on terror. This approach has sat uncomfortably with the notion of due process and risks creating a culture of impunity. An investigation headed by Major General George R. Fay into the role of military intelligence personnel at the Abu Ghraib prison found that the scandal there was not just caused by a small circle of rogue military police, but stemmed from failures of leadership rising to the highest levels of the US command in Iraq.<sup>57</sup> Such findings point to the systemic dangers that arise when an administration like that headed by President Bush neglects due process on the presumption that the war on terror is fundamentally a contest between good and evil.

### **Beyond the Morality-Power Dichotomy of Foreign Policy**

From what we have said, it is clear that the old dichotomy between morals and power interests in foreign policy should be shelved.<sup>58</sup> Counter-posing morality and power may impose a certain degree of clarity on a complex and increasingly interconnected world, but it does so at the cost of a more precise and nuanced understanding of foreign policy and its global context. Besides, dichotomising morality and power is self-serving in that it implies there are few alternative perspectives outside the confines of this fault line.

However, in practice, and since the beginning of organized society, foreign policy has embraced both moral concerns and power interests. While self-interest has certainly dominated foreign policy thinking, its degree of dominance has varied according to the country in question and the nature of its domestic political arrangements. Moreover, no foreign policy has been totally devoid of ethical concerns. As Christopher Hill points out, even Adolf Hitler's Thousand Year Reich was, in its own grotesque way, 'an ethic pursued through foreign policy'.<sup>59</sup> This is true even for governments that refrain from making any explicit moral commitments in the realm

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<sup>57</sup> *Washington Post*, 20 August, 2004, <http://www.washingtonpost.com/ac2/wp-dyn/A17092-2004Aug19?language=printer>.

<sup>58</sup> Christopher Hill, *The Changing Politics of Foreign Policy* (Basingstoke, 2003), p. 303.

<sup>59</sup> *Ibid.*

of foreign policy. The latter, particularly during the era of globalization, invariably entails consequences for other actors. Even apparently technical agreements, such as national environmental regulations or fishing rights conventions, contain implicit judgements about the rights of one community over another.

If ethics are a permanent feature of the international setting, several contextual observations should be noted. First, if ethical concerns are to be acted upon internationally, there are few other channels available than foreign policy. This is not to downplay the potential moral significance of some non-government organizations such as Amnesty International or intergovernmental organizations like the UN. Rather it is to recognise, at least for the foreseeable future, that non-state players are unlikely to displace sovereign states as the major actors in international relations. It would take, in the words of Hill, a giant leap of faith to believe ‘in the self-executing properties’ of cosmopolitan values.<sup>60</sup>

Second, states will continue to dispute the merits of their respective ethical and moral systems. Foreign policy, by definition, cannot be wholly cosmopolitan in ethical terms. It exists, in the first place, as the instrument of a distinctive political process and environment. According to Gelb and Rosenthal, ‘the US is often on a different ethical and moral track from others. Most nations have approved of the genocide convention, the International Criminal Court, the treaty banning land mines, and the Kyoto Protocol on climate change, all of which they consider part of their moral stance’.<sup>61</sup> Nor is the US unique in this regard. Countries like Japan and Norway are quite prepared to actively support lifting the ban on international whaling despite the opposition of their friends and allies to any such measure.

The clash of different ethical or normative systems can also be understood as a tragic development in world politics. Mervyn Frost has called for a wider discussion of the role of tragedy in International Relations. While historical and literary protagonists, from Oedipus and Antigone, to Hamlet are enmeshed in webs of tragedy, so too do states sometimes become embroiled in tragic dramas with painful conclusions. As Frost argues, tragedy ‘identifies a dramatic rendering of a story in which the audience is confronted with protagonists, portrayed as worthwhile and praiseworthy people, who, when confronted with a particular problem, act in accordance with what for them are core ethical principles. Yet by so doing, they bring about consequences which cause great suffering both to themselves and others and which undermine key ethical principles which they themselves hold dear’.<sup>62</sup>

Third, notwithstanding differences between countries over what constitutes ethical behaviour, states can share or come to share ethical norms. Generally, norms can be defined as ‘shared expectations about appropriate social behaviour held by the community of actors’.<sup>63</sup> It is widely assumed that foreign policy-makers operate in a normative or ethical environment where other statespersons will appraise their

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60 Ibid.

61 Gelb and Rosenthal, ‘The Rise of Ethics in Foreign Policy’, p. 7.

62 Mervyn Frost, ‘Tragedy, Ethics and International Relations’, *International Relations*, 17/4 (2003): 479–80.

63 Martha Finnemore, *National Interests in International Society* (Ithaca, NY, 1996), p. 22.

actions and pass judgement. As Robert Jackson has noted: ‘They are not assumed to be operating in a moral void’.<sup>64</sup> Furthermore, norms and ethical considerations can change over time, as do codes of ethics. Ethical concerns about what is right and wrong, morally acceptable or not, can be shaped by changing domestic or external circumstances. Traditional adversaries in Europe, like Germany and France, witnessed a remarkable reconciliation of moral values and norms after joining the EEC and then EU in the post-war period, a development which today makes the prospect of military conflict between these neighbours appear virtually inconceivable. Within states, particularly democracies, there are regular battles over moral and practical concerns, and over which concerns should take precedence. An election can bring a major change in a moral stance taken by a state.

Fourth, the morality of the strong can be expected to prevail over the weak in global politics, but such dominance is likely to be increasingly qualified by the dramatic consequences of globalization. The terrorist attacks of 11 September on the homeland of the world’s only superpower graphically confirmed that globalization is transforming both the nature of the sovereign state in the international system and the relations between the two. In a globalizing environment, extraordinary state power does not guarantee invulnerability. Today, the US is both more powerful and more vulnerable than previous global powers in history. No state, however powerful, can now effectively protect itself from economic, environmental, or security threats without the co-operation of other actors, including weak ones. While the strong are understandably reluctant to come to terms with this trend in the short term, the realities of such interdependence in the long term will certainly affect the evolution of ethics in foreign policy as the twenty-first century unfolds.

### **The Ethical Content of Foreign Policy**

In this book, we consider some of the major ethical challenges facing foreign policy in the early part of the twenty-first century. Four inter-related themes are examined: the war on terror; global security; culture and economics; the rule of law, and the perspectives of some practitioners on relevant issues. It is clear that what constitutes an ethical foreign policy is highly contested.

The US-led invasion Iraq and its associated ‘doctrine of pre-emption’ was seen by some observers as a humanitarian intervention by a ‘coalition of the willing’ to liberate oppressed peoples and depose a tyrant. Barry Cooper and Richard V. Allen both advance this view, marshalling an impressive array of arguments from classic philosophy and the more recent past. Both seek to understand what states can do to defend themselves against fanatics willing to sacrifice their own lives to destroy the infrastructure and the lives of their supposed enemies.

However, others in this volume take a more critical stance towards the current American approach to the war on terror. While agreeing that America will continue to maintain its pre-eminence as ‘world sovereign’ for the foreseeable future, James

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<sup>64</sup> Robert Jackson, *The Global Covenant: Human Conduct in a World of States* (Oxford, 2000), p. 9.

R. Flynn sketches the contours of a new and more moral foreign policy course for the United States. David MacDonald complements this with an understanding of how America's morality and values have evolved since the foundation of the republic. Of primary interest here is the role of Christianity in American life and its influence on conceptions of US exceptionalism.

Other ethical dilemmas addressed here include globalization and free trade. Is globalization good for developing countries – can free trade truly reduce poverty, income inequality, illiteracy, and authoritarian rule? Andrew Stoeckel argues for it, while others like Simon Tay wonder whether increased regional integration and free trade sometimes works to the detriment of weaker actors. Tay rigorously examines ASEAN's rhetoric and action in the field of human rights, particularly when dealing with grievous abuses by its own member countries, like Burma/Myanmar. Similarly, Alfredo Rehrens warns that while free trade can have a positive effect on domestic economies and standards of living, corruption remains a key barrier to the effective distribution of wealth and political power. He focuses on Latin America, but reaches some more generally applicable conclusions. Dirk Nabers focuses on the role of norms on community building and foreign policy in Germany and Japan. He argues that some countries are more able to promote their principles than others, depending on their security environment.

One can also question the role of international institutions like the United Nations in promoting ethical outcomes. Are they morally good because they advance global concerns, defend poorer countries, encourage cooperation, and justice? Or might one argue that they expensive, riddled with factionalism, and impair the work of sovereign, democratically elected governments. For Phil Goff, small countries like New Zealand rely on the UN as the key vehicle for promoting an ethical foreign policy. While larger powers may promote their own interests irrespective of the opinions of others, small states need international organizations to make a meaningful contribution to the world they live in. Another way small and medium states can make a difference is through international policing and peacekeeping, as Beth Greener-Bercham explains. Yet in promoting stability, police forces from outside raise a number of ethical concerns all their own.

The media is another key focus of attention, and Jeremy Hall offers a cogent survey of the media in democratic society, especially during wartime. He wonders whether the ethics which have grown up around existing news mediums will make the transition into the new globalized media environment where military authorities technically struggle 'to control all of the news coming out of a war zone'.

Additionally, the role of international law in resolving disputes and conflicts is examined. Sir Ken Keith rejects the view that international law ceases to be relevant once armed conflict breaks out and argues that it is in the long term interest of a democratic state to not to stray from a rules-based order when trying to combat terrorism. At the same time, Susan Lamb observes that while international criminal tribunals have made an immense contribution to ending some of the worst crimes known to humanity, they should not be judged solely in these terms, but rather 'in terms of the extent to which they serve to encourage the emergence of more ethical domestic and foreign policy'.

We conclude the book with some reflections about the importance of ethics in foreign policy, weighing whether the old dichotomy between idealism and state interest remains as relevant for the study of international politics in the twenty-first century as it did for much of the previous century.

Part 1  
Morality and the War on Terror

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## Chapter 1

# Exceptionalism, the Holocaust, and American Foreign Policy

David B. MacDonald<sup>1</sup>

Any book about ethics and foreign policy would be remiss without a chapter on how America's ethical system has informed their worldview and their perceptions about the conduct of their foreign policy. I argue that American perceptions of their country's foreign policy are often based on their appraisal of America's character rather than the specific foreign policy actions performed by the state. Because America is a 'good' country with 'exceptional' values, it follows *ipso facto* that its policies must also be good. America as a good country can lapse momentarily, due to mistaken or ill-intentioned policies, but fundamentally has the capacity to redeem itself if it strays from its traditionally positive path.

This chapter explores and critiques evolving notions of US exceptionalism. Starting with a discussion of traditional exceptionalism and religious belief, I move on to critically examine the Americanization of the Holocaust. As will become clear, the Holocaust has recently contributed to a new form of exceptionalism. In the 1970s it functioned as an antipode to American goodness, after 11 September, 2001, America itself began to see itself as a (sometimes Holocaust-like) victim. Anti-Semitism and a newer form of hatred, 'anti-Americanism', have been juxtaposed and conflated. Traditional and new forms of exceptionalism serve to impact an illusion of exceptional goodness. A perception of America as a righteous victim detracts from meaningful analysis of the *facts* and *consequences* of US foreign policy. Exceptionalism is thus a hindrance rather than an aid to ethical foreign policy creation, at least from a liberal internationalist standpoint.

Throughout this chapter I use the term 'performative' to describe what US foreign policy makers have been trying to achieve. The term is often used in post-modern appraisals of foreign policy but it nevertheless has its merits. Campbell and Connolly use the term to mean that a state largely shapes its own character by 'performing' or generating policy in a certain way, thereby enacting 'the performative constitution of stable identities'.<sup>2</sup> By adopting certain symbols and invoking certain types of imagery, a state creates the illusion of what it ideally wants to be. Policy makers

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1 Political Studies Department, University of Otago.

2 David Campbell, *Politics Without Principle: Sovereignty, Ethics, and the Narratives of the Gulf War* (Boulder, 1993), pp. 26–7.



undertake a process of ‘narrativizing’ – where they create a ‘story’, with an ‘ordered plot’, ‘cast of characters’, ‘attributable motivations’, and ‘lessons for the future’.<sup>3</sup>

Yet they draw a distinction between the story and the actions. While American policy makers may invoke one set of symbols and images, the content of the policies they pursue may be profoundly different. As Nye wisely cautions, while ‘morality is a powerful reality’ that can shape conduct in positive ways, one needs also to be wary. Moral arguments ‘can also be used rhetorically as propaganda to disguise less elevated motives, and those with more power are often able to ignore moral considerations’.<sup>4</sup>

America’s most effective weapon in the twentieth century has been its moral authority, the widely held belief amongst its allies and those imprisoned by the Soviet Bloc that America represented positive, constructive values. The erosion of this moral authority should concern both Americans and outside observers alike.

### **Traditional Exceptionalism**

A key source of concern, in the west at least (Western Europe, Canada, Australia and New Zealand) has been the recent accentuation of exceptionalist myths of goodness and self-righteousness, especially since 9/11. Exceptionalism has always performed a role in American politics, and has allowed successive administrations to insulate themselves from external and internal criticism, especially in times of war. As McEvoy-Levy notes, exceptionalism ‘implies the United States’ moral superiority as well as the uniqueness of its origins, political system, social organization and values and cultural and religious characteristics’.<sup>5</sup> Monten has recently argued:

Distinct from traditional great powers, U.S. political identity has been organized around a particular conception of the national purpose, expressed in foreign policy as the belief that Americans are “a chosen people,” an elect nation guided by a “special providence” to demonstrate the viability and spread of the democratic institutions and values that inform the American experiment.<sup>6</sup>

The belief that America has been a fundamentally benign actor goes back to the early Puritan traditions of England, transplanted in the American colonies. In 1630, Governor Winthrop of the Massachusetts Bay Colony proclaimed ‘For wee must Consider that wee shall be a Citty upon a Hill, the eies of all people are upon us’. A sense of Puritan mission accompanied the early American colonies, that colonists were chosen and special, and that the land had been given them as a reward for their faith and adherence to God’s laws.<sup>7</sup> This belief continued well after the founding of

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3 Ibid. p. 7.

4 Joseph Nye, *Understanding International Conflicts: An Introduction to Theory and History*, 3rd edition (New York, 2000), p. 19.

5 Siobhan McEvoy-Levy, *American Exceptionalism and US Foreign Policy* (New York, 2001), p. 23.

6 Jonathan Monten, ‘The Roots of the Bush Doctrine: Power, Nationalism, and Democracy Promotion in U.S. Strategy’, *International Security*, 29/4 (2005), p. 119.

7 McEvoy-Levy, *American Exceptionalism and US Foreign*, p. 24.

the Republic, into the nineteenth and twentieth centuries. ‘Our first six presidents’, Lefever reveals, ‘believed that God was active in history’, and active in watching over America’s leaders to ensure that they adhered to a moral code.<sup>8</sup> A Manichean view of good and evil was also present in exceptionalist rhetoric from the onset. Evil was a reality that had to be combated daily, whether it was the ‘merciless Indian savage’ or the Puritans’ own repressed sexual energies. Views of indigenous peoples as either unbelievers of those in league with the Devil were not uncommon in the American colonies both before and after independence.<sup>9</sup>

Politically, exceptionalism has historically manifested itself in the following three ways, usefully identified by Judis. First, America has sought to portray itself as God’s ‘chosen nation’, blessed with a unique territory, culture and political system.<sup>10</sup> These early views disdained European politics and other ‘foreign entanglements’ and promoted isolationism. The second strand however, highlighted an American ‘mission’ or a ‘calling’ to transform the world.<sup>11</sup> This is typified by Wilson’s declaration in 1912 that ‘God planted in us the vision of liberty that we are chosen, prominently chosen, to show the nations of the world how they shall walk in the paths of liberty’. Later presidents from Franklin Roosevelt to George W Bush have articulated similar visions, evoking a ‘divine heritage’ (1942) or an ‘obligation to help the spread of freedom’ (2004).<sup>12</sup>

As Forsythe expands on this theme: ‘From the founding of the republic, the dominant self-image was of a good and great people, divinely inspired to lead the world – by example at home or activism abroad – to greater respect for personal freedom. The US constitution and its bill of rights symbolized this superior commitment. As such, US law was not to be trumped by any international law to the contrary’.<sup>13</sup> Such rhetoric translates directly into American views about how they can and should engage with the rest of the world. American engagement, as Forsythe recalls, is premised on ‘national particularity and cultural relativism. The dominant view in Washington is that real human rights come from US experience and are then exported to the rest of the world’. Since America possesses a monopoly on wisdom and truth, other (lesser) countries have little to teach the United States and can only act to constrain its enlightened policies.<sup>14</sup>

Finally, Judis’ third strand articulates that America, in carrying out its mission, represents the forces of good over evil. The ideal of good and evil also comes from 17th century Puritanism, characterized by an apocalyptic outlook, where worldly

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8 Ibid. p. 9.

9 Richard Drinnon, *Facing West: The metaphysics of Indian-hating and empire-building* (Minneapolis, 1980) pp. 7–8, 36–43.

10 John Judis, ‘The Chosen Nation: The Influence of Religion on U.S. Foreign Policy’, *Policy Brief* No. 37 (Carnegie Endowment for International Peace, March 2005), p. 1.

11 Ibid. pp. 1–2.

12 John Judis, ‘American Power and Empire’, Edited transcript of remarks, Carnegie Council-Eckerd College ‘America and the World’ Lecture (St. Petersburg, Florida, 19 October 2004).

13 David P. Forsythe, ‘The United States and International Criminal Justice’, *Human Rights Quarterly*, 24/4 (2002), p. 975.

14 Ibid. p. 976.

conflicts are elevated into conflicts between heaven and hell, God and Satan, and good and evil.<sup>15</sup> This brings us to the notion of Manichaeism, where the world is divided into good and evil actors, with America a model of a fundamentally good and benign force, seeking peace and stability.

## Religion and Politics

What emerges from an overview of early exceptionalist ideals is their strongly Christian nature. Certainly the First Amendment to the US Constitution prevents Congress from passing any ‘law respecting an establishment of religion, or prohibiting the free exercise thereof’. Yet religion continues to play a crucial role in American life, underpinning notions of traditional exceptionalism. A 2003 survey by the Pew Research Institute clearly reveals that America is the most religious ‘rich country’, with 59 percent of Americans arguing that religion was a very important part of their lives. The totals are considerably lower for European countries. Equally illuminating are the linkages between morality and Christian belief. 58 percent of American respondents claimed that ‘it’s necessary to believe in God in order to be a moral, good person.’ Western Europeans overwhelmingly rejected the idea.<sup>16</sup>

Religion has its lucrative side. Currently, there are some 200 Christian television channels, and 1,500 Christian radio stations in the United States.<sup>17</sup> The links between Christian fundamentalism and federal politics were not electorally significant until the mid 1970s, after Gerald Ford’s election loss. After 1976, conservative Republican operatives began to court Christian fundamentalists, changing the image of their part from one ‘primarily identified with militaristic foreign policies and economic proposals that favored the wealthy’.<sup>18</sup> Adopting conservative positions on such social issues as abortion rights, sex education and sexual orientation, millions of millions of fundamentalist Christians now created a new and growing support base for the party.

Strategists were right to note the power and size of this constituency. Over 61 million people regularly tuned in to Christian radio and television stations in the late 1970s. This included 15 million viewers for Pat Robertson’s ‘700 Club’, and a similar number for Jerry Falwell’s ‘Old-Time Gospel Hour’. The Christian Broadcasting Network also claimed some 30 million subscribers. In 1979 Falwell and Weyrich formed the ‘Moral Majority’, a political lobby promoting a strong social position on such issues as abortion, school prayer, and women’s rights. From 1979 to the end

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15 Judis, ‘The Chosen Nation’, p. 2.

16 Pew Research Institute, ‘God and Foreign Policy: The Religious Divide Between the U.S. and Europe’, Pew Forum on Religion and Public Life (10 July, 2003) <http://pewforum.org/events/index.php?EventID=49>.

17 John Micklethwait, Adrian Wooldridge, *The Right Nation: Conservative Power In America* (New York, 2004), p. 12.

18 Stephen Zunes, ‘The Influence of the Christian Right on U.S. Middle East Policy’, *Foreign Policy in Focus Policy Report* (Silver City, NM, 2004). <http://www.fpif.org/papers/0406christian.html>, p. 1.

of the Cold War they registered some 2.5 million new voters.<sup>19</sup> The capture of this pivotal constituency has virtually made the Republicans the default governing party of the United States.

Since 1980, as Zunes notes, 'they have won four of six presidential races, have dominated the Senate for seven out of 12 sessions, and have controlled the House of Representatives for the past decade ... the Christian Right constitutes nearly one out of seven voters and determines the agenda of the Republican Party in about half of the states, particularly in the South and Midwest'.<sup>20</sup> In 2000, Bush won 79 percent of the vote amongst whites who attended church more than once a week.<sup>21</sup> This increasing capture of the political agenda by the American right has had repercussions on how America's allies perceive its current foreign policies.

### **Exceptionalism, the 'Good War', and the Holocaust**

While relatively uncontroversial for American Christians, traditional exceptionalist myths have reinforced a narrow interpretation of American identity and American goals. In recent times, more inclusive myths with updated ideals of good and evil have been required. The civil rights movements of the 1960s and 70s also played a role in delegitimizing narrower 'WASP-ish' forms of exceptionalism. The push to promote the rights of vulnerable people (African Americans, American Indians, Jews, etc) has been ongoing, especially after Vietnam.

At a general level, America's involvement in World War II has been scripted as a shining example of American goodness and heroism, and is often presented as the 'good war'.<sup>22</sup> Allied to more general myths about the 'good war' has been the Americanization of the Holocaust, arguably the twentieth century's most tragic genocide, or at least its best known. The Holocaust as a global morality play of good versus evil has meshed extremely well with pre-existing conceptions of exceptionalism. As the liberator of the Jews, the slayer of Nazis, the protector of Israel and the enemy of anti-Semitism and Islamic terrorism, America presents itself as a redeemer, allied with the twentieth century's most prominent victims.<sup>23</sup>

During the 1970s, America's national identity was increasingly tied to representations of its own past as the antithesis of Nazi Germany. Such perceptions helped reinforce American goodness, replacing narrower less inclusive ideals of Anglo-Saxon racial and cultural superiority. This was strongly voiced in an April, 1978 speech by President Carter, who presented the Holocaust as a crucial aspect of America's national identity. America could feel good for having liberated the Death camps and for acting as a haven for the survivors. It further redefined its national

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19 Micklethwait, Wooldridge, *The Right Nation*, pp. 83–4.

20 Zunes, 'The Influence of the Christian Right on U.S. Middle East Policy', p. 1.

21 Micklethwait, Wooldridge, *The Right Nation*, p. 12.

22 David Hoogland Noon, 'Operation Enduring Analogy: World War II, The War on Terror, and the Uses of Historical Memory', *Rhetoric & Public Affairs* 7/3 (2004), p. 341.

23 Irving Louis Horowitz, *Taking Lives: Genocide and State Power*, 5th edn. (London, 2002), p. 376.

mission as one of promoting human rights and refusing to act merely as a bystander when other states were committing atrocities.<sup>24</sup>

By 1993, the Holocaust was institutionalized as a key aspect of American identity. *Schindler's List* was screened, the United States Holocaust Memorial Museum opened its doors in central Washington DC, and in Los Angeles, the Simon Wiesenthal Center opened its Museum of Tolerance-Beit Hashoah.<sup>25</sup> A central message of the USHMM was the contrasting of America as a democratic and tolerant nation with Nazi Germany, which in its very essence 'denied the deepest tenets of the American people'.<sup>26</sup>

### **The Holocaust and American Foreign Policy**

The Holocaust since Carter at least has helped bring moral clarity to debates over US foreign policy. America becomes a fundamentally benign actor, who liberates oppressed people, while defeating and punishing tyrants. From the 1990s, the Holocaust became useful as frame through which to understand world events, especially to make sense of the uncertainty and instability following the Cold War. It helped create the case for war during *Operation Desert Storm*, when President Bush Sr. glibly compared Saddam Hussein to Hitler. Bush by contrast billed himself as a 'valiant appeasement-resisting Churchill'.<sup>27</sup>

During the Yugoslav conflict, the debate about American intervention in the Balkans was largely framed by the Holocaust, which gave the imbroglio a cast of good and evil characters, Nazi-like Serbs, Jewish-like Bosnian Moslems. In 1992, journalist Roy Gutman published a lead article in *Newsday* – 'The Death Camps of Bosnia' – establishing the Moslems as victims of seemingly Nazi-esque atrocities at the hands of the Serbs.<sup>28</sup> Indeed, Serbian run 'collection centers' were little better than concentration camps, where prisoners were fed little to no food, frequently beaten and terrorised, sometimes sexually violated, and often killed. Yet Serbia could also legitimately cry foul, as Gutman's prize-winning dispatches notably

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24 Henry Greenspan, 'Imagining Survivors: Testimony and the Rise of Holocaust Consciousness', in Hilene Flanzbaum (ed.), *The Americanization of the Holocaust* (Baltimore, MD, 1999), p. 45; James Young, 'America's Holocaust', in Flanzbaum (ed.), *The Americanization of the Holocaust*, p. 73.

25 Efraim Sicher, 'The Future of the Past: Counter-memory and Postmemory in Contemporary Post-Holocaust Narratives', *History and Memory*, 12/2 (2000), p. 56; Alison Landsberg, 'America, the Holocaust and the Mass Culture of Memory: Towards a Radical Politics of Empathy', *New German Critique*, 71 (1997), pp. 63–4; Young, 'America's Holocaust', p. 80.

26 Young, 'America's Holocaust', p. 73.

27 Stephen Graubard, *Mr. Bush's War: Adventures in the Politics of Illusion* (London, 1992), pp. 3–4; Steven Hurst, *The Foreign Policy of the Bush Administration* (London, 1999), pp. 121–2.

28 Paul Williams, 'The International Community', in Branka Magaš, Ivo Zanic (eds.), *The War in Croatia and Bosnia-Herzegovina 1991–1995* (London, 2001), p. 277.

omitted references to Croatian camps, which were equally horrific, although fewer in number.<sup>29</sup>

After Gutman's report, Congressman Tom Lantos, the only Holocaust survivor serving in Congress, lambasted the Clinton administration in 1992 for its lack of involvement in Yugoslavia. Prominent American Jewish organizations published an advertisement in the *New York Times* adding Omarska and Brcko 'to the blood-chilling names of Auschwitz, Treblinka, and other Nazi death camps'. They promoted swift government action to end the unfolding genocide. Several newspaper columnists compared Milosevic to Hitler, and Clinton to the appeasement seeking Neville Chamberlain.<sup>30</sup> Future Secretary of State Madeleine Albright also pushed comparisons between Hitler and Milosevic, urging Clinton to conduct airstrikes.<sup>31</sup> Eventually, NATO did intervene, but much later than most proponents of intervention desired. In the case of NATO intervention in Kosovo in 1999, Clinton invoked the Holocaust in reference to Serbian ethnic cleansing. Both, he argued, were examples of 'vicious, premeditated, systematic oppression fueled by religious and ethnic hatred'.<sup>32</sup>

While Serbs were arguably the first to use Holocaust imagery in the Yugoslav conflict, Europeans and North Americans too began to interpret the escalating conflict through the prism of the Holocaust. As Levy and Sznajder have argued, the Holocaust, gave the Balkan imbroglio a moral clarity it had hitherto lacked. On the right, Serbian treatment of Bosnian Moslems and later the Kosovar Albanians was likened to Nazi treatment of Jews, while those on the left compared German and American intervention to heavy handed Nazi-style empire building. 'Holocaust iconography', the authors assert, came to play a dominant role and the Kosovo crisis became 'a globally televised morality play'.<sup>33</sup> In the journal of *Holocaust and Genocide Studies*, Alan Steinweis has recently engaged with what he calls the 'Auschwitz analogy' and its role in framing US perceptions of the Yugoslav crisis. Since American administrations already had a tendency to view events in black and white terms Holocaust analogies were an easy way of distinguishing victims from perpetrators.<sup>34</sup>

German Foreign Minister Joschka Fischer repeatedly invoked the Holocaust when pushing the merits of NATO airstrikes. Andreas Heinemann-Grüder remarks of the German strategy: 'Fischer's repeated comparison of Milosevic with Hitler conveyed the message: we have finally and safely arrived in the West, learned the

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29 Roy Gutman, *Witness to Genocide* (New York, 1993), p. 23.

30 Alan E. Steinweis, 'The Auschwitz Analogy: Holocaust Memory and American Debates over Intervention in Bosnia and Kosovo in the 1990s', *Holocaust and Genocide Studies*, 19/2 (2005), pp. 279–81.

31 Dusko Doder, Louise Branson, *Milosevic: Portrait of a Tyrant* (New York, 1999), p. 210.

32 Steinweis, 'The Auschwitz Analogy', p. 282.

33 Levy, Sznajder, 'Memory Unbound', p. 99; Levy, Sznajder, 'The institutionalization of cosmopolitan morality', p. 153.

34 Steinweis, 'The Auschwitz Analogy', p. 276–7.

lessons of the past, and are part of a contemporary anti-Hitler coalition'.<sup>35</sup> It's clear from a reading of the events surrounding the 1999 intervention that Clinton, Fischer, Chancellor Schroeder, and British Prime Minister Blair overreacted to the situation on the ground. There was ethnic cleansing certainly, but the KLA was hardly a pacifist organization, and the airstrikes helped escalate the very refugee crisis they were designed to stop.

In the final analysis, Milosevic was not Hitler, possessing neither his charisma nor his deeply-rooted hatred. While Serbian crimes were horrific, they paled in comparison with those of the Holocaust. Srebrenica was one of the worst modern crimes against humanity, but Serbs did not commit this sort of genocide throughout Bosnia, either because they didn't want to, or they did not possess the means to carry it out. Most western leaders were aware of this, and they were doubly aware that while the events of the 1990s were horrible, they were not as bad as the Holocaust, which served as a poor analogy. Indeed, when it could be proven conclusively that the Bosnian Moslems were not suffering from Holocaust-like atrocities, and Milosevic was not Hitler, the matter became more an issue of restraining a neighbourhood bully than in 'bombing the rail lines to Auschwitz'.

### **9/11, the 'Good War', and the Holocaust Analogy**

A rift in values and policies between America and Western Europe also became sharply defined after 9/11. In poll after poll, majorities in many western countries from 2001 viewed American foreign policy with concern, while expressing reservations about America's domestic policies, political system, and ways of living.<sup>36</sup> Much of this can be reduced to a sometimes visceral dislike of the current administration and many of its neoconservative policies, which at base have disdained alliances and embraced unilateral forms of American power.

Equally important has a heightened sense of good and evil under the current administration, with an imperative to mould foreign policy to combat evil when it inevitably appears. Military power (and a willingness to use it) is privileged over other options.<sup>37</sup> In defending his invasions of Afghanistan (2002) and Iraq (2003), President Bush has often invoked the 'good war' to justify his so-called 'doctrine of preemption'. In his State of the Union address in January, 2006, Bush argued: 'We are the nation that saved liberty in Europe, and liberated death camps, and helped raise up democracies, and faced down an evil empire. Once again, we accept the call of history to deliver the oppressed and move this world toward peace'.<sup>38</sup>

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35 Andreas Heinemann-Grüder, 'Germany's Anti-Hitler Coalition in Kosovo', *Mediterranean Quarterly*, Summer (2001), p. 38.

36 Russell A. Berman, 'Europe and America: A Cultural Divide?', *Hoover Digest*, 4 (2003); Jeremy Riftkin, *The European Dream: How Europe's Vision of the Future is Quietly Eclipsing the American Dream* (Cambridge, 2004), p. 302.

37 Stefan Halper, Jonathan Clarke, *America Alone: The Neo-Conservatives and the Global Order* (Cambridge, 2004), pp. 11–13.

38 Bush, George, 'State of the Union Address by the President' (31 January 2006) <http://www.whitehouse.gov/stateoftheunion/2006/index.html>.

The view that America entered the war to save European Jews is contestable, but reinforces the belief that America is a country devoted to human rights – to spreading freedom and liberating oppressed peoples. Pre-emption in Iraq or elsewhere can thus be excused by invoking historic analogies to America's liberation efforts on behalf of western civilization. Hanson in the *National Review*, for example, clearly invokes World War II in making the case for war in Iraq: 'Hitler was ruthless in starting a war against Poland. Yet he could have been stopped far earlier in 1936 or so – had the democracies preempted him. Indeed, a failure to preempt is often far worse than the act itself'.<sup>39</sup>

This theme of America the liberator is consistent with traditional views of exceptionalism. Yet a new strand evolved after 9/11 – a theme of American victimization, rooted in a newfound fear of 'anti-Americanism'. Meunier usefully describes it as 'an unfavorable predisposition towards the United States, which leads individuals to interpret American actions through negative stereotypes'.<sup>40</sup> A sense of anti-Americanism has been around for some time, yet foreign manifestations of it were not taken too seriously until the al Qaeda attacks on New York and Washington DC. In a curious transferral, many conservatives began to compare anti-Americanism and anti-Semitism, as irrational hatred which had and might continue to produce tragic and destructive consequences.

Yet, *America-as-victim* was not a popular image until after 9/11, when the Holocaust presented itself as a readily available means of making sense of American experiences of vulnerability, humiliation and anger.<sup>41</sup> As Diken and Laustsen have noted in a recent article, 9/11 has now become sacralised, 'sublimated and elevated to a level above politics, dialogue and humor in a way reminiscent of the Holocaust'. Criticism, even light-hearted banter, about 9/11 was conceived as 'tasteless' and ill-advised.<sup>42</sup>

Indeed, a number of American conservatives have attempted to historicize the phenomenon, decontextualising and presenting it as a traditional, even ancient irrational hatred, 'actually even older, than the United States itself'.<sup>43</sup> Further,

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39 Victor Davis Hanson, 'Words that Don't Matter: The new buzz vocabulary of anti-Americanism', *National Review Online* (27 February 2004) <http://www.nationalreview.com/hanson/hanson200402270800.asp>.

40 Sophie Meunier, 'Anti-Americanisms in France' (Council for European Studies Columbia University, 2005) [http://www.councilforeuropeanstudies.org/pub/Meunier\\_jan05.html](http://www.councilforeuropeanstudies.org/pub/Meunier_jan05.html).

41 Steven Alan Carr, "'American Holocaust": The Banality of 9/11 after the Enactment of the USA PATRIOT Act Legal Communication in Action Since 9/11/01', presented at the National Communication Association New Orleans Marriott (New Orleans LA, 22 November 2002). Available at <http://users.ipfw.edu/carr/writing/americanholocaust.htm>, accessed 10 October 2005.

42 Bülent Diken, Carsten Bagge Laustsen, '7/11, 9/11, and Post-Politics', (Lancaster, 2004) at <http://www.comp.lancs.ac.uk/sociology/papers/diken-laustsen-7-11-9-11-post-politics.pdf>, p. 1.

43 Barry Rubin, 'E-Notes: Understanding Anti-Americanism', Foreign Policy Research Institute (August 20 2004) <http://www.fpri.org/enotes/20040820.west.rubinb.antiamericanism.html>.



anti-Americanism and anti-Semitism were tied together, especially in Germany and France, where both prejudices arose as a response to the industrial revolution, urbanization and modernity more broadly defined.<sup>44</sup> These hatreds were rhetorically fused together as ‘twin brothers’, and their irrational and destructive nature was highlighted in both cases.<sup>45</sup> By implication, the Holocaust and 9/11 seemed to share some sort of moral equivalency.

Americans and Jews were not only paired, but now became virtually interchangeable. ‘During the Nazi period,’ Rosenfeld remarks, ‘a popular slogan clearly identified the source of Germany’s troubles: ‘The Jews are our misfortune.’ Today it is the Americans who are the focus of such an exaggerated grievance’.<sup>46</sup>

Yet anti-Americanism is sometimes defined in such an open-ended way that almost anyone can be a perpetrator of this form of hatred. For example, Rubin and Colp Rubin’s *Hating America* (2004) offers a four-part definition which is wide open for abuse. People exhibiting one or more of the following characteristics can safely be labelled as anti-American:

An antagonism to the United States that is systematic, seeing it as completely and inevitably evil. A view that greatly exaggerates America’s shortcomings. The deliberate misrepresentation of the nature or policies of the United States for political purposes. A misrepresentation of American society, politics or goals which falsely portrays them as ridiculous or malevolent.<sup>47</sup>

The authors justify this definition by arguing that since ‘the United States is not a terrible or evil society’ excessive criticisms are unwarranted. Further, America ‘does not seek world domination and its citizens do not take pleasure in deliberately injuring others’. To imply otherwise, the authors conclude, is to be guilty of anti-Americanism.<sup>48</sup> This is a very subjective definition which allows the authors tremendous scope to denounce almost anyone as an anti-American, for ‘exaggeration’ and ‘misrepresentation’ for even seeing some aspects of American society as ‘ridiculous’. One needs to buy into the belief of the authors that sometimes ‘decisions inevitably have drawbacks and bad effects’ and that sometimes ‘mistakes are made’.<sup>49</sup> However to infer from this that American goals are sometimes ‘malevolent’ is seemingly inaccurate. The invasion of Iraq and other such manoeuvres are to be interpreted as well-meaning mistakes with unintended consequences. We are to suppose that US foreign policy makers are always well intentioned, but sometimes misguided.

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44 Alvin H. Rosenfeld, ‘Anti-Americanism and Anti-Semitism: A New Frontier of Bigotry’ (New York, 2003) <http://www.ajc.org/site/apps/nl/content3.asp?c=ijITI2PHKoG&b=846637&ct=875059>.

45 Andrei Markovits, ‘European Anti-Americanism (and Anti-Semitism): Ever Present Though Always Denied’ *Post-Holocaust and Anti-Semitism: Web Publications*, 21 (2005) <http://www.jcpa.org/phas/phas-markovits-05.htm>.

46 Ibid.

47 Barry Rubin and Judith Colp Rubin, *Hating America: A History* (New York, 2004) p. ix.

48 Ibid. p. ix.

49 Ibid. pp. ix–x.

O'Connor is right to note that 'Most discussion on anti-Americanism lacks a precise definition and as a result the history of anti-Americanism has been recorded and retold in a largely impressionistic fashion. This has contributed to the incoherent nature of much so-called anti-American comment, with the term being used too broadly and thus too regularly.'<sup>50</sup> In the case of the Rubins this is obvious. The definition is open for abuse. Once anti-Americanism, anti-Semitism, 9/11, the Holocaust, Nazis, Jews, Islam and the Twin Towers are cobbled together, the result is an emotionally charged amalgam, which bears little relationship to reality.

Certainly anti-Americanism is a reality, as we see in the sometimes grotesque utterances of Iranian, Venezuelan, North Korean, and other leaders. The challenge is to highlight and criticize the manipulation of anti-Americanism for political purposes, while simultaneously trying to understand the causes and consequences of it, scotching its most severe manifestations. As such we need to ensure that the term, like 'racism', 'sexism', 'classism' and other such isms are not exploited for political gain. As a term for scholarly discussion and debate, anti-Americanism can certainly be useful. Yet there is sadly little difference between Hugo Chavez's condemnations of President Bush as 'Satan' and recent invocations of anti-Semitism when understanding criticism of the war in Iraq.

### Some Reflections

In what follows I will briefly outline some of my concerns about using the Holocaust and anti-Semitism as devices for invigorating and reframing American exceptionalism. First, we need to address the many factual problems and misperceptions in the current exceptionalist account of World War II and the Holocaust. America's role towards the end of the conflict was certainly decisive. However, America entered the war in 1941, not 1939, and did not do so to save Europe, or Europe's Jewish populations. Indeed, America was reluctant to intervene to stop the bloodshed of Jews, and famously turned back a Jewish refugee ship from Nazi Germany. The case of the ill-fated 'St Louis' is well known. Even Jewish-owned newspapers like the *New York Times* failed to highlight the dangers of Hitler's Final Solution.<sup>51</sup> As Novick and others have argued, American Jewish organizations were not as worried as they might have been about the unfolding events in Europe, and neither was their government. This was perhaps so because then significance of 'the Holocaust' as we understand it today was not readily apparent to those at the time.<sup>52</sup>

A further problem is the widely held misconception that American support for Israel implies American support for the continued existence of the state in its current form, and continued support for Jews as such. This is especially true of Christian fundamentalists like Falwell, for example, who in the early 1980s pushed for 'total military and financial support for Israel', and warmly praised Israel's invasion of

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50 Brendon O'Connor, 'A Brief History of Anti-Americanism from Cultural Criticism to Terrorism', *Australasian Journal of American Studies* (2004), p. 89.

51 Laurel Leff, *Buried by the Times: The Holocaust and America's Most Important Newspaper* (Cambridge, 2005).

52 Novick, *The Holocaust and Collective Memory*, p. 20.

Lebanon.<sup>53</sup> The Christian right's literal interpretation of the Bible made them very supportive of Likud priorities, especially the permanent expansion of Israeli borders into its occupied territories.<sup>54</sup>

Yet, while the Christian right's agenda may be pro-Israel, it is not necessarily pro-Jewish. They support Israel because the Jewish return to Zion is a precondition for the Christ's Second Coming. While this has translated into support for hardline Likud policies, the right is not supporting Likud because it likes the party or its leadership, but because it promotes an expanded Israeli state, which fits well with Christian fundamentalist priorities. If Likud attempts any deviation from this principle, its leaders are roundly condemned. This reached a nonsensical level in early January, 2006, when evangelist Pat Robertson blamed Prime Minister Sharon's stroke on divine retribution for Israel's withdrawal from Gaza.<sup>55</sup> Thus US support for Israel needs to be carefully examined for its motives and long term objectives. These are not always necessarily favorable to Jewish interests, and many so-called 'paleoconservatives' like Pat Buchanan are both fundamentalist and anti-Semitic at the same time. Indeed, one can trace a tradition of anti-Semitism amongst many American right wing fundamentalists.<sup>56</sup>

A final point concerns the widely held belief that there is an axiomatic link between Christianity and Republican policies. As Christian Democrats have pointed out, Republicans hardly have a monopoly on Christian principles. Indeed, in advocating tax cuts for the rich, war in Iraq, while rejecting demands for social justice and poverty reduction, Republicans deny many of most important principles embodied in the New Testament. Abraham Lincoln rightly cautioned that American leaders should not boast that God is on their side, but should earnestly seek to find whether they are indeed on God's side. As Jim Wallis has argued recently:

The first way – God on our side – leads inevitably to triumphalism, self-righteousness, bad theology, and, often, dangerous foreign policy. The second way – asking if we are

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53 Colin Shindler, 'Likud and the Christian Dispensationalists: A Symbiotic Relationship', *Israel Studies* 5/1 (2000), p. 165.

54 Peter Yoonsuk Paik, 'Smart Bombs, Serial Killing, and the Rapture: The Vanishing Bodies of Imperial Apocalypticism', *Postmodern Culture* 14/1 (2003); F. Michael Perko, 'Contemporary American Christian Attitudes to Israel Based on the Scriptures', *Israel Studies* 8/2 (2003), pp. 4–5; Shindler, 'Likud and the Christian Dispensationalists', p. 172; Joel Beinin, 'The Israelization of American Middle East Policy Discourse', *Social Text* 21/2 (2003), p. 129; Melani McAlister, 'Prophecy, Politics, and the Popular: The Left Behind Series and Christian Fundamentalism's New World Order', *The South Atlantic Quarterly* 102/4 (2003), pp. 775–6.

55 CNN, 'Robertson suggests God smote Sharon: Evangelist links Israeli leader's stroke to 'dividing God's land'', <http://www.cnn.com/2006/US/01/05/robertson.sharon/>, accessed 6 January 2006.

56 Earl Raab, 'Pat Buchanan's anti-Semitism: an American tradition?', *The Jewish Weekly News of Northern California* (16 February 1996) [http://www.jewishsf.com/content/2-0-/module/displaystory/story\\_id/3000/format/html/edition\\_id/52/displaystory.html](http://www.jewishsf.com/content/2-0-/module/displaystory/story_id/3000/format/html/edition_id/52/displaystory.html).

on God's side – leads to much healthier things, namely, penitence and even repentance, humility, reflection, and even accountability.<sup>57</sup>

Wallis rightly contextualizes the role of Christianity in public life. It can be of benefit when it promotes self-examination and reflection, but can equally be destructive if it becomes an excuse for self-righteousness and war. Wallis and the staff at his *Sojourners* magazine demonstrate that religion in civil society can play a pro-active and positive role. And further, holding Christian beliefs does not automatically translate into support for unequal or militaristic foreign and domestic policies.

### **Stifling Internal Critiques: Indigenous Peoples**

Overall, Americanization helped promote a greater awareness of the horrors of the Holocaust and its devastating impact on those who endured it. From memorials and museums, movies and literature, to academic conferences, tenured academic positions, and school curricula, the Holocaust has achieved an unparalleled level of public and scholarly attention. Yet, focusing on the Holocaust has also helped the US government ignore or elide responsibility for its own domestic and international crimes. As Boyarin cogently observes: 'One effect of this displaced eulogization is to encourage amnesia about domination closer to home' particularly of indigenous peoples. By 'advertising that America has the space in its heart and in its capital to commemorate genocide committed elsewhere, the genocidal origins of the United States will be further occluded'.<sup>58</sup>

For the American government, recognizing the Holocaust allows the government to avoid discussing its own genocidal past, while still looking sympathetic and morally upright. As Stannard posits, if Nazi Germany is 'the very idea of evil', Jews become by extension, 'the ultimate 'worthy' victim'. However, the Americanization process buttresses America's image as a model of democracy, multiculturalism and enlightenment. Indigenous peoples are thus the 'the ultimate 'unworthy' victims'.<sup>59</sup> America's own victims remain muted, while those whom they have helped are promoted as proof of American goodness. American history, even in its dealings with indigenous peoples thus becomes a 'flawless mirror image' of the situation in Germany.<sup>60</sup> Certainly America has done much good in the world. But it is myopic to suggest that they, unlike all other countries, have not made mistakes, and sometimes malicious ones.

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57 Jim Wallis, *God's Politics: A New Vision for Faith and Politics in America* (San Francisco: HarperSanFrancisco, 2005) pp. xvi–xvii.

58 Jonathan Boyarin, 'Europe's Indian, America's Jew: Modiano and Vizenor', *boundary 2*, 19/3 (1992), pp. 198, 207.

59 Stannard: *American Holocaust*, p. 256.

60 Lilian Friedberg, 'Dare to Compare: Americanizing the Holocaust', *American Indian Quarterly*, 24/3 (2000), p. 367.

## False Equivalences and Anti-Semitism

At another level, anti-Semitism and anti-Americanism really have little in common. Clearly there is no fear of America as a group being targeted with genocidal aggression. Even President Bush concedes that al Qaeda ‘hates our freedoms’ but does not necessarily aim to kill all Americans. America, despite the sometimes misguided security efforts of the Bush administration, has not fallen victim to another terrorist attack, although there have been some close calls.<sup>61</sup> The Holocaust has been extensively used in reinforcing Israel’s national identity, and while there are debates about how deeply the Holocaust should influence Israeli life, Israel should arguably have the right to interpret the Holocaust as it sees fit.<sup>62</sup> However, American appropriation of Holocaust-like victimization is a worrying phenomenon, which threatens to trivialize the memory and significance of the Holocaust in both Israel and America.

Worryingly, while the Holocaust has become an iconic symbol and a standard of comparison, Jews themselves have become a lightning rod for attack. The perceived ties between Diaspora Jews, Israel, and American foreign policy, have made Jews the victims of anti-Semitic violence whenever or wherever American or Israeli actions are criticized. Since ‘Israel is conceived as the long arm of the West in the midst of the Arab and Muslim worlds’, Jews have invariably become key targets for those who resent western, particularly American power.<sup>63</sup> The same has also been true of Western Europe, which experienced a sharp rise in anti-Semitism in 2001 and 2002 largely tied to criticism of Sharon’s government and its close ties to the Bush administration.<sup>64</sup>

This is doubly true after the American invasion and occupation of Iraq. The solution to this serious problem is not for America to stop supporting Israel if it so chooses,<sup>65</sup> but rather for conservatives to stop drawing overt and facile comparisons between American and Jewish vulnerability. The more these links are (disingenuously) drawn out to serve *American* interests, the more vulnerable Jews in the Diaspora will be to unwarranted attacks. We can and should denounce anti-Semitic violence, but we need also to be aware that when American conservatives tie these forms of hatred together, they do Jewish security concerns no good.

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61 Graydon Carter, *What We’ve Lost* (London, 2004), pp. 16, 18–19.

62 Peter Novick, ‘Holocaust Memory in America’, in James Young (ed.), *The Art of Memory: Holocaust Memorials in History* (New York, 1994), p. 162.

63 Raphael Israel, ‘Antisemitism Parading as Antizionism’, paper from the International Conference on the Global Dimensions of Contemporary Antisemitism (Montreal, March, 2004), p. 6.

64 Joel Rosenthal, ‘Anti-Semitism and Ethnicity in Europe’, *Policy Review Online* (2003) <http://www.policyreview.org/oct03/rosenthal.html>; Andrei Markovits, “‘Twin brothers’: European Anti-Semitism and Anti-Americanism’ (2006) <http://www.andymarkovits.com/NewsReleases/AntiSemitismVI>, p. 35; James Geary, ‘How Bad is It?’, *Time Europe* (10 June 2002).

65 John Mearsheimer, Steven Walt, ‘The Israel Lobby’, *London Review of Books*, 28/6 (2006).

Americans today and Europe's Jewish population of the 1930s and 40s have precious little in common. The Holocaust should emphatically not be the plaything of conservative politicians and commentators. Anti-war demonstrations in Berlin or Paris protest an illegitimate war, and only indirectly Israeli politics, American culture and other aspects of life. Ideally, one should expect a greater level of graciousness from America. I echo Flynn's observations in his upcoming chapter that being a world sovereign must entail putting up with some degree of envy and resentment – turning the other cheek when it is criticized by its allies. This is properly the lesson we should derive from Christian teachings – 'an eye for an eye' is hardly the basis upon which to conduct either a humane or just foreign policy.

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## Chapter 2

# The America Who Would be King: In Praise of Moral Restraint *or* Concerns of an Acolyte of Thomas Hobbes<sup>1</sup>

James R. Flynn

What is at stake is not Iraq but our global role.  
Zbigniew Brzezinski

This war . . . shows that the US administration is trying to make the world its own province.  
Mikhail Gorbachev

We stand at a unique moment in history. American power dominates the world scene and it is surrounded by nations ready for leadership against a common enemy – the threat to well-being posed by weapons of mass destruction whether in the hands of nation states or networks who answer to no nation state. America has a choice: it can either play the role of a good world sovereign who rules by consensus; or merely behave like a victorious great power who treats the whole world as a sphere of influence.

The emergence of a single great power offers irreducible advantages. A great power looks no further than its national interest and imposing its own chosen moral goals. But better one of these than many. When there were two, the US and USSR, each could point to the other as enemy and justify force to seek advantage and self-defined moral goals within its own sphere of influence. When there were several, the US, Russia, Britain, France, Germany, Italy, and Japan, each did mischief in its immediate vicinity and colonial sphere.<sup>2</sup> As Hobbes said, better to have power invested in one actor because one appetite demands less than the insatiable appetites

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1 This chapter was drafted in February before the US invasion of Iraq on 20 March, 2003. The citations were updated before publication and the prefatory quotations added. Aside from the sentence referring to the ‘Vision for a New Iraq’, the text has not been altered. I have no desire to take advantage of hindsight. However, I have added a postscript on ideology and on Bush’s statement of 14 April 2004.

2 Paul M. Kennedy, *The rise and fall of the great powers: Economic change and military conflict from 1500 to 2000* (New York, 1987).



of many.<sup>3</sup> Even America's power is limited and fewer need fear arbitrary behavior with so many eliminated from the game of great power.

However, a world sovereign can make the world better still. In particular, it must *not* do whatever it believes to be right if that is destructive of consensus. A world sovereign has a higher moral purpose: to make peace wherever possible and consolidate and consensualize its rule. This means creating a certain state of mind. A great power can function if it is feared. To be a good world sovereign, you must win respect not because others fear you but because they fear what the world would be like without you. Here are few propositions about the role of world sovereign in the hope that America will learn to be a gracious king, perhaps not one who rules with our loves but at least one who rules with our grudging regard.

### **A World Sovereign Must Expect to be Hated**

Americans often ask why their country is hated. The Bush administration has revived the aim of a Global missile defense system that would make it invulnerable to attack from any other nation. While this is not fully possible, its enormous capacity to retaliate offers a pretty good substitute. America has a military technology that allows it to kill whoever it wants, at least in the developing world, without serious loss even to its own professional military personnel. This is something new and astonishing in world history.<sup>4</sup>

Imagine that Mexico had invented a force-field that rendered it utterly invulnerable and a death ray it could use anywhere on earth. It might use its powers only for things that were unambiguously good, such as taking out American mayors who are incurably corrupt or Los Angeles police who are undeniably racist (that is, it could do America the favor of enforcing US laws where America itself has failed). It might even give America a miss and take out Saddam Hussein and the North Korean elite. One thing is certain. A wave of fear and loathing would sweep America. Every resource and mind would be mobilized to discover how to break that force field and neutralize that death ray.

Add to this that America has used its power to take sides in morally ambiguous situations like the Middle East, that it has invaded nations in its sphere of influence when its construction of its interests so dictated, that it has instituted and supported governments (including Hussein's regime in Iraq in the 1980s) whose citizens have suffered much – and it takes a moral blindness quite extraordinary to wonder why it is hated.

However, the point is that a world sovereign that has these powers and that has come to the throne by conquest (winning the Cold War) rather than by institution (consent) will be hated however circumspect its use of power. It can seek to minimize

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3 Thomas Hobbes, *Leviathan*, ed. Herbert W. Schneider (New York, 1958), pp. 154–155.

4 See 'Statistical Summary: America's Major Wars', Table II (casualties) at: [www.cwc.other/stats/warcost.htm](http://www.cwc.other/stats/warcost.htm). In the Gulf War, US casualties were 760 of which only 148 were combat deaths. In other 20th century wars, its casualties varied from 137,000 to 1,100,000. Even the Spanish-American War cost 4,108.

the world's animosity but it must not sulk if unloved. Assuming office requires some psychological preparation as every politician knows.

### **A World Sovereign Should Move Toward Rule by Consensus**

How can America go from simply being feared towards a world in which most nations are far more afraid of what the world would be like without America's preponderant power? The primary goal must be 'to make peace wherever possible', that is, to show that American power is indispensable to protecting nations and peoples from the most horrific forms of violence. Such a goal if pursued sincerely and realistically will maximize consensus for your rule. Its realization involves two tasks: eliminating the weapons of mass destruction that *other* states possess; reducing the threat posed by the privatization of such weapons.

It is sometimes asked how America can justify eliminating the nuclear weapons of others while retaining its own. The answer is that the emergence of one power with overwhelming military might provides the only instrument that could conceivably eliminate nuclear weapons. Universal disarmament is not a practical option. As is often said, were all the weapons to disappear tomorrow, the knowledge of how to create them would survive. And within a few years even more nations would have them than at present – newcomers would be encouraged by the fact that they were not already hopelessly outgunned. Therefore, realistic steps toward control of such weapons are first, that America acquire an effective monopoly; and second, that its weapons be internationalized – rather than destroyed. Postponing the second step, we will discuss the first.

What might reduce the number of those who currently have nuclear weapons? The first priority should be in South Asia where both India and Pakistan have weapons of mass destruction and a history of conflict. America should ascertain whether they are willing to at least let their systems atrophy, in return for an American guarantee of their security. It would have to be established that both are willing to (tacitly) accept that the present division of Kashmir is tolerable, when weighed against the possibility of nuclear devastation and the waste of ever-expanding nuclear establishments. America would have to guarantee that it would automatically come to the aid of whichever side was attacked – and probably be the spearhead of a force that would take over border control if incursions by irregulars were a problem. India could hardly disarm unless she was also guaranteed her border with China – and China should be asked to give firm assurances (as distinct from being asked to disarm).

We now see why the preservation of the US deterrent is essential. It must be there to give guarantees to those who might forsake their own. It must be there so that the US can seek the pacification that is the essence of the role of a world sovereign: 'Covenants, without the sword, are but words'.

North Korea was willing to let its nuclear program wither until it felt the need to formalize its implicit non-aggression treaty with the US.<sup>5</sup> It now wants ratification

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5 I refer to the 'Agreed framework between the United States of America and the Democratic People's Republic of Korea' of October 21, 1994. See [www.carnegieendowment.org/state/rpp/agreed\\_framework.cfm](http://www.carnegieendowment.org/state/rpp/agreed_framework.cfm).

of a formal non-aggression treaty by the US Senate – and the US should jump at this chance to demonstrate that it truly is pursuing a pacific policy. There is supposed to be a special relationship with Britain, which might, for the first time, be turned to some use. How salutary it would be if England were to unilaterally forgo nuclear weapons to prove to the world that US policy is not merely to disarm non-whites.

It may be that the time is not yet ripe for real steps toward nuclear disarmament. That is not a prescription for inaction. The intervention in Bosnia not only had humane consequences but also showed that America really did care about saving Muslim lives.<sup>6</sup> It would also be good if America offered the world some kind of leadership in energy conservation and climate control. Submitting to the jurisdiction of the International Criminal Court would provide other nations an example of good citizenship. Above all: until the US takes itself seriously as a world sovereign, it can hardly expect anyone else to do so.

Even the best policies may take some time to build the necessary faith that America is sincere and that she is committed in a way that would survive a change of administrations. That is no excuse for what we have got. The rhetoric being used to justify war against Iraq is so false as to make one weep. It is true that Hussein had delusions of grandeur about leading a united Arab nation to world power. But we must see him in the light of reality. He had little standing in the Arab world. He had to settle for aspiring to be the Arab hero who developed a deterrent to counter that of Israel. He had offered financial rewards to Palestinian terrorists but was hated by Islamic fundamentalists of the sort who have links to al-Qaeda. He faced an Israel with a huge military advantage.<sup>7</sup> This was the person who was supposed to pose a threat to US security. Neighbors, like Turkey, seemed blissfully unaware they were at the mercy of a madman who might at any time unleash toxins that would kill them all.

As for the ‘war on terror’, Iraq pales into insignificance compared to America’s ally, Saudi Arabia. That nation’s citizens supplied most of the al-Qaeda cadre who attacked the Twin Towers. It makes little effort to restrict the recruitment of terrorists within its own territory and allows ‘Islamic charities’ to divert millions to international terrorists. How can anyone trust America’s sincerity for decades – after it has debased its high purpose into propaganda, simply to panic its citizens into a war pursued for other reasons?

Then there is the Korean debacle. Oddly, naming North Korea as one of the three most wicked nations in the world, and proceeding to attack another of the nations so named, made North Korea think it was next.<sup>8</sup> So they have flexed their nuclear muscles and what message has America sent to the world? If a state does not in fact have the weapons or delivery systems to threaten the US, it is subject to invasion on moral grounds. While if a state actually has them, it will be treated with great

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6 David Halberstein, *War in a time of peace* (New York, 2001), Chapters 27–31.

7 Shai Feldman and Yiftah Shapir (eds.), *The Middle East strategic balance 2003–2004* (Brighton, 2004).

8 George W. Bush, ‘State of the Union Address’, January 29, 2002. See: [www.whitehouse.gov/news/releases/2002/01/20020129-11.html](http://www.whitehouse.gov/news/releases/2002/01/20020129-11.html).

circumspection. What an incentive system to offer nations (like Iran) who are unsure of America's intentions.

As for the struggle against organizations who have powerful weapons and are beyond the control of nation-states, and who therefore cannot be deterred by threatening a nation-state, they will have to be weakened mainly behind the scenes by cloak and dagger operations. These groups are such a threat to France, Germany, etc., as well as America, that those nations will not withhold cooperation despite the extraordinary language the American administration has directed at them over their unwillingness to invade Iraq. Nonetheless, who would have thought America could have sowed so much disunity among nations who after the events of 9/11, were united in a common cause? The great harm that has been done is that none of these nations, nations who should have been among the easiest to bind together, is likely to feel for decades that they can trust American probity or continuity of purpose. None of them are likely to develop a consensus that real leadership can be expected from America as world sovereign – as distinct from merely tolerating her as the world power that emerged triumphant (thank heaven) from the struggle with the Soviet Union. This alone would have been a good enough reason to alter the Iraq policy for a nation who would be king.

While international cooperation has the best chance of minimizing the threat to America from the above networks, nothing can guarantee security. Hopefully, the next attack on the US homeland will not bring a witless invasion somewhere to prove to the American public that 'something is being done'. The Byzantine Empire had to live for a thousand years without hysterical response to cities being periodically taken out by plague, the Bulgars, the Arabs, the Turks. An empire worth its salt will learn to respond rationally rather than by the politics of theater.

### **A World Sovereign Should Not Be So Evil As To Always Do Good**

Individuals can kill to do good whenever they can square it with their consciences. Great powers operating within their sphere of influence can usually do whatever they have convinced themselves is good (it rarely is of course). A world sovereign does not have a license to do good indiscriminately. Saddam Hussein was a tyrant. Is it not a good thing to depose a tyrant? That depends on when and where and above all, whether it detracts from consensus for the sovereign's power.

The Middle East is one of those agonizing cases where both sides have an overwhelming moral case. Any Jew at the end of World War II, witnessing the extermination of the six million after Western nations denied them escape, would believe that only if Jews had their own state, could they give themselves the protection others had denied them. And you would not be too fastidious in securing that state: were Jews to be the only people in human history who never inconvenienced anyone in nation-building? On the other hand, a Palestinian Arab would say: fair enough – but **we** did nothing to you – this is not going to happen at our expense. I am not condemning with hind-sight: America was not a world sovereign when she made her choice but a victorious great power acting out of sympathy for a people who had

done much to win a place in our hearts. And I am not saying that US policy is now to be altered without guarantees for Israeli survival.

Still, the fact remains: by siding with Israel, America long ago took sides in a *morally ambiguous* dispute. This is something the world sovereign should avoid. The rule: when the sovereign chooses an ethical goal, it should be one that commands an almost universal moral consensus – like control of weapons of mass destruction. When you break this rule, a new rule takes hold: recognize that you have forfeited the right to do good. The rule only applies to the area concerned, of course, the Middle East. And even there, there are exceptions. The fact that America is morally compromised in the Middle East could be trumped by events so significant that they provide an overriding justification. If Iraq really posed a danger of universal destruction, that would suffice – which is why, no doubt, America has debased its true mission by rhetoric claiming as much. Another exception: you can intervene if a nation attacks across an international boundary and all look upon you as an enforcer of the peace – as in the case of the 1990–1991 Gulf War.

Nations find it hard enough to reconcile themselves to the world sovereign's exercise of its power. It is absurd to expect Arabs to view America as a morally neutral sovereign playing a legitimate role. America is in the position of a ruler who has licensed one person in a neighborhood divided by hate to carry a gun. I refer to its huge unpaid loans that have helped Israel create a nuclear strike force.<sup>9</sup> Is it odd that other residents try to sneak in unlicensed weapons to redress the balance? Syria has weapons of mass destruction. Iraq was more open about it because it wanted to be recognized as the Arab state that could prevent Israel from using its first-strike capacity to dictate terms. Israel should have been left to deter Iraq's weapons, tolerating them if it must, crippling them if it could.

There is much talk of 'regime change' as a justification of American military intervention. This is indicative of how little America understands the rational priorities of a world sovereign. If someone is trying to bring order to a primitive political system, reforming behaviour is near the bottom of the list. A sheriff in a town where everyone carries a gun does not expend his political capital to reform the town drunk, despite the fact that ideally this would be desirable to help his wife and children.

This is particularly true in that America cannot tolerate real democracy in Iraq. Expression of the popular will almost certainly divide Iraq into three states composed of Kurds, Sunni Arabs, and Shia Arabs respectively. An independent Kurdish state would destabilize Turkey.<sup>10</sup> An independent Shia state (or a united Iraq controlled by the Shia majority) would be an ally of 'evil' Iran. Such political developments will have to be frustrated by force exercised either by America or the very Sunnis who sustained Saddam Hussein in power. At best, Iraq will get a more polite tyranny. At worst, America will be drawn into a series of interventions in a region in which it

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9 See 'U.S. financial aid to Israel: Figures, facts, and impact', Summary. From 1949 to 1997, foreign aid grants and loans totaled \$74 billion and unpaid interest totaled \$50 billion. At: [www.Washington-report.org/htmls/US\\_Aid\\_To\\_Israel.htm](http://www.Washington-report.org/htmls/US_Aid_To_Israel.htm).

10 David L. Phillips, 'Turkey's dreams of accession', *Foreign Affairs*, 83 (2004), pp. 86–97.

is hated. Is this an example of how America intends to exercise its power as world sovereign? Nothing could do more to create alarm – and undermine the confidence and consensus necessary for the sovereign to do its proper job: make peace wherever possible.

### **A World Sovereign Must Live Down Its History as a Great Power**

Let us set aside what cannot be set aside, America's compromised position in the Middle East, in order to make a more general point. Any nation that history promoted to the role of world sovereign would have something to live down: its record as a great power. The excuse of every great power throughout history for invading weaker nations has been concern for the welfare of their peoples. Oddly, that concern is never much manifest ten years before the invasion and usually dissipates shortly after.

America's past is fairly typical. The Spanish-American War began with the goal of freeing the Spanish colonies and ended with their annexation. Since 1945, no misery has been too great, no government too awful, to merit much concern as long as America's strategic interests were served.<sup>11</sup> America's outrage at Saddam Hussein's brutality was missing in the 1980s when it gave him the satellite intelligence he used to better target Iranian troops with chemical weapons. The world has every right to believe that if the sufferings of the Iraqi people are lessened, it will only be as an accident of US policy.

Well, are not such historical accidents to be welcomed – why look a gift horse in the mouth? Even if all that results in Iraq is a more polite tyranny, better that than a tyrant whose grandiose fantasies have inflicted so much misery. Who cares about the depth of America's concern so long as the consequences are good? The answer is that a world sovereign must care about the world's perception of its aims. Invading people for their own good is calculated to reinforce the perception that America has not really abandoned the rhetoric and behavior of a great power. Other nations fear that granting America a license to interfere whenever there is a suffering people really means giving America a license to kill. Surely the task of the sovereign is to reassure, not to create alarm.

The sovereign must earn the right to use war to do good by compiling a record that inspires confidence. It inspires confidence by showing that it really does want a world made safer by the taming of weapons of mass destruction. That may take a very long time. Indeed, it may be only at that distant day when the first priority of the sovereign, a safer world, has been attained that the next priority, using force to promote the general welfare, can be persistently pursued. As usual, there will be exceptional cases. The sovereign may intervene when suffering is so great (Somalia) or slaughter so great (Bosnia) that much of the world forgets its suspicions. But when it is clear that suspicion is endemic, the sovereign, however great its disinterested passion to do good, must show moral restraint.

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11 William Blum, *Rogue state: A guide to the world's superpower* (London, 2002).

## **A World Sovereign Should Watch Its Tongue**

We have seen the harm done by the rhetoric of the Bush administration in the case of North Korea and its suspect rhetoric in the case of Iraq. Worse still is the rhetoric of the so-called 'war on terror' which has become almost universal. That rhetoric creates enemies that are not true enemies and friends that are not true friends. It has systematically mis-educated the American people about the true state of the world.

Terror occurs when people both suffer from a burning sense of injustice and cannot compete with whomever they see as their oppressor in terms of conventional military tactics. Those are prerequisites rather than sufficient conditions: things like oil money and favorable terrain help turn discontent into action. The alternative to terror is massive civil disobedience after the manner of Gandhi and Martin Luther King. Sadly that has been an infrequent response in human history. American irregulars were denounced as terrorists at the time of the American revolution. They could not get at English living in England. It would be interesting to know what would have happened if they had possessed the means. Two Prime Ministers of Israel (Menachem Begin and Yitzhak Shamir) were once members of terrorist organizations (the Irgun and the Stern gang).<sup>12</sup> The only way to stop terror everywhere would be to eliminate a sense of injustice or grievances everywhere. That is beyond the power of any world sovereign.

Therefore, the American people have been mis-educated about the true state of the world: they have been told that it can be divided into normal human beings and crazy people who out of sheer wickedness use terror. That premise entails the conclusion that everyone who is threatened by terrorists must be worthy of support, whether it is Israel fighting Palestinians, Russia fighting Chechens, the Philippines fighting Moslem rebels. American's recent knee-jerk response, that it will help the Philippine government 'because they have a terrorist problem', shows how such absurd rhetoric can be hijacked by states the justice of whose cause America should carefully evaluate.<sup>13</sup>

The only terror America should oppose is terror that threatens America and those nations whose hands are relatively clean. In passing, America has some cleansing of its own hands to do. Those who speak of America showing resolve against Iraq show a curious lack of resolve in one quarter: telling Israel privately but firmly that removal of the settlements on the West Bank must proceed with vigor (after all, they violate the UN resolutions that are so sacred to America) or American aid will be phased out. Israel should also be told that if they resist by mobilizing support within America, the President will address the nation and, for the first time, offer a full and honest presentation of the facts.

It may be said that there was no alternative to the rhetoric of the war on terror to energize the American public. That is nonsense. The Twin Towers was an attempt

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12 For Begin, see: Mark Tessler, *A history of the Israeli-Palestinian conflict* (Bloomington, 1994), p. 207. For Shamir, see: William B. Quandt, *Peace process: American diplomacy and the Arab-Israeli conflict since 1967* (Berkeley, 1993), p. 349.

13 George W. Bush, 'Remarks to the Philippine Congress', October 18, 2003. See: [www.state.gov/p/eap/ris/rm/2003/25455/htm](http://www.state.gov/p/eap/ris/rm/2003/25455/htm).

to destroy America's moral and political autonomy by inflicting cruel loss. It threatened the capacity of a free people to seek any goal abroad that anyone might resent. For domestic consumption, the fight against al-Qaeda should have been called 'The Second War for American Independence'. Other nations should have been asked whether they wanted America to be so crippled and whether they wanted to circumscribe their own autonomy out of fear. For international consumption, the objective of the joint effort against al-Qaeda could be called 'freedom from fear' (note the alliteration).

No member of the Bush administration really believes what they say about terrorism – or at least let us pray to God that this is so. And no sovereign should give its subjects a fundamentally false picture of the world. A short-term gain in terms of emotive language is not worth the price. The farther the people are from a true apprehension of reality, the harder to sell policies that attack real evils.

### **A World Sovereign Should Be Prudent When Pursuing Self-interest**

No one expects America to be a saint. If only because a saint cannot play the role of world sovereign. If the US was threatened with collapse because of lack of oil and the only way to get oil was from Venezuela, the world would have to tolerate a US sphere of influence in Venezuela. Does the US fear that a wave of more popular governments in the Middle East is in the offing; and that therefore, all of that oil may soon be in hostile hands? The notion that, given the present mood, more popular governments in the Middle East would serve America's interests is too silly to merit discussion.

So does setting up an oil protectorate in Iraq supported by American arms and largesse make sense? It would be refreshing if something so clearly within the spectrum of normal great-power behavior were the true objective of the war against Iraq. However, an assessment of consequences shows that this may well not be the best way to ensure a flow of oil to the West. The dangers are: (1) Such a Western military enclave might become even more hated than Israel; (2) Every regime in the area would be forced to take sides and if they remained US allies, the very regimes that America fears may be overthrown will be overthrown; (3) Militants may make determined efforts to sabotage oil fields, refineries, and pipelines with incendiary devices. Would it not be better to moderate American policy in the Middle East and depend on the desire of even regimes with limited sympathy for America to make money? That means selling oil on the international market for the best price you can get – with America having the advantage of being the biggest customer with the best hard currency.

However, let us assume that the pros and cons are evenly balanced on whether war or moderation is the best bet. If that is so, and if the world sovereign sees that war is undermining the consensus necessary to gain respect as world sovereign, that should tip the balance in favor of moderation. There is no sign that the present administration believes that such consensus counts as even a feather in the scales. For them, lining up support is a grudging concession to the fact that a lot of people, quite inexplicably, seem to either withhold support or at least care about the extent of



support. After all, support should come automatically because US policy is so good and admirable; if a majority of nations disagree, well so much worse for them. The recalcitrant have already been told that ways will be found to punish them for their cowardice and cupidity.

### **A World Sovereign Should Seek To Internationalize Its Power**

America has long treated the UN as a mere instrument of national policy. When it could not get its way in the 1980s, it crippled the UN by withholding funds. Now the US wishes to do the UN a great favor: taking enforcement of that body's own resolutions out of its hands without its consent. In fact, as everyone knows, vigilante justice is the most direct path to undermining a government's authority and the one thing no government that wishes to survive can tolerate. Americans have been told that France and Germany are cool toward the current US posture toward the UN. In fact, they think America is behaving like an outlaw that threatens the whole international system. But their mouths are shut by fear. The world cannot afford to insult the only nation that can play a dominant and constructive role in world affairs.<sup>14</sup>

The US should be obsessed with an overriding objective: how to render world sovereignty tolerable and productive. It must somehow sugar the bitter pill of a single nation acting as world sovereign. Therefore, above all, it should be solicitous toward the UN. Showing respect for the UN is a heaven-sent opportunity to offer proof that America looks forward to the day, however distant, perhaps a century away, of putting its power under international control. That depends, of course, on its having met the test of slowly pacifying the world through use of its nuclear and military superiority, persuading other nations to give up weapons of mass destruction and neutralizing those who would privatize them, thereby creating a world that it can trust and that reciprocates that trust. It can justify its pursuit of a nuclear monopoly only by sending a consistent message that those arms are a heavy burden it will someday be willing to share: that it will move to international control of its weapons of mass destruction once their pacifying purpose has been achieved.

Current arms policy aims at winning miserable small-scale advantages. I refer to America's refusal to ratify the Comprehensive Nuclear Test Ban Treaty, the sabotage of the Biological and Toxic Weapons Convention, and worst of all, the announcement that America considers itself free to use nuclear weapons against states that do not possess them.<sup>15</sup> The weapons named are tactical rather than weapons of mass destruction. But no tactical advantage is worth the anxieties that have been aroused.

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14 Gwynne Dyer, 'UN goes along with charade', November 14, 2002. See: [www.aljazeeraah.info/Opinion%20editorials/2002](http://www.aljazeeraah.info/Opinion%20editorials/2002).

15 Joseph S. Nye, *The paradox of American power: Why the world's superpower can't go it alone* (New York: Oxford University Press, 2002).

## **All Of The Lessons Rolled Up Into One**

The one lesson: practice moral restraint to achieve a higher moral purpose. There is precedent for America playing the sovereign role of offering security to nations who forgo weapons. America has said that an attack on non-nuclear Japan will be deemed to be an attack on itself; America has long guaranteed the security of weaponless Iceland.

If that policy is to be extended, with great caution, to other states, fears must be alleviated. The greatest fear is that as America comes closer and closer to total dominance and others come closer and closer to being at its mercy, it will abuse its power to impose its own self-interest or self-defined moral goals. That the 'Vision for a New Iraq' contains an anti-abortion clause defies belief. The roles of world sovereign and Don Quixote are incompatible. Every lesser moral goal must be assessed in the light of the overriding goal of a safer world. Is that not good enough to satisfy the most voracious moral appetite?

The problem with American foreign policy is not so much that Bush and his advisers are acting out their own peculiar version of the role of a great power, national interest modified by idealism, with the familiar mix of intelligence and stupidity, genuine moral purpose and blind moral arrogance. It is that America is playing the role of a great power at all. Rather than the role history has assigned it, namely, that of world sovereign.

Things could be worse. What if the USSR had won the cold war? What if history had nominated France, a nation whose intelligent cynicism forbids any long-term objective of a better world order? Then there is Britain, a nation so addled by its 'special relationship' with America that it has lost any capacity for independent thought. To be fair, Britain is experiencing that prolonged nervous breakdown that afflicted Sweden in the 18th and early 19th centuries when it had to face the fact that it was no longer a great power. It is a pity that Britain has developed no higher goal than to be the jackal that runs at the lion's feet.

America must choose. It can exploit its position as the sole great power, treating the entire world as a sphere of influence, baffled by the world's failure to applaud its good intent (when it exists). Or it can play the role of world sovereign. To settle for the former is to settle for being a dwarf in giant's clothing. To choose the latter means being a good and prudent king, unloved, envied, resented, but acknowledged by all to be essential to security and well-being.

## **Postscript**

Scholars who commented on the above have asked my opinion about the ideological roots of current US policy. I am reluctant to respond in that such speculation is not far removed from psychoanalysis of an only quasi-existent group mind. However, I have an opinion and will add a postscript.

President Bush and his advisors are no more exotic than the Mandarins of China, unusual perhaps only in the depth of their patriotism. American history has dictated the contents of their minds and, like most Americans, they are too ahistorical to

assess their heritage. Two huge nations, isolated and virtually self-sufficient, 19th century America and imperial China. Both self-obsessed, each looked into the mirror and saw a unique human experiment with a people and institutions specially blessed. The Chinese court could not imagine why anyone would want to visit the barbarians and sixty percent of US Congressmen see no reason to possess a passport. A problem that must be solved within a generation: within 30 years China may have economic (and therefore military) power matching that of the US. Every step should be taken to bind the nations together for the day they may have to act as co-sovereigns. The fact that China owns so much of the US that it cannot afford to allow an American economic collapse may be glue or a source of bitter division.

After World War I, the view that America was the center of the universe split into two ideologies. American liberals tended to espouse Wilsonian idealism, that is, they believed that America had a mission to democratize the world beyond its borders. If this failed, the presumption was that other great powers were too wicked to lay their interests on the altar of a better world.<sup>16</sup> However, there was at least the breath of a psychological constraint: that there was something odd about attempting to impose a democratic world order by undemocratic means, that is, through force rather than a consensus that embraced at least a fair swag of other nations. American conservatives tended to be isolationists. They found the rest of the world so wicked as to be hopeless. And here, there was a very powerful psychological constraint: America should not risk contamination by associating with bad company but should concentrate on perfecting its own society within its own borders.<sup>17</sup>

The world view of the present administration combines the worst features of both ideologies. The conviction that the world is wicked is held with all of the fervour of the conservatives. This erases the liberal constraint (never very strong) that other nations should be persuaded. The crusade to improve the world is espoused with all of the fervour of the liberals. This erases the conservative constraint that America should focus on perfection within. The result is something rather incredible. The very definition of sovereignty is control over the means of organized violence. In asserting the right to license who may carry weapons of mass destruction, America has asserted a claim to world sovereignty. And the stated rationale for this claim – American exceptionalism. The rest of the world should simply acknowledge America's unique virtue.

Thus, we have a nation drunk on morality and uninhibited in its pursuit of its mission. It would, of course, prefer others to endorse its actions, if only because that would speak well of them and would enhance America's strength. But that does not affect the moral equation: America has the right to act unilaterally because its motives are pure and failure to do so is moral cowardice.

One momentous event has occurred since the invasion of Iraq: Bush's statement of 14 April, 2004 accepting that 'already existing population centers' on the West

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16 Thomas J. Krock, *To end all wars: Woodrow Wilson and the quest for a new world order* (New York, 1992).

17 Wayne S. Cole, *Senator Gerald P. Nye and American foreign relations* (Minneapolis, 1962).

Bank may have to remain in Israeli hands<sup>18</sup> – a statement endorsed by his Democratic opponent for President the following day.<sup>19</sup> This calls for something more explicit than the recommendations about US policy toward Israel expressed above.

America totally misconstrues its role in the Israeli-Palestinian dispute. To broker a peace agreement may be impossible and America's prestige should not be dependent on the success of such efforts. Rather, its primary aim should be to take a clear and unambiguous stand that both safeguards the survival of Israel and is even-handed enough to be acceptable to moderate Arab opinion. It should say that Israel must evacuate the territories gained in the 1967 war including the entire West Bank and accept autonomy for East Jerusalem. In return, the US will, as it does for Japan, treat Israeli territory as its own for purposes of conventional defense, that is, no nation will be allowed to use nuclear blackmail against Israel and no conventional army will be allowed to cross its borders. As a guarantee, token military and significant civilian personnel could be stationed in Israel. Israel will have to take its own measures against terrorism with only minimal US help – and will be free to conduct covert operations outside its own territory. If Israel refuses to accept this policy, it is on its own both militarily and financially. It can, of course, pick up the offer off the table at any time.

America's explicit recognition of Israel's annexation of much of the West Bank takes it so far from a neutral stance that it not only reduces the constructive role it can play in the Islamic world to a minimum but also threatens confidence in its probity everywhere. The analogy between Iraq and Vietnam remains unhelpful in so far as it is unlikely that US dead will run to over 50,000. But Bush's statement has created a Vietnam in the political sense. It has made it impossible to contemplate a truly independent and democratic Iraq that will not be anti-American. So we have the sad old choice that prolonged the agony of Vietnam: on any given day, the politics of withdrawal and admitting the venture has failed are disastrous; and over the long term, to stay and stay and stay is even more disastrous.

Given the bi-partisan support for Bush's declaration, there is no hope of a better policy in the near future – and therefore, no hope of significant progress toward America as a genuine world sovereign. At least, realists in American now have a single sharp focus for their strategy: if they cannot moderate US policy towards Israel, any other victory will be drained of substance. The long-term prospects are not hopeless. In 1945, there was another great power that espoused a crusading mission without significant psychological inhibitions. George Kenan advocated educating the USSR about political reality by way of a policy of containment. They were to be forced, time after time, to moderate their behaviour when they ran into the countervailing force of American power – so that eventually they would realize that the world was not theirs for the making without the consent of others.

Political reality is a wonderful educator even when those who teach its lessons are many and weak rather than one and strong. Time after time, it is likely to sober

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18 George W. Bush, 'Letter from President Bush to Prime Minister Sharon', April 14, 2004. See: [www.whitehouse.gov/news/releases/2004/04/20040414-3.html](http://www.whitehouse.gov/news/releases/2004/04/20040414-3.html).

19 James Zogby, 'Bush, Kerry fail leadership test on US Middle East policy'. See: [www.aaiusa.org/pr/release04-19-04.htm](http://www.aaiusa.org/pr/release04-19-04.htm).

America by conjoining its behaviour with consequences unforeseen and unwelcome. After Vietnam, after Iraq, after what new misplaced attempt to substitute force for diplomacy, America may realize that there is something better than trying to coerce the world into playing the role of a sphere of influence. It took Russia 40 years to moderate its behaviour. It up to America's friends abroad and those among its citizens who care about its place in history to ensure that America is not a slow learner.

## Chapter 3

# Ethics and National Security in an Age of International Terrorism

Barry Cooper

πόλεμος πάντων μὲν πατήρ ἐστί, πάντων δὲ βασιλεύς  
Heraclitus, Frg. 53.

### Introduction

On the surface, the focus of this chapter looks straightforward, and may be summarized as follows: the practical imperatives of international stability and of the national security of the United States and of the allies of that country necessitate that terrorists in general, and the al Qaeda network in particular, be contained or destroyed. In order to respond to that necessity on ethically defensible grounds, such actions must be justified in explicit terms. To consider the problem of making explicit the ethical issues in resisting terrorist attacks or preventing them from taking place is the chief purpose of this chapter. It seeks to illuminate the ethical dimension of any national security policy when adversaries of a nation-state are terrorists capable of undertaking spectacular and lethal attacks as al Qaeda did on September 11, 2001.

In seeking to understand the wider significance of 9/11, the discussion makes reference to the reflections of major thinkers in the history of Western political philosophy, to more recent political history, and to the spiritual history of the Islamic world. It is the contention of this chapter that the conflict with al Qaeda is not simply one of national interest or even of the material interest of the industrial world in preserving access to the large oil reserves of the Middle East. There is a spiritual conflict as well. It exists equally between al Qaeda and the non-Muslim world – chiefly the United States and its allies – and between al Qaeda (the animating ideology of which is conventionally called salafism, jihadism, or Islamism) and Islam.<sup>1</sup> In order to understand the full scope of the conflict between the United States and its allies and the al Qaeda terrorist network, it is necessary to consider the context within which it takes place, and especially its time dimension or history.

The structure of this chapter is, therefore, as follows: first, we consider the relationship between the facts of the case and the story putting them into a context and conveys a meaning; second, this account is illustrated by the so-called ‘clash of civilizations’ elaborated most recently by Samuel Huntington, and by the political

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<sup>1</sup> See Barry Cooper, *New Political Religions, An Analysis of Modern Terrorism* (Columbia, 2004), ch. 3.

notion of friend and enemy that he borrowed from Carl Schmitt; third, we consider the origins of the modern ‘just war’ story as elaborated by Vitoria; fourth, we examine the genesis, significance, and experiential limitation of another modern term – or rather, pair of terms – national interest and national security; fifth, we return to the immediately pressing contingency of terrorist political action today and discuss briefly the spiritual consciousness of terrorists in organizations such as the al Qaeda network. This reintroduces the substantive ethical issue and makes explicit the reason why resistance to terrorist attacks is both necessary and just, whatever may be the limitations to the national interests of any particular state or coalition of states. The structure of the chapter therefore moves from relatively simple accounts of the subject-matter of the title, to a more complex and deeper analysis.

### **Necessity and the Context of War**

Unprovoked attack is almost always understood as a legitimate *causis belli*. By this argument, therefore, the issue of *jus ad bellum*, the right to resort to war, is moot or at least would be excused by the necessity of a response to the initiator of hostilities, in this case, the responsibility of al Qaeda for the attack of September 11, 2001. If this is true, the only relevant ethical concerns surround secondary issues of *jus in bello*, the law governing the conduct of war. But is it true?

To answer, consider a story told by Hannah Arendt, and its significance. Shortly before his death, the story goes, the French wartime leader Georges Clemenceau was discussing the question of responsibility and thus of guilt for the outbreak of the Great War. What, the envoy from Weimar Germany asked, did Clemenceau think historians would make of this complex, troubling, and controversial question. ‘This I do not know,’ he replied, ‘but I do know for certain they will not say Belgium invaded Germany’.<sup>2</sup> That is, one must begin with some brute facts, not with a sophisticated theory into which the facts are slotted or hung, like socks on a clothesline. One must begin with the simple factual truth, that on the night of August 4, 1914, German troops crossed the Belgian border. Likewise South Korea did not invade North Korea on June 25, 1950 and the United States did not invade Japan on December 7, 1941.

The implication of facts in relation to lies and opinions is important. Although one can argue with unwelcome or misguided opinions, it can be done only on the basis of agreed-upon facts. With respect to unwelcome facts one can only lie. This means that simply stating the facts does not manifest their truth. Telling it like it is, that is, telling the factual truth may, depending upon the context, manifest either the courage or the foolishness of the factual truth-teller. But there is no reason why liars cannot also be brave, especially if motivated by patriotism, for example, or by a religion that promises posthumous rewards for courageous or glorious deeds.

To be understood, stories require the reader or listener to participate imaginatively in the dramatic narrative. The greatest stories are told impartially and disinterestedly, no matter how appalling the facts seem to be – and 9/11 cannot be understood unless

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2 Quoted in Arendt, *Between Past and Future: Eight Exercises in Political Thought* (New York, 1968), p. 239.

its appalling characteristics be acknowledged from the start. This does not, however, turn the 9/11 story into a horror story even if it looks like one at the outset.

In the Western tradition, the Romans, not the Greeks, were the first to develop an elaborate justification for war, which is why the so-called just war theory already alluded to above is replete with Latin terminology, *causus belli*, *jus in bello*, and so on. According to the Roman historian, Livy: 'The war that is necessary is just, and hallowed are the arms where no hope exists but in them.' Among the necessities that justified war, at least for Livy, were expansion, defence of existing interests, preemptive assault, and conquest. That such activities would be seen as *prima facie* evidence of criminal and unjust war today is a sentiment that is less than a century old. Indeed, it was only after the experience of the high tech and mechanized slaughter of World War I that this new attitude attained any practical force at all. Today the argument from necessity takes a different form.

In the summer of 1993 Samuel Huntington published a provocative article 'The Clash of Civilizations?' in the journal *Foreign Affairs*. Three years later the question mark was removed and the argument expanded in *The Clash of Civilizations and the Remaking of World Order*. According to Huntington, 'enemies are essential' because they enable us to know who we are by knowing who we are not and often by knowing whom we are against.<sup>3</sup> Indeed, he is of the view that the civilizational differences between us and them is as close to a historical constant as there is. As a result, so is war, whether between national states or between civilizations. Huntington's general point is that there are no universal cultures nor multicultural civilizations: all are parochial, including those that claim to be multicultural or multicivilizational.

So broad an argument has generated considerable criticism. The boundaries of the civilizational unit, for example, are not always clear or clearly drawn. For Huntington, notwithstanding the 'clash of civilizations', the internal order of those civilizations is (somehow) clash-free. Furthermore, Huntington's understanding of 'religion' or of 'religious phenomena' appears limited in the sense that he looks at the 'function' or 'use' of religion in society. In this sense he is literally not empirical insofar as he does not look to the experience of the adherents and practitioners or to their self-interpretation of it. Thus, if we take Huntington at his word, the 9/11 attack confirmed for the jihadists the otherness and enmity of the capitalist Crusader West. There was nothing right or wrong in what they did; it was simply functional. In order to understand why the 9/11 hijackers flew their planes into the Twin Towers and the Pentagon and were headed for another Washington target fully aware that they would kill thousands of people and by so doing please God, a larger story is needed than the one Huntington provides, or, on the basis of his understanding of human existence, can provide.

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3 Huntington, *The Clash of Civilizations and the Making of World Order* (New York, 1996), pp. 20–1.



**Just War**

Not the ancient Romans but the early modern Spaniards are the source of just war notions that still influence contemporary reflections on national security and ethics. The discovery of America and the activities of the Conquistadores aroused not a few misgivings concerning the legality and justice of Spanish expansion in the new world and the extinguishing of so many independent political bodies.

In 1532, Francesco de Vitoria published *Relectiones de Indis*, usually translated as *On the American Indians*.<sup>4</sup> This ‘re-reading’ or *relectione* developed a series of rules for proper relations between political units. In this book, Vitoria developed the notion of a *jus gentium*, a law of nations, that was not so much the medieval or Roman body of rules accepted by all peoples as the evocation of a sacramental human unity that transcended single and more or less sovereign political bodies. That is, Vitoria tried to rescue the notion of a human community that was clearly under assault by the Spanish treatment of the Indians. For Vitoria, therefore, the actual rules governing relations between political units are not simply treaties that sovereigns can make or break, but rules of conduct that, if broken, would be a mortal sin. What is interesting for our purposes is that the direction of Vitoria’s argument was *away* from the sentiments surrounding the growth of the sovereign state and the accompanying notions of national interest, national security, and *raison d’état*.

First of all, Vitoria argued that, because human beings fall into error and because they are likely to view their own cause as just, there is a need, as Aristotle said in the *Ethics* (1113a25–30) for a wise man, a *spoudaios*, to judge. So far as the Spanish conquest of America is concerned, Vitoria himself would do his duty and explain the lawfulness of Spanish action. Notice, therefore, a second implication: Vitoria would explain the lawfulness of what had already happened – namely victory by Christian Spaniards over infidel Moors and then over pagan Indians. Vitoria was not simply engaged in justifying victory but in showing why the victory that had occurred was just. This is also how an Aristotelean *spoudaios* would deal with the problem of *bellum nostrum justum*, though it is not self-evident he would agree with Vitoria.

Vitoria’s discussion of just war set a pattern that has not yet been broken. It was advanced with great subtlety and extensive philosophical and theological learning, and at the same time evinced an odour of spiritual corruption and intellectual dishonesty. Unlike his older contemporary, Machiavelli, Vitoria did not have the *virtù* to meet the irrationality of force in human affairs with defiance; unlike his younger one, Bodin, he could not accept it with mystic resignation either. Indeed, he could not endure the reality that conflict is fundamental, that Fragment 53 of Heraclitus, which appears in this chapter as an epigraph, is true: war is the father and king of all. Nor could Vitoria and his contemporary descendants accept the implication, that right and wrong are derivative of that fundamental reality. Vitoria, in short, had no sense of tragedy. He insisted that his enemies were criminals, worthy only of execution followed by a moralizing and sentimental sermon of self-justification.

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<sup>4</sup> See Vitoria, *Political Writings*. ed. Anthony Pagden and Jeremy Lawrence (Cambridge, 1991), ch. 6.

However that may be, Vitoria was also of the opinion that intercivilizational relations, brutal as they are, would develop in the direction of relations between Christian states. In this respect, he was decisively in error. Not only has there been no diminution in the brutality and moralizing of intercivilizational relations, but, at least in the twentieth century, the relationship between western states has approached the brutality that Vitoria reserved for intercivilizational conflicts. Even more significant, the non-Western partners to these encounters – Japan and Russia in the last century, the Muslim world today, and tomorrow perhaps China – have learned to imitate the brutality Vitoria first justified and the Spaniards first practiced.

## **National Security**

The term, national security, along with associated notions of national interest and even the nation as a meaningful community that may or may not take the legal form of a state, is derived from the gradual integration of a large complex of sentiments and institutions that began to form in the late Middle Ages. English institutions in particular became a model of balance and political articulation between Parliament and the royal administration, courts, and common law. English understanding of representation and constitutional government culminated in a sentiment that supported the existence of a closed, secular, and autonomous polity: King and Parliament were the unquestioned and supreme governing authority.

In this context, Thomas More's *Utopia* (1516) is important for two reasons that have a bearing on the problem discussed in this chapter. First, the Utopian way of war illustrates the limitation of the notion of national security; second, the motivation of the author in writing the work has a bearing on a typical element in terrorist consciousness.

The historically significant meaning of More's *Utopia* is that it is a literary text connected to the discovery of America, a new world that was suddenly available to serve as the location of a dramatic and fictional presentation of political ideas. At the same time, the production of this text was the means for the author to express his genuine and real political views about his own present circumstances.

Let us consider Utopian warfare. The Utopians are peace-loving, though excellently trained and equipped for war. Every Utopian war is just because they are essentially police operations to punish violations of the law by others. Wars are also just when undertaken to establish colonies. The Utopians are healthy and fecund and need living space; because their neighbours make marginally poorer use of their land, it is just for the Utopians to manage it for them. If the aboriginal inhabitants agree, all are improved; if they resist, this is the most just cause for war – because nature demands that the earth be properly used for those who need it. In return, the Utopians protect their land and the lands of their friends, not merely in defence, but by preemptive war as well. Because they are humanitarian, they will aid the oppressed wherever they are found; they will aid their friends when they are oppressed and they will even protect their merchants when they are oppressed by

foreigners. When their own citizens are attacked, they demand the surrender of the guilty under threat of invasion.<sup>5</sup>

The similarity of Utopian military doctrine and recent campaigns in Afghanistan and Iraq is not accidental. There is a core of pragmatic rationality in the western way of making war that provides a common element. It has, moreover, occasionally been noticed by those who have come out on the wrong end of a particularly strenuous bout of western war-making. After World War I, for instance, German historians discovered in *Utopia* British imperial rules of engagement, a blueprint for colonial exploitation, and early evidence of the well known perfidiousness and hypocrisy of the British by which they endowed their own expansive and aggressive tendencies with an unwarranted moral halo.<sup>6</sup> In return, British scholars hotly denied any such intention could be found in More's writing and noted that, in any event, the real expansion of the Empire took place over a century later.<sup>7</sup> It would take but little imaginative insight to take the German case against the British and apply it today to the United States. Perhaps Chancellor Schroder had his predecessors in mind when he lent his weight to the simple view that the American-led campaigns were really 'all about oil' and the rest was hypocrisy and cant. Likewise one can imagine the indignation – indeed, one can recall the indignation – of Defense Secretary Rumsfeld at such insulting suggestions. And yet, the Germans were not entirely wrong, nor are the views of their descendants in 'Old Europe' completely misguided.

More's text is also a literary product. Parts are ironic; parts are funny. It is not self-evident which parts are meant seriously and which parts are not. His description of Utopian armies in action look as if they were written by a man who wanted to get rid of a feudal military and to replace it with something like Machiavelli's popular militia. Moreover, the enumeration of the just causes of war, which we may find pragmatic enough but morally questionable, looks a lot more sensible than the frivolous causes of princely whims, which constitute the contemporary alternative causes for war.

As with Vitoria, however, what is also notable is an absence of a sense of what we called the tragic. That war is father and king is excused by a prior commitment to More's 'ideal state,' which eclipsed any sense that war, however necessary, is also terrible. For More, those who live by the ideal, namely the Utopians, do no wrong. The standards of justice and injustice in conduct are determined without ambiguity by the utopian ideal. As a consequence the Utopians see themselves as police, prosecutor, judge, jury, and executor. One consequence of continuing importance today is the moralization of political activity, including war, which is again similar to the unifying aspects of the arguments of Vitoria.

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5 These and other provisions are found in the section 'Military Affairs', in Edward Surtz, S.J., and J.H. Hexter (eds.), *The Yale Edition of the Complete Works of St. Thomas More*, vol. 4, *Utopia*, (New Haven, 1965). pp. 199ff.

6 Hermann Oncken, *Die Utopie des Thomas Morus und das Machproblem in der Staatslehre, Sitzungsberichte der Heidelberger Akademie der Wissenschaften, Philosophische-Historische Klasse*, 13 (Heidelberg, 1922); Gerhard Ritter, *Machstaat und Utopie: Vom Streit und die Damonie der Macht seit Machiavelli und Morus* (Munich, 1940), ch. 2.

7 Henry W. Donner, *Introduction to Utopia* (London, 1945).

This brief analysis of some of the elements in More's *Utopia* may seem to have led us some distance from the issue of national security. As with the discussion of Vitoria, however, it has brought to light one important element of the problem that is otherwise often overlooked. More's 'ideal' is important not only because it expanded the notion of national interest into a justification for imperialism, which is still a major issue in the debate over national security. It is important as well because More was the first to have given literary expression to the same *pleonexia* for which Vitoria's *Relectiones* was the first systematic justification.

As was observed in connection with Vitoria, More also has no sense of the tragic dimension to political life. Instead, we find the first instance of a secular intellectual creating the image of an entire people, the Utopians, as the embodiment of an unambiguous standard of humanity. He was the first to describe the field of international or intercivilizational politics and conflict as consisting of political actors promoting ideals, but only one set of ideals – as we would say, only one national interest – really mattered, namely that of the Utopians. Indeed, as Hythlodae indicated, once *superbia* had been overcome in Utopia, the institutions of that commonwealth would spread everywhere. One thinks again of the objective of 'democratizing' Iraq and Afghanistan.

There is a distinct flatness to More's argument, which has nevertheless become a commonplace among the most sensible analysts of international politics, namely members of the 'realist' or 'neo-realist' schools. The reason lies in a renunciation of, or obliviousness to, a spiritual search for meaning beyond the happiness of the commonwealth, which is to say, beyond the national interest. The temporal order and its defects have become the sole source of authority. This is why, for More, politics is exhausted by the proper arrangements of institutions. There is no need for spiritual guidance because the ideals, the national interests of Utopians, are understood to be self-sufficient. For the same reason, in their pursuit of national security, they are without restraint. By giving full expression to the *pleonexia* of secular reason, More's Utopians considered it perfectly acceptable to establish principles of justice for everybody else. National security is thus the modern term for the rational deployment of the military in service to an ideal, namely, the national interest. What has been lost is the experience of an orientation beyond the vicissitudes of temporal politics or historical contingency by which they may be understood. Thus is Utopian rationality surrounded by a penumbra of higher irrationality.

## **Ethics**

We have already introduced a number of ethical themes and issues in the broad sense of the term. The incoherence of just war doctrines or the pneumopathological fantasies of utopian military and foreign policy raise a number of ethical questions in the sense of what is right or wrong, just or unjust, good or bad, rational or fantastic.

The most comprehensive classical texts dealing with this problem, the *Ethics* and the *Politics* of Aristotle, attempted to provide a thorough account of the field of political inquiry, which he called political science. Politics, Aristotle said, in the *Ethics*, is the science or art of human action. Actions are directed towards

goals or ends, which eventually can be analyzed in terms of a highest end, namely happiness.<sup>8</sup> Aristotle's well known and systematic organization of a science of politics has a bearing on the present problem not simply because it begins, as Leo Strauss emphasized, with commonsense questions, but also because of an issue that arose in connection with Vitoria and the problem of *bellum nostrum justum*, and in connection with More and the rational deployment of security forces.

We noted that, for Aristotle, politics is the general science of human action. In the more restricted sense of law-giving or nomothetics,<sup>9</sup> politics teaches how to establish institutions and laws that will instruct citizens in ethical virtues, which in turn are described in Book II of the *Ethics*. But what if someone challenged Aristotle's account of human excellences? What if, instead of virtue, the argument was made that pleonexia, power, or prosperity was the greatest good? Aristotle anticipated this very modern question and supplied the following answer: we cannot know the highest things with the precision of physics;<sup>10</sup> thus, even to discuss ethical problems one must know them from experience, from the actual formation of an individual personality. This is all very well, we may say, but it does not dispose of the problem that human beings and societies desire different things as good.

Aristotle's answer to what might be called sophomoric relativism is to distinguish between what appears to be good, phenomenal good, and what is really good. All human beings wish for what appears to be good, but the true good is what is truly wished for. That is, the only phenomenal good that is also a true good is the one desired by the true wish. 'The truth of the good is inseparable from the truth of the wish,' Voegelin observed. Accordingly, 'a critical debate about the good can be conducted only by men who are capable of desiring according to truth. Such a man Aristotle called a *spoudaios*'.<sup>11</sup> According to this Aristotelean epistemology of ethics and politics, then, analysis of the various virtues described in the *Ethics* can be undertaken only by human beings who know the material they analyze because they actually possess those same excellences. And the results of the analysis will be comprehensible only by *spoudaioi* themselves or by human beings who have sufficient character to see the problem. At this point<sup>12</sup> Aristotle quotes Hesiod:

Best by far is he who knows all things himself,  
 Good is he who harkens to right counsel;  
 But he who knows not, nor heeds  
 Another's wisdom is an *achreios* (a useless or foolish man).<sup>13</sup>

What is problematic about this insight of Hesiod and Aristotle is not its validity but the degree to which those who know govern those who know not, the *achreioi*, in any particular political regime.

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<sup>8</sup> See *EN*, 1094a22.

<sup>9</sup> See *EN*, 1141b28–34.

<sup>10</sup> See *EN*1094b11–247.

<sup>11</sup> Voegelin, *Order and History*, vol. III, *Plato and Aristotle, The Collected Works of Eric Voegelin*, vol. 16, ed. Dante Germino (Columbia, 2000), p. 354. See *EN*, 1113a29–35.

<sup>12</sup> *EN*, 1095b10–13.

<sup>13</sup> Hesiod, *Works and Days*, p. 293ff.

To summarize Aristotle's point: debate about ethics is debate about excellences or virtues. It can be conducted only by *spoudaioi* or by those who are able to acknowledge the excellences that such people embody. At the same time they must study the useless and foolish because such individuals are in revolt against the virtues the others possess or at least acknowledge. One of the conclusions to be drawn from the analyses of Vitoria and More was that they obscured the tragedy of political conflict by their moralizing, which in turn eclipsed any experience of ethics in the Aristotelean sense. This may not have made them *achreioi*, but it surely disqualified them as *spoudaioi*.

The ethical problem of a separation between action and the notion of justice was central to the thinking of one of the great early modern political philosophers, Machiavelli. In the central chapters of *The Prince*, Machiavelli offers some shocking advice to the new prince: he must know when to act as a beast, how to look only to appearance, how not to be good – all of which can hardly be news to a real new prince in sixteenth-century Italy. Philosophically, Machiavellian ethics consists in recognizing what everyone already knows from Heraclitus and Aristotle: the existence of human beings is burdened with conflict.

The spiritual insight of Plato, that it is better to suffer than to inflict evil, to use the formula of the *Gorgias*, can clearly be in conflict with the continued existence of the individual or of the community. That is, human existence involves others as well as oneself so that actions are burdened with consequences for others. A prince who did not answer an attack with orders to shoot back will not likely be praised for his exquisite Platonic spirituality. On the contrary, he will be criticized for his irresponsibility. This does not mean that Platonic spirituality, Christian spirituality, or the *dike* of Zeus can be summarily dismissed. It does mean that ethical spirituality can become a political problem in human existence because human existence, including politics, involves a lot more than ethical spirituality. So far as Machiavelli is concerned, he never tried to pretend that his immoral advice was moral. Unlike Vitoria and More, he was not a moralizer. The measure of his greatness lies in his acknowledgement of the mystery of accident and contingency, of existential cruelty and guilt that lies at the origin of all political order and that by convention is never admitted to public awareness. Machiavelli possessed a sense of tragedy which moralizers try to obscure. In this respect he is a far better guide to the genuine problems of ethics and national security in an age of international terrorism.

### **Terrorist Spirituality**

Historically speaking, the conduct of Western security policy has been tinged with elements of moralizing and pneumopathological fantasies. This is true of American foreign and military policy today, even for those who admire American achievements. When we consider the atrocities of terrorists, however, we are in an entirely different ethical universe.

Traditional terrorism, in the words of the mid-nineteenth century terrorist Carlo Pasacane, was ‘propaganda by deed’.<sup>14</sup> As Brian Jenkins said as late as 1975, ‘terrorists want a lot of people watching and a lot of people listening, and not a lot of people dead’.<sup>15</sup> To the extent that ‘propaganda by deed’ is effective, however, it provides a long-term incentive for additional acts; if any particular terrorist act is not covered by the media, there is a short-term incentive to escalate the level of violence until it is. Apart from the appeal of its evident hard-nosed crudeness, the chief reason why Jenkins’ aphorism, that terrorists wanted a lot of people watching or listening and not a lot of people dead, was persuasive is because limited terrorist killing appeared to be both effective and instrumental. If this was true, the number of dead from any particular terrorist act had to bear some intelligible and proportional relationship to political ends. Until the closing years of the twentieth century, then, the use of weapons of mass destruction (WMDs) were not an appealing option, and the killing and damage tended to be relatively modest – what Walter Laqueur has called ‘nuisance terrorism’.<sup>16</sup>

Unlike ordinary military or criminal killing, terrorist killers typically view their own activity as both altruistic and sacrificial. As Hoffman said, ‘the terrorist is fundamentally an *altruist*: he believes that he is serving a ‘good’ cause designed to achieve a greater good for a wider constituency – whether real or imagined – which the terrorist and his organization purport to represent’.<sup>17</sup>

The reality that terrorists carefully avoid facing is that killing the innocent is inherently illegitimate. Moreover, terrorists are sufficiently aware of this truth or of this ethical reality that they go to great effort to deny it. In this respect, they are as pneumopathological as More when dreaming his utopian dream. Indeed, the creation of an imaginary dream world, a ‘second reality’ as Robert Musil called it, is practically a requirement for terrorism. This is why it is necessary to distinguish between imaginary purposes terrorists claim to pursue and genuine grievances they hope to exploit, never forgetting that there are always plenty of grievances around. Thus, despite claims to the contrary, the attacks of al Qaeda on the United States had little to do with the quarrels between the Israelis and the Palestinians.

A second element of pneumopathology is derived from the eagerness of the terrorist to engage in self-sacrifice in order to put his altruism into practice. Whether he or she dies in the act or is executed, the terrorist typically claims to be sacrificing himself. But at the same time he is actually asserting himself by claiming to be exceptional as compared to those for whom he is sacrificing himself. The pneumopathology of terrorist consciousness or of terrorist existence, for common sense, lies in the

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14 See David Stafford, *From Anarchist to Reformism: A Study of Political Activities of Paul Brousse Within the First International and the French Socialist Movement, 1870–90* (Toronto, 1971), pp. 76–8.

15 Brian Jenkins, ‘International Terrorism: A New Mode of Conflict’, in David Carlton and Carlo Schaerf, (eds.), *International Terrorism and World Security* (London, 1975), p. 15; Brian Jenkins, ‘Will Terrorists Go Nuclear?’ *Orbis*, 29/3 (1985), p. 511; Brian Jenkins, *The Likelihood of Nuclear Terrorism* (Santa Monica, 1985), p. 6.

16 Laqueur, *The New Terrorists: Fanaticism and the Arms of Mass Destruction* (New York, 1999), p. 4.

17 Bruce Hoffman, *Inside Terrorism* (New York, 1998), p. 43.

fraudulent claim to be exceptional. Considered psychologically, terrorism is an act of the weak that allows them to attack an ostensibly superior force and proclaim aggressively their own existence: 'I bomb, therefore I am'.<sup>18</sup> By claiming to be exceptional, the act of a terrorist killer is also an accusation that his audience and his victims are alike unexceptional, for the simple reason that their refusal to act is evidence they lack a moral personality as great as his. In other words, cloaking terrorist acts in moralizing language is but a symptom of the pneumopathology by which evil takes on a spiritual appearance.

The change from traditional terrorist acts, the propaganda of the deed where the object is to terrify a large number of onlookers by killing a few, to the suicidal mass murderers of September 11, 2001, clearly indicates a change in operational style. But only the style has changed. The substance remains: a pneumopathological consciousness projects an imaginary or second reality and acts murderously within the real world by killing a lot of innocent people. The other stylistic change has been to use religious symbols to express and justify the pneumopathological experience. Starting perhaps with Aum Shinrikyo in 1995, the 'new terrorists' abandoned any cost-benefit rationality and focussed on killing or harming as many people as possible. In short, the new terrorists consider violence to be a sacramental act or divine duty executed in direct response to some alleged theological demand or imperative.

The details of 'religious terrorism' will vary with the religion pressed into service by the killers. Timothy McVeigh's sacred text was *The Turner Diaries*, Shoko Asahara relied on his own version of the *Tibetan Book of the Dead*, various Islamist terrorists have developed their own interpretations of the *Koran*, and Baruch Goldstein who opened fire in the Ibrahim Mosque in Hebron thought of himself as Mordechai the revenger in the Purim story. In other words, the Islamist killers in al Qaeda have in many respects simply expressed a number of typical pneumopathological themes.

In one significant respect the activities of Islamist terrorists are novel. Their chief addition to the repertoire of terrorism is to have combined murder and suicide.<sup>19</sup> The first such attacks were mounted nearly twenty years ago against the American embassy in Beirut, and, as with the suicide attacks of September, 2001, they were undertaken with an apocalyptic expectation that terrorism would trigger a war of extermination that would conclude with an endless peace and righteousness triumphant. In order to combine murder and suicide and to imagine that it was a heroic sacrifice, the Islamists had to pervert a number of traditional Muslim teachings.

The first was the notion of a martyr, in Arabic, *shahid*, one who bears witness to truth. This sentiment is found in many genuine religious traditions. Bearing witness to truth even unto death is often held, in faith, to be rewarded in death by God. In Islamic tradition, there are plenty of consolations for a martyr. They are *not*,

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18 John Arquilla, David Ronfeldt, and Michele Zanini, 'Networks, Netwar, and Information-Age Terrorism', in Ian O. Lesser, Bruce Hoffman, John Arquilla, David F. Ronfeldt, Michele Zanini, and Brian Michael Jenkins (eds.), *Countering New Terrorism* (Santa Monica, 1999), p. 40.

19 The first 'suicide terrorists' were not Muslims but Tamils carrying out operations in Sri Lanka. The Islamists, however, have undertaken far more such attacks than the 'Tamil Tigers.'



however, meant to be attractions or reasons to seek martyrdom, even in a military *jihad*. To turn the consolations of martyrdom into the appeal of martyrdom is a piece of sympathetic magic or sorcery. Even when debased in this way, however, martyrdom is not the same as suicide, in Arabic, *intihar*.

It was necessary, therefore, to expand the notion of martyrdom to include suicide. In Islam, by authority of the *Koran*, the oral and later literary tradition or *Hadith*, and the canonical literature containing the *fatwas* of learned religious judges, suicide is a grievous sin.<sup>20</sup> One of the religious leaders in Hizballah, Muhammad Fadlallah, solved the problem in a snap by declaring ‘there is no difference between dying with a gun in your hand or exploding yourself. In a situation of struggle or holy war, you have to find the best means to achieve your goals’.<sup>21</sup> However, *jihad*, even in the sense of military struggle, was to be a *risk* of life in the service of religious truth. There is no risk in blowing oneself up, only certain death.

One observation seems obvious: bin Laden and the al Qaeda network are conventional in their motivations, their grievances, and their preference for highly destructive but comparatively low-tech weapons. In one important respect they have, however, achieved a significant innovation. Aum was strictly hierarchical, as are older terrorist organizations such as the PLO. Like Hamas, however, al Qaeda is a network, which makes a conventional decapitation strategy far less effective than it would if all that were needed to destroy al Qaeda were the death of its leader.

## **Terrorist Netwar**

Al Qaeda is organized as a flexible and diffuse network rather than a rigid hierarchy. The great advantage of a network is that it organizes small dispersed and tactically nimble groups to swarm and disperse, to ‘pulse,’ not to attack in echelons or waves. There are several varieties of network, but all of them are facilitated and enhanced by global connectivity and are based on trust. The leader, in this case bin Laden, is less a commander issuing orders than an animator, the author of a master narrative.

Networks are hard for hierarchies to destroy, as can be seen with Colombian police versus drug cartels, the King County Sheriff’s department versus the WTO protestors in the Battle of Seattle, and even the RCMP in Quebec City. It can be done, however, and the first step is intelligence sharing. Given the secrecy of most intelligence hierarchies even within the same government structure, let alone with foreign nationals and former enemies or rivals, this is a significant challenge.<sup>22</sup>

These challenges, however, are being met. Victor Davis Hanson raised his own version of the argument from necessity when, shortly after 9/11, he asked: ‘what did they think America would do? Ignore the attack?’ There is, in fact, some evidence

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20 See Franz Rosenthal, ‘On Suicide in Islam’, *Journal of the American Oriental Society*, 66 (1946), pp. 239–59.

21 Quoted in Magnus Ranstorp, ‘Terrorism in the Name of Religion’, *Journal of International Affairs*, 50/1 (1996), p. 55.

22 For an account of this problem see Bruce Berkowitz, *The New Face of War* (New York, 2003).

that bin Laden did not expect so ferocious a response. So: how does one kill a terrorist network, especially one animated by apocalyptic pneumopathological fantasies?

In one respect at least, it does seem that the military has made the necessary adjustment in its conduct of operations in Afghanistan and in Iraq. A combination of raids and strikes using special forces, which are highly networked small units, along with air power, seems to have kept the adversary network in a state of crisis.

In Afghanistan and then in Iraq, there has also been a movement away from what is called platform-centric warfare, where strategy revolves around a platform – a tank, a carrier, an infantry unit – to network-centric warfare. Here the first element of contact is the sensor grid of real-time information via satellites and special forces. This allows rapid target acquisition by special forces and the use of force from bombers or helicopters, which netwar strategists call peripherals. This is a major change: carriers, B-52s, and Bradleys are not usually thought of as peripherals, like a laser printer.

The point of it all is akin to the Wal-Mart strategy of just-in-time delivery and constant monitoring of inventory. In both, information superiority is turned into competitive advantage. The military version is to think in terms of many small independent units that can quickly call on overwhelming force. This does not mean complete information, and the search for complete information apparently allowed Mullah Omar and other senior al Qaeda people to escape in December, 2001 even though they had been spotted by a Predator surveillance drone. It does mean a flatter hierarchy, however, which the military do not willingly embrace. It means that a special forces corporal can tell an admiral commanding a carrier battle group when to launch an aircraft or a cruise missile. At the same time, however, the end of major combat operations in Iraq has shown that old-style ‘boots on the ground’ in large numbers are necessary if military victory is to be followed by successful occupation.

In appraising the war against terrorist networks such as al Qaeda, it is important to bear in mind two things. First, 21st century terrorism can only destroy and degrade. It can build nothing. Second, pneumopathologies are based upon imaginary fantasies, not commonsense realities. This is why they cannot last, but also why it is impossible to negotiate with terrorists. In the short term, however, they can kill great numbers of otherwise innocent people.

## **Conclusions**

At the beginning of this chapter, the point was made that the question of ethics and national security in an age of terrorism looks straightforward. In one sense it is: every political order exists under pressure of destructive forces from within and from without. That is certainly true today with respect to the West. Moreover, every political order maintains its existence by the threat and application of violence, against both internal lawbreakers and external threats. It is also true that violence is a means of maintaining political order, not its purpose.

There is, within the modern secular West, great continuity of institutions and of a form of spiritual or ethical sense that is far from stable or comprehensive. With

the writings of Vitoria or of More, we are moving in a kind of twilight zone of spiritual or ethical confusion. It is unquestionably true that the terrorist killers of Aum Shinrikyo or al Qaeda are victims of a far worse deformation. To compare al Qaeda to the Nazi or Bolshevik totalitarians is not entirely unreasonable.

So what can one conclude from these reflections? First, that Western modernity is deeply flawed at least as compared to the integral ethical spirituality dramatically presented in *The Suppliants*. Second, that despite these flaws, Western civilization remains stratified in terms of its ethical sensibility. At the same time, it seems clear that the English-speaking democracies have not lost touch with a civilizational tradition that reaches back to antiquity. Third, therefore, the Western way of fighting, which was formalized in the Clausewitzian trinity of an *army* acting on the orders of a *state* to protect a *civil society*, is unlikely to be bettered. This conclusion may not give Westerners much spiritual comfort, though it does help us understand our own institutional safety. Whether the challenge to Western institutions is sufficient to promote a recovery of Western spiritual ethics, or even a genuine sense of tragedy, remains to be seen.

Part 2  
Morality and Global Security

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## Chapter 4

# The Ethics of the 'New International Policing'

B. K. Greener-Barcham

Recent years have witnessed the creation of new institutional arrangements for policing at the international, regional and national levels, and have seen peace support and other operations drawing on police capabilities to an unprecedented degree. Most strikingly, some countries have begun to undertake executive policing actions and 'in-line' roles in other states. This chapter explores some of the ethical questions arising from recent moves to deploy domestic security agents in external jurisdictions. It begins by tracing the historical development of international policing operations, establishing what practices have come to be seen as being acceptable by the international community since the post-war years. Two recent case study deployments to Solomon Islands and Papua New Guinea are then briefly explored to better understand the very real practical and ethical issues involved in the 'new international policing' phenomenon.<sup>1</sup> The chapter considers the ethical aspects of such deployments in light of contemporary international norms before bringing in more virtue and consequentialist-oriented arguments. The overall shift to a 'new international policing' paradigm is deemed to correspond with changing international norms regarding international peace, order and security and the overarching need to ensure state sovereignty, but the chapter closes with a cautionary note about the need to challenge as well as affirm those norms if we are to realise a more ethical world.

### **Post-1945 Policing Missions**

International policing emerged in the post-war era. The Allied occupational forces in Germany and Japan were charged inter-alia with policing, overseeing and re-establishing effective and legitimate judiciaries and penal systems. The 1950–53 UN mandated action in Korea was also labelled an international 'police action', although arguably the first major post-war international policing operation that could claim to be an instance of policing in both name and in nature was Operations des Nations Unies au Congo (ONUC) 1960–64 which assisted local police in helping to maintain civil order. Other examples of international policing of note included the UN Temporary Executive Authority (UNTEA) which administered West New Guinea

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1 The section on New Zealand involvement in Solomons draws on my chapter 'RAMSI: The New Zealand Experience', in John Henderson, Greg Watson (eds.), *Securing a Peaceful Pacific* (Christchurch, 2005).

(now Irian Jaya) for 8 months in 1962–63, with a British officer supervising the Papua police, and the UN Emergency Force (UNEF) of 1957–67 that had to assume some responsibility for law and order following an Israeli troop withdrawal.<sup>2</sup> Similarly, the first UN force in the Sinai was at times referred to as a ‘police force’.<sup>3</sup>

However, it was the much larger and prolonged deployment of the UN Force in Cyprus (UNFICYP) in 1964 to curb clashes between Greek and Turkish Cypriot communities<sup>4</sup> that recognised the importance of civilian police in a more systematic way, with the UN coining the term CIVPOL to denote civilian police. Then, in the late 1980s, the United Nations Transition Assistance Group (UNTAG) undertook a major role in helping to facilitate the political transition to independence of Namibia. UNCIVPOL were tasked with: a supervisory and human rights role, undertaking major public information and outreach programmes, supervising and controlling elections, and ensuring that the South West African Police (SWAPOL) maintained law and order in a professional manner.<sup>5</sup> UNTAG was something of a watershed in that its police came under the direct control of the Special Representative.<sup>6</sup> Indeed, Namibia cemented the role of police in these much more complicated UN peace operations, with CIVPOL numbers growing from 35 in early 1988 to eventually involve over 1,500 CIVPOL from twenty-five countries.<sup>7</sup>

### *The New Global Context*

International policing operations continued to proliferate during the post-Cold War era. Police observers were deployed to the second UN Angola Verification Mission (UNAVEM II) in 1991 to help monitor the neutrality of the Angolan National Police (ANP) during the election period. Meanwhile, a quiet but vital CIVPOL role unfolded in 1991 in protecting humanitarian relief supplies for Kurdish populations in northern Iraq following the first Gulf War, and some Commonwealth countries

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2 Annika S. Hansen, *From Congo to Kosovo: Civilian Police in Peace Operations*, Adelphi Paper 343 (Oxford, 2002), p. 26.

3 See Erwin A., Schmidl, ‘Police Functions in Peace Operations: An Historical Overview’, *Policing the New World Disorder: Peace Operations and Public Security* (Washington, DC, 1998), p. 21.

4 Gavin Brown, Barry Barker and Terry Burke, *Police as Peace-keepers: The History of the Australian and New Zealand Police Serving with the United Nations Force in Cyprus 1964–1984* (Melbourne, 1984).

5 Roger Hearn, *UN Peacekeeping in Action: The Namibian Experience* (New York, 1999), p. 69.

6 Stephen Fannin, ‘UN Peace Settlement Plan for Namibia (UNTAG)’, in *The Role and Functions of Civilian Police in United Nations Peace-keeping Operations: Debriefing and Lessons*, Report and Recommendations of the International Conference Singapore December 1995 (London, 1995), p. 114.

7 Chuck Call and Michael Barnett, ‘Looking for a Few Good Cops: Peacekeeping, Peacebuilding and CIVPOL’, in Tor Tanke Holm and Espen Barth Eide (eds.), *Peacebuilding and Police Reform* (London and Portland, OR, 2000), p. 43.

deployed observers to South Africa in 1992, ostensibly to monitor change in relation to policing issues.<sup>8</sup>

In Mozambique UNCIVPOL had a very broad mandate: to monitor police activities, verify details of police forces, monitor citizens' rights and civil liberties, and to monitor election campaign.<sup>9</sup> At the same time, UNCIVPOL police began to break new ground in El Salvador. Reform and training were given to a new police force that was helped by the United Nations Observer Mission in El Salvador (ONUSAL) Human Rights and Police Divisions, and by police advisers brought in by the UNDP. In May 1993, a UNCIVPOL contingent of 300 from twenty-eight member states arrived in Western Sahara to assist in the maintenance of law and order in the vicinity of voter registration and polling stations, and to assist UNHCR in refugee repatriation.<sup>10</sup> UNCIVPOL personnel were also involved in the UN Assistance Mission for Rwanda (UNAMIR) that was established in October 1993 to assist in the maintaining of public security through the monitoring and verification of the activities of the communal police and the gendarmie.<sup>11</sup> Furthermore, UNSC Resolution 814 authorised the UN Secretary General to assist Somalia in the reorganisation of the Somali police force in 1994.<sup>12</sup>

Other institutions also began to respond to the need to secure public order – most particularly in Europe. The Organisation for Security and Cooperation in Europe (OSCE) undertook police development programmes in Croatia and Kosovo, and the Western European Union (WEU) did likewise in Albania.<sup>13</sup> Yet these tended to be smaller in scale than UN deployments. Indeed the mission to Cambodia in the early to mid 1990s elevated the role of civilian police in joint military-police international deployments.

UNTAC involved 3,600 CIVPOL personnel contributed by 32 countries.<sup>14</sup> The civilian police component was tasked with 'stabilising the security situation', and an important part of this particular role was the regulation of existing police forces

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8 Peter Gastrow, Special Advisor to the Ministry of Safety and Security in South Africa, cited in a *PeaceWatch* report on the conference entitled 'Police Are Critical to the Peace Process', as found at <http://www.usip.org/peacewatch/1996/696/Police.htm>, accessed on 02/02/2005.

9 Ali Mahmoud, 'UN Operation in Mozambique (ONUMOZ)', in *The Role and Functions of Civilian Police in United Nations Peace-keeping*, pp. 43–44.

10 Jurgen Reimann, 'Debriefing on CIVPOL Experiences: United Nations Mission for the Referendum in Western Sahara (MINURSO)', *The Role and Functions of Civilian Police in United Nations Peace-keeping*, pp. 107–110.

11 Cheik Oumar Diarra, 'United Nations Assistance Mission for Rwanda (UNAMIR)', *The Role and Functions of Civilian Police in United Nations Peace-keeping Operations*, pp. 101–102.

12 Selwyn Mettle, 'Operation in Somalia (UNOSOM)', *The Role and Functions of Civilian Police in United Nations Peace-keeping Operations*, p. 54.

13 Chuck Call and Michael Barnett, 'Looking for a Few Good Cops: Peacekeeping, Peacebuilding and CIVPOL', p. 48.

14 Michael J. Dziedzic, 'Introduction', in *Policing the New World Disorder*, p. 8.



in Cambodia.<sup>15</sup> Perhaps most interestingly, however, the situation in Cambodia was somewhat unique in that police were given the authority to make arrests mid-way through the operation – constituting, in the words of Annika Hansen, the ‘first step down the slippery slope of executive policing’.<sup>16</sup>

The joint police-military mission in Haiti, on the other hand, had a number of successes. Over 800 police officers joined some 6,000 troops in the UN deployment (UN Mission in Haiti – UNMIH) that, in January 1995, took over from the initial US-led Multinational Force (MNF).<sup>17</sup> This was another important deployment as it was the first time that CIVPOL explicitly had ‘police development’ included in its mandate.<sup>18</sup>

More recently, late 2002 saw the conclusion of the UN Mission in Bosnia and Herzegovina (UNMIBH), the largest police reform and restructuring operation in UN history that had begun in 1995. It was also the first time that a regional organisation (NATO) had been endorsed by the UN to lead the military part of the peace operation.<sup>19</sup> Police and civilians from nearly 100 countries had worked for almost seven years to restructure local law enforcement bodies to meet international democratic policing standards.<sup>20</sup> Similar work on a lesser scale was then carried out by the United Nations Transitional Administration in Eastern Slavonia, Baranja and Western Sirmium (UNTAES). In these cases, international police worked alongside existing local police forces, eventually replacing them with a new multi-ethnic police force, whilst later deployments witnessed a further shift towards executive policing by outside forces.

### **Towards the New International Policing**

By the late 1990s, civilian police were increasingly involved in peace operations where the criminal justice system, and sometimes the state itself, had totally collapsed – causing police responsibilities to be broadened to include law enforcement work.<sup>21</sup> The emphasis on monitoring found in early missions through to the mid 1990s was

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15 Cheryl M. Lee Kim and Mark Metrikas, ‘Holding a Fragile Peace: The Military and Civilian Components of UNTAC’, in Michael W. Doyle et al (eds.), *Keeping the Peace: Multidimensional UN Operations in Cambodia and El Salvador* (Cambridge, 1997), p. 107.

16 Annika S. Hansen, *From Congo to Kosovo*, p. 19.

17 Sebastian von Einsiedel, David M. Malone, ‘Haiti’, in David Malone (ed.), *The UN Security Council: From the Cold War to the 21st Century* (Boulder, CO and London, 2004), pp. 470, 474.

18 Chuck Call and Michael Barnett, ‘Looking for a Few Good Cops: Peacekeeping, Peacebuilding and CIVPOL’, p. 49.

19 Lynn M. Thomas, ‘Peace Operations and the Need to Prioritize the Rule of Law through Legal System Reform: Lessons from Somalia and Bosnia’, *Small Wars and Insurgencies*, 15/2 (2004), p. 74.

20 See the UNMIBH website at <http://www.un.org/Depts/dpko/missions/unmibh/index.html>.

21 As argued by Michael Emery, UN Department of Peacekeeping Operations, and Erwin A. Schmidl, Austrian Ministry of Defense, in their papers given to the ‘Police Functions in Peace Operations’ UN Workshop, May 10 1996, as cited in a *PeaceWatch* report on the

soon enlarged by mandates for reform and training in places like El Salvador and thereafter such police deployments assumed growing responsibilities. As public security 'is an expansive concept, especially in the turbulence that follows armed conflict, and so civilian police find [or have found] themselves asked to undertake an impressive array of peacekeeping duties'.<sup>22</sup>

Moreover, UN deployments in Kosovo and East Timor consolidated the importance of policing in peace support operations and reinforced the possibility of outside powers having the mandate and capacity to undertake executive roles within the jurisdiction of other states. Yet, in these two operations, a significant caveat remained: no real government existed that was capable of undertaking these roles. The remainder of the chapter will therefore move on to explore the nature of the 'new international policing' by focusing on two more recent examples.

### **New Zealand Involvement in RAMSI**

In early 2003, the Solomon Islands Prime Minister made a formal request to Australia and New Zealand to help him restore order within his country.<sup>23</sup> The New Zealand government agreed to send police and military personnel to be a part of a new Australian-led Regional Assistance Mission to Solomon Islands (RAMSI). This outside assistance from Australia and New Zealand was intended to act as a 'circuit breaker' to allow the government to regroup and rebuild.<sup>24</sup>

The initial New Zealand contingent sent to the Solomons consisted of:

- 35 police officers
- an Army Infantry company
- support personnel
- engineers
- a medical, civil and humanitarian assistance element
- and four RNZAF helicopters with personnel

By late 2004, the New Zealand presence was reduced to two helicopters with 55 personnel; an infantry platoon of up to 40 personnel; and a support contribution of up to 25 personnel. This military commitment now consists of the deployment of an infantry platoon of 33 people as well as three support personnel and was to remain in place until at least 31 July 2006, and indeed for a time police numbers were in

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conference entitled 'Police Are Critical to the Peace Process', as found at <http://www.usip.org/peacewatch/1996/696/Police.htm>, accessed on 02/02/2005.

22 Chuck Call and Michael Barnett, 'Looking for a Few Good Cops: Peacekeeping, Peacebuilding and CIVPOL', p. 43.

23 See: Sandra Tarte, Tarcisius Tara Kabutaulaka, 'Rethinking Security in the South Pacific: Fiji and the Solomon Islands', in Bruce Vaughn (ed.), *The Unraveling of Island Asia? Governmental, Communal and Regional Instability* (Westport CO and London, 2002), for an overview of the time leading up to RAMSI.

24 Item Nine, New Zealand Ministry of Foreign Affairs and Trade, 'Solomon Islands: Strengthened Assistance', *Defence Cabinet Document* Covering Submission and Cabinet Paper, 23 June 2003, SLB/4, p. 2.

fact almost doubled as a result of the riots and lawlessness that followed elections in April 2006.

The core objectives of the mission therefore were, according to the New Zealand Ministry of Foreign Affairs, the ‘re-empowering the forces of law and order so that they are able to sustain law and order themselves, and of providing the Solomon Islands government with the freedom to operate without the ongoing threat of intimidation and extortion at gunpoint’.<sup>25</sup> Further, the return of civil order was seen as the key to the economic improvement of the Solomons.

Within this context, the mandate of the New Zealand police contingent was clearly defined. General tasks for the New Zealand Police contingent, in priority of order, were:

- the (short-term) provision of protection to key Solomon Islands Government figures
- establishing law and order in Honiara
- recovering of RSIP and privately-owned firearms
- establishing law and order in the provinces

The final task included the reform of the Solomon Islands police.<sup>26</sup> The whole rationale for this being a primarily police-driven mission stemmed from the fact that the Solomon Islands’ police capability was lacking – in part due to high level corruption – and expatriate police involvement was believed necessary to help begin to restore this capability.<sup>27</sup>

With respect to the military-police interface in RAMSI, NZDF personnel were delegated their general tasks by the lead police agencies, and were restricted primarily to the aim of creating a secure environment to enable police to operate.<sup>28</sup> RAMSI was therefore clearly a policing mission first and foremost. Further, as the initial phases of RAMSI were deemed a success by New Zealand and Australian officials, this encouraged deeper Australian involvement in Papua New Guinea.

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25 Item Nine, New Zealand Ministry of Foreign Affairs and Trade, ‘Solomon Islands: Strengthened Assistance’, *Defence Cabinet Document*, Cabinet paper plus attachment, 9 June 2003, p. 2.

26 Items Thirteen to Eighteen, New Zealand Ministry of Foreign Affairs and Trade, ‘Solomon Islands Strengthened Assistance: NZ Concept Paper’, *Defence Cabinet Document*, Submission, 26 June 2003, pp. 4–5.

27 Item Seventeen, New Zealand Ministry of Foreign Affairs and Trade, ‘Solomon Islands: Strengthened Assistance’, *Defence Cabinet Document* Covering Submission and Cabinet Paper, 23 June 2003, SLB/4, p. 4.

28 Item Twenty-six, New Zealand Cabinet, ‘Report of the Cabinet External Relations and Defence Committee’, Period Ended 4 July 2003, *Defence Cabinet Document*, Cabinet Minute of Decision, 7 July 2003, CAB Min (03) 6/6.

## Australia's Deployments to PNG

Australia has had a long and sometimes difficult history of involvement in Papua New Guinea.<sup>29</sup> In 2003–4, the Australian government dramatically redefined its approach to this country. Writing in early 2004, Elsina Wainwright said:

This year the Australian Government plans to deploy around 230 Australian police to Papua New Guinea as part of the Enhanced Cooperation Package (ECP) for PNG, to help PNG address governance and law and order challenges. The ECP will also include the placement of up to 64 senior officials in key economic, finance, planning, justice and security agencies. The package therefore seeks to resolve policing issues not just by providing more police but also by addressing the broader machinery of government... Australian officers will be appointed to frontline positions within the Royal Papua New Guinea Constabulary (RPNGC) to assist with the maintenance of law and order and to enhance the professional skills of the RPNGC... On current estimates the commitment is expected to last around five years, at a cost of around \$160 million per year. Unlike the Solomon Islands operation, there will be no Australian military presence; the police, however, will be armed where necessary.<sup>30</sup>

In fact the ECP budget as a whole – encompassing law and order reform, judicial and prison system reform, financial governance and border and airport security efforts – came to almost \$1 billion. Yet this effort never really got underway. On 13 May 2005, the Papua New Guinea Supreme Court ruled that immunity provisions granted to Australian officers serving in the ECP were unconstitutional. Shortly thereafter, the 167 Australian police officers then deployed in PNG were stood down and began to be flown home with only a very small team being left behind to wind up the agreement. Negotiations have been ongoing but thus far have not resulted in any major agreement being reached.<sup>31</sup>

The immediate reason for this chain of events stemmed from the legal challenge led by Morobe Governor and MP, Luther Wenge, who was concerned that the rules under which Australian police operated were consistent with PNG law.<sup>32</sup> Yet major problems were present from the very inception of the ECP. Some of this stemmed from a lack of consultation with some senior PNG politicians being openly hostile to the Australian deployment from the very beginning.

Other problems emerged out of the disparity between the A\$745 million set aside for the wages, accommodation, logistics and operational costs of the AFP. Of this A\$55 million was set aside for the Royal Papua New Guinean Constabulary

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29 See Ron May, *State and Society in Papua New Guinea: The First Twenty-Five Years* (Adelaide, 2001), for an excellent general history of Papua New Guinea.

30 Elsina Wainwright (with contributions from John McFarlane), 'Police Join the Front Line; Building Australia's International Policing Capability', in *Strategic Insights*, (Canberra, 2004), p. 3.

31 See Allan Patience, 'PNG At 30: Our Failing Neighbour', <http://www.theage.com.au/news/opinion/png-at-30-our-failing-neighbour/2005/09/15/1126750074057.html#>, accessed 10/10/2005.

32 Lloyd Jones, 'Ruling Threat to Aussie police aid', *News.com.au*, as found at <http://www.news.com.au/story/print/0,10119,15273255,00.html>, accessed on 3/6/2005.

(RPNGC). While this difference in expenditure was defended in terms of function, an Australian Senate enquiry found that the RPNGG would have benefited from more Australian funding. Yet Helen Hughes and Susan Windybank offer a more hard-headed appraisal by suggesting ‘the presence of Australian officers meant a cut in income...for senior [PNG] police officers (allegedly paid by Chinese triads to turn their eyes from illegal gambling, drugs, arms and people smuggling).’<sup>33</sup>

The ruling of the PNG Supreme Court on 13 May 2005 raised a number of issues, but in doing so it arguably also raises a number of questions pertaining to ethics and responsibility, and such issues will now be explored in greater detail.

### **The Ethical Challenge of the New International Policing**

The trend towards a more assertive use of civilian police on an international basis highlights the justifications for initiating such missions; the need for an awareness about the appropriateness of the means used; and the notion that the actual outcome of such missions will weigh most heavily in any judgment of the ethical aspects of such deployments. The proposition that ‘in relations between states, ethical acts are those that uphold the norms of interstate behaviour’ provides us with a useful starting point.<sup>34</sup> What are the current norms of interstate behaviour in relation to questions of state sovereignty and intervention?

### **The Initiation of Policing Missions**

Scholars like Robert Jackson have indicated there were a number of states in existence which had the outward appearance of sovereign states, but which actually struggled to maintain the internal cohesion to sustain such a reality. In discussing how these quasi-states had managed to survive in the international arena, Jackson identified in the international arena an overwhelming emphasis on ‘negative sovereignty’, the primary focus on non-interference in the domestic jurisdiction of a state, rather than the notion that ‘positive sovereignty’ – the ability of the state to act in a fashion that is consistent with the interests of its citizens – which was largely confined to an emphasis on international aid and distributive forms of justice.<sup>35</sup>

However, with the end of the Cold War, the norms of positive sovereignty – including the principle of armed humanitarian intervention – gained increasing momentum. Traditionally, states have claimed that they may intervene in the internal jurisdictions of other states if it is deemed that there is a major threat to international peace and order. In recent years, there has been a reassessment of what constitutes

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33 Helen Hughes, Susan Windybank, ‘Nose cut off to spite the face’, published in *The Courier Mail*, 31 May 2005, as found at <http://www.cis.org.au/excehigh/Eh2005/EH27905.htm>, accessed on 30 June 2005.

34 Paul Keal, ‘Introduction’, in Paul Keal (ed.), *Ethics and Foreign Policy* (Canberra, 1992), p. 5.

35 Robert H. Jackson, *Quasi-States: sovereignty, international relations and the Third World*, (Cambridge, 1990).

credible and serious threats to this international peace and order. For example, as Nicholas Wheeler has pointed out the notion of being able to intervene in another's affairs for avowed humanitarian purposes was not generally an accepted practice in international society.<sup>36</sup> But with the rise of the human rights discourse, the CNN effect, the call for a 'New World Order' and the move towards casting the individual not the state as the 'referent' of security, the term 'humanitarian intervention' was viewed in a new climate.<sup>37</sup> But the possibility that states may simply pursue national interests under the guise of altruistic 'humanitarian intervention' prompted some scholars and practitioners to recast sovereignty as a responsibility, not a right.<sup>38</sup> That is, states should earn their immunity from external intervention.

With the new emphasis on state sovereignty as a responsibility, a number of scholars have discussed the need to legitimise interventionist activity<sup>39</sup> through the application of concepts like 'just war', 'just cause' and 'actions of last resort'. Statements of invitation from governing agents within a target country could also help legitimate such interventions. In the specific cases considered here, there are ethical grounds to question some aspects of these interventions.

With regard to the RAMSI deployment to the Solomon Islands, previous pleas for help had prompted a limited external response as witnessed by the Townsville Agreement and the deployment of a small International Peace Monitoring Team (IPMT). These efforts were criticised for being too little and too late in relation to the troubles there.<sup>40</sup> But the external context altered with the events of September 11th and the 2002 Bali bombing. These events highlighted the possibility that failed states could become bases for terrorist activity.<sup>41</sup> Subsequent Australian and New Zealand policy statements expressed concern that failed or failing states in the Pacific region could constitute a new security threat.<sup>42</sup> Such perceptions therefore muddled

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36 Nicholas Wheeler, *Saving Strangers; Humanitarian Intervention in International Society* (Oxford, 2000).

37 For an excellent, concise and clearly written overview of this process see Martha Finnemore, *The Purpose of Intervention*.

38 International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa, 2001).

39 This is most obvious in the literature regarding humanitarian interventions as seen in Nicholas Wheeler, *Saving Strangers*; and Jean Bethke Elshtain, 'Just War and Humanitarian Intervention', *Ideas*, 8/2 (2001): 1–21 as found at <http://www.nhc.rtp.nc.us:8080/ideasv82/elshtain.pdf>, accessed 10/10/2005, amongst others.

40 These sentiments were openly expressed at the *Securing a Peaceful Pacific* Conference, University of Canterbury, October 2004. For information on previous Australian involvement in Solomon Islands see: [http://www.dfat.gov.au/geo/solomon\\_islands/solomon\\_islands\\_brief.html](http://www.dfat.gov.au/geo/solomon_islands/solomon_islands_brief.html), accessed 1/11/2005.

41 Ray Takeyh and Nikolas Gvosdev, 'Do Terrorist Networks Need a Home?', *The Washington Quarterly*, 25/3 (2002), both outline why they believe failed states are likely places for terrorist havens – pointing to a lack of control over territory, a willing pool of recruits etc.

42 See: Rt Hon Prime Minister Helen Clark, Opening Address to Pacific Roundtable on Counter-Terrorism, Intercontinental Hotel Wellington 10 May 2004, as found at <http://www.scoop.co.nz/stories/PA0405/S00183.htm>, accessed on 2/06/2005; Australian Department of Foreign Affairs and Trade, Transcript of Network Ten, 'Meet the Press' Interview with

humanitarian claims for action in the Solomons and Papua New Guinea *although* they also raise the notion that it is currently the ethical responsibility of states to not let other states collapse in the contemporary international environment because of the overwhelming focus on maintaining order.

Nevertheless, possible concerns over neo-colonial motivations in the Solomons and PNG were not realised. In both cases, external intervention was undertaken with the explicit consent of the authorities in each country. In the case of RAMSI, the mission was one of 'strengthened assistance', with the term 'intervention' purposely avoided.<sup>43</sup> Wellington claimed that 'any strengthened assistance should not undermine the sovereignty of the Solomon Islands government'.<sup>44</sup> In the case of Australian involvement in the ECP, some observers saw this is another instance of Australia wanting to 'manage' the region.<sup>45</sup> But Australian involvement was also related to concerns that Australian aid be used more wisely than it has been to date.

These two case studies indicate that intervention was reluctantly undertaken as a 'last resort'. The factor of a 'right intent' in terms of aiding close neighbours could also said to be present, but historical legacies, the issue of tied aid and the strategic catalyst for these deployments mean that they may not be seen not as purely altruistic. Most fundamentally, however, we must argue that, given that the norm is for the retaining and strengthening of the state system to pursue order and justice, both cases reinforce those norms. Yet, in addition to these issues regarding the initiation of involvement, as Jean Bethke Elsthain has pointed out in her critique of NATO involvement in Kosovo, noble motivations are not enough to legitimate such actions – they must also be matched by the means used.<sup>46</sup>

## **The Conduct of Policing Missions**

Several main factors shape the ethical conduct of international police deployments. First, the overarching context of the mission itself is important. In the case of RAMSI, New Zealand Cabinet papers outlined how the New Zealand authorities sought to work within with a regional mission to enhance its legitimacy. Generally, multilateral interventions are equated with broad-based international agreement,

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Alexander Downer, Australian Minister for Foreign Affairs, 3 August 2003, as found at [http://www.dfat.gov.au/media/transcripts/2003/030803\\_network\\_ten\\_meet\\_the\\_press.html](http://www.dfat.gov.au/media/transcripts/2003/030803_network_ten_meet_the_press.html), accessed on 24/05/2005.

43 Item Six, New Zealand Ministry of Foreign Affairs and Trade, 'Solomon Islands: Strengthened Assistance', *Defence Cabinet Document*, Cabinet paper plus attachment, 9 June 2003, p. 2.

44 Item Seventeen, New Zealand Ministry of Foreign Affairs and Trade, 'Solomon Islands: Strengthened Assistance', *Defence Cabinet Document* Covering Submission and Cabinet Paper, 23 June 2003, SLB/4, p. 4.

45 For an exposition on ongoing Australian desires to manage the region see: Greg Fry, 'Whose Oceania? Contending Visions of Community in Pacific Region-Building', Paper presented at the Otago Foreign Policy School Conference on 'Redefining the Pacific: Regionalism; Past, Present and Future', University of Otago, 25–28 June 2004 as found at <http://www.otago.ac.nz/otagofps/fps2004/papers.html>, accessed 30/04/2005.

46 Jean Bethke Elsthain, 'Just War and Humanitarian Intervention'.

and regional forces are often, though not always, perceived as a good method for ensuring greater accountability.<sup>47</sup> In this vein, it is interesting that RAMSI involved a fairly large number of regional players although Australian leadership was sometimes characterised as somewhat overbearing. In contrast to RAMSI, the ECP was a strictly bilateral arrangement. This bilateralism does not necessarily by itself make the mission less legitimate, but it can highlight power imbalances between the parties in the relationship and also prompt concerns about the motivations of the stronger party

Second, the ethical image of an intervention can hinge on the inclusion or exclusion of 'just war' considerations. For example, in planning for the New Zealand deployment to RAMSI, there was an explicit recognition of two different aspects of the rule of 'proportionality'. There was both a recognition that the mission should not be overwhelming in size nor under-resourced, but perhaps most interestingly there was also an awareness of other proportionality issues such as the need to balance military and police involvement. There was a particular concern to 'manage the size of the military 'footprint' to ensure that it does not overwhelm and alienate the Solomon Islands community'.<sup>48</sup> As for the Australian deployment to Papua New Guinea, the initial numbers floated for deployment were deemed necessary to carry out the job properly, but a large number of in-line positions within the operation potentially encroached on a major part of PNG's bureaucracy, and it is therefore interesting to see a subsequent agreement reached to host a more modest number of Australian police in the PNG.

It is also important to note that in the case of RAMSI, the international police force worked alongside rather than as part of the RSIPF. The need to reform the RSIPF played a role here. Though the 'parallel' structure presented some operational challenges in the Solomon Islands, it seemed preferable to inserting expatriate police into the local force. 'Ownership' was an especially sensitive issue during the Australian deployment to Papua New Guinea where concerns surfaced about AFP immunity. Such provisions were deemed necessary by Canberra for AFP officers to be able to operate effectively in what was believed to be a highly corrupt environment, but provided either good cause or, from a more sceptical view, good excuses for resistance to the ECP mission.<sup>49</sup>

What was also apparent from RAMSI is the need for greater awareness about the style of policing that most suits the location of the deployment. For example, Australian and New Zealand conceptions of 'community policing' proved quite

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47 See Jeffrey Boutwell, Report on Pugwash Meeting No. 252, Pugwash Study Group on Intervention, Sovereignty and International Security, 10–11 December 1999, Venice, Italy, as found at <http://www.pugwash.org/reports/rc/rc5.htm>, accessed on 10/10/2005, for an overview of some debates regarding the pros and cons of regional interventions.

48 Item Twenty-Five, New Zealand Ministry of Foreign Affairs and Trade, 'Solomon Islands: Strengthened Assistance', *Defence Cabinet Document* Covering Submission and Cabinet Paper, 23 June 2003, SLB/4, p. 5.

49 See for example: 'Australian police return without immunity', *Pacific Beat*, Radio Australia, as found at <http://www.radioaustralia.net.au/pacbeat/stories/s1485518.htm>, accessed on 1/11/2005 (audio also available).



different in practice in the Solomons.<sup>50</sup> Planning for future missions must take into account the policing styles of the intervenors, but also be compatible with local values and approaches to law enforcement issues. Policing has been given a much greater international profile in the post-Cold War era but the formidable *political challenge* is for international actors to recognise there are many different policy styles in the world that must be harmonised in a way that suits the local environment. Limited progress towards common benchmarks for policing training has been made at the UN through CIVPOL, but there is probably room for a multilateral convention to guide the emergence of the new 'policing'.

### **The Outcomes of Policing Missions**

From a consequentialist viewpoint, the most important aspect of the new policing missions is their eventual outcome. Success of such missions is perhaps the most vital component in discussions of whether or not those deployments are ultimately ethical ones. In evaluating their success, the medical code of conduct of 'first do no harm', and the just war notion of 'reasonable prospect of success' might be useful yardsticks. We cannot as yet make complete judgements on either RAMSI or the ECP as these will be ongoing for many years yet, but we can address how successful they have been in some areas to date.

Phase one of RAMSI, the 'security pause', appears to have been largely successful.<sup>51</sup> In particular, it is significant there has been much forethought put into dealing with the three stages of law enforcement – police; courts and prisons. This is vital as this was a lesson that was learned by the international community from previous experiences. After Kosovo, it was recognised that involvement in actual policing including, for instance, the detention of perpetrators, 'but then leaving the detainee to the local authorities for punishment, may turn out to be disastrous either for the individual in question, the prestige of the international police force, or both'... 'If the international community involves itself in, for instance, investigation and detention, it must also take responsibility for the future fate of the persons detained.'<sup>52</sup>

Moreover, it is also clear that major efforts are continuing to ensure the second phase of economic development progresses. Here the presence of large numbers of Australian and other foreign specialists augurs well for the economic recovery of the Solomon Islands. Some issues may, however, provide certain problems. These include: how to get enough skilled local people in to undertake the tasks at hand to

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50 Interview with Superintendent Tony McLeod, National Manager of Operations, New Zealand Police, 16/08/2004.

51 Dr John Roughan, '100 Days of RAMSI', SSGM Working Paper 03/3, as found at <http://eprints.anu.edu.au/archive/00002780/>, accessed on 20/9/2004, describes how effective RAMSI has been and pointed out that the establishment of over 16 police posts in the provinces had been an important part of that success.

52 Espen Barth Eide, Tor Tanke Holm, 'Postscript: Towards Executive Authority Policing? The Lessons of Kosovo', in Holm, Eide (eds.), *Peacebuilding and Police Reform*, p. 218.

ensure local 'ownership' of the process; how far to go in pursuing those tainted by allegations of corruption or other misdeeds (is it better to ignore lesser evils in order to gain stability if those individuals are necessary for the recovery of the country?); and when is RAMSI's task actually finished? Some of these issues are being ironed out at the present time but no definitive answers to these questions are yet known.

The ECP situation is even less mature, though some commentators might suggest that the situation in PNG is so dire that any improvement would be a major advance.<sup>53</sup> The final outcome of these two deployments has yet to be fully determined. Yet it should be emphasised that previous deployments of this nature have had a mixed record in achieving their objectives.

For example, despite a strong resource base and long-term commitment from contributing countries, the UN mission in Bosnia has recently been under fire for failing to achieve the somewhat ambitious police reform it set out to achieve.<sup>54</sup> More fundamentally, we also need to ask as to whether or not using such police capabilities to help rebuild the state in these two countries (and others) really is the answer to the problems faced. A number of scholars in the Pacific have increasingly begun to call for a fusing of local cultural values and traditional governance systems with these state structures or parallel to these structures to create more robust governance mechanisms.<sup>55</sup>

## **Conclusion**

It is clear that the new international policing can make a major improvement to security in a failing or failed state. The fact that 'policing involves reliance on community assistance and therefore on shared values between the community and the police' can facilitate the establishment of a cohesive community based on trust and a faith in the civil structures that support that community.<sup>56</sup> The achievement of longer-term stability in the governing of Namibia, according to the Australian government, owed much to the CIVPOL presence in country during its transition to independence, when it was 'more significant than the military presence in encouraging a sense of day to day security and impartiality in running the country'.<sup>57</sup> More specifically, the

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53 See for example the rather damning views of Hughes and Windybank, 'Nose cut off to spite the face'.

54 James Lyon, 'EU's Bosnia Police Mission is "Laughing Stock"', *The European Voice*, 15 September 2005, <http://www.crisisgroup.org/home/index.cfm?id=3666&l=1>, accessed on 11/10/2005.

55 Manuhua Barcham, 'Conflict, Violence and Development in the Southwest Pacific; Taking the Indigenous Context Seriously', *CIGAD Working Paper Series*, 4/2005 (Palmerston North, 2005); Greg Fry, 'Whose Oceania? Contending Visions of Community in Pacific Region-Building'.

56 Seumas Miller, John Blackler and Andrew Alexander, *Police Ethics* (St Leonards, NSW, 1997), p. 158.

57 The 'Australian Plan' as outlined in The Commonwealth of Australia, *Cambodia: An Australian Police Proposal*, Working papers prepared for the Informal Meeting on Cambodia, held at Jakarta 26–28 February 1990 (Canberra, 1990), p. 36.

lack of arms and the absence of a reliance on heavily coercive methods underlines the importance of a civil structure that is being rebuilt as a structure that does not need to rely on military or overtly coercive force to retain control. This reinforces a respect for the political legitimacy of the state and engenders a level of trust amongst the local population.

But if we are to answer a more specific question about the ethics of the move towards a new international policing, we need to return to the initial proposition that unethical acts are those that breach accepted international norms. Such norms regarding intervention, or to use a less politically charged term, ‘involvement’ in the internal affairs of others, have changed substantially over the last few decades. As these broader norms have changed, permitting greater external involvement within domestic jurisdictions of states, so too have the norms regarding the deployment of police on an international basis. As this chapter has demonstrated, it is now possible for states to not only undertake monitoring or training roles within others’ jurisdictions but also, under exceptional circumstances, undertake executive and in-line roles too. When viewed in this deontological light, the recent shift towards a ‘new international policing’ *must* be considered an ethically acceptable one. Most fundamentally, though, the enduring notion that state sovereignty is the best guarantee for international peace and security continues to insist that there is in fact a kind of obligation to prevent states from collapsing – a notion strengthened by the contemporary perceived threat from failed states that, some believe, may well become terrorist havens that could threaten state sovereignty elsewhere also.

Still, in terms of a virtue ethics viewpoint, there are some grounds for concern about the degree of benevolence within these deployments. Questions regarding altruistic motivations would suggest that it is just a partial truth to say that such deployments fully meet current norms – what about power politics and the role of hegemony in shaping those norms for the benefit of the most powerful global players? Other concerns stem from the fact that there is currently a major lack of inter-state communication and understanding as to what ‘policing’ does or should entail in international deployments – though we could argue here that we should view the NIP in consequentialist terms. Here outcomes are most important no matter what kind of deployment is undertaken.

In conclusion, then, the increased use of police abroad in unprecedented ways falls into line with current international norms and, despite some practical and moral challenges, arguably presents an exciting and as yet underutilised resource for states seeking to respond to challenges to international peace and order. Yet one final and very fundamental issue raised here is the question as to whether or not we should be reinforcing state norms or challenging them. Indeed, as this chapter has demonstrated, all norms are continually evolving. Not only do we need to ask if it is ethical to utilise police forces in such ways in others’ jurisdictions to reinstate the state, we also need to go further and ask whether or not it is ethical to simply rebuild ‘the state’ in all cases rather than seriously considering other possible political solutions with regards to, say, regional or local governance options. This final issue really is *the* major ethical issue for us to ponder.

## Chapter 5

# Liberal Interventionism versus International Law: Blair's Wars Against Kosovo and Iraq

Nicholas J. Wheeler and Rachel J. Owen

### Introduction

British Foreign Secretary, Robin Cook, proclaimed on 12 May 1997 that the goals of security, prosperity, protection of the environment, and 'an ethical dimension' would guide foreign policy under the new Labour Government.<sup>1</sup> It was this last part of the 'mission statement' that attracted the newspaper headlines the following day. Cook's declaration that 'The Labour Government will put human rights at the heart of our foreign policy', and his promise to 'make Britain once again a force for good in the world',<sup>2</sup> established a new moral compass by which to steer Britain's foreign relations.<sup>3</sup> At the same time, the Foreign Secretary made clear that he saw no incompatibility between a human rights orientated foreign policy, and one that promoted the rules of the international community. What this cosy optimism overlooked was the possibility that cases would arise where hard choices would have to be made between ethics and security on the one hand, and respect for the rule of law on the other.

The first major test was Kosovo: Prime Minister Tony Blair and Cook took the momentous decision to use force to protect the Kosovar Albanians without express Security Council authorisation. In this case, both believed that military action was necessary to defend fundamental human rights. They also argued that it was taken on behalf of the 'international community' in a context where the UN was paralysed from acting because of the threat of a Russian veto. Not everyone in the international community was persuaded by this justification however, and critics charged that the UK's intervention in Kosovo violated international law. But, as argued below, the government was successful in persuading a majority of states on the Security

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1 For a discussion of Cook's new approach, see Tim Dunne and Nicholas J. Wheeler, 'Blair's Britain: A Force for Good in the World?' in Margot Light and Karen E. Smith (eds.) *Ethics and Foreign Policy* (Cambridge, 2001), pp. 167–184.

2 Robin Cook, 'British Foreign Policy', *Mission Statement*, 12 May 1997.

3 This approach had been elucidated a few days earlier by Cook in the House of Commons, *Hansard*, [294], 12 May 1997.

Council that its breach of the law should be excused, given the moral exigencies of the case.

The same could not be said four years later with regard to Iraq, when Blair, yet again, took the country to war. Indeed, Cook, who was now Leader of the House of Commons, resigned from the Cabinet over the Prime Minister's decision to join the US and Australia in prosecuting war against the government of Saddam Hussein. In an electrifying resignation speech to the House of Commons, Cook argued that the government's decision to use force represented a fundamental challenge to the authority of the UN. He wrote in *The Guardian* the following day: 'If we believe in an international community based on binding rules and institutions, we cannot simply set them aside when they produce results that are inconvenient to us'.<sup>4</sup> His viewpoint was widely shared among Labour MPs – of whom 139 rebelled against the government in the crucial vote in the House of Commons vote on 18 March – and it struck a responsive chord with British public opinion.

The contrast between Kosovo and Iraq serves as a useful hook on which to hang the central thematic of this chapter, namely, the relationship between ethics, law and the use of force. The crucial question to be investigated concerns how an ethical state should act when confronted with a conflict between the formal legal rules and the perceived imperative to use force in defence of higher moral purposes. It is recognised that this dilemma does not arise for all states pursuing an ethical foreign policy. But it does arise for those governments that have both the material capabilities to act, and the belief that they have a responsibility to uphold order and justice in international society. Britain is a good example and it is for this reason that its interventions in Kosovo, and especially Iraq, have been chosen here.

### **The Place of Law in an Ethical Foreign Policy**

In a sense, the very term 'ethical foreign policy' is a misnomer since foreign policy always has ethical implications. Governments may not always consciously articulate the values and principles guiding their policies, but there is no escape from moral choices in foreign policy: even a non-decision is an ethical position. The question is not *whether* ethics should guide foreign policy, but *which* particular ethic it should be. Specifically, should an obligation to obey international law form part of any self-respecting ethical foreign policy?

Realist theory in International Relations would argue that such a commitment counts for little, since powerful states dispense with their legal obligations when these prove inconvenient, or reinterpret them to satisfy their interests. Either way, law exerts little or no constraint on foreign policy decision-making. Instead, its rules and principles are highly indeterminate, with the legal materials in any particular case being sufficiently open to interpretation to allow a variety of possible answers.<sup>5</sup>

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4 Robin Cook, 'Why I had to leave the Cabinet', *The Guardian*, 12 March 2003.

5 The problem of legal indeterminacy is discussed in Nicholas J. Wheeler, 'The Kosovo Bombing Campaign', in Christian Reus-Smit (ed.), *The Politics of International Law* (Cambridge 2004), pp. 189–217.

The rejoinder to the realist position, championed by English school theorists of international society, is that law is not infinitely malleable. As a result, we should expect to see state actions constrained if they cannot be defended in terms of a plausible legal argument. The international lawyer Louis Henkin captured this contention when he wrote that ‘the fact that nations feel obliged to justify their actions under international law, that justifications must have plausibility, that plausible justifications are often unavailable or limited, inevitably affects how nations will act’.<sup>6</sup> We are not arguing that states cannot act without a good legal argument, since law poses no more a material constraint on state actions in international society than it does on individual actions in domestic society. But what law does is impose an important normative restraint, since states recognise the importance of justifying their conduct in terms of common rules and norms which establish the framework within which legitimacy claims are advanced in international society.<sup>7</sup>

Two crucial consequences follow from this process of justificatory reasoning: the first and frequently overlooked point is that without this shared language, it would not be possible for governments to have any sort of meaningful conversation. Secondly, a defining mark of the existence of a society of states is that governments recognise they owe others an account of their behaviour that is explicable in terms of these rules and norms. Thus, even when governments privately know they are breaking the law, they do not argue that this rule is no longer legally binding. Rather, they try to give reasons why their action is defensible under the rule – however strained this interpretation might be.<sup>8</sup>

A *sine qua non* of an ethical foreign policy should be a commitment to the rule of law, but we are not suggesting that states should sacrifice their vital interests on the altar of fidelity to the rules. Instead, as Andrew Linklater argues, governments should ‘put the welfare of international society ahead of the relentless pursuit of [their] own national interests’.<sup>9</sup> Thus, if a state places common rules in jeopardy by pursuing narrow political and commercial advantage, this would disqualify it as an ethical state. Unfortunately, this framework does not adequately capture the moral conflicts posed by British interventions in Kosovo and Iraq. The very issue that divided supporters and critics of military action in both these cases was whether

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6 Louis Henkin, *How Nations Behave: Law and Foreign Policy* (New York, 1979), p. 45.

7 Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (London, 1977), pp. 40–46; Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford, 2000), pp. 6–11, 21–26; Christian Reus-Smit, ‘The Politics of International Law’, in Christian Reus-Smit (ed.), *The Politics of International Law* (Oxford, 2004), pp. 14–45; Ian Clark, *Legitimacy in International Society* (Oxford, 2005).

8 Friedrich V. Kratochwil, *Rules, Norms and Decisions. On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge, 1989), Friedrich V. Kratochwil, ‘How Do Norms Matter?’ in Michael Byers (ed.), *The Role of Law in International Politics: Essays in International Relations and International Law* (Oxford, 2000), pp. 35–69; K.M. Fierke, *Changing Games, Changing Strategies: Critical Investigations in Security* (Manchester, 1998); Christian Reus Smit, ‘The Politics of International Law’, in Christian Reus-Smit (ed.), *The Politics of International Law* (Oxford, 2004), pp. 14–45.

9 Andrew Linklater, ‘What is a good international citizen’, in Paul Keal (ed.), *Ethics and Foreign Policy* (Sydney, 1992), pp. 28–29.

the use of force would strengthen or weaken the ‘welfare of international society’. In both examples Blair believed that a decision to bypass the Security Council was justifiable, because it would have the longer-term effect of strengthening the values embodied in the UN Charter.

This approach begs the important question: what if some members of the Security Council are not persuaded by the justifications offered for a breach of the law? How many members of the Council have to approve or tacitly accept it before an act qualifies as legitimate? To explore this issue, the chapter turns to the case of Kosovo.

### **Kosovo: ‘Illegal but Legitimate’**

The first point to make about NATO’s intervention in Kosovo is that no member of the Alliance issued a plea in mitigation that accepted they were acting illegally. The US came closest to this, in so far as it never defended its recourse to force as explicitly legal.<sup>10</sup> At the other extreme, British ministers were explicit that the UK’s participation in ‘Operation Allied Force’ was legal. Nevertheless, the government’s legal advisors, including the Attorney General, were reported to be very uneasy about the legal basis of acting without express Security Council approval.<sup>11</sup> But it was clear that Russia, and perhaps China, would have vetoed any new resolution authorising the use of force. With Blair and Cook strongly committed to using force against the Milošević regime, the lawyers in the Foreign and Commonwealth Office felt impelled to come up with a legal rationale.<sup>12</sup> This was articulated by George Robertson, Secretary of State for Defence, when he addressed the House of Commons on 25 March 1999. He stated:

We are in no doubt that NATO is acting within international law. Our legal justification rests upon the accepted principle that force may be used in extreme circumstances to avert a humanitarian catastrophe. Those circumstances clearly exist in Kosovo. The use of force...can be justified as an exceptional measure in support of purposes laid down by the UN Security Council, but without the Council’s express authorisation when that is the only means to avert an immediate and overwhelming humanitarian catastrophe.<sup>13</sup>

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10 The US approach to the legality of using force over Kosovo is well summarised in the following comment by Michael J. Matheson, who was the State Department’s Acting Legal Advisor during the crucial period of deliberations. Speaking after leaving office in 2000, Matheson stated ‘the NATO justification was a pragmatic basis for moving forward without establishing new doctrines or precedents that might trouble individual NATO members or later haunt the alliance if misused by others’. Quoted in Ian Johnstone, ‘Security Council Deliberations: The Power of the Better Argument’, *European Journal of International Law*, 14/3 (2003), p. 469. See also Johnstone, ‘Security Council Deliberations’, pp. 437–480; Nicholas J. Wheeler, ‘The Humanitarian Responsibilities of Sovereignty’, in Jennifer Welsh (ed.), *Humanitarian Intervention in International Relations* (Oxford, 2004).

11 Tim Judah, *Kosovo: War and Revenge* (London, 2000), pp. 182–185; John Kampfner, *Blair’s Wars* (London, 2003), p. 41.

12 Judah, *War and Revenge*, p. 185.

13 Quoted in Memorandum on ‘International Legal Issues Arising in the Kosovo Crisis’, submitted by Professor Vaughn Lowe to the House of Commons Foreign Affairs Committee.

In making this legal argument the government was careful not to advance a claim that might create a precedent that others could use to justify the use of force. As the international lawyer Vaughn Lowe pointed out, the UK did not claim a unilateral right, under which each and every state may decide for itself that intervention is warranted. Rather, the 'prior decision of the Security Council is asserted as a key element of the justification'.<sup>14</sup> The Council had determined in Resolutions 1199 and 1203 that Kosovo constituted a threat to peace and security in the region; that continuing Serb violence against the Kosovars was producing a major humanitarian crisis; and that it would remain seized of action in the event of continuing non-compliance. The ingenuity of the British position was that it articulated a limited right for states to enforce existing Chapter VII resolutions in cases where the use of force was the only means to prevent or end a humanitarian catastrophe.

The UK's legal argument cut no ice with Russia, China and India who charged NATO with a flagrant breach of the Charter. The Russian representative denied that there existed any basis in international law for the defence of humanitarian intervention, considering that NATO's action threatened the pillars of interstate order.<sup>15</sup> The five NATO governments on the Council – the United Kingdom, United States, France, Canada, and the Netherlands – argued that NATO's action had been necessitated by the Council's failure to will the means to enforce the ends laid down in Resolutions 1199 and 1203.<sup>16</sup> But, this claim could not evade the fact that NATO had breached the specific UN Charter provisions in Articles 2 (4) and 51. This was revealed most tellingly in relation to the legal defence proffered by the British Government. On the one hand, it sought to limit the precedent-setting effect by acknowledging the Council's essential role in determining the existence of an impending humanitarian emergency. But, on the other, it also asserted the right of individual governments to decide when the use of force was necessary to end such crises.

What rescues NATO's intervention in Kosovo from the charge of lawlessness, was the Security Council's response to it. This was most graphically illustrated by the Council's rejection, on 26 March 1999, by twelve votes (United States, United Kingdom, France, Canada, Netherlands, Argentina, Slovenia, Brazil, Malaysia, Bahrain, Gambia and Gabon) to three (Russia, China and Namibia) of a draft Russian resolution demanding a cessation of the bombing. The voting reflected the wish on the part of the seven non-NATO members of the Council to steer a course that reiterated the bedrock principle of Security Council authorisation, whilst recognising that the worsening humanitarian crisis in Kosovo excused NATO bypassing the formal Charter machinery. None of these governments named NATO's action as a violation of the Charter, but nor did they argue that it was a positive step in establishing a new norm or legal rule of humanitarian intervention. Rather, in justifying their decision to reject the draft Russian resolution, those who spoke in the Council from the non-NATO seven made repeated references to the urgent need to end the humanitarian

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Cited in Fourth Report, 'Kosovo', 23 May 2000, p. 148.

14 *Ibid.*, p. 148.

15 United Nations Security Council/Verbatim Records of Meetings [hereafter S/PV] 3988, 24 March, 1999, p. 3.

16 S/PV.3988, 24 March 1999, p. 5, 6, 9.



crisis in Kosovo. It is evident from these speeches, especially those given by the representatives for Slovenia and Malaysia, that Russia and China were being blamed for unreasonably blocking a new resolution authorising the use of force to protect the Kosovars.<sup>17</sup>

The British Government pointed to the defeat of the Russian draft resolution as legitimating its intervention. When asked to pronounce on the legality of NATO's action, the Council refused to declare it illegal by three votes to seven (excluding the five NATO states on the Council). Russia's perceived stubbornness in refusing to support military action was viewed in London as the cause of the Permanent Five's (P-5) disunity over Kosovo. However, the government refrained from explicitly challenging the legitimacy of Russia's threat to veto over Kosovo, no doubt worried that such a move could erode the authority of the veto to the detriment of British interests.

This caution in tampering with the fundamental rules of the Charter was thrown to the wind four years later over Iraq. In a desperate effort to win public support for yet another military action without express UN authority, Blair declared that the UK might go to war even if one or more of the P-5 blocked a new resolution authorising it. Given that a key British justification for the war against Iraq was to enforce UN authority, how could the Prime Minister reconcile this commitment with his explicit statement that he would not be bound by the veto? The answer was to lie in Blair's enunciation during the Iraq crisis of the concept of the 'unreasonable veto'.

### **Iraq: Illegitimate but legal?**

A question that will fascinate future historians centres on Blair's own motivations for going to war against Saddam. As we discuss below, the primary justification for the use of force was Iraq's development of weapons of mass destruction (WMD) in

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17 Speaking in the first Council debate on 24 March 1999, the Malaysian representative stated, as a matter of principle, that his government believed the Council should sanction any use of force. However, due to the 'irreconcilable differences among permanent members – the Council has been denied the opportunity to firmly and decisively pronounce on this issue, as expected of it by the international community' (S/PV.3988, 23 March 1999, p. 10). The Slovenian representative offered the most eloquent statement that Russia and China had blocked the Council by acting unreasonably. Slovenia was no ally of the Milošević regime, but it took the floor in the Council to make a speech that resonated strongly with the thoughts of many of those in the chamber. Ambassador Turk reminded his colleagues that the Council had adopted three resolutions under Chapter VII, and that the Belgrade Government had failed to comply with these. Given this situation, it might be expected that the Council would have willed the requisite means to enforce its declared ends. However, Ambassador Turk noted that 'not all permanent members [a clear reference to Russia and China] were willing to act in accordance with their special responsibility for the maintenance of international peace and security under the United Nations Charter...[this] absence of support has prevented the Council from...authorizing the action which is necessary to put an end to the violations of its resolutions (S/PV.3988, 24 March, 1999, pp. 6–7). See also Thomas Franck, *Recourse to Force: State Action Against Threats and Armed Attacks* (Cambridge: Cambridge University Press, 2002), p. 185.

defiance of twelve years of UN resolutions demanding Iraq's disarmament. From the British perspective, the early case against Iraq was laid out in the September 2002 dossier on WMD, which was overwhelmingly based on intelligence from the Joint Intelligence Committee (JIC).<sup>18</sup> This document formed the basis for the British governmental decision to go to war the following March. Most notoriously, this document claimed that some WMD would be ready to deploy 45 minutes after the order to use them was given.<sup>19</sup>

The Prime Minister also strongly supported regime change in Iraq on *humanitarian* grounds.<sup>20</sup> Blair set out the humanitarian case for war in a speech in Glasgow on 15 February 2003. On the same day that roughly one million people took to the streets of London to protest against Britain going to war, the Prime Minister replied to his critics that 'Ridding the world of Saddam would be an act of humanity. It is leaving him there that is in truth inhumane'.<sup>21</sup> Three important implications follow from the claim that Blair was strongly motivated by humanitarian reasons: the first is that if promoting human rights was a key goal of British policy, Saddam's compliance with UN resolutions relating to Iraqi disarmament would not have improved human rights inside Iraq. Moreover, if regime change on humanitarian grounds was the key driver behind the decision to use force, it makes a mockery of Blair's claim before the war that a peaceful solution was possible if Iraq met its disarmament obligations. Second, there was no prospect of building an international coalition at the UN to support removing Saddam on humanitarian grounds, given the strong commitment of member states to the principles of sovereignty and non-intervention. Third, given the lawyers' strong doubts over Kosovo – which did not involve regime change – it is not surprising that it was subsequently revealed in a leaked memo and paper that Lord Goldsmith, the Attorney General, had advised Blair in both July 2002

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18 'Iraq's Weapons of Mass Destruction: The Assessment of the British Government', September 2002, <http://www.radanovich.house.gov/documents/Britishdossier.pdf>. Accessed 15 December 2006. See also February Governmental Report on Iraq, 'Iraq – Its Infrastructure of Concealment, Deception and Intimidation', <http://image.guardian.co.uk/sys-files/Guardian/documents/2003/02/07/uk0103.pdf>. Accessed 15 December 2006.

19 Iraq's Weapons of Mass Destruction: The Assessment of the British Government', September 2002, paragraph 6, p. 6; paragraph 5, p. 18. See also Lord Hutton's official inquiry findings, published on 28 January 2004, [http://news.bbc.co.uk/1/shared/spl/hi/uk/03/hutton\\_inquiry/documents/pdf/hutton\\_inquiry.pdf](http://news.bbc.co.uk/1/shared/spl/hi/uk/03/hutton_inquiry/documents/pdf/hutton_inquiry.pdf), pp. 11–84. Accessed 15 December 2006. For more on intelligence failures relating to Iraq see: Michael Fitzgerald and Ned Lebow, 'Iraq: The Mother of all Intelligence Failures', *Intelligence and National Security*, 21/5, October 2006, pp. 884–909.

20 In his revealing diary of life behind the scenes in Downing Street, Peter Stothard, who spent thirty days with the Prime Minister in March 2003, quotes Blair to the following effect: "If Saddam had disarmed and remained in place, Tony Blair would not have been "comfortable" at all' (Peter Stothard, *Thirty Days: A Month at the Heart of Blair's War* (London, 2003), p. 141.

21 Speech by Prime Minister at Labour's local government, women's and youth conferences, Scottish Exhibition and Conference Centre (SECC), Glasgow, 15 February 2003. For a transcript of the speech, see: <http://www.scoop.co.nz/stories/WO0302/S00174.htm>. See also James Cusick, 'Blair: Even if One Million March That's Not as Many as Saddam Has', *The Sunday Herald*, 16 February 2003.

and March 2003 that it would be illegal to forcibly remove Saddam from power on humanitarian grounds.<sup>22</sup>

Whatever Blair's own convictions about the humanitarian case for war, he stated publicly that this is 'not the reason we act. That must be according to the United Nations mandate on Weapons of Mass Destruction'.<sup>23</sup> The subsequent failure to discover any Iraqi WMD has led commentators to argue that Blair deceived the public to legitimise a war driven by other motivations. However, it appears that Blair sincerely believed that Iraq's WMD capabilities – actual and potential – posed a long-term threat to both national and international security. The character of the Iraqi regime led Blair to believe that Saddam Hussein would not rest until he possessed nuclear capabilities, and this made it imperative to remove the Iraqi dictator before he became an even greater threat to regional and global security. Blair agreed with the neoconservatives in the Bush administration concerning the threat to Western security posed by Iraq, but he fundamentally disagreed with their belief that the UN was irrelevant in managing this. The neoconservatives argued that America's best defence against the spread of WMD to states like Iraq – which, along with Iran and North Korea had been labelled by as the 'axis of evil' in his 2002 State of the Union address – was to act both unilaterally and pre-emptively.<sup>24</sup> The need to strike first was emphasised by President George W. Bush in a speech he gave at West Point in June 2002,<sup>25</sup> and was subsequently reiterated in the National Security Strategy document of September 2002. The latter declared that there was a 'compelling case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. *To forestall or prevent* such hostile acts by our adversaries, the United States will act pre-emptively'.<sup>26</sup> The neoconservatives were insistent on two fundamental issues: firstly, the pre-emptive strategy operated

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22 The Attorney General's position is set out in a minute of a meeting which Matthew Rycroft attended and which he subsequently prepared for his boss David Manning (Blair's senior foreign policy advisor at this time). The memo was published as 'The Secret Downing Street memo', *The Sunday Times*, 1 May 2005. See also 'Full text: summary of attorney general's legal advice on March 7 2003', *The Guardian*, 27 April 2005, <http://www.guardian.co.uk/Iraq/Story/0,,1471655,00.html> and 'Full text: Iraq legal advice (part two)', *The Guardian*, 28 April 2005, <http://www.guardian.co.uk/Iraq/Story/0,,1472459,00.html>; Philippe Sands, *Lawless World: America and the Making and Breaking of Global Rules* (London, 2005), p. 183–4.

23 Speech by Prime Minister at Labour's local government, women's and youth conference, SECC, Glasgow, 15 February 2003.

24 The intellectual bases of the neoconservative position are laid out in William Kristol and Lawrence Kaplan, *War Over Iraq: Saddam's Tyranny And America's Mission* (Encounter Books, 2003). See also David Frum and Richard Perle, *An End to Evil: How to Win the War on Terror* (New York, 2003).

25 Remarks by the President at the 2002 Graduation Exercise of the United States Military Academy, 1 June 2002, <http://www.whitehouse.gov/news/releases/2002.../20020601-3.htm>, accessed 31 October 2002.

26 The National Security Strategy of the United States, 20 September 2002 (emphasis added). <http://www.whitehouse.gov/nsc/nss.pdf>, accessed 31 October 2002. The 2002 State of the Union address is available at <http://www.state.gov/r/pa/ei/wh/rem/7672.htm>, accessed 15 December 2006.

irrespective of UN authority; and secondly, it did not require the existence of an imminent threat, only a *potential* one. The British Government was very uncomfortable with such an approach, worrying that this policy would undermine international order by seceding to individual states considerable latitude in deciding when the use of force was permissible. Rather than rely on the neoconservative strategy of unilateral pre-emption, Blair sought to persuade Bush to work through the UN.

## The UN Route

The British Prime Minister's commitment to the UN route was reflected in his own personal convictions, his party's long-standing advocacy of liberal internationalism, and recognition that securing the support of the UN would bolster support for his Iraq policy at home. Speaking at a Downing Street press conference on 13 January 2003, the Prime Minister declared that there 'has to be the way of resolving this [trafficking in WMD] and sending a signal to the whole of the world that this trade will not be tolerated, that people who have these weapons in breach of UN resolutions, will be forced to disarm'.<sup>27</sup> Blair's determination to disarm Iraq via the UN reflected his hope that if the international organisation could restore its credibility vis-à-vis Iraq, this would establish an important precedent for managing future threats of this kind.<sup>28</sup> He was also well aware from public opinion polls, conducted in the summer of 2002, that domestic support for war increased significantly if it was backed by proper UN authority.<sup>29</sup> The UN framework was also crucial to the government's legal case supporting war. The Attorney General, Lord Goldsmith, and the lawyers in the FCO maintained that the Council's authorisation to use force against Iraq for its invasion of Kuwait in 1990 continued to provide legality for the use of force thirteen years later. Resolution 687 set out the terms of the ceasefire that ended 'Operation Desert Storm', and, as part of this, it demanded that Iraq eliminate all of its WMD capabilities 'in order to restore international peace and security in the area'. The UK's legal argument revolved around the controversial claim that Iraq's 'material breach' of Resolution 687, and all subsequent resolutions reaffirming its provisions, reactivated the provision in Resolution 678.<sup>30</sup>

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27 Tony Blair Press Conference, 13 January 2003, <http://www.number10.gov.uk/output/Page3005.asp>. Accessed 15 April 2004.

28 Stothard, *30 Days*, p. 38.

29 John Kampfner writes that Sally Morgan warned Blair at the end of July 2002 that any decision to use force without UN authority 'would break the party and government' (John Kampfner, *Blair's Wars*, (London, 2003), p. 192).

30 For a general summary of the various UN Security Council Resolutions pertaining to Iraq, see Appendix A, David M. Malone, *The International Struggle Over Iraq: Politics in the UN Security Council, 1980–2005*, (Oxford, 2006), pp. 316–320. It is now evident from the full text of the Attorney General's legal advice to the Prime Minister in his letter of 7 March 2003 (made public in April 2005) that Lord Goldsmith privately pointed out to Blair the important limitations of the government's legal case. Nevertheless, in response to a Parliamentary question on the legal basis for using force against Iraq, the Attorney General provided a

Given the importance of securing UN authority, the British Prime Minister worked very hard to persuade Bush that he should override the advice of the neoconservatives. At their meeting at Bush's ranch in Crawford, Texas in April 2002, Blair tried to convince the President of the benefits of building up international support through the UN. Matthew D'Ancona claimed that the Prime Minister told Bush at Crawford that if he went down the UN route, Blair would act as a bridge between Washington and the other key European capitals.<sup>31</sup> In pursuing this goal, the British had an important friend in US Secretary of State Colin Powell. The latter reinforced the arguments Blair had made at Crawford, and which David Manning, Blair's chief foreign policy advisor, had elaborated on during his visit to Washington in July 2002.<sup>32</sup>

The neoconservatives were also fighting for the ear of the President, with Vice-President, Richard Cheney, and Secretary of Defence, Donald Rumsfeld, trying to steer Bush away from recourse to the UN. They argued that a return of UN weapon inspectors would provide no guarantee of Saddam's compliance with UN resolutions.<sup>33</sup> Fearing that Bush was wobbling on the UN, Blair and his team flew to Camp David on 7 September 2002 to make the case for working through the UN. Blair reportedly told Bush that if Saddam complied with future UN weapon inspections, he would have to be left in power. According to John Kampfner, 'Bush promised that if the UN did deliver genuine disarmament, he would pursue the diplomatic route. Blair promised that if that failed, he would go to war'.<sup>34</sup>

The success of Blair and Powell's strategy in persuading Bush to work with the UN was demonstrated on 12 September 2002 when the President announced to the UN General Assembly that he would work with the UN to secure the 'necessary resolutions'. The plural use of the word was not deliberate on the part of the President,<sup>35</sup> but disagreement over whether there should be one or two resolutions was to split the Security Council in the following months.

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written answer on 17 March which set out the government's argument that the authority to use resided in existing UN resolutions. This is usefully summarised in an article by Robert Norton-Taylor, security affairs editor of *The Guardian* ('The attorney who passed the buck', *The Guardian*, 3 March 2005), <http://www.guardian.co.uk/butler/story/0,,1429194,00.html>. Accessed 15 December 2006. For a powerful critique of the UK's legal position, see Sands, *Lawless World*, pp. 188–193.

31 Interview with Matthew D'Ancona, *Frontline*, 11 March 2003.

32 Kampfner, *Blair's Wars*, pp. 191–193.

33 Cheney made a speech on 26 August in Tennessee arguing that the return of UN inspectors would provide no assurance of Saddam's compliance with UN resolutions. [http://www.usembassy.it/file2002\\_08/alia/a2082601.htm](http://www.usembassy.it/file2002_08/alia/a2082601.htm). Accessed 15 December 2006. For background to the debate within the administration at this time, see Bob Woodward, *Bush at War* (New York, 2002), pp. 332–349; Malone, *The International Struggle over Iraq*, pp. 152–184; pp. 190–192. For more on the Realist-Neoconservative debate, see John Mearsheimer, 'Hans Morgenthau and the Iraq War: Realism vs. Neoconservatism', *Open Democracy*, <http://www.opendemocracy.net/debates/article.jsp?id=3&debateId=77&articleId=2522>. Accessed 15 December 2006.

34 Kampfner, *Blair's Wars*, p. 197.

35 Woodward, *Bush at War*, p. 348.

## The Second Resolution

The first challenge facing the UK in the Security Council was to bridge the differences between the 'Permanent Five' (P-5) on how far a new resolution should go in authorising the use of force. The US military build-up in the region in the summer of 2002 had forced Iraq to agree to re-admit UN weapon inspectors. Resolution 1441, adopted unanimously on 8 November, established the conditions that Iraq would have to meet in order not to be declared in breach of its disarmament obligations. It was a finely worded diplomatic compromise that effectively kicked all the hard decisions down the road. In particular, China, Russia, and especially France, took the view that any decision about whether Iraq was in 'material breach' of Resolution 1441 should be made by the Council and not individual states.

Nevertheless, in late January 2003, the United Kingdom followed the United States in declaring Iraq to be in 'material breach' of Resolution 1441.<sup>36</sup> However, such a determination was not supported by the subsequent reports of 14 February and 28 February by the UN Monitoring, Verification and Inspection Commission for Iraq (UNMOVIC) led by Hans Blix. The UN inspectors were tasked with reporting back to the Council on Iraq's compliance with Resolution 1441, and, after two months of intrusive on-site inspections in which numerous facilities identified by US and UK intelligence were visited, it was apparent that the evidence pertaining to Iraq's weaponisation and stockpiling of chemical and biological weapons was far less conclusive than suggested by the policy pronouncements of Bush and Blair.<sup>37</sup> This encouraged France and Russia to deepen their opposition to the use of force, a position strongly supported by Germany that was on record opposing military action even with a new UN resolution. These three governments accepted that Iraq was not fully complying with Resolution 1441, and there was plenty of evidence in Blix's reports as to how the Iraqis were concealing information in an effort to frustrate UNMOVIC's work; but, like Blix, France, Russia, and Germany believed that inspections should be given more time. This position was widely shared among the other members of the Council, and the nightmare scenario in London was not only that France and Russia would veto a new resolution, but that it would also fail to secure the necessary nine votes.

Bush was never enthusiastic about a second resolution. The President only supported the British effort to secure one because he knew Blair desperately needed it to win support at home.<sup>38</sup> Indeed, there was frustration among British officials that the US did not expend greater energies in cajoling the non-permanent members of

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36 Richard Beeston and Roland Watson, 'War against Iraq is legitimate, declares Straw', *The Times*, 29 January 2003.

37 Over 550 inspections of approximately 350 different sites in Iraq were undertaken by UNMOVIC. The latter's reports are available in full at: [http://www.un.org/Depts/unmovic/new/documents/quarterly\\_reports/s-2003-232.pdf](http://www.un.org/Depts/unmovic/new/documents/quarterly_reports/s-2003-232.pdf). Accessed 15 December 2006. For a useful summary of the chronological evolution of UNMOVIC and its predecessor, the United Nations Special Commission (UNSCOM), see Malone, *The International Struggle Over Iraq*, pp. 152–184. See also Hans Blix, *Disarming Iraq: The Search for Weapons of Mass Destruction* (London, 2004).

38 Kampfner, *Blair's Wars*, pp. 295–296.

the Council into line. One official is reported as saying: 'Although everyone talked about all sorts of arm twisting and bribery, what was staggering was that there was very little of that'.<sup>39</sup> Blair claimed that President Chirac's announcement, in an interview on French television on 10 March 2003, that France would veto any new resolution that issued an ultimatum to Iraq, finally defeated the second resolution. The British Government was quick to blame France for sinking this move, but there are two reasons for rejecting this vilification of the French.<sup>40</sup> Firstly, the UK was never confident of securing the nine votes it needed in the Security Council or it would have tabled the resolution itself.<sup>41</sup> Secondly, the British position conveniently ignored the reluctance of the Bush administration to press strongly for a second resolution that might have delayed its timetable for military action against Iraq.

The failure to achieve a second UN resolution was a massive political blow for Blair, given how much political capital he had invested in securing it. However, there was no question of the Prime Minister breaking his word to Bush that Britain would support America over Iraq. It was Blair's cardinal assumption that the world would be a more dangerous place if America acted alone.<sup>42</sup> The Prime Minister feared that this would strengthen the unilateralists in the administration and set back the cause of multilateralism. Blair continued to maintain that there was clear legal authority to attack Iraq in the existing resolutions, but the fact that he had put so much weight on securing a second resolution weakened his case. Realism would argue that the legal defence mounted by the United Kingdom to justify its use of force against Iraq shows how the materials of a case can be manipulated to justify whatever policy makers want to do. However, what is significant is that the government's legal case not only failed to persuade the majority of international lawyers, it was also roundly rejected by a large number of states at the UN. Had the evidence been overwhelming that Iraq was in breach of Resolution 1441, and then one or more of the P-5 had threatened to veto, the case mobilised by the United Kingdom, United States, and Australia in defence of the war would have been much more persuasive.

The contrast with Kosovo could not be starker. There, the majority of non-permanent members had been clearly persuaded that Russia was acting unreasonably in blocking military intervention. They accepted that Serb violence posed an imminent threat to Kosovars and that all peaceful options had been exhausted. Blair hoped that Council members would feel the same sense of urgency and threat over Iraq, and hence view France and Russia's threat to veto as equally unreasonable. But, based on Blix's reports, Council members considered that the inspections process offered, at least for the immediate future, a viable alternative to the use of force, and they were simply not convinced that Iraq posed the kind of imminent threat that justified immediate military action.<sup>43</sup>

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39 Patrick Wintour and Martin Kettle, 'Brought to the brink of defeat', *The Guardian*, 26 April 2003.

40 Kampfner, *Blair's Wars*, pp. 287–288; Sands, *Lawless World*, p. 201.

41 Kampfner, *Blair's Wars*, pp. 286–287.

42 Stothard, *30 Days*, p. 87.

43 Malone, *The International Struggle Over Iraq*, pp. 196–197.

Given Britain's failure to convince the Council to back military action, should the United Kingdom, as an ethical state committed to upholding the authority of international rules, have decided not to go to war? According to John Kampfner's fascinating account of British decision-making during the Iraq crisis, Jack Straw, Cook's replacement as Foreign Secretary, was sufficiently troubled by the failure to secure a new UN resolution that he wrote a 'personal minute' to Blair on 16 March, in which he suggested that Britain should not join the Americans in attacking Iraq without proper UN authority. Instead, he argued that Britain should offer to deploy its forces at the end of the war to assist with winning the peace.<sup>44</sup> Straw's minute reflected, in part, the thinking of senior officials at the Foreign Office who worried about embarking on war.<sup>45</sup> An important part of these concerns centred on Britain acting to flout the authority of international rules that it claimed to stand up for. According to Kampfner, Blair confronted Straw over his minute, and faced with resigning or supporting Blair, the Foreign Secretary decided to suppress his doubts and back his leader.<sup>46</sup>

It is, of course, impossible to view this disagreement between Blair and Straw without the benefit of hindsight, particularly given the enormous problems that have faced Britain and the United States in bringing peace and stability to Iraq. What is more, Lord Butler of Brockwell's enquiry into the intelligence assessments, which formed the public rationale for going to war, raised more questions than it answered. Butler's lengthy report reviewing the intelligence on Iraq's WMD concluded in July 2004 that the intelligence available prior to the invasion of Iraq in March 2003 was 'insufficiently robust' to categorically state that Iraq had been in breach of Resolution 1441.<sup>47</sup> While Butler concluded there was no evidence that any deliberate manipulation of the intelligence had taken place, it was stated that the Joint Intelligence Committee's "45 minute" reference should not have been included in the dossier.<sup>48</sup> In addition, the Butler report conceded that 'it was a serious weakness that the JIC's warnings on the limitations of the intelligence underlying its judgements were not made sufficiently clear'.<sup>49</sup> As Len Scott and R. Gerald Hughes explain, the careful wording of the Butler report effectively sidestepped specifically criticising either the intelligence community, or the actions of the Prime Minister, in pressing for war against Iraq.<sup>50</sup> Butler defended his original position when questioned in October 2004.

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44 Kampfner, *Blair's Wars*, pp. 303–304.

45 This assessment of thinking in the Foreign Office is confirmed by Cook in his *The Point of Departure* (London, 2003).

46 Kampfner, *Blair's Wars*, pp. 301–303.

47 The report is available in full at <http://www.butlerreview.org.uk/report/report.pdf>. Accessed 15 December 2006.

48 *Ibid.*

49 *Ibid.*, 'Conclusion', paragraph 34, p. 154.

50 Len Scott and R. Gerald Hughes, 'Intelligence, Crises and Security: Lessons from History?', *Intelligence and National Security*, 21/5, October 2006, p. 654. See also Anthony Gleys and Philip H. J. Davies, 'Intelligence, Iraq and the Limits of Legislative Accountability during Political Crisis', in the same volume, pp. 848–883.



In joining the United States and Australia in attacking Iraq on 20 March 2003, Blair breached his commitment given two months earlier that he would only go to war in the absence of a second resolution if an ‘unreasonable veto’ were cast in the Council. Speaking on 26 January 2003 in an interview on BBC’s ‘Breakfast with Frost’, Blair set out the only conditions under which he would support war in the absence of a new UN resolution. He declared:

That is the circumstances where the UN inspectors say he’s not co-operating, and he’s in breach of the resolution that was passed in November but the UN [because one of the permanent five members of the Security Council] unreasonably exercises their veto and blocks a resolution. Now in those circumstances you damage the UN if the UN inspectors say he’s not co-operating, he’s in breach and the world does nothing about it.<sup>51</sup>

The Prime Minister might reply that had President Chirac not threatened to veto any new resolution, it would have been possible to secure the necessary votes for passage of a resolution. At which point, the exercise of the veto by Russia, China or France would have given Blair the opportunity to invoke the argument of the ‘unreasonable veto’. Historians will argue over the significance of Chirac’s démarche on 10 March, but even without this, it is highly questionable whether a resolution, which gave Iraq an ultimatum, would have secured the nine votes. The majority of Council members were not persuaded that the diplomatic path was exhausted, and believed that Hans Blix’s team of inspectors should be given more time. As was evident from the anti-war protests across the world, the mood in the Council was also that of wider global public opinion: Britain acted in support of a US led war that had precious little support globally.

## Conclusion

As a general principle, a foreign policy purporting to be ethical should strengthen, rather than weaken, the framework of international law. Blair would claim that in the cases of Kosovo and Iraq, the UK fulfilled this requirement. With regard to Kosovo, the government asserted a legal right to enforce existing UN resolutions demanding an end to the humanitarian crisis. Over Iraq, it argued that prior resolutions authorised war. In terms of international law, neither of these arguments proved persuasive to a majority on the Security Council. However, the latter reacted much more positively to NATO’s use of force to protect the Kosovars than it did to the US-led coalition’s action against Iraq. Kosovo secured legitimacy if not legality, whereas Iraq was deemed by most Council members to be both illegal and illegitimate.

Whatever Blair and Cook’s contention to the contrary, they knew that they were breaching the technical rules of the Charter over Kosovo. But, when faced with a choice between strict adherence to the legal rules or breaking them to protect human

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<sup>51</sup> Patrick Wintour, ‘Saddam must co-operate’, *The Guardian*, 27 January 2003. In his letter of 7 March 2003, the Attorney General pointed out that there was no legal basis for claims of the ‘unreasonable veto’. See ‘Full text: summary of attorney general’s legal advice on March 7 2003’, *The Guardian*, 27 April 2005, paragraph 31.

rights, they opted for the latter. Britain and the other NATO states on the Council were able to marshal a normative argument in defence of their actions that persuaded the majority of the Council to vote down Russia's attempt to stop the intervention. Those who supported NATO's action considered that upholding the formal rules would lead to an outcome that would fundamentally contradict the moral purposes underpinning the Charter. The fact that these were embodied in existing Chapter VII resolutions added considerably to the legitimacy of the case. In such circumstances, an ethical state might argue that it is sometimes necessary to break specific textual provisions of the Charter in order to defend its underlying moral integrity. This is not to say that particular moral principles were being privileged over international law, since that would risk a general erosion of the restraints against violence. Rather, legal rules should be interpreted in terms of both the specific circumstances of the case, and the application of general normative principles.

The objection here – and the one mobilised by Russia, China and India in the Council over Kosovo – is that states cannot select which rules they will adhere to. All powers – great and small alike – benefit from a rule-governed international order. If powerful states disregard Charter rules when these prove inconvenient, or offer interpretations of the law that lack credibility, then the overall effect would be to undermine the authority of the law. The problem is that pushed to its extreme, this position would sanction non-intervention in cases of genocide if there were a veto in the Council. There has to be some flexibility in the interpretation of the law in these hard cases, and such a use of the veto would clearly be 'unreasonable'. Indeed, few international lawyers would hold that a state or group of states, using force to end genocide in contravention of the veto should be condemned or sanctioned for doing so.

Having relied on general normative principles in defending the use of force against Yugoslavia, Britain rested its legal case against Iraq on the specific wording in Resolutions 678, 687 and 1441. There were two possible alternative legal bases for action, the neoconservative argument of preventive war and humanitarian intervention, both of which the Attorney General had rejected as lawful bases for the use of force. Either rationale fundamentally challenged the existing international legal framework and risked setting dangerous precedents. The difficulty Blair faced was that securing legality for the war depended upon winning the argument in the Council that Iraq was in breach of Resolution 1441. But this was not convincing to the vast majority of Council members, who, on the basis of the reports from UNMOVIC, took the view that inspections should be given more time before military action was resorted to. Blair hoped desperately that he would secure his cherished second resolution, but he inserted the argument of the 'unreasonable veto' as an escape clause in the event that one or more of the P-5 blocked a new resolution.

There is no provision in the UN Charter that provides any legal basis for overriding the veto, but Blair asserted a position that gives the majority of Council members the power to decide whether a veto is reasonable or not. In the end, he achieved neither the prized second resolution nor the consolation of claiming a 'moral majority' in the Council. Most members felt that whatever the technical merits of the UK's legal argument, it contravened the general spirit of the Charter which requires that force only be used as a last resort and where there is a clear threat. This was the moment for Cook's departure from the government. Unlike Blair, he was not persuaded that

the reasons for attacking Iraq justified breaking with the UN, believing that such a course of action would jeopardise Britain's long-term security. Cook's decision reflected a widespread feeling in Britain, and around the world, that whatever the technical legal arguments, the preventive use of force would be a flagrant violation of the Charter. Blair shared this concern about the dangers of unilateralism, but he believed, ultimately, that if America acted to remove Saddam on its own, this would strengthen the neoconservatives in the administration, to the detriment of his wider project of harnessing American power to the goals of liberal internationalism. Thus, he found himself in the paradoxical position of supporting an action that was almost universally viewed as breaking the rules, in order to maximise Britain's influence over America's future engagement with the UN. Yet, in deciding to act unilaterally, Blair abandoned his stated goal of using the Iraq crisis to strengthen the authority of the UN. Far from bolstering the framework of collective security, the war against Iraq massively weakened it. Once the UN route was derailed, Blair should have turned away from war once the UN route was derailed. His failure to do so represents the nadir of the Labour's government's ethical foreign policy.

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## Chapter 6

# Morality, Media and International Conflict

Jeremy Hall

On January 27, 2005 CNN Executive Eason Jordan took part in a session of the World Economic Forum in Switzerland titled ‘Will Democracy Survive the Media?’

That evening 34-year-old Rony Abovitz, the founder of a biotech company invited to the forum, logged onto the World Economic Forum website and posted an account of what Jordan had said. During the discussion, Jordan had reportedly stated his belief that American troops were deliberately targeting journalists in Iraq.

In a subsequent interview, Mr Abovitz – who has no formal journalism training, said that his first reaction was to believe Mr Jordan, and he only posted his account to verify that it was true.<sup>1</sup>

But motives aside, Abovitz’s simple action caused a firestorm of controversy across the internet. That the US military has caused the deaths of journalists was not in question: the Pentagon has acknowledged that some of the ‘collateral damage’ inflicted during military operations in Iraq has included journalists. A report by press advocacy group, Reporters Without Borders says that 86 journalists were killed in Iraq in the period 20 March 2003–20 March 2006, with 10 of these deaths being attributed to the US military.<sup>2</sup> Jordan’s reported claim that the attacks were deliberate however, was going a step too far for many observers.

Within hours, the comments by Jordan reported in Abovitz’s internet posting were reproduced across scores of ‘blogs’ – online journals which mix news reporting with personal viewpoints and observations. Freed from the precise and unflinching deadlines dictated by the printing press and broadcast media, internet media can be updated continuously, with comparatively few restrictions on space. As happened in the Jordan case, blog writers can react off each other and generate greater and greater momentum over a contentious issue.

Responding to the growing tumult, Jordan said that he had ‘mis-spoken’ and did not intend to suggest that the US military was targeting journalists. Release of the transcripts from the session were, however, blocked.

Reacting to it seems to growing pressure from the internet and beyond, Jordan resigned from his position at CNN on 12 February 2005 ‘to prevent CNN from being

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1 ‘the accidental blogger’, <http://www.ajr.org/Article.asp?id=3841>.

2 ‘Slaughter in Iraq: 20 March 2003–20 March 2006’, Report from Reporters Without Borders’, [http://www.rsf.org/IMG/pdf/Survey\\_RSFIraq\\_06.pdf](http://www.rsf.org/IMG/pdf/Survey_RSFIraq_06.pdf).

unfairly tarnished by the controversy over conflicting accounts of my recent remarks regarding the alarming number of journalists killed in Iraq.<sup>3</sup>

What had started as comments in an ostensibly ‘closed’ session, resulted in a spectacular fall from grace.

The Eason Jordan case throws several features of the contemporary media environment into sharp relief.

Jordan was attempting to address the heightened dangers facing journalists in a war zone where the battle zones are diffuse and poorly delineated, but the nature of his fall also gives an indication of the sharpened emotions and intensity that being in a state of conflict brings to bear on media organizations. It also dramatizes the rise of the internet as a news source, and the way that it is blurring the line between the creators and consumers of news – and raising new ethical dilemmas in the process.

It was a case in which ‘traditional’ media and its mores had come up against the global reach, expanded access, and 24-hour publishing schedule of new media and got a bloody nose.

### **The Role of the Media**

Faced with the dilemmas posed by technological innovation and unconventional conflicts like that being waged in Iraq, it is worth noting the fundamental role that media plays in a democratic state.

It is a commonplace adage – but one that bears repeating – that the media plays an integral role in the healthy function of a democratic state. Media organizations are tasked with informing and enlightening their audience. Effective media organizations also hold those in power to account by matching their claims and ambitions against the observable reality on the ground. In these ways, media organizations insure that citizens are properly equipped to choose who will govern them, and how they should be governed.

Thomas Carlyle has been credited with first use of the term the ‘fourth estate’ to describe the media. He wrote in 1841:

... does not... the parliamentary debate go on... in a far more comprehensive way, out of Parliament altogether? Edmund Burke said that there were three Estates in Parliament, but in the Reporters’ Gallery yonder, there sat a fourth Estate more important than they all.<sup>4</sup>

Writing in Victorian England, Carlyle would have been aware that the decisions taken by the British government had implications which carried far beyond the immediate territory of the British Isles. Just as today, huge change can be wrought around the globe by decisions taken in Washington DC. The media in the US – and a number of other powerful countries – therefore has an even greater responsibility to ensure that it provides accurate and honest information.

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3 <http://www.washingtonpost.com/wp-dyn/articles/A17462-2005Feb11.html>.

4 T. Carlyle, *On Heroes and Hero Worship and the Heroic in History* (London, 1841).

## The Media at War

War represents an acute dilemma for the media in a democratic state. It adds immediacy and urgency to news coverage and inflames passions. It literally brings the question of life and death – sometimes on a vast scale – to media coverage. Just as organized conflict has long been a feature of human history, so too has the thirst for information about a conflict by those affected. Attempts by those in power to restrict, distort, deny or even wholly misrepresent information about a conflict surely have an equally ancient lineage.

Samir Khader, a Senior Producer at Arab television network *Al-Jazeera* put it bluntly in 2004: ‘You cannot wage war without ... [the] media, [and] without propaganda. Any military planner that plans a war without putting media and propaganda at the top of his list is not a good military planner.’<sup>5</sup>

Across the major conflicts waged by Western democracies in the Twentieth Century, relations between media organizations and the governments of combatant states have moved through a number of different stages, encompassing subservience, collaboration, independence, and also co-option. In all conflicts, the character of the fighting has played a very important role in shaping the media coverage.

In the First World War, the British government exercised overwhelming domination of news from the battlefield – helped to a great extent by the still primitive state of mass media communication, and the intensely patriotic sentiment of the British people, in at least the early stages of the war.

Prime Minister Lloyd George reportedly told Guardian Editor C.P. Scott in 1917:

if people really knew [the truth] the war would be stopped tomorrow. But of course they don’t know, and can’t know. The correspondents don’t write and the censorship wouldn’t pass the truth. What they do send is not the war, but just a pretty picture of the war with everybody doing gallant deeds. The thing is horrible and beyond human nature to bear and I feel I can’t go on with this bloody business.<sup>6</sup>

According to Philip Knightley, the British programme of information control at this time was so effective that the Nazi Minister of Propaganda Joseph Goebbels used it his model from the 1930s onwards.<sup>7</sup>

In the Second World War, the British placed comparably strict controls on all war correspondents. The strictness of the regime may have come to seem justified given the considerable power of the Nazi regime and its capacity for atrocity on an industrial scale, but it nevertheless points to the key dilemma for the democratic state at war. Democracies value the free flow of information so that their citizens can make informed choices, and yet the exact opposite; the restriction, distortion or denial of information is frequently crucial to the success of military operations.

Among the major conflicts of the twentieth century, the Vietnam war of 1965–1975 stands as something of an anomaly. Journalists there had wide access to combat

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5 *Control Room*, Documentary, 2004.

6 <http://www.spartacus.schoolnet.co.uk/JscottCP.htm>.

7 P. Knightley, *The First Casualty* (London, 2003).

areas with few restrictions. Television footage of engagements between American troops and the communist forces were frequently aired throughout the world.

Some commentators have gone as far as saying that it was a war actually lost by the media. In 1981, former Vietnam correspondent Robert Elegant wrote in the now defunct magazine *Encounter*:

‘For the first time in modern history the outcome of war was determined not on the battlefield but on the printed page and, above all, on the television screen... never before Vietnam had the collective policy of the media- no less stringent a term will serve- sought by graphic and unremitting distortion, the victory of enemies of the correspondents own side.’<sup>8</sup>

The cornerstone argument in the ‘defeat-by-media’ thesis offered by Elegant and others is the coverage afforded the 1968 Tet offensive by Communist forces. At this time, a series of attacks were launched across South Vietnam by communist forces – bringing the war into the heart of several cities. Although all of the attacks were repulsed and heavy casualties inflicted on Communist forces, the images of chaos and death which filled television screens across the world seemed to directly refute American claims that steady military progress was being made. In particular, a brief but dramatic attack against the American embassy seemed symbolic of US failure to create security.

Whether unrestricted media access was indeed the cause of the American defeat – and there are certainly compelling arguments to be made to the contrary – it was undoubtedly perceived as a major factor in the US military, and conditioned future approaches to the management of the media in wartime.

The Falklands War of 1982 provides another snapshot into the evolving relationship between Western governments and the media. In one important sense, the physical realities of the conflict favoured the British government. The distance of the Falkland Islands from the United Kingdom, meant that all British reporters were dependent on the military for transport to the war zone and protection. A group of American journalists who planned to charter a boat and move into the naval exclusion zone found that there was no special exemption for them from the British threat to sink all vessels entering the area. Only British correspondents were permitted by the British Department of Defence to accompany the task force. This de facto form of embedding, which will be discussed in more detail later in this chapter, appears to have had the desired effect. Journalist with the taskforce generally fell into line with the ‘grim but necessary’ formulation of the conflict offered by the British government, while those attending daily government press briefings were unable to get any information other than that which was officially on offer.<sup>9</sup>

The first Gulf War of 1991 was publicly touted by the US administration as the laying to rest of Vietnam’s ghost. Their meaning was a military-strategic one: the Gulf War of 1991 would mean that American leaders would no longer be hesitant to deploy US forces on a massive scale. But it was also to be something of a laying

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8 R. Elegant, ‘How to lose a war: reflections of a war correspondent’, *Encounter*, August 1981.

9 Knightley, *The First Casualty*, p. 479.

to rest of another ghost: that of the laissez-faire media management of the Vietnam-era.

On an operational level, the war saw the use of a pooling system. A limited number of reporters were chosen for a pool, and escorted to relevant sites and facilities by military officers. Those that chose to go it alone were known as ‘unilaterals’ and faced not only the danger of the battlefield but also lack of cooperation from the military.

Perhaps the world’s most famous ‘unilateral’, Robert Fisk, saw beyond the official image presented through the pooling system when he reported on the Battle for Khafji in January and February 1991. Khafji had been captured by Iraqi forces in an unexpected incursion into Saudi territory, and was then subject to a counter-attack by American and Saudi forces. Despite proclamations by the British Prime Minister John Major that the town had been retaken, Fisk personally witnessed the battle still in progress.<sup>10</sup>

It is interesting to note that one of the decisive military deceptions of the 1991 Gulf War – that of leading Saddam Hussein and his generals to believe that the US-led coalition would mount a seaborne invasion of Kuwait, was partly made possible by media coverage. Preparations by US marines for an amphibious assault on Kuwait were widely reported. There may not have been media complicity in this case, but it does highlight the way that the military will seek to use media outlets for its own purposes where possible.

### **9/11 and the ‘War on Terror’**

When President George W. Bush declared a ‘War on Terror’ in the immediate aftermath of the 9/11 attacks, some commentators questioned his characterization of the new international environment. Rather than a ‘war’ they said that the circumstances at hand required action more similar to a series of criminal investigations. After all the number of people involved was comparatively small, and aside from the quasi-state set up by the Taliban in Afghanistan, there was little in the way of state-level support.

This assessment remains essentially valid today, although the Bush administration’s decision to favour ‘hard’ military solutions, involving the deployment of hundreds of thousands of military personnel has often given the conflict the superficial appearance of a conventional war, like those that have been detailed previously.

The number of journalists killed in Iraq, given earlier in this chapter, makes it clear that if the world is not quite in a state of war, the dangers to members of the media are at least as high as any previous conflict in the twentieth century.

The basic contours of the current conflict are well known to most people. While the West – largely, but not exclusively, embodied by the US – fights with arrests, air strikes, special forces, and in some cases full-scale invasions, militant Islam responds with terrorist bombings, small scale military attacks, propaganda and the further

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<sup>10</sup> R. Fisk, *The Great War for Civilization and the Conquest of the Middle East* (London 2005).



dissemination of its ideology. While the US and its allies seek to use technology to minimize the loss of human life, Muslim radicals use their willingness to lose their own lives as a pointed demonstration of their commitment to the cause and their ability to prevail in the long term. These generalizations are, of course, far from watertight. The use of advanced military technology does not always succeed in minimizing casualties: civilian casualties from US and other Western military action are a regular feature of the current conflict. Likewise, Islamic militants on occasion use conventional military tactics.

## **Afghanistan**

Afghanistan was the first major military operation launched in the post-9/11 era. Military operations in Afghanistan were, and continue to be, broadly multilateral in character. On a diplomatic level the military offensive to unseat the Taleban and attempt to bring Osama bin Laden to justice had much in common with the first Gulf War of 1991. For journalists, the initial attack on the Taleban was difficult to cover. Operations were largely split between the air force and special forces – the former could clearly not afford journalists a ground-level view of events while the latter usually refused access on the grounds of operational secrecy.

More significant than the operational limitations on full reporting that the Afghanistan theatre placed on reporters was the self-censorship that was evident. The 9/11 attacks had produced a massive outpouring of patriotism in the United States. This manifested itself in such things as the ubiquitous display of the stars and stripes in American streets, and waves of new recruits entering the armed forces.

And beyond the US as well, there were sentiments of revulsion about the character of the 9/11 attacks and sympathy for the American people. It is strange given subsequent events to remember that on the day after the attacks, the French centre-left newspaper *Le Monde* published an editorial by Jean-Maire Colombani entitled ‘Nous sommes tous Américains’ (We are all Americans).<sup>11</sup>

The sudden, apocalyptic-seeming nature of the 9/11 attacks, combined with the apparent nihilism of the perpetrators provoked a rallying around the flag from which reporters were not immune. As veteran newsman Dan Rather stated in 2002:

What we are talking about here – whether one wants to recognize it or not, or call it by its proper name or not – is a form of self-censorship. It starts with a feeling of patriotism within oneself. It carries through with a certain knowledge that the country as a whole... felt and continues to feel this surge of patriotism within themselves. And one finds oneself saying: ‘I know the right question, but you know what? This is not exactly the right time to ask it.’<sup>12</sup>

And so it was in the early stages of Afghanistan – reporters were often distant from the actual fighting, and patriotically inclined to accept the received version of what was actually happening there.

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11 J.M. Colombani, ‘Nous sommes tous Américains’, *Le Monde*, 13 September 2001.

12 <http://news.bbc.co.uk/2/hi/programmes/newsnight/1991885.stm>.

## Iraq

The voluntary suspension of the media's critical faculties of which Dan Rather spoke was to come with a heavy price.

In June 2002, President Bush outlined a new military doctrine – that of launching preventive military attacks in areas where terrorist threats were forming, or could potentially form in the future. Although it was not immediately clear, this doctrine was pointed squarely at Saddam Hussein's regime in Iraq.

At time of writing, the war in Iraq has killed almost three thousand US troops, and as many as 52,000 Iraqi civilians,<sup>13</sup> without the prospects of peace and stability looking any closer.

The war has now begun to have domestic political repercussions for the Bush administration, with 2006 mid-term elections dishing out a massive defeat for the Republican Party in both houses of Congress.

It is clear that at the very least the management of the war has been deeply flawed, and at worst, the entire operation was a strategic blunder of huge proportions.

The failure if the media to explore the motives for and likely aftermath of the invasion of Iraq must stand as an enduring lesson from the era. The failure was not universal: many British and European media outlets questioned the validity of the claims being made around Saddam Hussein's weapons of mass destruction and alleged links with Al-Qaeda. But in the United States, where it counted the most, a critical perspective was to a large degree lacking. There will be few who mourn the unseating of a brutal dictator like Saddam Hussein. Rather more, however, will lament the misplaced reasons and outright deceptions which were considered necessary to achieve this result.

In the time immediately preceding the invasion of Iraq in March 2003, an incredible 76 percent of Americans surveyed in a CNN-Time Poll the believed that Saddam Hussein provided support to Al-Qaeda. In the following year, such a connection was roundly dismissed by the September 11 commission.<sup>14</sup>

As Howard Kurtz, a *Washington Post* correspondent and media critic said at the time of the invasion:

I think the administration has used the media very successfully to make the case against Saddam as the chief evildoer of the moment, but I still think there's an awful lot of uneasiness in America over this war.<sup>15</sup>

Misgivings over the use of the media to justify the initial invasion of Iraq were to be compounded by the management of journalists once fighting began. Many journalists covering the conflict were based at United States Central Command (CENTCOM) facility at Al Udeid Air Base in Qatar. While the facility provided excellent communications facilities, and regular access to some of the key decision-makers, journalists stationed there were insulated from the reality of the war, and susceptible to the editorial lines being pushed by the Pentagon.

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13 <http://www.alertnet.org/thenews/newsdesk/L11884963.htm>.

14 <http://www.washingtonpost.com/wp-dyn/articles/A47812-2004Jun16.html>.

15 <http://edition.cnn.com/2003/WORLD/meast/03/11/Iraq.Qaeda.link/>.

For those journalists outside of CENTCOM, the 2003 invasion also saw the rise of a new style of media management called embedding – frequently derided as ‘inbedding’ by journalists. Embedding was the process of attaching journalists to specific military units in more intrinsic way than in previous conflicts. Embedded journalists live, train, and are fed, clothed and housed with their unit – and they go into battle with it. From the perspective of media outlets, the arrangement makes sense because it provides them with unprecedented access to the war zone. Indeed, the coverage of the Iraq invasion was the most comprehensive in television history, with many firefights and combat incidents relayed to viewers in realtime. From the military perspective the arrangement is desirable because it provides easy oversight of journalists and their activities.

But the problem for objective journalism is clear: a reporter whose day to day activities are so closely entwined with those of a military unit – and who shares their daily travails – is likely to develop a close sympathy with them reinforcing self-censoring tendencies.

The extent to which the Pentagon would seek to manage perceptions of the invasion of Iraq were apparent in several different incidents during the war.

At the outset of the war much hype and anticipation surrounded a planned ‘shock and awe’ attack with bombs and missiles against Baghdad. The attack was to be delayed at the last minute by an attempt to kill Saddam Hussein and his immediate associates and thereby snatch a virtually bloodless victory. When the campaign did launch in earnest, it appeared to have a negligible effect on the course of the war, and indeed, given the handy proximity of international news crews to the site of many of the attacks it was difficult to avoid the impression that they were carried out with at least one eye on domestic reaction in the US.

Then there was the case of PFC Jessica Lynch. Lynch was a US army private captured by Iraqi forces after her unit was ambushed near Nasiriyah. She was rescued by American special forces from an Iraqi hospital at Nasiriyah in a raid that was filmed and widely publicized; turning Lynch into one of the defining symbols of American heroism in the war. BBC interviews with staff members at the hospital appear to indicate that most of the rescue had been exaggerated for propaganda purposes:

According to Dr Harith a-Houssona, who looked after Jessica:

It was like a Hollywood film. They cried ‘go, go, go’, with guns and blanks without bullets, blanks and the sound of explosions. They made a show for the American attack on the hospital – action movies like Sylvester Stallone or Jackie Chan.<sup>16</sup>

Lynch herself has subsequently distanced herself from efforts to celebrate her story including a film dramatization of the events.

When US forces entered Baghdad in early April 2003, there were three crucial incidents involving the media. Early on the morning of April 8, Al-Jazeera correspondent Tareq Ayyoub was killed when an American aircraft fired two missiles at the networks Baghdad headquarters. Although the US military denied that the

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<sup>16</sup> <http://news.bbc.co.uk/2/hi/programmes/correspondent/3028585.stm>.

attack was intentional, among the staff at *Al-Jazeera* there was little doubt that this was the case: The first objective in firing these missiles at the office of *Al-Jazeera* is to tell [us] ‘you’re not siding 100 per cent with us against Saddam Hussein so we are going to punish you.’ [Al-Jazeera] acknowledges receipt of this message.<sup>17</sup>

As extraordinary as these claims may seem, they have some credence. The US military had been provided with coordinates indicating the precise location of the Al-Jazeera office, military commanders should have been mindful not to attack the location. Recently there have been revelations that have reinforced *Al-Jazeera’s* argument. A memo leaked to the British newspaper the Daily Mirror apparently revealed that Bush had been talked out of bombing *Al-Jazeera* by Tony Blair.<sup>18</sup>

On the same day that *Al-Jazeera* was attacked, the Palestine Hotel – an 18-storey structure – which was being used to house foreign journalists, and had been delineated to the US military as such, was fired on by an American tank, killing two journalists working for the Reuters news agency.<sup>19</sup> The offices of Abu Dhabi TV were also attacked by a US tank.

Incidents such as this reinforce the perennial statement that the frontline is not fit for unprotected journalists, but they also serve to push journalists towards the greater safety of the ‘embedded’ environment.

A sense of contrivance also hangs over the events of 9 April when the statue of Saddam Hussein was toppled in Baghdad’s Fardus Square. Although initial video images of this event suggested a large crowd spontaneously attacking the statue and being assisted by US troops to pull it down, subsequent examination has suggested a smaller crowd, possibly brought into the area expressly by the US military.<sup>20</sup> Correspondent Robert Fisk called it ‘...the most staged photo opportunity since Iwo Jima.’<sup>21</sup> Along with President Bush’s arrival onboard the aircraft carrier USS Abraham Lincoln to declare that ‘major combat operations in Iraq have ended’, the Fardus square incident now looks likely to have been conceived well in advance of the launch of the invasion – as a means of supplying compelling imagery that would succinctly summarize the official view of the conflict.

## The Rise of Subjectivism?

Throughout the invasion of Iraq and its aftermath, the traditional media landscape was in a state of flux with coverage by two very different television stations coming to the fore: namely the Fox News Network in the US and Al-Jazeera in the Middle East. The Fox News Network was launched by Rupert Murdoch on October 7, 1996, and has gone on to earn vociferous criticism as the ‘mouthpiece of the republican

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17 *Control Room*.

18 [http://www.mirror.co.uk/news/latest/tm\\_objectid=16991373%26method=full%26siteid=94762-name\\_page.html](http://www.mirror.co.uk/news/latest/tm_objectid=16991373%26method=full%26siteid=94762-name_page.html).

19 [http://news.bbc.co.uk/2/hi/middle\\_east/2928153.stm](http://news.bbc.co.uk/2/hi/middle_east/2928153.stm).

20 *Control Room*.

21 Quoted on [http://seattlepi.nwsource.com/opinion/124210\\_ourplace30.html](http://seattlepi.nwsource.com/opinion/124210_ourplace30.html).

party'.<sup>22</sup> In the aftermath of 9/11 and through the invasion of Iraq and beyond, the station distinguished itself for its unabashed patriotism and willingness to make its editorial position clear. Following 9/11 an American flag graphic was posted into the upper left corner of all broadcasts, and persists to this day. It was an approach which paid dividends during the Iraq conflict which saw its viewership rise by around 300 per cent.<sup>23</sup>

Al-Jazeera also began broadcasting in 1996, using a \$US 150 million grant from the emir of Qatar, and now claims a potential audience of around 50 million viewers – mostly in the Middle East but with significant numbers in Europe too. Fully 96 per cent of the station's audience describe themselves as Muslim.<sup>24</sup> An indication of the rapidly expanded influence of *Al-Jazeera* on the global stage came at the end of 2004 when it was voted the 5th most influential global brand – beating out the BBC on which came in at 9th.<sup>25</sup>

US Defence Secretary Donald Rumsfeld described the station at that time as 'a mouthpiece for al-Qaeda and a vehicle of anti-American propaganda.'<sup>26</sup>

Al-Jazeera's success has been built on its ability to reach out to its target audience and frame issues in a way that is consistent with their own worldview. During the invasion of Iraq, their emphasis was not on military operations being conducted by US and Coalition forces – as was the case on many Western networks covering the war – but rather the suffering inflicted on ordinary Iraqis during the fighting.

Having already gained notoriety for broadcasting audio and video tapes recorded by Osama bin Laden and his associates in the aftermath of 9/11, Al-Jazeera earned further condemnation through its decision to air footage of British and American servicemen and women who had been captured or killed during the invasion.

Although both stations would balk at the comparison, parallels can be drawn between Fox and the Arab news network Al-Jazeera. As Lieutenant Josh Rushing, a Marine press officer at CENTCOM summed said in 2003:

'It benefits Al-Jazeera to play to Arab nationalism because that's their audience just like Fox plays to American patriotism.'<sup>27</sup> In an interesting personal twist, Rushing has since left the Marine corps and gone to work for Al-Jazeera international.

The question of objectivity in international news coverage – and particularly in the coverage of areas of international conflict – has always been salient, but it was largely subsumed while such coverage was the exclusive preserve of Western news organizations like CNN and the BBC. Now that alternative poles of power are beginning to emerge in global newscasting this question has emerged into plain sight. When *Al-Jazeera* manager Joanne Tucker was bluntly asked by an American journalist whether the reporters under her direction were capable of objectivity she replied:

22 'Outfoxed', documentary, transcript at: [http://www.outfoxed.org/docs/outfoxed\\_transcript.pdf](http://www.outfoxed.org/docs/outfoxed_transcript.pdf).

23 <http://www.twnyc.com/downloads/chlineupMV.pdf>.

24 <http://www.allied-media.com/aljazeera/JAZdemog.html>.

25 [http://www.brandchannel.com/features\\_effect.asp?pf\\_id=248](http://www.brandchannel.com/features_effect.asp?pf_id=248).

26 <http://www.pbs.org/now/politics/aljazeera2.html>.

27 *Control Room*.

‘This word “objectivity” is almost a mirage. [There was] rage directed against us because we showed soldiers die in combat ... If there was no agenda, if there was true neutrality there would be a welcoming of any and all information from all sides.’<sup>28</sup>

## The Rise of New Media

Al-Jazeera is unlikely to be the last regional television network which emerges to challenge the dominance of Western networks like CNN and the BBC. The technology for the creation and broadcast of video footage will only become more accessible in the years ahead.

But beyond Al-Jazeera, an even more profound shift in the way that news is created and consumed is underway. There has been something of a lag between the emergence of the internet as a mass technology and its use as a conduit for news and information, but its time appears now to have well and truly arrived.

The barrier to entry for anyone wishing to become part of the international media landscape have never been lower. According to technorati.com a site which seeks to quantify the growth of the internet, there were 27.2 million blogs as of February 2006 – representing a 600 per cent increase over the past 3 years.<sup>29</sup>

The internet now allows anyone with a computer and a modem to publish virtually anything and have access, if not the automatic attention of, a worldwide audience. Increasing access to high-speed broadband connections means that the material published is not restricted to text or images, but can now often include audio-visual material of increasing quality. The production threshold for publishing material online is far lower than that for the print or broadcast mediums. As noted previously, the internet has no broadcast or printing deadlines. Material can be created and published online 24 hours a day 7 days a week.

Perhaps the most compelling vision of how new media will develop in the years ahead has come – fittingly – from the internet itself. In 2004, Robin Sloan and Matt Thompson, two young journalists at the Poynter Institute in Florida in the United States created a short 8-minute narrated animation to present to fellow Poynter journalists. The animation was subsequently published on the internet and has since reverberated around the established media provoking considerable comment and discussion.<sup>30</sup>

The film charts the evolution of some of the major new media players including Microsoft, Apple, Google and Amazon.com, and reaches its climax with the emergence of something called the Evolving Personalized Information Construct. (E.P.I.C.) The idea conveyed in this portentous-sounding acronym is of a media landscape where *everyone* is a participant who can upload news and information to a shared information grid. The information is then automatically sorted according to location, relevance and the creator paid an amount commensurate with the number of readers their material is able to acquire.

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28 *Control Room*.

29 <http://www.technorati.com/weblog/2006/02/81.html>.

30 See film at <http://www.robinsloan.com/epic/>

The film also goes on to prophesize the degeneration of the once mighty *New York Times* (emblematic in this instance for all ‘traditional’ media outlets) into “a print newsletter for the elite and the elderly.”<sup>31</sup> Looking at the current media environment, we see that the seeds for many of the film’s predictions have well and truly been sown. For one thing, the ease with which material can be published online is growing all the time. The emergence of free services like Blogger.com, which offers a simple interface for online publishing, mean that even those people without much knowledge of the internet can now set up shop in cyberspace to publish.

During the Iraq invasion, some of the most compelling coverage of the situation in Baghdad came from an Iraqi calling himself ‘Salam Pax’ who kept an online diary of events in his immediate neighbourhood at the web address [http://dear\\_raed.blogspot.com/](http://dear_raed.blogspot.com/). Salam Pax was later determined to be a 29-year-old Iraqi architect called Salam Al-Janabi. Content from his blog was reproduced in many Western news outlets, but most notably the British Guardian newspaper which later gave him a regular column.

Blogs written by soldiers serving in the US military in Iraq have also become common with at least one soldier has been disciplined because his postings breached ‘operational security’.<sup>32</sup> The recent upsurge in violence in Helmand Province in Afghanistan has been documented in some detail by British military bloggers. On 6 September 2006, the BBC obtained footage of intense fighting in Helmand filmed on a mobile phone. It was reportedly released by the soldiers on the ground without the approval of military censors in order that their bravery ‘did not pass unnoticed at home’.<sup>33</sup>

Indeed, the proliferation of smaller devices with the ability to record audiovisual material is accelerating the process of turning every citizen or soldier into a potential news-gatherer. During the London bombings of 7 July 2005, some of the most compelling footage of the immediate aftermath was recorded on the video cameras mounted on cellphones. As major television networks were forced to loop limited available footage as they waited for more further pictures to appear, many people turned to the internet to post their accounts of what had happened and read other raw and unfiltered stories from others. Websites such as <http://london-underground.blogspot.com/>, which had previously published mostly accounts of the day-to-day frustrations of being a London commuter suddenly became central news hubs. Likewise, [wikipedia.org](http://wikipedia.org), which has been described as an ‘open-source encyclopedia’, became a major news source.

In Korea, currently the world’s most ‘wired’ country in terms of broadband penetration<sup>34</sup>, a new editorial model has emerged which places the ‘citizen journalist’ at the centre. Ohmynews.com has a central office which employs an editorial team and some journalists, much like a conventional newspaper would. But a large proportion of the content published by the website is sent in from around the Korean peninsula

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31 Ibid.

32 NPR Broadcast, 24 August 2004.

33 <http://news.bbc.co.uk/1/hi/help/3681938.stm>.

34 [http://www.oecd.org/document/60/0,2340,en\\_2825\\_495656\\_2496764\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/60/0,2340,en_2825_495656_2496764_1_1_1_1,00.html).

by people with no formal connection to the site. Editorial staff currently number 55, while there are some 41,000 ‘citizen journalists’ connected with the site.

Their articles are grammar and fact-checked, and they are often paid for their contributions (up to \$US 20) if they are deemed to be of sufficient quality. Readers are able to post comments on any published story, and can also donate money to a writer that they particularly agree with. And despite its seemingly frivolous name, Ohmynews.com has emerged as a serious competitor to the major news outlets in Korea. During the Korean presidential elections of 2000, Ohmynews was widely credited with influencing the election of Roh Moo-hyun. After his victory, he granted his first interview to the website.<sup>35</sup>

### **Problems with New Media**

The rise of new media may herald the arrival of a more democratic news landscape, but it also has a darker side.

The question must be posed as to how pervasive the new media revolution is. While creation of broadband infrastructure may be moving ahead quickly in many developed countries, many in the developing world are yet to acquire a telephone. Pakistan, for example, currently has 23 telephones per 1000 people, compared to 667 in the United States.<sup>36</sup>

Then there is the central question of ethics. As the Eason Jordan case raised at the very beginning of this chapter demonstrates, the ethics which have grown up around existing news mediums will not necessarily make the transition into the brave new world of universal media participation, should it arrive. The concept of something being ‘off-the-record’ – background information for the journalist’s understanding but not for wider dissemination, may be an early casualty.

In the past, newspapers and other media outlets had to be wary of making unfounded allegations because if they did they could be legally targeted by an injured party. This created a certain level of self-interest for media organization to get their facts straight. It did not, of course, eliminate all falsehood and exaggeration, but provided at least a brake. By contrast, on the internet, information can be posted anonymously, and endlessly repeated across different websites, sometimes gaining a spurious legitimacy. Certainly this was the claim made by some commentators following the fall of Eason Jordan. In their view, the facts of whether he had made the comments in question were never firmly established, but the gathering noise from the blogosphere forced him to resign. As Robin Sloan, one of the creators of the EPIC 2014 puts it:

I look at all these blogs that get piped into my computer and in them I see things which are more interesting and relevant to me than anything in the newspaper and I also see things which are so banal and so trivial, or incorrect that you see why people value hardcore, accurate journalism. So the sword is absolutely double-edged...<sup>37</sup>

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35 <http://www.msnbc.msn.com/id/5240584/site/newsweek/>.

36 [http://www.foreignpolicy.com/story/cms.php?story\\_id=2509](http://www.foreignpolicy.com/story/cms.php?story_id=2509).

37 Interview with Robin Sloan, 25 August 2005.



The consumers of news have always had the tendency to select information that they agreed with, and to filter out information that was disagreeable or contrary to their worldview. In the past, this tendency was held in check by the limited number of news outlets. A media consumer at least had contact with certain information that he or she might seek to avoid. Now, it is possible to restrict ones news intake to those websites or email lists which specifically match ones own worldview.

A news source which has such low barriers to entry and ease of access also means that it becomes a platform for groups of every conceivable political colouring. As well as providing a place to report information on conflict between international groups, the internet also provides an arena where that conflict can actually be played out. The grisly execution videos placed online by Islamic militants is an example of political groups reaching across official barriers to target audiences in a belligerent country directly. Similarly, the internet is the primary means by which militant groups disseminate their ideology and tactics.

This phenomenon is not limited to the conflict between the West and militant Islam. In April 2005, there were widespread protests in China following the publication of school textbooks in Japan said to gloss over wartime atrocities. As Japanese interests in Chinese cities were being attacked by crowds of people, a parallel attack was going on in cyberspace. The websites belonging to Japanese government departments, companies, and the controversial Yasukuni Jinja shrine (where several Japanese war criminals are buried) were all either defaced or taken offline.<sup>38</sup>

## **Conclusion**

In the early years of the 21st century it is clear that the world is growing increasingly complex on a political and economic level. The process of globalization – usually held to be the acceleration of ‘deep’ links among citizens and organizations of different nation states has resulted in an international milieu quite different from even the latter stages of the last century.

The nature of conflict has changed too. Rather than interstate conflict the growing pattern is for groups and individuals who see themselves as disenfranchised to group together along transnational, international lines. So it was for the 9/11 hijackers, and so it will likely be for other militant groups who oppose the status quo. While the current situation makes an apocalyptic clash costing hundreds of thousands of lives less likely than it was during the Cold War, it is infused with a unique sense of unease in that virtually anyone, anywhere is a potential victim.

Mirroring and perhaps exacerbating the increasingly fragmented nature of international politics and economics is an increase in the complexity of the channels of news and information.

In the First World War, aside from first hand accounts, most people received their news about the conflict from newspapers and newsreels. By the time of the Second World War, radio had been added to the mix. For wars such as Vietnam,

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38 [http://www.timesonline.co.uk/article/0,,3-1637293\\_1,00.html](http://www.timesonline.co.uk/article/0,,3-1637293_1,00.html).

the Falklands crisis and the First Gulf War, television played a dominant role. Now, however, there are literally millions of sources of information available to anyone with a modem. But despite all of the convulsions in the shape of politics and war, and the mediums used to convey key events, two things have remained constant: people will always seek to learn about conflict which affects them, and those in power will always look to put the best possible face on any conflict that they partake in.

On balance, the emergence of a number of new phenomena in the international media environment – notably a greater number of international broadcasting entities, the rapid swell in the ranks of citizen and soldier bloggers, along with other manifestations of ‘new media’, makes it technically harder for military authorities to control all of the news coming out a war zone. However, perennial factors such as the patriotic inclinations of reporters, and also the degree of danger that they face in a war zone will continue give the military a significant ability to shape the media message to its advantage.

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Part 3  
Morality, Culture and Economics

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## Chapter 7

# How to be Good: Morality in Japan's and Germany's Foreign Policy

Dirk Nabers

### Introduction

In the last few years, it has become widely accepted in the study of international politics that international life is determined primarily by actors' ideas rather than brute material forces. Furthermore, the identities and interests of states are constructed by these ideas rather than given by nature.<sup>1</sup> In a similar vein, this chapter argues that beliefs about what is good or bad, just or unjust sometimes play a crucial role in international politics. These beliefs are commonly referred to as *moral beliefs*,<sup>2</sup> constituting behaviour such as the respect for human rights and international law, assistance for those who are in need of material aid, the respect for non-combatants in wars, and the like.

Issues of morality and ethics<sup>3</sup> play a major role in normative theories of International Relations (IR). In this context, two questions have especially dominated the field in the last decades: First, how have ideas of what is good or bad influenced political behaviour? And second, given the constraints of domestic and international political life, what can be done?<sup>4</sup> Norms and rationality have mostly been seen as closely connected.<sup>5</sup> Even classical realists such as E.H. Carr and Hans Morgenthau

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1 Wendt, Alexander, *Social Theory of International Politics* (Cambridge, 1999), p. 1; Adler, Emanuel, 'Constructivism and International Relations', in Carlsnaes, Walter, Risse, Thomas, Simmons, Beth A. (eds.), *Handbook of International Relations* (London, 2002), p. 95.

2 Lumsdaine, David H., *Moral Vision in International Politics: The Foreign Aid Regime, 1949–1989* (Princeton, 1993); Nel, Philip., 'Morality and Ethics in International Relations', in Patrick J. McGowan and Philip Nel (eds.), *Power, Wealth and Global Equity. An International Relations Textbook for Africa* (Cape Town, 2002).

3 The chapter will differentiate between morality and ethics. While morality refers to the actual political process, ethics denotes the epistemological question of how to study morality (Amstutz, Mark, *International Ethics: Concepts, Theories, and Cases in Global Politics* (Oxford, 1999), p. 2).

4 Hurrell, Andrew, "'There are no rules" (George W. Bush): International Order after September 11', in: *International Relations* 16/2, (2002), p. 137.

5 For example, Finnemore, Martha, Sikkink, Kathryn, 'International Norm Dynamics and Political Change', *International Organization* 52/4 (1998).

have argued that purely rationalist theories fail because they exclude human features such as emotional appeal and grounds for moral judgement.<sup>6</sup>

Later analyses have convincingly shown that morality plays a role in international affairs. David Lumsdaine has offered compelling evidence that moral considerations bare responsibility for international aid.<sup>7</sup> I will take a similar path by arguing that the security policies of Japan and Germany have to a large extent been influenced by moral considerations. The behaviour of these two countries seems to be of particular interest when it comes to questions of morality, since they have traditionally adhered to comparable standard norms of appropriate behaviour, based on the renunciation of the use of force and the promotion of multilateralism and equality in international affairs, hence being labelled ‘civilian powers’ by some observers<sup>8</sup> or ‘cultures of antimilitarism’ by others.<sup>9</sup> As central players in international institutions, both Germany and Japan have strongly supported the United Nations; as collective actors they were generally opposed to unilateral action in the past. This foreign policy role identity was particularly visible in Japan’s adherence to its pacifist constitution, but also in Germany’s integration into the transatlantic alliance and the European Union.

This is not to suggest that self-interest plays a minor role in international politics. It is only natural that human beings pursue their own interests. Some authors would also argue that predominant moral principles in world affairs often favour the already powerful actors.<sup>10</sup> It is therefore of particular interest to understand morality and norm conformity as what March and Olsen have called the ‘logic of appropriateness’.<sup>11</sup> Talking about appropriateness, an intersubjective perspective on norms becomes unavoidable: We can only grasp the meaning of appropriateness by referring to the judgements of a community or society. Norms are rooted in a specific *culture*. Culture shall in the following be understood as the sum of beliefs, norms

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6 Carr, Edward Hellet, *The Twenty Years’ Crisis: An Introduction to the Study of International Relations*. 2nd edn, (London, 1946); Morgenthau, Hans J., *Politics among Nations: The Struggle for Power and Peace* (New York, 1948).

7 For example, Lumsdaine, *Moral Vision in International Politics* (Princeton, 1993).

8 Maull, Hanns W., ‘Germany and Japan: The New Civilian Powers’, *Foreign Affairs*, 69/5 (1990); Maull, Hanns W., ‘Germany and the Use of Force: Still a ‘Civilian Power’?’, *Survival* 42/2 (2000); Maull, Hanns W., ‘Germany and the Use of Force: Still a “Civilian Power”?’, in Katada, Saori N., Maull, Hanns W., Inoguchi, Takashi (eds.), *Global Governance: Germany and Japan in the International System* (Aldershot, 2004); Aoi, Chiyuki, ‘Asserting Civilian Power or Risking Irrelevance? Japan’s Post-Cold War Policy Concerning the Use of Force’, in Katada et al. (eds.), *Global Governance* (Aldershot, 2004); Nabers, Dirk, ‘Germany’s Security Policy between Europeanism, Transatlanticism and a Global Role’, in Katada et al. (eds.), *Global Governance* (Aldershot, 2004).

9 Berger, Thomas U., *Cultures of Antimilitarism: National Security in Germany and Japan*. (Baltimore and London, 1998).

10 For a discussion, see Nel, Philip, ‘Morality and Ethics in International Relations’, in McGowan, Nel (eds.), *Power, Wealth and Global Equity* (Cape Town, 2002), p. 46.

11 March, James G., Johan P. Olsen, ‘The Institutional Dynamics of International Political Orders’, *International Organization* 52, (1998).

and identities of a group of social actors in a particular place and time.<sup>12</sup> A culture makes certain things possible, others desirable or unimaginable, because it serves as the background of shared interpretations, so-called intersubjective understandings. In German philosopher Jürgen Habermas' words, culture is the 'lifeworld', i.e. the shared common understandings, including values that develop over time in social groups. The lifeworld embraces assumptions about who we are and what we value: what we believe, what threatens and upsets us, what we desire, what we are willing to sacrifice to which ends. Participation in the same lifeworld means sharing a common sense of who 'we' are.<sup>13</sup> Correspondingly, Yaakov Vertzberger has shown that, 'At the core of culture, in most cases, are broad and general beliefs and attitudes about one's own nation, about other nations, and about the relationship that actually obtain or that should obtain between the self and other actors in the international arena'.<sup>14</sup> Culture, identity, norms and moral beliefs are thus inextricably intertwined. Culture provides the content for specific beliefs about what is good or bad; conversely, it is the sum of beliefs in a society that add up to its culture. To adhere to normative beliefs either as an individual or as a member of a group constitutes one's identity as a morally conscious human being.

In the empirical analysis that follows, special emphasis will be given to the time since 11 September 2001. In the 'war against terror', central norms constituting Germany's and Japan's civilian power role identity were put to a test. It is intriguing to look at Tokyo's and Berlin's stance vis-à-vis the United States, since moral behavior per definition involves the attempt to persuade others to believe in certain convictions about what is good or bad.<sup>15</sup> As a result of this interactive process, culture – as the background for moral beliefs and norms – is neither stable nor undisputed. Particularly in so-called 'organic crises'<sup>16</sup> like the September 11 terrorist attacks, existing cultures are apt to collapse and new beliefs and norms develop. This was best observable in the American case, but also in many other countries. The crisis

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12 Crawford, Neta, *Argument and Change in World Politics: Ethics, Decolonization and Humanitarian Intervention* (Cambridge, 2002), pp. 6, 59; Wendt, *Social Theory of International Politics* (Cambridge, 1999), pp. 140–142. Neta Crawford differentiates between philosophical, normative, identity and instrumental beliefs. While philosophical beliefs refer to the kind of reality humans live in, normative beliefs have a constraining character as they provide individuals or groups with ideas about appropriate behavior; identity beliefs include ideas about self and other and instrumental beliefs are those ideas that tell us how to accomplish a goal.

13 Habermas, Jürgen, *Theorie des kommunikativen Handelns. Bd. 1: Handlungsrationalität und gesellschaftliche Rationalisierung* (Frankfurt a.M., 1995), pp. 32, 39, 107, 455; also Habermas, Jürgen, *Theorie des kommunikativen Handelns. Bd. 2: Zur Kritik der funktionalistischen Vernunft* (Frankfurt a.M., 1995) and Müller, Harald, 'Arguing, Bargaining and All That: Communicative Action, Rationalist Theory and the Logic of Appropriateness in International Relations', *European Journal of International Relations* 10/3 (2004), p. 396.

14 Vertzberger, Yaakov Y.I., *The World in Their Minds: Information Processing, Cognition, and Perception in Foreign Policy Decisionmaking* (Stanford, 1990), p. 268.

15 Crawford, *Argument and Change in World Politics* (Cambridge, 2002), p. 82.

16 Laclau, Ernesto, *Politics and Ideology in Marxist Theory: Capitalism, Fascism, Populism*. London, 1977), p. 103, referring to Gramsci.



following 11 September 2001 represents a situation in which everyday beliefs of how the world works were obviously disrupted by an event that was out of control. In that sense, it can be compared to trauma, a situation that is hard to describe and yet demands to be communicated.

The incidents of 11 September 2001 had a traumatic impact on many countries in the world, triggering adjustments in belief structures and behavioural norms. The central question to be answered in the following refers to the possibility of normative change in the security policies of Germany and Japan. Following this introduction, I will give an overview over the traditional German and Japanese cultures of restraint in security affairs, outlining the dominant norms which guided the two countries foreign policy in the last few decades. While there is not much in constructivist thinking that tells us what is good or bad in world politics, the civilian power theorem makes it possible to differentiate between interest- and norm-based foreign policy behaviour. It can thus be used as a foil to describe what is socially constructed to be good in specific cultures, in our case Germany and Japan. In a further step, I will compare the counterterrorism policies of both countries after the attacks on New York and Washington and ask whether they were able to preserve their particular role identities in the ‘war against terror’. I will conclude with some general remarks about the role of morality and ethics in international politics.

## **Germany and Japan as Civilian Powers**

### *Germany*

Both Japan and Germany have in the last decades shown an evident aversion to military organization or the use of force to settle international disputes. To start with, Germany’s post-World War II security posture is best illustrated by the terms ‘pacifism’ and ‘moralism’, embedded in a democratic polity and strong support for a deepening European integration. On that basis, Hanns Maull identified three imperatives that guided Germany’s behaviour in the decades after the war: ‘Never again’, ‘never alone’ and ‘politics, not force’.<sup>17</sup> Never again referred to the will to ceaselessly work to prevent genocide and human rights abuses; never alone meant integration into the European Union, multilateralism and the promotion of democracy at home and abroad; politics, not force denoted the determination to reduce East-West tensions in a peaceful manner.

There is a strong continuity of these principles in Germany’s foreign security relations. In the 1950s, Germany became a fully-fledged member of the North-Atlantic Alliance in political terms and fully devoted itself to NATO’s principles of democracy and Western values. Yet, within the Alliance, it never promoted itself as a full member in military terms due to self-imposed constitutional constraints. Important decisions were taken elsewhere – in London, Paris, and particularly in Washington.<sup>18</sup>

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17 Maull, ‘Germany and the Use of Force: Still a “Civilian Power?”’, in Katada et al. (eds.), *Global Governance* (Aldershot, 2004).

18 For a detailed overview see Kaplan, Lawrence S., *The Long Entanglement. NATO’s First Fifty Years* (Westport, CT, 1999).

After the frustrating failure of the European Defense Community at the beginning of the 1950s, the Federal Republic avoided any moves towards establishing a genuine European Security and Defense Identity (ESDI) in the next two decades, heavily depending on the security guarantees of the transatlantic Alliance. Only with the Genscher-Colombo Initiative of 1981 did Germany aim at including security issues in the European Political Co-operation (EPC), followed by severe domestic criticism of NATO's military strategy during the debate on INF deployment. In the middle of the 1980s, the German government put primary focus on détente and the promising Conference on Security and Co-operation in Europe (CSCE), while still heavily depending on the American security shelter.<sup>19</sup>

At the time of unification in 1989/90, Germany's stance in defense affairs can best be described as twofold: to abstain from any kind of military engagement abroad and instead engage in what has been dubbed 'comprehensive security' policy, first and foremost entailing the support of the United Nations. In the 1990s though, it seemed as if Berlin was incrementally altering the terms of its engagement in common defense. While outside pressure played a significant role in furthering the German discussion over the self-imposed limitations – the criticism of Germany's checkbook diplomacy during the 1990 Gulf War can be quoted as an example – Germany incrementally broadened its peacekeeping duties in United Nations' and NATO missions:

- In 1992 and 1993, a medical unit consisting of 150 doctors and nurses was sent to Southeast Asia to serve in the United Nations Transitional Authority in Cambodia;
- In 1993 and 1994, some 1,700 *Bundeswehr* personnel was sent to Somalia for United Nations peacekeeping duties;
- From 1993 to 1995, Germany took the leading role in the fully integrated NATO Airborne Warning and Control System (AWACs) units, supervising and enforcing economic sanctions against the Milosevic regime as well as monitoring and implementing a no-fly-zone over Bosnia;
- Supported by a broad consensus of government and opposition parties,<sup>20</sup> in 1995, German troops participated in a NATO operation to haul out United Nations Protection Force (UNPROFOR) personnel from Bosnia by dispatching Tornados for aerial attacks, subsequently participating in both the Implementation Force (IFOR) and the Stabilisation Force (SFOR);
- In October 1998, backed by a comfortable majority in the German Bundestag,<sup>21</sup> the newly elected Schröder-Fischer government decided in favor of *Bundeswehr* deployment in the Kosovo crisis, thereafter sending 14 ECR

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19 Jopp, Mathias, 'Germany and the Western European Union', *AICGS Research Report No. 9* (Baltimore, MD, 1999).

20 The Social Democrats, at that time the biggest opposition party, stated in a guideline paper that it supported the Deployment of the *Bundeswehr* in peacekeeping operations, such as the one in Bosnia (SPD 1997).

21 After the election of 27 September 1998, the former government parties CDU/CSU and FDP played a constructive opposition role, however rejecting the possibility of supporting *Bundeswehr* ground troop operations.

Tornado aircraft to the Balkans, part of which was designated for electronic reconnaissance and countermeasures, the other part for optical reconnaissance; furthermore, together with non-governmental organizations, the German government organized refugee camps in Macedonia and Albania and helped transporting about 2,500 tons of material in over 250 transport flights;

- Once the air attacks were over, the German government increased its personnel for the Kosovo force by more than 6,000 to some 8,500, making it the second largest contingent in the region; all in all, some 13,000 Germans were stationed in Bosnia and Kosovo after the war.<sup>22</sup>

Profound change was indeed observable during the Kosovo War, when Foreign Minister Joschka Fischer of the pacifist Green Party kept his country firmly committed to NATO. This led various observers to analyze anew Germany's role as a 'civilian power',<sup>23</sup> scrutinizing the durability of domestic principles for engagement in military affairs outside the realm of the traditional NATO framework of collective self-defense. In the middle of this process came the 1994 Constitutional Court (*Bundesverfassungsgericht*) ruling that not only the United Nations but also NATO and WEU are collective security organizations and thus Germany abides by its constitution when participating in military operations conducted by one of these bodies.<sup>24</sup> Accordingly, the Defense White Book of 1994 for the first time emphasized the 'core function' of collective self-defense, at the same time revealing the possibility of the *Bundeswehr* directly supporting multinational crisis management in the framework of WEU and NATO.<sup>25</sup>

Yet, most of the beliefs that guided German foreign policy behavior in the past decades were still well in place, including: 1) the priority of political solutions over military interventions; 2) the abidance by international law; 3) safeguarding human rights; 4) promoting development aid and – in any case –, 4) acting multilaterally. On the other hand, the Kosovo experience showed that some of these principles might be contradictory. Growing anxiety with regards to the committed atrocities and the willingness to act on behalf of violated human rights eventually led to the integration into a NATO-led intervention force without prior approval of the United Nations Security Council. Germany tried to show responsibility by providing large-scale humanitarian assistance and by accepting the largest contingent of refugees, while at the same time partaking in the air strikes.

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22 Bundesministerium der Verteidigung (2000) *Bisherige Auslandseinsätze*, [http://www.bundeswehr.de/index\\_.html](http://www.bundeswehr.de/index_.html), accessed 25 August 2000; Giessmann, Hans J. (1999) *The 'Cocooned Giant': Germany and European Security* (Hamburg, 1999).

23 For example, Maull, 'Germany and the Use of Force: Still a "Civilian Power?"', in Katada et al. (eds.), *Global Governance* (Aldershot, 2004).

24 The *Bundesverfassungsgericht* identifies NATO as a system of collective security. See BVG 1994. For a review of the ruling see Lutz, Dieter S., 'Seit dem 12. Juli ist die NATO ein System Kollektiver Sicherheit! Eine Urteilschelte', *Sicherheit+Frieden* 4/94 (1994).

25 Bundesministerium der Verteidigung, *Weißbuch 1994. Weißbuch zur Sicherheit der Bundesrepublik Deutschland und zur Lage der Zukunft der Bundeswehr*. (Bonn, 1994), p. 23.

The debate about the underlying norms of German security policy had in this manner also become a conceptual discourse about efficiently balancing non-military and military means of international crisis management.<sup>26</sup> The reluctance to dispose of once firmly held moral principles was particularly visible in the field of using military force to stop the cruelties in Kosovo. The new government was well aware of the violation of the principles set by its coalition agreement, i.e. that Germany would feel obliged to protect the monopoly of force of the UNSC.<sup>27</sup> The decision to participate in the Kosovo air strikes without a United Nations mandate can thus be judged as an exception from the rule. Although Russia and China at that time prevented a mandate from the UNSC, the Council also refused with a clear majority to demand the air strikes be terminated.

Last not least, Germany's willingness to promote its long-held anti-militaristic world view became obvious in the case of NATO enlargement. Aspects such as market access, trade liberalization, environment and migration policies dominated the German foreign policy agenda in this field and led Defense Minister Volker Rühle in 1993 to emphasize democracy, prosperity and military security in Eastern Europe as inextricably linked. Accentuating NATO's role as a community of values after the disappearance of the Warsaw pact threat, the German government lived up to the standards of a 'civilian power', even though initially excluding Russia from its plans.<sup>28</sup> The case shows that in a civilianizing world positively laden ideas, e.g. stability, democracy, liberty and prosperity, can exert enormous influence. After it had become obvious that alternatives for the enlargement had practically disappeared and the power of arguments convinced the last opponents, a reconciliation of different principles could finally be achieved.

### *Japan*

In the Japanese case, it is Article 9 of the country's constitution that has defined the framework for its security policy since World War II. The 'no war clause' stipulates that 'the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes'; furthermore, it specifies that 'land, sea, and air forces, as well as other war potential, will never be maintained'. Over the decades, the article has been reinterpreted by repetitive governments as renouncing the use of force in international affairs, but not rejecting a national right to self-defense, which was highlighted in a Supreme Court ruling in 1959, giving the so-called Self-Defense Forces (SDF) a legal foundation.<sup>29</sup>

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26 See also Giessmann, *The 'Cocooned Giant'* (Hamburg, 1999).

27 Bundesregierung, *Koalitionsvertrag*, <http://www.bundesregierung.de/frameset/index.jsp> (2000), accessed 28 August 2000.

28 Tewes, Henning, 'How Civilian? How Much Power? Germany and the eastern Enlargement of Nato'. Paper for the Civilian Power Workshop, University of Trier, 11–12 December, 1998.

29 Sissons, D.C.S., 'The Pacifist Clause of the Japanese Constitution', *International Affairs* 37/1 (1961).

The essence of Article 9 has become rapidly internalized by large parts of the Japanese public. It has led to a foreign policy that was labelled, analogous to the German case, ‘comprehensive security’,<sup>30</sup> based on the three widely known principles of the ‘Yoshida Doctrine’: First, Japan can ensure its security only by placing the alliance with the United States at the center of Japan’s foreign policy; secondly, Japan’s defense capabilities have to be maintained at a low level as a corollary of the first principle; and, thirdly, the extra resources saved by these low key security arrangements have to be channeled into economic activities so that Japan can prosper as a trading state.<sup>31</sup>

Subsequently, the strong influence of its anti-militarist domestic culture was symbolized by a set of rules and regulations devised to limit the size and the scope of the Japanese military.<sup>32</sup> Among them were the so-called three non-nuclear principles, the one per cent ceiling of GDP on defense spending, and the ban on the export of weapons related technology. Moreover, the right to collective self-defense was repeatedly ruled out by Tokyo. Already in June 1954, the Upper House had unanimously passed a resolution affirming that the SDF were not allowed to operate overseas; in 1956, the government officially acknowledged the right to collective self-defense as outlined in Article 51 of the Charter of the United Nations, but added that it was unconstitutional to exercise military force in pursuit of that right.<sup>33</sup>

In the decades that followed, Japan led the rising worldwide civilian involvement in refugee aid, food delivery and developmental assistance. The country maintained the status of the world’s largest Official Development Assistance (ODA) donor throughout the 1990s and became the second biggest financier of the United Nations.<sup>34</sup> Tokyo also tried to develop a more assertive role in security affairs, yet without engaging in combat operations abroad. A tentative reformulation of old alliance structures was though signaled by the April 1996 Hashimoto-Clinton summit and the ‘Japan-US Joint Declaration on Security’, the ‘New Guidelines for Japan-US Defence Cooperation’ (*Nichibei bōei kyōryoku no tame no shishin*), and the defense-related legislation of May 1999 and October 2001. The guidelines, especially, highlight what was perceived as a strengthened bilateral defense cooperation between Japan and the USA.<sup>35</sup> The new guidelines were issued on September 24, 1997. They sketch a framework for:

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30 Kevenhörster, Paul, Nabers, Dirk, *Umfassende Sicherheit. Japans Außenhandel und Entwicklungspolitik in Ostasien (Comprehensive Security. Japan’s Foreign Trade and Development Aid in East Asia)* (Hamburg, 2003).

31 Pyle, Kenneth B., *The Japanese Question: Power and Purpose in a New Era* (Washington, DC, 1992), p. 25.

32 Berger, *Cultures of Antimilitarism* (Baltimore and London, 1998), p. 7.

33 Aoi, ‘Asserting Civilian Power or Risking Irrelevance? Japan’s Post-Cold War Policy Concerning the Use of Force’, in Katada et al. (eds.), *Global Governance* (Aldershot, 2004).

34 For an overview see Katada, Saori N., ‘New Courses in Japan’s Foreign Aid Policy: More Humanitarian and More Nationalistic’, in Katada, Saori N., Maull, Hanns W., Inoguchi, Takashi (eds.), *Global Governance. Germany and Japan in the International System* (Aldershot, 2004).

35 Nabers, Dirk, *Kollektive Selbstverteidigung in Japans Sicherheitsstrategie* (Hamburg, 2000).

- Cooperation between the Japanese Self-Defense Forces and the American forces 'under normal circumstances', i.e. cooperation in peacetime,
- Collaboration in response to an armed attack against Japan. While the SDF would mainly carry out defensive operations on the territory of Japan and its surrounding waters and airspace, US forces would offer support;
- Cooperation 'in situations in areas surrounding Japan that will have an important influence on Japan's peace and security'. Field of bilateral cooperation consist of humanitarian relief activities, search and rescue measures, non-combatant evacuation operations, Japan's support for US forces activities, and Japan-US operational cooperation.

Two years later, in May 1999, three guidelines-related bills were passed by the Japanese Diet, one allowing SDF rear area support (*kôhō shien*) for US military action, one amending the 1996 Acquisition and Cross Servicing Agreement (ACSA, *Buppin ekimu sôgô teikyô kyôtei*) to permit the mutual provision of necessary goods and services in case of a military emergency 'in the areas surrounding Japan', and the last revising the SDF law (*Jieitaihô*) to allow the dispatch of ships and helicopters of the SDF to rescue Japanese overseas.<sup>36</sup>

This development represents the most significant expansion of Japan's responsibilities in the alliance since its foundation in the 1950s. As in the German case, it was coupled with growing responsibilities in UN-led peacekeeping missions. Japan's first noticeable dispatch to a UN peacekeeping operation was in 1989, when 27 electoral observers took part in the United Nations Transition Assistance Group (UNTAG) in Namibia. In 1992, the ratification of the so-called International Peace Cooperation Law enabled Japan to send not only civilian personnel, but also personnel of the SDF to PKO in foreign countries. On the basis of that law, Japan participated in PKO in Angola, Cambodia, Mozambique, El Salvador and Timor-Leste, and since 1996 has been dispatching troops to the United Nations Disengagement Observer Force (UNDOF) on the Golan Heights. Japan's SDF personnel also conducted humanitarian relief operations in Rwanda and East Timor and cooperated in international election monitoring activities in Bosnia and Herzegovina (in 1998 and 2000), Kosovo (in 2001) and in Timor-Leste (in 2001 and 2002).<sup>37</sup>

While the engagement of the SDF in combatant roles remained restricted to self-defense and the Japanese government's neglect of the right to collective self-defense remained untouched, the new guidelines and the SDF activities in PKO emphasized a more assertive security stance. For the time being, Japan was able to preserve its traditional identity of self restraint in military affairs. It is the terrorist attacks on Washington and New York of September 2001 that threatened to expose anew Japan's traditional self-conception as a civilian power in international affairs.

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36 Loewen, Howard, Nabers, Dirk, 'Transregional Security Cooperation after 9/11', *Asia-Europe Journal* 3/2 (2005).

37 MOFA (The Ministry of Foreign Affairs, Japan), *Japan's Contribution to UN Peacekeeping Operations*, <http://www.mofa.go.jp/policy/un/pko/pamph2005.html>, accessed 30 October 2005.

In sum, after World War II and during much of the 1990s, both Germany and Japan have stuck to long-held principles, which can be summarized as

- The willingness to cooperate with others to achieve international goals,
- The focus on non-military means to achieve national goals, including the permanent renunciation of weapons of mass destruction;
- The promotion of supranational institutions such as the United Nations;
- The support for human rights and international law, and
- The readiness to contribute financially to the international community, in particular through bilateral ODA and financial contributions to the United Nations.

This foreign policy role identity found expression in a number of legal arrangements, above all in Japan's pacifist constitution (Art. 9), but also in the German constitution's limit to the use of force for purposes of defense (Art. 87a) and to participation in systems of collective security (Art. 24, para. 2). Considering the growing role that both countries played in PKO in the 1990s, it might seem as if both countries had gradually discarded their shyness about the use of the military to solve international problems. This, however, is to neglect the severe political reservations with regards to the use of force, which both countries continuously articulated.

Finally, it is important to point out that to underline the commonalities between Germany and Japan is not to overlook substantial differences between the two countries. The civilian power role has undoubtedly been more distinct in the German case, with its integration into the European Union and flourishing relations with former arch enemies France and Poland. In the Japanese case, the historical burden still seems to impede healthy relations with China and South Korea. However, both Germany and Japan have gone through deep social and political transformations since World War II and evolved as the prototypes of a new sort of international power, labeled 'civilian power' in this chapter.

The real test of both countries' readiness to leave the civilian path and engage in military actions abroad was yet to come with the 11 September 2001 terrorist attacks. In what follows, I will ask if both countries were able to preserve their role identities as civilian powers in the 'war on terror'.

### **Post 9/11: Still Civilian Powers?**

It would be wide of the mark to stereotype the positions of the 'Germans' and the 'Japanese' in the discourse following 11 September 2001. It is however possible to detect predominant views on morality and international norms. A major challenge to Japan's and Germany's traditional roles as 'civilian powers' came with Washington's construction of the September attacks as an act of 'war'. It comes as a little surprise that no sign of criticism was audible from Japan or Germany in the first weeks after 11 September. Prime Minister Koizumi announced on 7 October, the start of the

Afghanistan war: 'Japan strongly supports these actions to fight against terrorism',<sup>38</sup> and German Chancellor Schröder went even further in acknowledging the right of self-defense on the basis of Article 51 of the UN Charter.<sup>39</sup>

Generally overlooked at that time, the German position matched with the traditional role concept of a civilian power. This is affirmed by foreign minister Fischer: 'The position of the Federal Government is clear: We want the United Nations resolutions to be implemented promptly with no ifs or buts'.<sup>40</sup> The German government emphasized that Afghanistan was made possible by a UN mandate, and the International Security Assistance Force (ISAF) was mandated under Chapter VII of the United Nations Charter (Peace Enforcement) by UN Security Resolutions 1386, 1413, and 1444. The ensuing bill to make a dispatch of German forces to Afghanistan possible included a clear restriction of the geographic scope of the mandate for German forces in Operation Enduring Freedom: 'German forces will participate in missions against international terrorism outside Afghanistan only with the consent of the governments concerned'.<sup>41</sup> In Afghanistan, Germany tried to find the political counterweight to its engagement of troops after the fighting was over by bringing the conference on forming an interim government to Königswinter, close to the former capital of Bonn. Besides, in the eyes of the German government, Afghanistan did not break the rules of multilateralism, which is prior information and consultation, primary norms in the civilian power role model.<sup>42</sup>

Perceptive problems, misrepresentations and misunderstandings, particularly on the transatlantic axis, surfaced when the Bush administration shifted its attention towards Saddam Hussein in 2002. The potential means to deal with Iraq favoured by the Bush administration differed from those preferred by the Germans. The alliance started to crumble when the US appeared committed to widening the war to a more general attack on terrorism and states supporting terrorists. In his 29 January 2002 State of the Union Address, President Bush explicitly identified Iran, Iraq and North Korea as constituting 'an axis of evil'.<sup>43</sup> After that, the differences went beyond bad word choice. They also concerned different opinions with regard to the right to preventive military action in international affairs. Already at the German-French

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38 Prime Minister's Office, *Prime Minister Koizumi Expressed Japan's Strong Support to the United States to Fight Against Terrorism*, Tokyo, 7 October 2001, [http://www.kantei.go.jp/foreign/koizumispeech/2001/1008sourikaiken\\_e.html](http://www.kantei.go.jp/foreign/koizumispeech/2001/1008sourikaiken_e.html), accessed 12 March 2004.

39 Bundesregierung, *Stichworte zur Sicherheitspolitik Nr. 11, November 2001*, [www.bundesregierung.de/Anlage256835/November+2001.pdf](http://www.bundesregierung.de/Anlage256835/November+2001.pdf), accessed 20 March 2002.

40 Iraqwatch, *Speech by Joschka Fischer, German Federal Foreign Minister, February 22, 2002*, <http://www.iraqwatch.org/government/Germany/germany-mfa-022202.htm>, accessed 24 February 2002.

41 Deutscher Bundestag, *Einsatz von Bundeswehrsoldaten in Afghanistan gebilligt*, [http://www.bundestag.de/bic/hib/2001/2001\\_300/01.html](http://www.bundestag.de/bic/hib/2001/2001_300/01.html) (2001), accessed 20 February 2002.

42 Nabers, Dirk, *Allianz gegen den Terror: Japan, Deutschland und die USA* (Wiesbaden, 2005).

43 The White House, *President Delivers State of the Union Address, January 29, 2002*, <http://www.whitehouse.gov/news/releases/2002/01/20020129-11.html>, accessed 20 December 2003.



summit meeting in the northern German city of Schwerin, both Chancellor Schröder and French President Jacques Chirac announced that any military action in Iraq would require previous UN Security Council legitimization.<sup>44</sup> According to Foreign Minister Fischer, the containment policy pursued by the United Nations had been on the whole successful. Hence, no immediate action was needed.<sup>45</sup>

On the American side, Vice-President Cheney and Secretary of Defense Rumsfeld have always shown great doubt that weapons inspections could ever provide enough insurance of Iraqi disarmament to make an invasion unnecessary. On 26 August 2002, Cheney for example maintained that 'A return of inspectors would provide no assurance whatsoever of [Saddam's] compliance with UN resolutions. On the contrary, there is a great danger that it would provide false comfort that Saddam was somehow back in the box.'<sup>46</sup>

In Iraq, Germany from the very beginning took a tough stance against any contribution to the war. Although the Schröder government could not restrain the US from using its military infrastructure in Germany, Berlin strongly rejected the new security agenda of the United States. The German government has from the start been suspicious that the United States would seek to take the slightest sign of Iraqi non-compliance as a pretext for using force. In spite of declaring his 'unconditional solidarity' in the immediate aftermath of 11 September 2001, the German Chancellor had already at that point made clear that there would be no participation in any foreign 'adventures'.<sup>47</sup> In addition, German Foreign Minister Fischer emphasized that a requirement for functioning alliances is prior consultation.<sup>48</sup> The rhetoric emanating from Berlin conveys a strong message of distrust from Berlin to Washington. Consequently, the German government was sceptical with regards to an American intervention in Iraq. In sum, Berlin put forward the following arguments:<sup>49</sup>

- Since no one knows if Saddam really has WMD at his disposal, the potential military risks are too high,
- After removing Saddam from power, the stability of the country remains

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44 See 'UN must sanction Iraq strike', *The Guardian*, 31 July 2002.

45 Iraqwatch, *Remarks by Joschka Fischer, German Foreign Minister, August 7, 2002*, <http://www.iraqwatch.org/government/Germany/germany-mfa-fischer-080702.htm>, accessed 20 August 2004.

46 See *New York Times*, 27 August 2002, 'In Cheney's words: The Administration Case for Removing Saddam Hussein'.

47 Bundesregierung, *Regierungserklärung von Bundeskanzler Gerhard Schröder zu den Terroranschlägen in den USA und den Beschlüssen des Sicherheitsrates der Vereinten Nationen sowie der NATO vor dem Deutschen Bundestag am 19. September 2001 in Berlin*, <http://www.bundestkanzler.de/Regierungserklaerung-.8561.46891/Regierungserklaerung-von-Bundeskanzler-Schroeder..htm>, accessed 12 March 2004.

48 *Ibid.* See also Schröder's speech on the day after the terrorist attacks: 'Certainly: Every right corresponds with a duty. On the other way round, every alliance duty corresponds with a right, which means information and consultation' (Bundesregierung, *Stichworte zur Sicherheitspolitik Nr. 9, September 2001*, [www.bundesregierung.de/Anlage255644/SEptember+2001.pdf](http://www.bundesregierung.de/Anlage255644/SEptember+2001.pdf), accessed 14 August 2004).

49 Bundesministerium der Verteidigung, *Defence Policy Guidelines*. (Berlin, 2003).

uncertain and a long-term engagement looks inevitable;

- A unilateral invasion – even if it was backed by a ‘coalition of the willing’ – would set a dangerous precedent and would violate international law if it was not legalized by the UNSC.

Where the German government openly displayed its concern that the Bush administration was seeking a pretext for war even if Saddam does give up his WMD programme, Japan candidly showed its support for the US. Whereas Tokyo clarified it favours the alliance, Berlin made clear it would work to maintain international law. Moreover, the Koizumi government showed trust in the Bush administration although multilateralism was dismissed by Washington, while Berlin repeatedly pointed to its standard option of diplomacy as a tool to resolve the crisis.

During the course of the year 2002, Germany once again had to choose between long-held foreign policy principles. Certain interest-shaping norms, such as the defiance of the use of force and the protection of human rights, as well as the legality of the operation and the commitment to multilateralism, contradicted each other when Germany tried to take an active stance on the Iraq issue. Germany opted for the rejection of force by all means. Peter Struck, Schroeder's defense minister, was quoted with the following words in the *International Herald Tribune*: ‘As long as I am defense minister, the Bundeswehr will not be deployed in Iraq’.<sup>50</sup>

In East Asia, Japan underlined its basic commitment to the alliance with the United States several times. The Japanese government officially informed the United States in December 2002 that it would back the US if it launched military operations against Iraq.<sup>51</sup> Tokyo also urged the US to create an environment in which the international community could jointly back the US if it commenced an attack against Iraq, but eventually the failure to achieve a multilateral solution under the heading of the United Nations was no obstacle for Japan to support the US. On the day after the war had begun in Iraq, Prime Minister Jun'ichirō Koizumi reiterated his support for the US-led attack, saying it is ‘natural’ for Japan to back Washington as an ally, even if public sentiment tends into another direction, as Koizumi put in plain words: ‘The US-Japan Security Treaty acts as a major deterrent against actions by North Korea. My actions are based on careful consideration of the importance of the Japan-US alliance and the international cooperative situation’.<sup>52</sup> ‘Interest’, ‘alliance’ and ‘partnership’ are textured as equivalent in Japanese speech acts. While Japan institutes its policy towards the USA on an alliance logic, it is certain domestic norms that guide Germany's stance.

This is a remarkable case of norm reformulation on the Japanese side. Müller elucidates that constitutive norms – such as those inherent in the civilian power

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50 *International Herald Tribune*, 9 September 2002, ‘Paris and Berlin remain split on key Iraq issue’.

51 MOFA (The Ministry of Foreign Affairs, Japan), *Press Conference by Prime Minister Junichiro Koizumi, March 20, 2003*, [http://www.mofa.go.jp/region/middle\\_e/iraq/issue2003/pmpress0320.html](http://www.mofa.go.jp/region/middle_e/iraq/issue2003/pmpress0320.html), accessed 3. April 2003.

52 *The Japan Times*, 24 March 2003, ‘No SDF dispatch without new UNSC resolution: lawmakers’.

model – are hard, but not impossible to alter.<sup>53</sup> They may change as a result of a reflective process of ‘assessing’ the value of a norm with regards to their utility or appropriateness, or when certain norms contradict each other. Then actors have to judge these norms in terms of their relative weight, as was the case with the Japanese decision against international law and for solidarity with the United States. However, as norm change is difficult and slow in most cases, not all norms constituting the role concept of a civilian power were abandoned at the same time. When it came to the war in Iraq, Tokyo again made it clear that no military role could be expected of Japan. However, soon after the initial fighting in Iraq was over, the dispatch of the troops – which would come under the special measures bill for providing support to Iraq’s reconstruction implemented in the Summer of 2003 – was taken into consideration by the Koizumi government. In the political debate over the bill, the Japanese government indicated that troops would not be sent to ‘combat areas’;<sup>54</sup> and the US had to wait until December for a final decision over the dispatch. The activities of the Japanese forces, which started in January 2004, do not involve the use of force, but are limited to humanitarian and reconstruction activities, such as the provision of medical services and drinking water, repairing of public buildings, and transport of humanitarian supplies, as well as support activities for other countries’ efforts in the restoration of security.

In addition, the SDF supplied tents to Amman, Jordan, at the request of the United Nations High Commissioner for Refugees (UNHCR) and transported humanitarian relief items from UN stockpiles in Brindisi, Italy, to Amman at the request of the World Food Program (WFP). The purpose of such activities is, in the end, to contribute to the national reconstruction of Iraq. Approximately 600 members of the Ground Self-Defense Force were active in reconstruction assistance in southern Iraq. Additionally, about 200 members of the Air Self-Defense Force were involved in transporting supplies across the Kuwait-Iraq border via C-130 transport planes. Utilizing both the SDF and ODA, Japanese troops were engaged in paving roads with asphalt. More than 50 km of streets and highways were improved with the help of the Japanese.<sup>55</sup>

After the official end of the war in May 2003, Germany also provided Iraq with extensive humanitarian aid and has since been assisting the country in reconstruction efforts and in the process of political transition. However, no German soldier has ever set foot in the country that is widely judged to be still in a state of war. In 2004, 100 German army trucks were transported to the United Arab Emirates. There the members of the new Iraqi armed forces were taught how to drive and maintain

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53 Müller, Harald, ‘Arguing, Bargaining and All That: Communicative Action, Rationalist Theory and the Logic of Appropriateness in International Relations’, *European Journal of International Relations* 10/3 (2004), p. 418.

54 *Xinhua News Agency*, 27 March 2003, ‘US envoy asks Japan to send SDF to postwar Iraq’.

55 MOFA (The Ministry of Foreign Affairs, Japan), *Japan’s Assistance to Iraq (Fact Sheet)*, as of October 17, 2005, [http://www.mofa.go.jp/region/middle\\_e/iraq/issue2003/assistance/assist0510.pdf](http://www.mofa.go.jp/region/middle_e/iraq/issue2003/assistance/assist0510.pdf), accessed 27 October 2005.

the German-made desert-worthy vehicles. Training support is being provided in cooperation with and on the territory of the Emirates.<sup>56</sup>

Although both countries have been active in reconstructing the Iraqi infrastructure after the war, both countries' security policies after 11 September 2001 differ in some substantial ways. Especially in the Japanese case, we have seen an interesting case of norm reformulation. Let us put the empirical findings in a comparative perspective in the final section.

## Conclusion

Starting with Germany, one can conclude that the country's established post-war foreign-policy identity as a civilian power has indeed undergone some transformative pressures since the 1990s. Certain interest-shaping norms, such as the defiance of the use of force and the protection of human rights on the one hand as well as the legality of the operation and the commitment to multilateralism on the other, happened to contradict each other when Germany tried to take an active stance on the Balkan. Still, the German contribution to the Kosovo operation reflected the incremental approach in defense policy that the Kohl government espoused and which was carried on by the red-green coalition in Afghanistan.

From 1998 onwards, the 'pragmatic realist'<sup>57</sup> Foreign Minister Joschka Fischer has outclassed inner-party idealists and fundamentalists in Berlin's Kosovo and Afghanistan decisions. This did by no means imply an ad-hoc reversion of long-maintained moral principles. The combat contribution of the Bundeswehr in NATO's Kosovo mission was just too undersized to blame Germany for new militaristic ambitions. Besides, humanitarian assistance was given highest priority, both in the Balkans and later in Afghanistan, but eventually also in Iraq. Principally, Germany's 'culture of antimilitarism' has not changed significantly even after the 'war on terror' started.

The picture looks more complex in the Japanese case. A transformation of the Japan-US alliance system had already taken place during the 1990s, yet without changing Tokyo's stance towards the United Nations or its rejection of combat roles in international crises. After 11 September 2001, however, essential norms defining the Japanese nation since World War II, such as the commitment to the United Nations, combined with the categorical renunciation of war to solve international problems, were scrapped. One has to concede that Tokyo also urged the US to work for an international consensus on the Iraq issue, but eventually the failure to achieve a multilateral solution under the heading of the United Nations was no obstacle for Japan to support a war that was not backed by the majority of the Security Council.

As Germany, Japan still largely corresponded to the ideal type of a civilian power at the turn of the new century. One essential element of the model, however, refers to the support of legal norms even if this does not provide direct material gains. Pfeil calls these key roles 'promoter of the rule of international law' and 'proponent of

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56 Nabers, *Allianz gegen den Terror* (Wiesbaden, 2005).

57 Giessmann, *The 'Cocooned Giant'* (Hamburg, 1999).

a value-based foreign policy'.<sup>58</sup> More than ever before, Japan defined itself on the basis of its relationship with the United States, while German scepticism about the usefulness of military force once again took centre stage in the debate.

This is not to suggest that the German stance in the war on terror is morally justified only because the country did not ally with the United States. However, it once again illuminates the interconnectedness of culture and rationality. The Japanese government constructed terrorism as 'a despicable act that threatens the lives and lifestyles of the people all over the world and the peace and security of all the countries in the world'.<sup>59</sup> Interestingly, after 11 September Germany did not feel threatened by insecure surroundings in Europe, as did Japan with regards East Asia. While Tokyo time and again pointed into the direction of North Korea as its principal threat,<sup>60</sup> and the Japanese government drew a direct line from North Korea to global terrorism and weapons of mass destruction (WMD),<sup>61</sup> the German defence policy guidelines, describing the European security environment, speak of 'politically advantageous changes in the last years'.<sup>62</sup>

In the Japanese case, it is the North Korean threat, coupled with the awareness that American leadership best serves the country's aims, which eventually shaped Japan's position in international security relations. Moreover, the Japanese decision to participate in the war against terror was undoubtedly prompted by repeated comments of US Deputy Secretary of State Richard Armitage, who bluntly advised the Koizumi government to 'show the flag' in any military action taken by the United States.<sup>63</sup> Furthermore, Colin Powell repetitively called on Japan to express support

58 Pfeil, Florian, *Zivilmacht für die Menschenrechte* (Hamburg, 1999).

59 Prime Minister's Office, *Statement by Prime Minister Junichiro Koizumi, Tokyo, 8 October 2001*, [http://www.kantei.go.jp/foreign/koizumispeech/2001/1008danwa\\_e.html](http://www.kantei.go.jp/foreign/koizumispeech/2001/1008danwa_e.html), accessed 20 April 2004.

60 As foreign minister Yoriko Kawaguchi put it on the occasion of Assistant Secretary of State of the United States James Kelly's visit to North Korea in October 2002: 'Japan is very concerned about the issues of weapons of mass destruction, including nuclear weapons and missiles.' See MOFA (The Ministry of Foreign Affairs, Japan), *Visit of Assistant Secretary of State of the United States James Kelly to North Korea (Explanation to Japanese Side)*, [http://www.mofa.go.jp/region/asia-paci/n\\_korea/us0210.html](http://www.mofa.go.jp/region/asia-paci/n_korea/us0210.html) (2002), accessed 20 November 2004.

61 As Toshimitsu Motegi, Senior Vice Minister for Foreign Affairs, put it on the Munich Conference on Security Policy in March 2003: 'The Iraq problem may have started with a classic war of invasion. However, when it was linked with the 'new threats' such as proliferation of weapons of mass destruction (WMDs) and terrorism, it came to represent the challenges facing the global security order in the post-cold-war era. The problem of North Korea, a country located next to us, has its roots in the cold-war legacy of a divided state, but it does have a similar character in posing the threat of WMDs proliferation' (MOFA (The Ministry of Foreign Affairs, Japan), *Speech by Mr. Toshimitsu Motegi, Senior Vice-Minister for Foreign Affairs, Japan, at the Munich Conference on Security Policy 'The Global Challenge of International Terrorism', February 8, 2003*, <http://www.mofa.go.jp/policy/terrorism/speech0302html>, accessed 3. April 2003).

62 Bundesministerium der Verteidigung, *Defence Policy Guidelines*. (Berlin, 2003).

63 McCormack, Gavan, 'Japan's Afghan Expedition', *Japan in the World*, November 5, 2001, <http://www.iwanami.co.jp/jpworld/text/Afghanexpedition01.html> (2001), accessed 19

for a UN-resolution allowing the disarmament of Iraq. Likewise, the United States left no doubt it would provide Japan with a security guarantee against a potential North Korean attack.<sup>64</sup>

Certain moral norms obviously change due to an assessment of its utility or appropriateness, or in cases when particular norms contradict each other. Then actors have to review these norms in terms of their relative weight, as was the case with the Japanese decision against the United Nations and for the alliance with the United States. The North Korean threat undoubtedly played its part in that game. Some authors therefore maintain that identity can be 'a function of whichever institution and set of social practices best obtains a set of exogenous interests in the given systemic circumstances'.<sup>65</sup> This neoliberal-institutionalist statement challenges the constructivist worldview insofar as constructivism maintains that culturally embedded identities set the norm for what is ultimately considered 'rational' in foreign policy. Nonetheless, the German case is an intriguing example of a country refusing to go to war although this might have led to material gains (oil, resources, veto power in world politics). At the end of the day, interests must analytically be defined as ideas about how to meet needs if we want to get a broader understanding of international politics. Defining politics in purely materialist terms and leaving out variables such as morality and norm-guided behaviour definitely shuts out a wide variety of possible explanations from the outset.

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November 2001.

64 *The Japan Times*, 7 October 2001.

65 Sterling-Folker, Jennifer, 'Competing Paradigms or Birds of a Feather? Constructivism and Neoliberal Institutionalism Compared', *International Studies Quarterly* 44 (2000).

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## Chapter 8

# Interdependence, States and Community: Ethical Concerns and Foreign Policy in ASEAN

Simon S.C. Tay

### **Introduction: Human Rights, Ethics and Interdependence**

In 1993, ASEAN ministers met in Singapore in the run up to the World Convention on Human Rights at Vienna that same year. It was also held amidst the idea, then strongly promoted, that societies in Asia and ASEAN had different approaches and standards in human rights that legitimately differed from the West. Against this background, the ASEAN Ministers declared that they should consider starting a regional human rights mechanism.

In the period since, no ASEAN mechanism for human rights has been established.<sup>1</sup> Yet these past years since 1997 have witnessed a number of significant issues that run the gamut of concerns in human rights. These range from the impact of the Asian crisis on the social and economic welfare of many millions; to high politics in the release and re-detention of Aung San Suu Kyi in Myanmar (Burma), and the treatment of former Malaysian Deputy premier, Anwar Ibrahim; to on-going cross-border concerns the illegal trade in women, children and migrant workers between many ASEAN member states; and to the settlement of previous (and in some cases on-going) human rights abuses in Cambodia, East Timor, and Aceh.

In June 2003, ASEAN foreign ministers issued a statement of concern about the treatment of Aung San Suu Kyi.<sup>2</sup> This is a departure from the established practice of non intervention and 'no comment' on matters of this nature. It remains to be seen however if this is an ad hoc response from ASEAN or a significant shift in its approach that may precede a more consistent and institutionalized approach to human rights in the region. The former seems more likely.<sup>3</sup>

At the same meeting of ASEAN Ministers, a less noted statement was issued on the need for ASEAN to make progress towards an economic community.<sup>4</sup> This

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1 Simon Tay was the Singaporean representative on the working committee from its inception to 2003, when he resigned from the committee.

2 *Joint Communiqué of the 36th ASEAN Ministerial Meeting, Phnom Penh, 16–17 June 2003*. <http://www.aseansec.org/14833.htm> (Accessed on 4 Sept 2003).

3 *Economist*, 'A Slap on the Wrist'. 21–27 June 2003, p. 26.

4 *Joint Communiqué of the 36th ASEAN Ministerial Meeting* (2003).



follows up on existing, agreed and quite practical plans for economic integration, moving beyond the present ASEAN free trade area (AFTA). The statement also drew from a report by the 'track-2' network of ASEAN Institutes of Strategic and International Studies that recommended that ASEAN set itself such a goal for the future.<sup>5</sup>

It is against this background that I will share some perspectives on how states in ASEAN and the Asia Pacific can and should manage the different elements of their interdependence. Ethical concerns such as human rights, environmental protection and humanitarian interventions will be a particular focus. These issues are treated by many states in a different way than economic and security concerns, as being of lesser importance. Interdependence in the ethical or moral realm is taken to be less real and worthy of attention than economic or physical interdependencies. The idea of community, I will argue, has the prospect of helping us deal with the full range of interdependencies – including the ethical or moral – in ways that the focus on states and governments neither allows at present nor promises for the future. In essence, my arguments are three-fold.

1. First, while interdependence is recognized, there are both historical and ongoing reasons for the states in the region, especially in ASEAN, to continue to try to uphold the norm of non-intervention. This is especially in a world that is grappling with an American primacy in setting agendas and projecting power.
2. Secondly, the treatment of the ethical issues like human rights and environmental protection within ASEAN is changing. However, it is not changing in a manner that is consistent and necessarily effective. The on going inconsistencies and ineffectiveness relate to the state-centred process involved in raising and responding to these issues.
3. Thirdly, the ideas and ideals of community could bring important changes to the ways in which foreign policy and ethical issues are conceived. Not least, they potentially hold the key to more sustained and just engagements on the issues of interdependence that confront us in the region. However, the concepts of community are contested by the states and governments in the region. Some continue to seek to deny or control them, while others seek to co-opt them or conflate the idea of community with the state itself. Thus, while ethical concerns have now entered the equation of foreign policy, realist and state-centred concerns continue to dominate.

### **Interdependence and Sovereignty: The ASEAN Context**

Interdependence is a fact of modern life. Economic and financial activities link us. So do physical and environmental phenomena. Ethical concerns too travel across

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5 The author chairs the SIIA, a founder member of the ASEAN-ISIS network, and was a co-convenor of the dialogue on the issue in February 2003, and co-author for the report on an ASEAN Economic Community, submitted to ASEAN Senior Officials Meeting in the 2nd quarter of 2003.

borders, relayed from the point of conflict and tragedy by the media, into our living rooms. Recent events in the region strongly highlight this interdependence.

The Asian crisis that started in mid-1997 in Thailand and spread rapidly through the region showed the economic interdependence of the region. The Indonesian land and forest fires that started in that same year spread a plume of smoke haze to demonstrate our ecological interdependence, polluting millions of people in South East Asia and exacting billions of dollars from the regional economies. In this tumultuous time, human rights concerns too have raised in different arenas like East Timor after the vote for independence; Cambodia when the uneasy coalition split into violent conflict; and Malaysia, over the treatment of former deputy premier, Anwar Ibrahim.

In the early 1990s, globalization was much discussed as a new phenomenon for states, companies and communities to grapple with. The emphasis was on its merits and potential benefits. The ill effects that can arise have now become clearer.<sup>6</sup> In the early 1990s too, the discussion about globalization led many to speculate about the disappearance of the state. Associated with this, some saw the rising importance of other non state actors: civil society and non governmental organizations; transnational corporations; international media; and international organizations. International governance in other forms and caused by other 'actors' like the 'free market' is another feature of the present conditions that state must consider.

It is true that there have been incursions into traditional domains of domestic sovereignty and more circumscribed freedoms in making government policy. It is also true that a state today grapples with issues that it cannot solve by itself, for itself. The state however has not disappeared. The state seems in fact to be a critical focal point for responses to phenomenon that emerge, whether from global and regional interchange and interdependencies or from actors and factors below the level of the state. The inter-state system seems to be the only viable way that most can and have imagined so far for managing our increasing interdependence.

The region too has not disappeared in the wash of globalization. Regional arrangements and outcomes continue in parallel and sometimes ahead of their global counterparts. This can be explained variously. More cogent and effective cooperation often results from proximity, where the good or ill effects of inter-state commerce and other transactions can be seen more immediately. The presence and suasion of regional powers is another factor. A third is that a region can have elements of affinity, in shared culture and values, whether historical or modern.<sup>7</sup>

Nevertheless, an insistence on state sovereignty seems somewhat anachronistic. The norm of non-intervention in the domestic affairs of a state is assailed on many fronts. Governments who insist on such a notion as their prerogative seem old-fashioned, like someone at a fashionable party wearing last season's clothes. In many different fields from financial flows to the protection of human rights, from the clouds of smoke haze or acid rain to the movement of suspected terrorists and small

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6 W. Greider, *One World, Ready or Not: The Manic Logic of Global Capitalism* (New York, 1997); T. L. Friedman, *The Lexus and the Olive Tree* (London, 2000).

7 W. Mattli, 'Explaining Regional Integration Outcomes', *Journal of European Public Policy*, 6/1 (1999), pp. 1–27.

arms: one state struggles to deal with the negative effects that events in another state may cause.

The persistence of the idea of state sovereignty is partly historical. Almost all states in the region have been under the yoke of colonialism. Even for states that were not, like Thailand, the influence and power of Europe had to be accommodated and balanced in many ways. Examples of interference and intervention by the Great Powers, or the perception of the same, have continued, even post independence. This is especially true as many of the states in the region have been weaker states. In this sense, we are wrong to see sovereignty always as an excuse trotted out by a powerful state to excuse abuses visited on its own people. More often than not, sovereignty is a construct for weak states to fend off the attention of powerful states.

This continues in many ways with the original reasons for state sovereignty. The peace of Westphalia, after all, constructed the notion of state sovereignty to mutually shield one porous state from another, in a situation in which none was so clearly dominant over the other. One key difference today is that some states have been more successful in constructing their own 'internal' sovereignty. In these successful states, power has been legitimated, institutions of the state have matured, the state has come to be accepted as natural and permanent. These achievements cannot be taken as givens in many of the states of ASEAN and Asia today, even after many decades of independence.

Yet the successful states can and often do often turn to questions of 'external' sovereignty, seeking to quiz other, less assured states about their internal sovereignty. ASEAN member states have always tried to deal with the fact that they are smaller to medium sized states, without power. Thus, while some talked of the region as a zone of neutrality, the reality is that all have accepted – expressly or tacitly – the role of the USA as a guarantor of regional stability and peace. In perhaps the best known of ASEAN's achievements – the continued attention and final resolution of the Vietnamese intervention of Cambodia – classic elements of ASEAN diplomacy can be seen.

One aspect is that, while the Pol Pot regime committed grave atrocities against their own people, ASEAN member states gave priority to pushing back against the Vietnamese intervention. This stance even countenanced the need to foster a coalition that included elements of the Khmer Rouge. Another aspect was the limited ability of the ASEAN member states, beyond focusing political attention, to resolve the issue. Instead, efforts had in the end to depend on the USA and middle powers. In this regard, power has always been part of the calculation of regional players. The norm of non intervention in ASEAN *inter se* can be seen as part of a bargain among the member states to help maintain their cohesion and to focus attention to non ASEAN states, as Cambodia and Vietnam were at that time.

In the post-Cold War era, a quite different structure and concept of security was installed in the evolution of the ASEAN Regional Forum (ARF). While this was never intended to displace any of the existing security arrangements, the ARF was set out in a very different tenor to supplement the same. The ARF has emerged an institution that is multilateral in nature and that expressly hopes to help foster a wider security community in the Asia Pacific. The ARF Road Map thus aims to build confidence, and move to the exercise of preventive diplomacy and then to

conflict resolution. In this, the ARF embraces conceptions of security that emphasize comprehensive and cooperative security, and the development of accepted norms and practices within a security community, in which the use of force by one state on another has become unthinkable.

Nevertheless, there have been some counter trends to the ARF's movement towards a security community. First, ASEAN 'leadership' as the hosts for the ARF came increasingly to be questioned. In part, this was due to the distraction and weakness of many ASEAN member states, post 1997. Another factor has been the ambition and geographical footprint of the ARF to include not just South East Asia but also North East Asia

The second major trend has been the movement away from multilateral and more cooperative or common concepts of security, to those based in more traditional calculations of bilateral links and national interest. This has been a trend in dealing with the USA, which has reassumed a primacy in power and security issues. On the other hand, we have also experienced an increased sensitivity over interference and intervention and, accordingly, a reassertion of sovereignty.

### **Ethical Questions of Human Rights and Environmental Protection**

Ethical concerns in foreign policy have followed a similar pattern to new security issues. They rose strongly on the early post Cold War agenda with both a practical emphasis by the US and other major powers and international institutions and an increased emphasis among international scholars. The interest in ethics has now stalled and faced setbacks. Post 9/11, while human rights and democracy have been part of the language used by the Bush administration in trying to justify their actions, their emphasis in practice has diminished.

The treatment of the ethical issues like human rights and environmental protection within ASEAN and Asian countries is changing, if not as consistently and effectively as some would hope. ASEAN and its member states since 1997 have had an on-going debate about the different balances between state sovereignty and their collective needs. This has been framed in a debate about different terms such as, 'constructive engagement' and 'flexible engagement', which are embedded with different political concepts, practices and even vision of what ASEAN is.

ASEAN's principle of non-intervention is guided not only by the UN Charter and declarations. It is guided by its own ASEAN Concord and the Treaty of Amity and Cooperation (TAC) of 1976. The TAC specifically outlined this principle as one of six fundamental principles that should guide inter-state relations. The TAC stipulates that, 'no state shall interfere in the internal affairs of one another'.<sup>8</sup> No definition of 'internal affairs' was given.

In looking at state practice, two key elements should be noted. The first is that non-intervention has been taken to go beyond acting as a shield against the use of force and threat of the use of force. ASEAN practice has often extended to even

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8 *ASEAN Concord* (1976), [www.aseansec.org/3630.htm](http://www.aseansec.org/3630.htm), accessed on 4 September 2003; *ASEAN Treaty of Amity and Cooperation* (1976), <http://www.aseansec.org/1217.htm>, accessed on 4 September 2003.

criticism levelled at what a state perceives to be its 'internal affairs'. This goes beyond the common international understanding of non-intervention as framed in the UN Charter. The second element of practice that must be noted is, however, contradictory. While ASEAN leaders and bureaucrats constantly declare this principle, closer analyses show several examples to prove that ASEAN has in fact been involved in each other's affairs.

ASEAN's involvement in the resolution of the Cambodian conflict is a good case in point. From the start of the Cambodian conflict in 1979 until Cambodia's formal admission as ASEAN's tenth member in 1999, ASEAN's engagement with Cambodia presents a strong argument against the misperception that ASEAN has strictly adopted a hands-off policy with its neighbours.<sup>9</sup> The most dramatic of this involvement was ASEAN's statement in late 1978 'strongly deploring' Vietnam's occupation of Cambodia and demanding its immediate withdrawal.<sup>10</sup> A consistent pattern of active ASEAN involvement emerged.

Thus when the term 'constructive involvement' was mooted by former Malaysian Deputy Prime Minister Anwar Ibrahim in 1997, as a reaction to the events in Cambodia of July that year, there had already been substantial ASEAN involvement in the country.<sup>11</sup> During this period, however, Cambodia's formal entry into ASEAN was delayed due to the domestic conflict brought about by the ousting of Prince Ranariddh as first prime minister of Cambodia by Hun Sen who was then the second prime minister. The events threw the country once again in turmoil and undermined the Paris Peace Agreements which defined the framework for peace and stability in Cambodia. ASEAN, aside from delaying Cambodia's entry, insisted that Cambodia meet certain conditions before it can be admitted as a member. These included the holding of free and fair elections and the establishment of the Senate.

ASEAN's handling of Myanmar, even prior to the statement in 2003, is another case in point. While ASEAN admitted Myanmar as a full member together with Laos in July 1997, ASEAN did not argue that the regime's human rights record was purely an 'internal affair' with which the association could not interfere. ASEAN's stated policy was for 'constructive engagement'. This differed from the policies of sanction and isolation that European and American governments pursued, but ASEAN policy was not one that denied the right and need to address issues within Myanmar. The difference was about the means and processes to address the human rights concerns. In this, ASEAN preferred engagement over sanctions and isolation.

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9 R.O. Tilman, *The Enemy Beyond: External Threat Perceptions in the ASEAN Region* (Singapore, 1985); A.K.P. Mochtan (ed.), *Cambodia: Toward Peace and Reconstruction* (Jakarta, 1993); S. Peou, *Conflict Neutralization in the Cambodian War: From Battlefield to Ballot Box* (New York, 1997); K. H. Kao, 'Flexible Engagement vs. Non-Interference: ASEAN and Cambodia', in K. H. Kao, J. A. Kaplan (eds.), *Principles under Pressure: Cambodia and ASEAN's Non-Interference Policy* (Phnom Penh, 1999).

10 *Joint Statement of the Special Meeting of the ASEAN Foreign Ministers on the Current Political Development in the Southeast Asian Region* (1979) Bangkok, 12 January. [www.aseansec.org/3708.htm](http://www.aseansec.org/3708.htm) (Accessed on 4 Sept 2003).

11 M. Cabellero-Anthony, 'How We Engage or Cooperate', ASEAN 2020 Conference paper, Singapore (July 1999).

The practice of this policy of ‘constructive engagement’ can however be criticized. In some ways, the practices were more often engagement – especially in economic matters – than constructive. Or, perhaps the engagements were ‘constructive’ in that many hotels, factories and other buildings were constructed in Myanmar from ASEAN businesses that engaged the country.<sup>12</sup> However, ASEAN leaders have, during their private meetings with their Myanmar counterparts, offered advice on the political situation in Rangoon and encouraged the SLORC to open a dialogue with pro-democracy opposition. We see obvious examples from Singapore, Malaysia and the Philippines.

Another exception was over the treatment of former Malaysian Deputy Prime Minister Anwar Ibrahim after he was dismissed by Prime Minister Mahathir in September 1998. Two then ASEAN heads of state expressed their concerns – President B.J. Habibie of Indonesia and the Philippines’ President Estrada. The comments elicited a diplomatic protest from Kuala Lumpur.

Given the examples of exceptions to the principle, it is interesting to analyse that proposals to review ASEAN’s principle of non-intervention have been rejected by the ASEAN governments. Most notable of these was the proposal for ‘flexible engagement’ made by the Thai government in 1998.<sup>13</sup> The proposal reflected two fundamental differences in ASEAN’s current practice. First, the manner by which communication and diplomacy is conducted. The ‘ASEAN way’ advocates quiet diplomacy – characterised by private discussions and use of oblique language – the proposal calls for open and frank discussion. Secondly, the proposal seemed to set out a broad set of domestic issues where ‘interference’ is justified when they impact on bilateral, regional and extra-regional relations.

These are but some of the examples where state practice in ASEAN has not lived up to the declarations of non-intervention. They are offered to show the principle is not absolute. They do not however show, in the writer’s opinion, that the norm of non-intervention is purely hyperbole or considered passé. Instead, I take the view that these examples are exceptions and contradictions that can largely be explained as disjunctures or conflicts between the norm of non intervention with another imperative for ASEAN: that of maintaining regional order and stability. This has led one observer to note that ASEAN has, particularly in the case of Cambodia, been exercising a policy of ‘selective engagement’.<sup>14</sup>

### Myanmar and the Future for Ethical Concerns in ASEAN

Against this background, I would like to offer three observations on the likely future of ethical concerns in foreign policy for ASEAN and Asian states. First, these ethical concerns are unlikely to be institutionalized to provide consistent and

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12 Greater Mekong Sub-region Business Support Centre (2003), [http://www.gmsbizforum.com/index.php?option=com\\_content&task=view&id=43&Itemid=35](http://www.gmsbizforum.com/index.php?option=com_content&task=view&id=43&Itemid=35), accessed on 4 September 2003.

13 *New Straits Times*, ‘Thailand to pursue “constructive intervention” policy’ (8 June 1998); *The Straits Times*, ‘Surin wants a more flexible ASEAN stand’ (3 July 1998).

14 Negara, in Hourn, Kaplan (eds.), *Principles under Pressure*.

broader attention to the concerns raised. This is not so much because the norms are questioned. Rather, continuing and indeed renewed concerns attach about the agreed processes and tools to encourage compliance with such norms. Thus, for example, we may agree that Daw Aung Sang Suu Kyi has been treated badly in Myanmar/Burma. It may however be instructive to look at the factors that have brought the issue to this point, as an agreed item on the ASEAN agenda, despite the group's norm of non interference.

One factor is the continuing criticism by Europe and the USA, and the personal presence of former US Secretary of State, Colin Powell, to bring the message into the discussions. A second factor is UN attention. A third factor is the involvement of Malaysia. A fourth factor is the continuing refusal of the Myanmar regime to deal constructively with the issues, and its quite untenable blanket of propaganda, bordering on the Orwellian language in 1984. A fifth is the inability or refusal of that country to consistently pursue economic opening, to the chagrin of investors from Malaysia, Singapore and Thailand. A sixth is the sense of increasing fragility in Myanmar, under pressure from without, influence from China and internal pressure from various interests like drug lords, illegal loggers, and ethnic tribes. A seventh is the sense that the SPDC regime is moving from being a strong institution in a weak society to a weak institution in a weak society. Some degree of reform in the regime seems to be necessary even to ensure stability and the integrity of the state.

This bears upon a second general observation about the application of ethical issues in foreign policy in the region. This is not only that the norms will be applied politically where the violations are gravest, but that they will be applied quite selectively against only those who seem most politically weak. Attention to Myanmar today can be explained in this manner. So too can the regional participation in East Timor in the period during which Indonesia, the region's center of gravity, was weakest. In contrast, while Indonesia has not returned to its previous position as ASEAN's de facto leader, it has stabilized somewhat under Presidents Megawati and Susilo Bambang Yudhoyono. Consequently, we may observe that while the renewed military presence in Aceh has not gone without comment, ASEAN has not made exactly the same 'intervention' by declaration that it has in Myanmar's case. Instead, when the government in Jakarta has pursued a course of conciliation by offering peace and a special autonomy to the region, ASEAN member states have joined with the European Union in monitoring the settlement.

From these observations, a third and more general observation can be offered. This is that while ethical concerns are being raised, there are more than merely ethical concerns behind them. In the case of Myanmar, more traditional reasons of state and of regional and international order are at play. These include the stability of the regime and the probable instabilities in regional order if things continue to worsen. The importance given to dialogue with the great powers, especially the USA, and to avoid blockages to that dialogue is another factor. Both these concerns are aligned to more traditional, realist considerations of foreign policy and are probably weigh more in the minds of ASEAN member states than the purely ethical concerns.

The uneven application of ethical concerns also ties in, in part, to a growing sense among human rights scholars and proponents about their relationship to state power. This is the emerging sense that the worst perpetrators of human rights abuses are not

powerful states, but weak and failing states. The corollary of this seems to be that we will not seek to construct an international system of justice, but rather depend on political coalitions of powerful and willing states to enforce human rights.

The political and politicized response to these issues can also be explained in a different way. The Asian or ASEAN 'inconsistency' is in fact a way of dealing with American primacy. The fact of American primacy has demonstrated a new relationship between regions and ideas. The old expectations of a growing equality between the USA and Asia have given way to a reaffirmation of a hierarchical order. As for ideas, the idea of ethical concerns rising to the top of a neo-liberal international order has given way among most to recognition that American primacy will pursue its own national interests. ASEAN and Asia's political expediency can therefore be seen as the rational response to an American-led order that is still emerging and self-interested.

### Realism, Liberalism and Legalization in ASEAN

Can we progress beyond this politicized treatment of ethical concerns in foreign policy in the region? Can we expect a more consistent and comprehensive mechanism for dealing with issues of ethics and interdependence, akin to a legal process?

Perhaps the dominant tenet, both internationally and in ASEAN and Asia, is realism. This perspective (whether classical or neo-realist) holds that states live in an anarchical system without a central governing authority. War, conflict and competition are natural outcomes, while cooperation is rare and likely to give way to the exigencies of national interest.<sup>15</sup> Self-help and self-interest become the order of the day in this competitive system. Realism therefore prescribes the need to maintain a balance of power between states or alliances between states.<sup>16</sup> A concert of great powers provides a second mechanism for international order. A third possibility conceived by realists is that a benign hegemonic power could provide stability.

Liberal theory is a contrast to realism in hoping to transcend the conditions of anarchy and conflict in the international arena. Although there are different strands of thinking in international liberalism, the striking and fundamental difference is the belief that human nature is manageable and that order, justice and freedom can be achieved through the creation of the right economic conditions and institutional mechanisms.<sup>17</sup> The politics of the immediate post Cold War world gave strength to belief that 'democratic peace' could prevail.<sup>18</sup> Another approach that draws from liberalism gives more emphasis on economic and other interdependencies between states. This argues that such interdependence increases the cost of war for all parties

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15 K. Waltz, *Theory of International Politics* (Reading, MA, 1979).

16 S. Walt, *The Origins of Alliances* (Ithaca, 1987).

17 R. Latham, *The Liberal Moment: Modernity, Security and the Making of Post-War International Order* (New York, 1997), p. 34.

18 M. Doyle, 'Liberalism and World Politics', *American Political Science Review*, 80 (1986).



and therefore makes it less likely.<sup>19</sup> A third mechanism for international order is liberal institutionalism. This suggests that institutions and regimes create stability by developing norms of conduct and shaping and regulating behaviour.<sup>20</sup>

It is of course possible that realists should pursue ethical concerns like the protection of human rights and the environment. Indeed, in the case of Myanmar, realist concerns of state stability, regional order and relations with the great powers have been predominant in ASEAN's decision to intervene. Nevertheless, the liberal tradition would seem to give more emphasis to a consistent and sustained attention to ethical concerns. The multilateral and normative frameworks and institutions that it constructs would tend to help foster the creation of norms and of regular processes to help monitor and regulate behaviour.

Looking at the statements and practices of foreign policy in ASEAN, we can discern different strands of both realism and liberalism. The institutions of ASEAN and the ASEAN Regional Forum (ARF) can be seen, fundamentally, as exercises that seek to develop and apply norms of conduct and restrain negative behaviour by regional states. These institutions seek to engage great powers and, especially, the USA, but not to be dominated by them. ASEAN and its modes of dialogue are, in this sense, normative and liberal enterprises.

Yet the multilateral and normative aspects of ASEAN are not all there is to international relations in the region. Quite apart from the multilateralism, there are bilateral arrangements in security and economics that are of a different and more realist nature. Thus, the USA has the Philippines and Thailand in Southeast Asia as their formal allies, and a long-term agreement to use port and facilities in Singapore for their military. Similarly in the field of economics and trade, American investment and trade has been the dominant factor in the economic openness of the Southeast Asian states to the rest of the region and the world economic system. The recent bilateral free trade agreement between the USA and Singapore is, in this context, a marker of continuity and deepening in the relationship between the region and America.

The central place of realism in the thinking of ASEAN member states can also be seen in the real limits that the association has experienced in fostering closer cooperation and regional integration, even after almost four decades of existence. Debates over security, and ways of defining national interest, also display the realism that underscores thinking and practice in this arena. While some in ASEAN and Asia have talked about community and human security, the state remains the main actor and focal point of security concerns. In ASEAN parlance, moreover, this conception of state security is extended by the idea of 'comprehensive security' to include questions of economic stability and growth, as well as internal concerns over social and racial cleavages.

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19 R. Rosecrance, *The Rise of the Trading State: Commerce and Conquest in the Modern World* (New York, 1986).

20 J. Ruggie, 'Multilateralism: The Anatomy of an Institution', in J. Ruggie (ed.), *Multilateralism Matters: The Theory and Praxis of an Institutional Form* (New York, 1993), pp. 3–50.

As such, multilateralism should be seen as a hedge, an additional mechanism that is being created over and above the bilateral networks. This has considerable impact on the will and ability of such systems to deal with ethical concerns, such as human rights and the protection of the environment. Indeed, on human rights, there is no single venue in ASEAN for a sustained and detailed discussion among officials, despite the many and varied meetings held. Human rights concerns are instead strewn across various ministries and agencies, including those dealing with social development, security and foreign affairs.

In these circumstances, ethical concerns can sometimes lead to rhetorical expressions of support. These can be seen as ‘speech-acts’ in the conduct of foreign policy and evidence that the states have been acculturated to the discourse of human rights and other ethical concerns. They should not, as such, be wholly discounted. There is, however, less evidence that they are meaningful in seeking the resolution of the real dilemmas and violations of human rights. This is especially as, with the striking exception of Cambodia, the ‘speech acts’ have not to date been sustained in many instances.

### **Conceptions of Community: State Control or Potential Solutions?**

Let me return to the contrast between the ASEAN statements on Myanmar and on an economic community. There is a lesson in the contrast between them. For while interdependencies are a reality, institutions in this region have lagged behind these realities. Even in its heyday, APEC lagged behind the private sector initiatives that linked our economies. In the crisis and downturn, APEC has been unable to respond and is a small or even missing factor in the recovery plans. Within South East Asia, after ASEAN has evolved its economic cooperation with the AFTA, a fuller integration has only begun to be pursued, with the 2003 Summit, in Bali Concord II, declaring the ambition of creating an ASEAN economic community.

In the environmental field, there is no institution despite the persistence of fires and haze in South East Asia, acid rain and dust in North East Asia or the trade in illegal logs between the two sub-regions and internationally that has brought increased deforestation. Even on the issue of the fires and haze, while ASEAN has moved, the treaty it has prepared has yet to be ratified by Indonesia. Moreover, the treaty is quite narrowly focused on environmental issues and its effectiveness may be questioned in this regard, as the more influential and affected ministries of forestry, agriculture and economic development agencies are not involved.

On ethical issues, such as human rights, independent but government-backed institutions have been started at the national level in a number of ASEAN states: the Philippines, Indonesia, Malaysia and Thailand. However, no regional institution has arisen, and interchange between the different national commissions has only been nascent. Concepts of community are contested by the states and governments in the region. Some continue to seek to deny or control them, while others seek to co-opt them or conflate the idea of community with the state itself. Thus, while ASEAN leaders have set the 2020 vision of creating a ‘community of caring societies’, the peoples of the sub-region still remain far apart on many fronts.

ASEAN leaders and officials have now embarked on plans to create an ASEAN Economic Community. There are also efforts towards an ASEAN security community, in which norms would be strengthened for mutual understanding and cooperation, as well as practical training in areas like peace keeping. In these efforts, we may see a growing disposition not so much to liberalism in the region, but a certain functionalism that recognizes how ASEAN needs to cooperate more closely in selected fields.

Yet, the idea of 'community' has not strongly been extended to the social and ethical spheres in ASEAN. Neither have the aims for an ASEAN community gone much beyond an intergovernmental interaction to include more interaction with and amongst various peoples and organizations in the civil societies of the member states. More broadly too, a wider Asian community is only now being discussed in terms of the ASEAN plus 3 (A+3) process and with the inaugural East Asian summit held in 2005, with the inclusion of India, Australia and New Zealand or the A+3 countries. However, there are few, if any, institutions to carry forward the process. In the Asia Pacific, the older APEC and ARF idea of a community in the round has been badly assailed. Instead, American primacy is creating a 'hub and spoke' structure. In this, realist conceptions of interest and security, post-9/11, are tending to assert themselves, rather than ethical values and ideas of an Asian or Pacific community.

As these measures gain speed and volume, it may be possible to speak of the region as an imagined community, to use Anderson's idea on a regional rather than national scale.<sup>21</sup> The imagined community that is created may be able to share not just a trade in goods and access to markets, but also communicate in shared terms and mutually accepted values a discourse about ethics. For the interim, however, functionalism is likely to be the more significant driving force within ASEAN. Functionalism is not however likely to emphasize ethical issues or the sense of identity that some believe most important.<sup>22</sup>

With such emphasis, and given the wider international movements and US-led trends, there are few grounds to believe that ethical issues will be raised on the foreign policy agenda in a systematic, institutionalized and consistent way. Ethical concerns will instead be seen a political phenomenon, to be dealt with by political tools, and judged as success or failure in political terms by the political leadership.

Realist politics, both domestically and in regional relations, will continue to dominate, together with the norm of non-intervention. Ethical values like those of human rights and the protection of the environment do enter the equation of state policy. However, they stand alongside more traditional, realist concerns with the maintenance of stability and order in the region, and the avoidance of international approbation that might lead to ASEAN's isolation by the major powers.

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21 B. Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London, 1991); A. Acharya, *The Quest for Identity: International Relations of South East Asia* (Oxford, 2000).

22 Acharya, *The Quest for Identity*.

**Conclusion: Ethical Values in the Equation of Foreign Policy**

The debate in ASEAN over ethical values now is quite different from that a decade ago. In the early 1990s, there was considerable sound and fury in the East-West divide over human rights and values.<sup>23</sup> In that same period, even as the Earth Summit of 1992 (UN Conference on Environment and Development) brought unprecedented attention to environmental issues, there was a considerable 'North-South' divide on the principles to address the common concerns of humanity. In these debates, the differences seemed to focus on the very norms for managing a more interdependent world with an inter-state system.

In the period since, discussion about the ethical ends we hoped for has lessened and we seem to have come to some convergence on norms. The member states in ASEAN and their elites have, in some cases, come to better see that ethical concerns can and do count for them quite directly, as in the case of the smoke haze pollution from fires in Indonesia. The conflagrations of the crisis period and on-going incidents of terrorism in the region have also persuaded more people that human values and rights are issues of interdependence.

In addition to persuasion, other state representatives and elites have, at least, learnt to adjust their statements to allow more scope for ethical concerns like human rights and sustainable development. They have become more accustomed to the international discourse on these topics for reasons of state diplomacy, even if there is no heartfelt conviction. These trends are likely to continue in ASEAN, with its real and increasing interdependencies. Ethical concerns will become more important than they have been before.

Where these 'speech acts' by ASEAN member states is sustained, they can have significant impact, as the cases of Cambodia and, in part, of Myanmar show. Even so, there is considerable scepticism if ASEAN apply a similarly sustained and consistent approach to the broad spectrum of human rights and ethical concerns in the region as a whole. For while there is more attention to these issues, they are not the only ones to be considered and must jostle with on-going concerns of national interests, cast in realist terms. Additionally and just as importantly, the processes for looking at ethical concerns across the region and the means to 'intervene' to foster them are subject to on-going debate.

Ethical concerns cannot and should not be content with episodic attention and politicized interventions. Some may wish to avoid legal approaches to the conduct of foreign relations in this area. There are also many who would dismiss ideals of a regional community with a recognized and conscious interdependence across borders as a distant dream. The attraction of ethical concerns and values will however give both community and legalization a greater gravity in ASEAN. In this, they should draw support from the functional cooperation that is growing in economic and security cooperation and 'community' in these sectors.

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23 S. Tay, 'Human Rights, Culture and the Singapore Example', *McGill Law Journal*, 41/4 (1996), pp. 745–780.

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## Chapter 9

# The Ethical Challenge of Trade Policy<sup>1</sup>

Andrew Stoeckel

There is a major ethical challenge in forming trade policy, but it is not the one most people would think. The word ‘trade’ in this chapter refers to international trade – the exchange of goods and services between countries, driven by the efficiency of specialisation and comparative advantage. If a developing country pays \$1 a day in wages, obviously shirts are going to cost less than those made in a country paying wages of \$100 a day. But what matters for trade is not that shirts cost absolutely less in the developing country, but that the developing country is *relatively* more efficient at making shirts than the motor cars made by the industrial country. Trade dictates that shirts will be made in the developing country and be exported to the industrial country. ‘Trade policy’ refers to the government policies that affect this international exchange of goods and services.

Governments around the world intervene heavily in this trade. In some cases they restrict this trade massively – mostly to ‘protect’ some local industry under various justifications. The main justifications are to save jobs, preserve national security, preserve food security, protect the environment, prevent malicious dumping, raise revenue for government – the list goes on. But, whatever the justification, these do not stand up to scrutiny. The effect is to hurt the sales of another country. One of the main justifications for restricting trade is to ‘save jobs’. This means most of the restrictions on trade discriminate against developing country interest, which introduces the ethical challenge.

First, some background. Economists have known for more than 200 years that free trade is highly beneficial to both parties. This proposition, mostly advanced by David Ricardo and Adam Smith, is the most widely agreed proposition amongst the economics profession. Surveys of professional economists show 80 per cent or more agree on the gains from trade.

Although free trade makes economic sense, many countries and some governments take a lot of convincing of the need for free trade. One example of this need for convincing is the Doha round of trade talks conducted under the auspices of the World Trade Organization (WTO). These talks have repeatedly stalled. They have

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<sup>1</sup> Much of the statistical material used here appeared in two studies published by the Commonwealth of Australia and APEC (Asia-Pacific Economic Cooperation), both of which were prepared by the Centre for International Economics. These studies are *Globalisation and Poverty, Turning the Corner* (2001) and *Open Economies Delivering to People: APEC's Decade of Progress – A Report Prepared for the APEC Leaders Meeting*, (Brunei Darussalam, 2000). Andrew Stoeckel is the Executive Director of the Centre for International Economics.

faltered on the failure of France and Germany to reform the Common Agricultural Policy of the European Union. Recent decisions to decouple farm support payments are half-hearted exercises.

To realise the benefits of free trade, various devices have been used to reduce barriers to trade. One has been the analysis, transparency and public education of the costs of restrictive policies at home. This device has worked very well for Australia and New Zealand, as well as many other countries like Taiwan and a host of others throughout East Asia. Unilateral trade reform is a powerful device for lowering trade barriers and many countries have gone down this path.

Another main device to lower trade barriers has been the multilateral route. By appealing to people's instincts of mercantilism (even though that is wrong-headed) a global game has been set up under the auspices of the WTO, which amounts to, 'I will reduce my barriers to trade, if you reduce yours'.

But the going is tough using the multilateral route, as typified by the 'Battle of Seattle' in 1999. Thousands of protestors wrecked the 1999 WTO meeting of trade ministers to launch a new round of trade talks aimed at reducing barriers to trade. Dozens of trade unions, Greenpeace, World Vision; just about every NGO was there in numbers protesting the globalisation of the world economy. Their arguments seemed to fall into three main camps:

- Familiar 'jobs will be threatened at home'; allowing imports just encourages the exploitation of low paid workers in poor countries (the unions are big on this);
- Growth just causes the rich to get richer and the poor to get poorer, with all the problems that this implies, such as high infant mortality, low literacy rates and so on (the international aid agencies are big on this);
- Growth only leads to environmental degradation. There is a 'race-to-the-bottom' and so production will simply locate to that part of the world where regulation is the weakest, resulting in more pollution or more resource depletion (naturally, it is the 'greens' who are biggest on this).

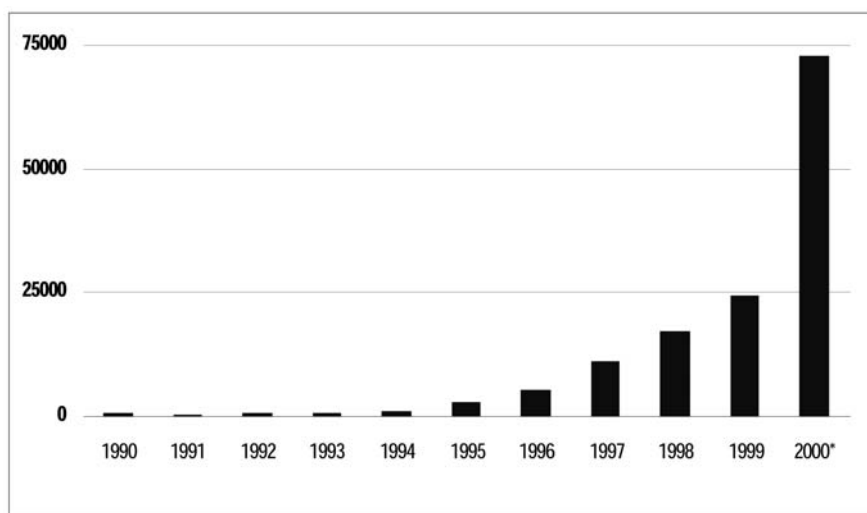
Here lies the ethical challenge. If removing barriers to trade did exploit workers in third world countries, if it did exacerbate poverty and if it did accelerate resource depletion and pollution, then free trade would be a bad policy. The correct moral, economic and social course of action would be to restrict trade. But if these things were not true and the opposite applied, then the anti-globalisers are playing a cruel hoax on the poor of the world and on the best use of the planet's resources. These groups, although well intentioned, would be irresponsible and partly to blame for the persistence of a large degree of unnecessary poverty and suffering in the world today.

## **Globalisation**

The evidence of trade policy and globalisation on growth, poverty and the distribution of income have been studied and analysed *ad nauseam*. A large amount of this work

has been conducted by agencies such as the OECD, UNDP and the World Bank – the latter having a clear charter to reduce world poverty.

Many people think globalisation is a new phenomenon. Certainly, the use of the word is new. The word ‘globalisation’ only started to become widely used after 1995. There was a three fold increase in the use of the word in the world’s English newspapers in the nine months to September 2000 over the previous twelve months (see Figure 9.1). With such a rise in the use of the word, it is understandable that there is confusion about what ‘globalisation’ is and the belief that it is something new and different. But the process of globalisation is not new and history gives us some important lessons of the dangers of misunderstanding what the debate is about.



**Figure 9.1** Number of times ‘globalisation’<sup>†</sup> is mentioned in world press articles

<sup>†</sup> Either globalization or globalisation. All countries, all outlets, English only.

\*Nine months to September 2000.

*Data Source:* Reuters Business Briefing, accessed 20 September 2001.

Globalisation is the integration of world markets brought about by the lowering of transaction costs. As the costs of transport, communications and barriers to trade and investment have fallen, the movement of goods, services and investment around the world has increased in volume, variety and speed. And since some barriers to trade run into the hundreds of per cent – for example, sugar – the biggest transaction cost is often border barriers.

This process of economic globalisation (henceforth referred to as globalisation) is not new. It has been going on since people first started to engage in trade and exchange. Indeed, by some estimates, the world prior to World War I (when it was centred around the United Kingdom), was relatively more ‘globalised’ than it is



today.<sup>2</sup> Yes, there is more total trade today than a century ago and whole new trades in services are now possible with modern communications such as the internet. But in a relative sense for some countries such as Australia and the United Kingdom, the amount of trade as a proportion of GDP was greater a century ago (see Table 9.1).

Other data show that in 1913 nearly 60 per cent of the securities traded in London were foreign ones.<sup>3</sup> On yet another measure – the movement of people – the world was far more integrated then than now. Passports were not required, nor work permits, and citizenship was granted freely to immigrants.<sup>4</sup>

**Table 9.1 Ratio of merchandise exports to GDP**

Country	1890	1913	1960	1970	1990
	%	%	%	%	%
Australia	15.7	21.0	13.0	11.5	13.4
Canada	12.8	17.0	14.5	18.0	22.0
Denmark	24.0	30.7	26.9	23.3	24.3
France	14.2	15.5	9.9	11.9	17.1
Germany	15.9	19.9	14.5	16.5	24.0
Italy	9.7	14.4	10.0	12.8	15.9
Japan	5.1	12.5	8.8	8.3	8.4
Norway	21.8	25.5	24.9	27.6	28.8
Sweden	23.6	21.2	18.8	19.7	23.5
United Kingdom	27.3	29.8	15.3	16.5	20.6
United States	5.6	6.1	3.4	4.1	8.0
World	6.0	9.0	8.0	10.0	13.0

Source: Feenstra (1998) and Maddison (1995) cited in Crafts (2000).

Back in 1914, according to Lord Keynes, people in London could order by telephone ‘the various products of the whole earth’, invest in ‘the natural resources and new enterprises of any quarter of the world’ or invest in ‘any substantial municipality in any continent’.<sup>5</sup> To Keynes the internationalisation of social and economic life was nearly complete. This prosperous, globalised economy was the outcome of policy choice. It started with the repeal of the Corn Laws in Britain in 1846, which ushered in a period of freer trade through most of Western Europe. The period was one of great prosperity.

Today, the world has achieved a level of trade as a proportion of GDP greater than before 1913, but it has taken a long time to get to that point. It took years for capital flows to reach the levels now experienced.

2 P. Krugman. ‘What do undergrads need to know about trade?’, in *American Economic Review: Papers and Proceedings of the 150th Annual Meeting*, 5–7 January 1993, 83/2, (1993), p. 24.

3 J. Micklethwait, A. Wooldrude, *Future Perfect, The Challenge and Hidden Promise of Globalization*, (New York, 2000), p. 5.

4 Ibid.

5 J. M. Keynes, *The Economic Consequences of the Peace*, (London, 1919).

## Early Backlash

What went wrong? It was not the two world wars, the Great Depression, the rise of communism and the cold war, and the nationalisation of major industries – although each played a part in the dismal inter-war period. Historians show that the correct view of the inter-war period is that a political backlash to the effects of globalisation developed in the early 1900s. Protectionism and restrictions on immigration were reimposed *before* the Great War.<sup>6</sup>

The inter-war period was a bleak time for the world. Between 1913 and 1950 the world economy grew much more slowly than between 1870 and 1913 and world trade grew much less than world income with inequality between regions rising.<sup>7</sup>

## Changed Mood to Integration

It was not until the Bretton Woods meeting in 1944 that the world once again embarked on a path of cooperation and closer integration that would finally lead to liberalisation. Reflecting the changed mood to openness and integration, global institutions – the IMF and World Bank, the OECD and later the GATT (the international trade body now called the WTO) – were all established. The world economy grew much faster from 1950 to 1973 than ever before – it was a golden age of unparalleled prosperity.<sup>8</sup> The 1970s and 1980s were, however, years of slower growth as the world absorbed two oil price shocks. Those countries that managed to change and adjust over this period did better. Flexibility was an advantage.

The Bretton Woods settlement was designed to free the world trading system in a carefully controlled way.<sup>9</sup> The system of fixed exchange rates and managed control over international capital flows broke down during the 1970s and early 1980s as more and more countries sought increased flexibility in their economy. They floated their exchange rates and liberalised international capital flows. Years later, communism was to also give way.

The globalisation of the economy has been further aided by some extraordinary reductions in the cost of transportation and communication. This is shown in Figure 9.2. There is little doubt that the telephone call and computer costs would have fallen further since 1990. This has not only facilitated trade, but also investment with greater speed and accuracy of information over large distances, so has the ease and confidence of running operations offshore. But the four panels in Figure 9.2 show enormous reductions in communications and transport costs in the inter-war period. Yet the world did not globalise. The reason is that policies did not allow it. Hence, the powerful point emerges that globalisation is a policy choice.

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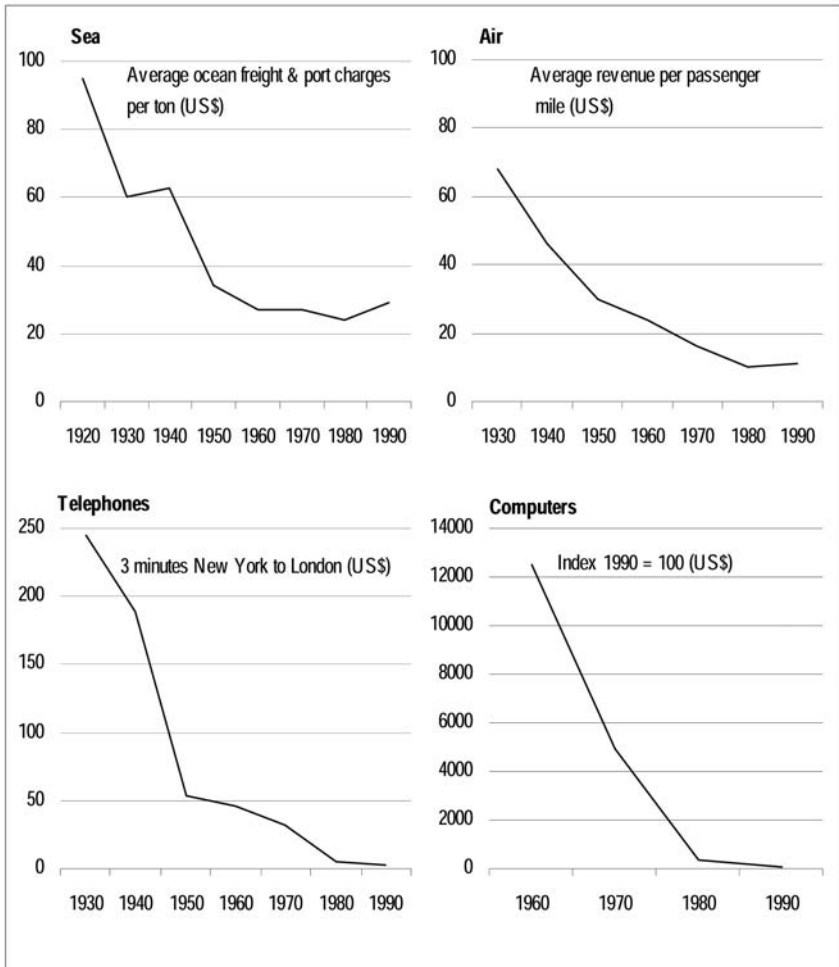
6 K. H. O'Rourke, J. G. Williamson, *Globalisation and History, The Evolution of a Nineteenth-Century Atlantic Economy*, (Boston, 2000), p. 286.

7 OECD, *Agricultural Policies in OECD Countries, Monitoring and Evaluation, 2001*, (Paris, 2001).

8 A. Maddison, *Monitoring the World Economy, 1820–1992* (Paris, 2001).

9 Micklethwait and Wooldrude *Future Perfect*, p. 5.

Only now is the world close to achieving what was achieved a century ago – the major exceptions being the high barriers to agricultural trade that are proving so difficult to remove<sup>10</sup> and migration, which is ‘unlikely ever to regain the levels

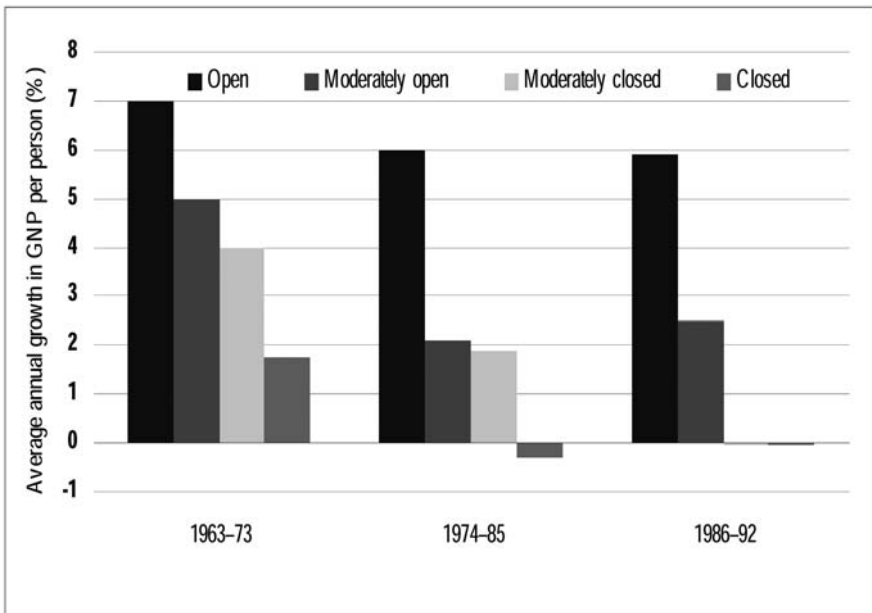


**Figure 9.2 Declining cost of transportation and communication**

Data source: Global Policy Forum 1999.

10 A. Stoeckel, H. Corbet, *Reason versus Emotion, Requirements for a successful WTO round, Seattle 1999* (Canberra, 1999).

achieved prior to the Great War'.<sup>11</sup> It has taken some forty years to unwind the damage done to the world trading system that started before World War I. What has been the effect on growth? Research shows clearly that those developing countries that have opened their economies have grown faster – a result that seems quite robust over different decades (Figure 9.3).



**Figure 9.3** The rewards of openness in developing economies are higher rates of growth

Data source: OECD 1999.

Moreover, this growth has not come at the expense of the poor. Except for people in Africa, it seems that, by-and-large, the poor are not getting poorer. To the contrary in fact: millions of people have been lifted out of poverty, mostly in Asia.

As former statistician of the Australian Bureau of Statistics, Ian Castles, describes it, 'Of the developing world's 4.8 billion people, two-thirds live in countries that have achieved faster growth rates in GDP per head than the United States since 1973'.<sup>12</sup> The Australian Treasury has reached the same conclusion.<sup>13</sup>

11 O'Rourke, Williamson, *Globalisation and History*, p. 286.

12 I. Castles, 'Let's stop using shoddy statistics', *Australian Financial Review*, 21 June 2001, p. 63.

13 Australian Treasury 2001, *Economic Roundup Centenary Edition 2001*, <http://www.treasury.gov.au>.

The above brief potted history of globalisation is necessary to appreciate several conclusions.

- Globalisation is not new; it is a process that has been going on for a very long time.
- Globalisation is not unstoppable; the world has retreated to protectionism in the past. There is nothing in history to say it will not do so again.
- When the world was globalised, prosperity followed; when it was not, the opposite was the result.
- Those developing countries that have globalised over the last three decades have done much better than those that have not. Average incomes have risen and inequality has fallen for the vast majority.
- One reason why many countries remain poor today is not because of globalisation, but because of their failure to embrace it with the institutional and governance change required.

## **Backlash**

Why then the public backlash against globalisation? The public demonstrations at the WTO ministerial meeting in Seattle in 1999 are well known, but there have been plenty of protests before and since.

Part of the problem is that many people do not appear to know that the world has become a better place for billions of people. The public have some basis to be misinformed on this. For example, Ian Castles has taken the World Bank's former president, Jim Wolfensohn, to task over misuse of international comparisons of GDP per capita.<sup>14</sup> Wolfensohn has claimed the rich have gotten richer and the poor poorer. But, according to Castles, Wolfensohn used data that was not in accordance with the professional standards of the global system of national accounts – to which the Bank itself was a contributor! The data show the rich and poor getting richer and the world distribution of income improving over the 22 years since 1965.<sup>15</sup>

Other examples of misinformation can be found in the environmental debate. There are cases of environmental damage that receive widespread publicity, but there are also cases where improvements have occurred that do not get noticed. In his book *Hoodwinking the Nation*, the late Julian Simon documents these instances and cites the lack of scientific training by journalists for the mistaken widespread belief that growth has led to worse environmental outcomes overall.<sup>16</sup> Another explanation of the backlash is the pace of change. The rapid pace of change over the last decade driven by policy change and technology has left some groups in the community either being worse off or, more pertinent, believing they are worse off.

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14 Castles, 'Let's stop using shoddy statistics'.

15 Ibid.

16 J. Simon, *Hoodwinking the Nation, A Cato Institute Book* (New Jersey, 2000).

## **Gainers and Losers**

Part of the gain from adopting new technology or removing business to commerce is that resources are put to more productive use. But as new jobs, products and opportunities are gained, others are lost. So rationalisation of banks, for example, occurs and jobs are lost. Bank branches close down as the need for ‘bricks and mortar’ is replaced by electronic banking. More efficient banking is the result, but regions come under pressure and some people object. The Australian telecommunications company, Telstra is partly privatised and with its part new freedom and changing technology there are job losses, freeing up workers to find more gainful employment elsewhere. One problem though – workers laid off in regional areas do not have the same opportunity to find alternative employment. So job losses and the potential for rationalisation of services sees a political backlash towards complete privatisation. Yet the full privatisation of Telstra – to remove all politics from the board – is essential if the company is to be fully competitive in the global economy. The decision not to fully privatise Telstra now may well have sown the seeds for its own demise in ten years time to some other competitor. But in ten years time people will not look back to decisions made today. Something or someone else will be blamed.

## **Compensation for Change**

The need to compensate the losers from change, in a temporary way at least, has been recognised for a long time, and social safety nets in various forms are in place. The problem no one has fully solved yet is how to compensate for change while not distorting the incentive to work, save and invest. Various ideas such as ‘wage insurance’ that partly compensates for a limited period the earnings losses of displaced workers have been proposed.<sup>17</sup> The idea is that the compensation only kicks in when workers have obtained a new job, giving strong incentive to find new employment.

The issue is not so much whether schemes like this work. The issue is that there is so little understanding of and debate on the need to listen to communities and address their concerns about change. There is too little public debate on the matter and, even when it does occur, often it is after the event when positions are polarised. Even the idea that the one constant in life is change needs to be better understood as well as the very high cost of trying to prevent globalisation occurring.

Those that argue that globalisation is inevitable do so on the basis that technology is the main driver. Faster and cheaper transport and communications costs, it is argued, will further integrate the world. They will. But there were huge reductions in real costs of transport and communications in the interwar period and the world did not globalise. As Shapiro and Varian note well in their book published before the technology bubble burst in 1999, ‘Technology changes. Economic laws do not’.<sup>18</sup> The big driver has been policy. To sell the remaining public shares of Telstra, remove politics from the board and allow it to be a globally competitive company is a policy

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17 Stoeckel, Corbet, *Reason versus Emotion*.

18 C. Shapiro, H. R. Varian, *Information Rules, A Strategic Guide to the Network Economy* (Boston, 1999).

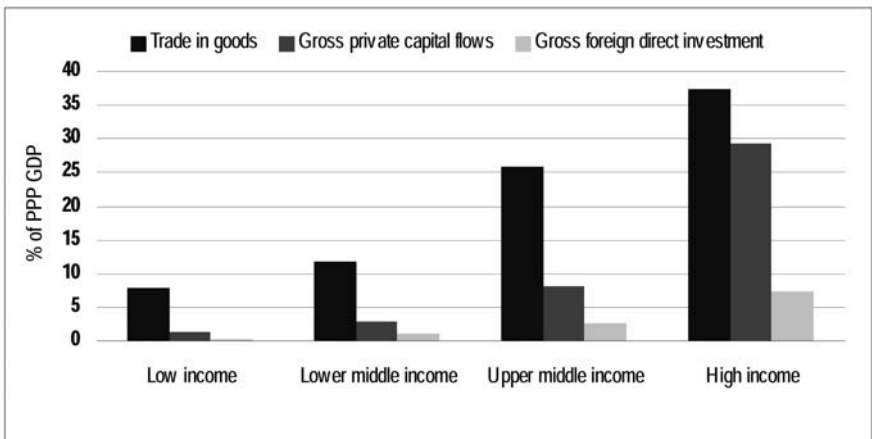
choice. To remove tariffs on cars and textiles and allow more trade in these goods is a policy choice. To allow the Sydney Futures Exchange to merge with the Australian Stock Exchange is a policy choice. So too is the need to reform international tax arrangements. These policy choices affecting globalisation of an economy are made by politicians, not companies.

Globalisation is therefore a choice. The danger, as shown by history, is that misunderstanding globalisation and its effects can lead to damaging policy choices which it can take years to recover.

The need for public debate and understanding about the policy choices we face is therefore an imperative if we are to do well in the world and continue to attract the attention of investors, both local and overseas. But how to generate that debate? A good place to start may be to stop using the word ‘globalisation’. It has become an adversarial issue. Rather, both sides of the debate should be trying to understand what is wrong with the greater social and economic integration between people in different countries (globalisation). This interaction is not about ‘money’. It is about all the things possible with higher growth – better education, better health, better environmental and social outcomes.

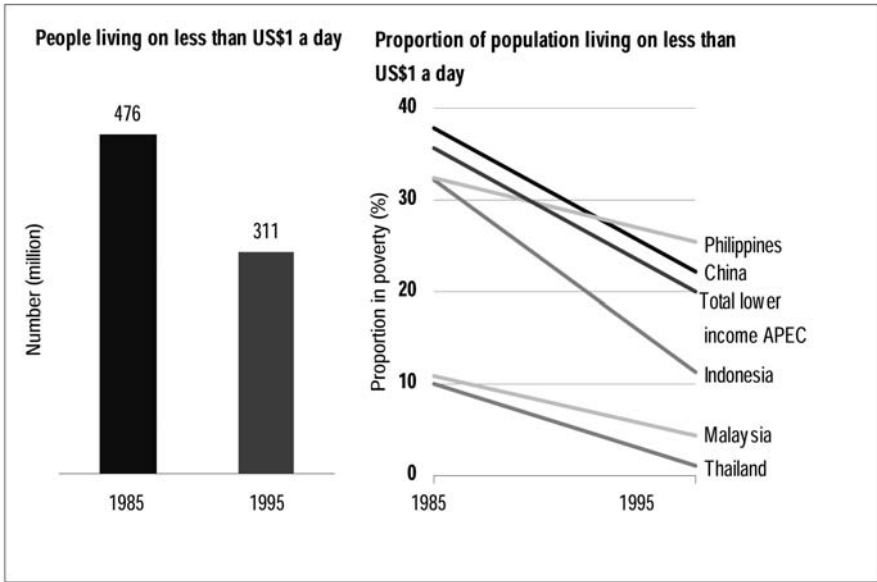
### **The Evidence that Globalisation has Benefited Mankind**

It was shown earlier in Figure 9.3 that open economies have grown faster than closed ones. This result turns out to be quite robust over several decades. Higher income economies are more open on all facets of globalisation than low income economies. They are more open to trade, more open to capital flows and more open to direct foreign investment (Figure 9.4).



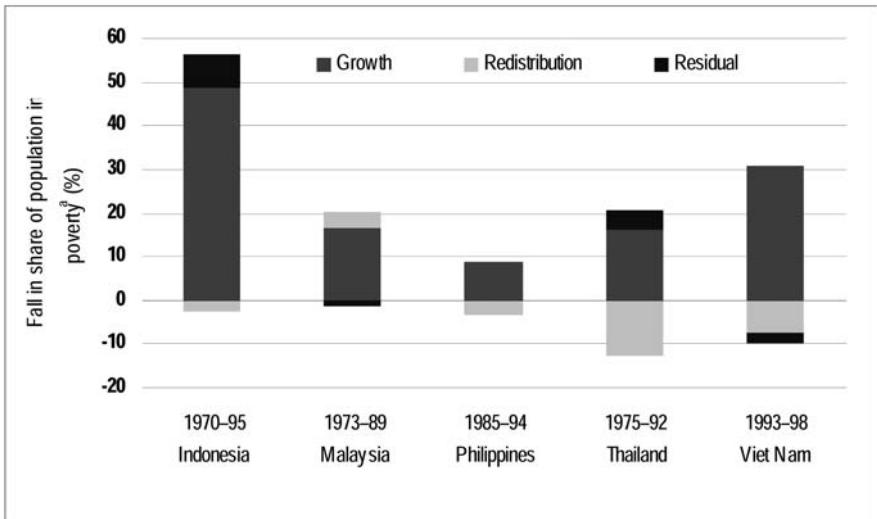
**Figure 9.4 Higher income countries are open to all facets of globalisation**

*Data source: World Bank (2001).*



**Figure 9.5 East Asian APEC members have been alleviating poverty**

Data source: Ahuja et al (1997).



**Figure 9.6 Growth is the driving force behind poverty reduction**

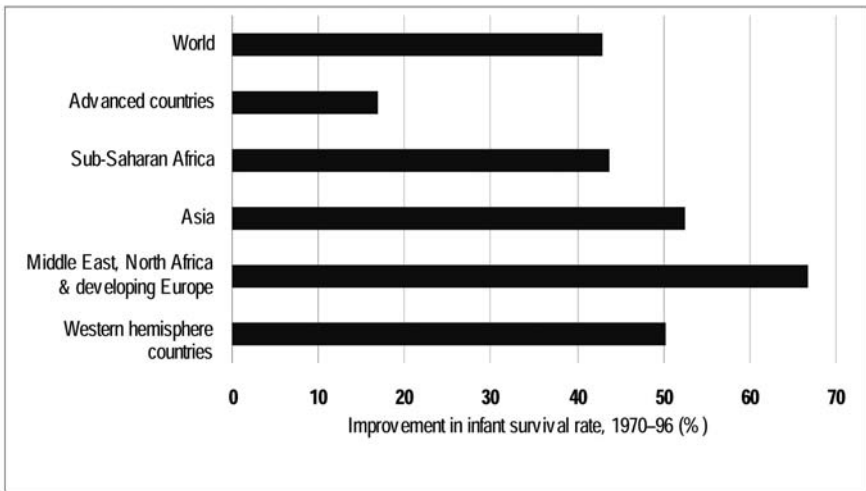
\*Percentage of population living on less than US\$1 a day.

Data source: World Bank (1999).



What about the argument that these high income countries are prospering at the expense of low paid workers on \$1 a day wages? Here the evidence shows the number of low paid workers (less than US\$1 a day) has fallen by 35 per cent in East Asia, over the decade 1985 to 1995 (Figure 9.5). That is one of the biggest falls in poverty (usually taken to be less than US\$1 a day wages) the planet has ever seen.

This reduction in poverty was driven by trade and economic growth (Figure 9.6). The evidence, at least in South-East Asia, also clearly shows that it has been growth that has been behind the poverty reduction, not the redistribution of income or other policies. Far from exploiting workers on a US\$1 a day, the evidence shows it has provided an enormous opportunity.



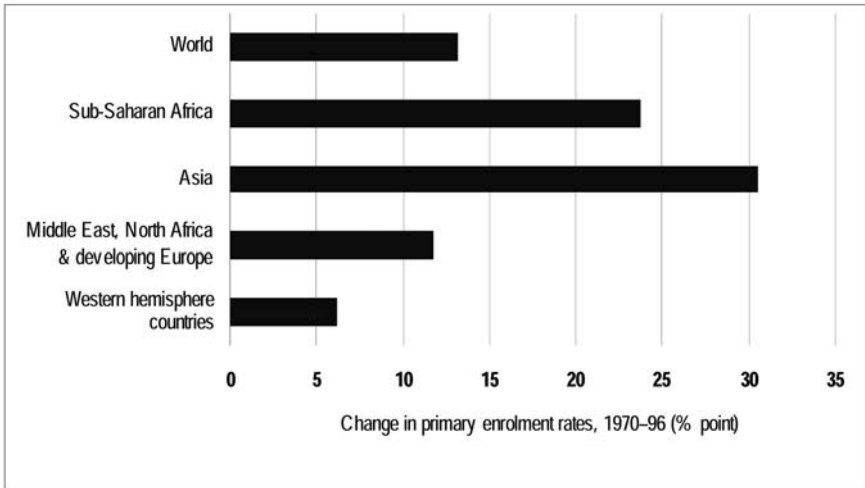
**Figure 9.7** Infant survival rate has improved particularly in developing countries

*Data source:* Sab and Smith (2001).

What will bid up the \$1 a day wages to \$2 and eventually \$100 a day is competing demands for the workers in these low-income countries. Attempting to use restrictive trade policy to improve working conditions in low-income countries is counterproductive. Restricting trade makes the low-income country poorer and less able to educate its people, and eventually makes it more difficult to improve working conditions.

This large reduction in poverty has been reflected in other social indicators such as the improvement in infant mortality. In developing countries, infant survival rates have improved by around 50 per cent between 1970 and 1996 (Figure 9.7). Literacy rates and schooling enrolments have risen (Figure 9.8).

Despite progress, poverty and infant mortality remain. But the solution of poverty is more trade and growth, not less. A lot of people like to challenge that point. They argue that growth has caused the trade – not the other way around. But some clever



**Figure 9.8 More children are enrolled in primary schools**

*Data source:* Sab and Smith (2001).

research<sup>19</sup> shows that every 1 per cent increase in trade *causes* economic growth of 2 to 3 per cent. Removing barriers to trade leads to more trade, which leads to more growth.

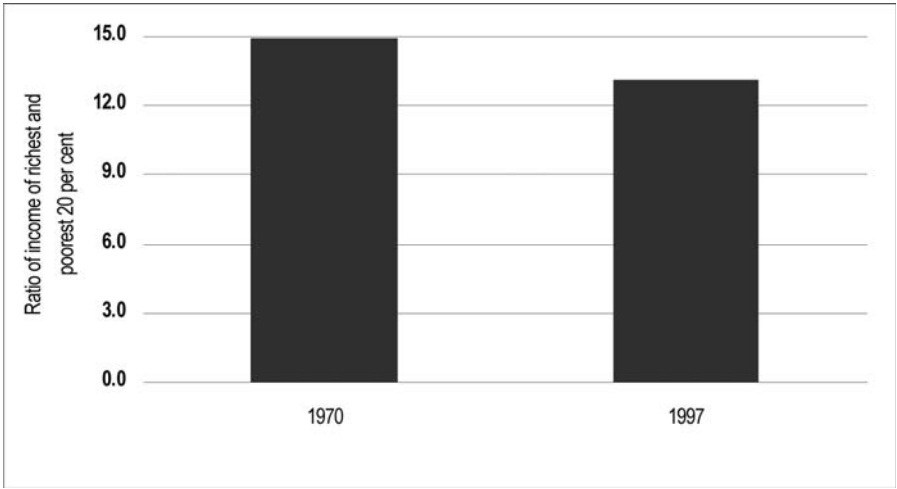
The critics are still not satisfied with this evidence and argue that it is the rich in developing countries that have got richer and the poor, poorer. They argue that the distribution of income has worsened and millions are still in poverty. It is true that millions throughout the world still live in poverty – as of 1995 there were 311 million on less than US\$1 a day. But the evidence on the distribution of income refutes the poor getting poorer myth. The disparity in the purchasing power of the richest and poorest 20 per cent of people has fallen from 15 to 13 between 1970 and 1997 (Figure 9.9).

The best measure of inequality is the gini-coefficient. As seen in Figures 9.10 and 9.11, income inequality has fallen. Between 1965 and 1997 income inequality in the world fell 10 per cent, while it fell by 23 per cent among APEC economies.

Yet more evidence of the reduction in poverty as incomes rise is indicated by the following chart. Taking a cross section of 74 countries, Figure 9.12 shows that, as the average income of a country rises, so the level of poverty falls. The conclusion is that as average incomes rise, the rich get richer but the poor get richer as well – and they get proportionally richer as well so that the level of inequality falls. The problem of poverty and inequality is highly concentrated in Africa.

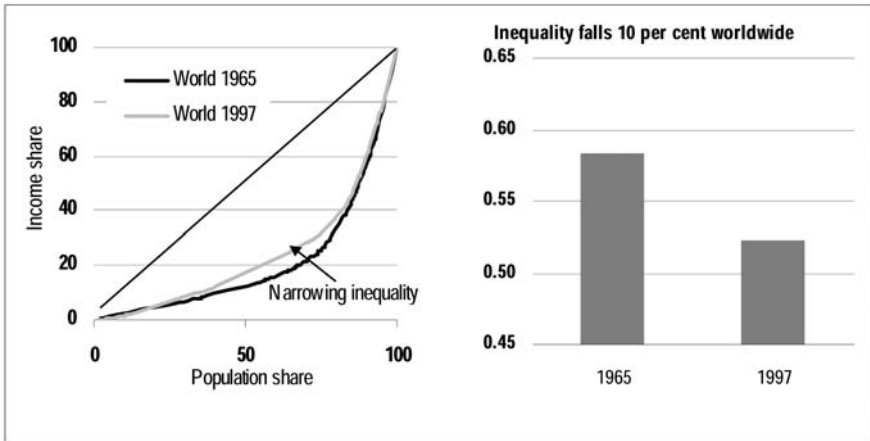
The popular cliché that the ‘rich get richer and the poor get poorer’, while popular, does not stand up to the facts. Just why such mantra persists in the face of credibly produced contrary evidence is an issue returned to later.

<sup>19</sup> J. A. Frankel, D. Romer, ‘Does trade cause growth?’, *American Economic Review*, 89/3 (1999): 379–99.



**Figure 9.9** Disparity in the purchasing power of the richest and poorest 20 percent of people has fallen

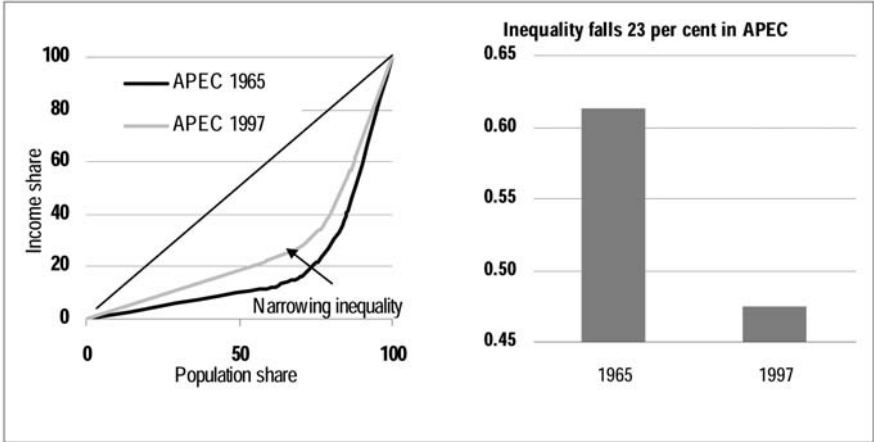
Data source: UNDP (2001).



**Figure 9.10** Between 1965 and 1997, income inequality in the world fell by 10 percent

Data source: Melchior, Telle and Wiig (2000).

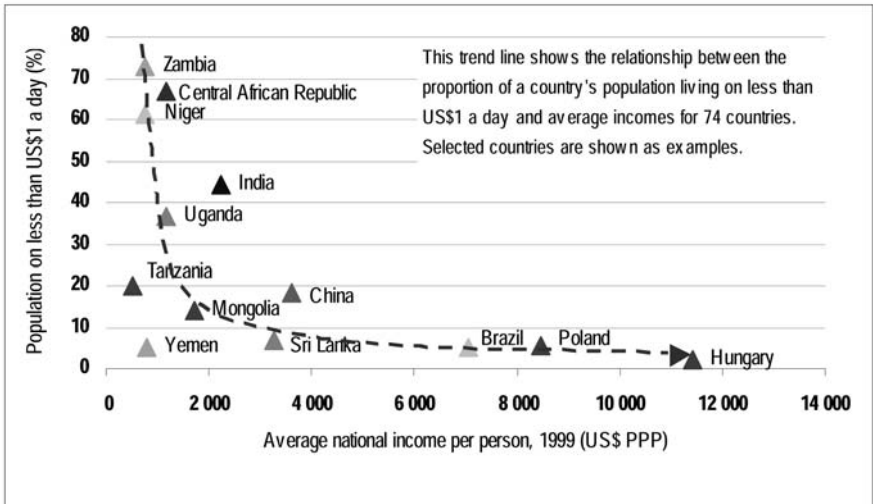
The point reached so far is that opening to trade causes growth, and that growth both lifts average incomes and reduces the absolute and relative incidence of poverty. This is not to deny that there is not massive poverty, hunger and unnecessarily high mortality and illiteracy rates in the world. There is. It is just that it is *not* caused by



**Figure 9.11** Between 1965 and 1997, income inequality in APEC fell by 23 per cent

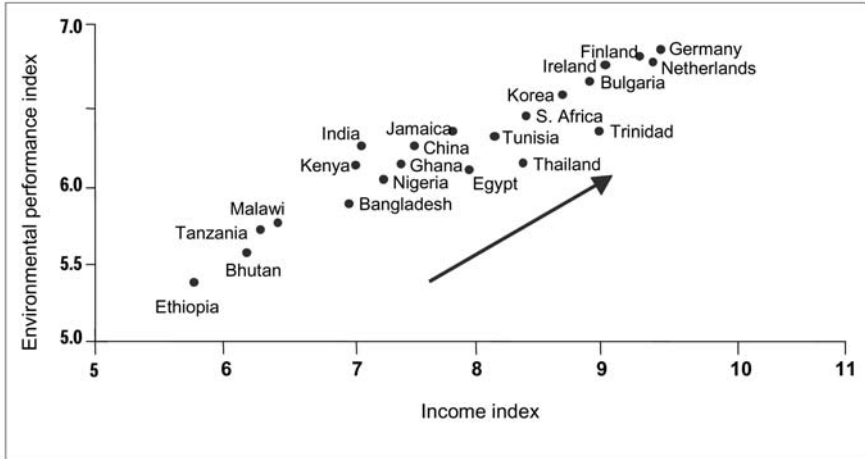
Data source: Melchior, Telle and Wiig (2000).

being open to trade and investment – in fact, mostly the reverse applies. The point is a critical one for addressing the ethical challenge of further alleviating the suffering that still prevails in the world today.



**Figure 9.12** Levels of poverty fall as incomes rise

Data source: World Bank (2001); UNDP (2001).



**Figure 9.13 Economic prosperity need not come at the expense of the environment**

*Data source: OECD (1999).*

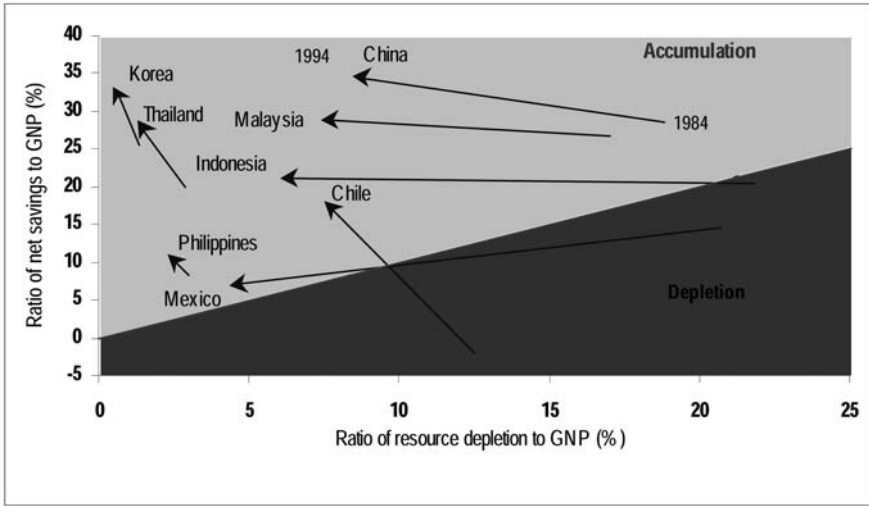
### The Environmental Debate

Not content with the conclusion that more trade is good for poverty reduction, the anti-globalisers then argue that opening to trade and investment and pushing pro-growth policies simply sees environmental problems ‘exported’ around the world. Dirty industrial production becomes relocated to poor countries, shifting the pollution there and exploitive resource industries do likewise. The charge is made that it is a ‘race to the bottom’, that greedy capitalists take advantage of the most lax laws and that unsustainable production is the result. But these popular misconceptions, such as those surrounding poverty, while admittedly popular, are nevertheless, still misconceptions.

Sustainability can and has been measured for lower income economies. The concept is one of net savings, which incorporates the value of resources in national accounts. Taking lower income APEC economies as an example, over the decade 1984 to 1994, a period of very rapid growth, all economies measured (shown on Figure 9.13) moved in the direction from depletion (or low accumulation) to higher accumulation.

The OECD has also examined the link between income and environmental performance. The link is a strong, positive one shown on Figure 9.14. The higher a country’s income, the better their environmental performance becomes. As a person’s income rises, so their demand for goods and services changes in relative importance. At low levels of income, food, shelter, and basic amenities are important. Once these things are widely available, health care, education, and transport become important. At even higher levels of income, people demand entertainment, travel and also better, cleaner and safer surroundings – a better environment and nature to

enjoy. The transition is a gradual one, but it seems the environment starts to become important for people at around US\$3000 of income. The finding is that, contrary to the cliché of a ‘race to the bottom’, it is in fact a ‘race to the top’. Preventing trade and investment only keeps incomes unnecessarily low as already demonstrated and retards the shift to better environmental outcomes.



**Figure 9.14 Resource management in lower income APEC economies improved between 1984 and 1994**

Data source: APEC Secretariat (2000).

That conclusion will still grate with many people who believe that this cycle of never ending growth will spell ruin for the planet. It goes to the core of one of the ethical challenges of trade policy so it is worth spelling out. The proposition that things are getting worse was perhaps first most thoroughly examined by the late Julian Simon. He found the reverse. That on a large number of criteria the planet had got better, not worse. He even won that famous bet with the dooms-dayer, Paul Ehrlich.

Bjorn Lomborg, the Danish statistician and self-described ‘greenie’ also thought Julian Simon had to be wrong and that his conclusions were just simple, American right-wing propaganda, so he set out to disprove him. He ended up agreeing with him. That led to his popular but controversial book *The Skeptical Environmentalist*.<sup>20</sup>

Remember, none of the preceding denies that there are not massive environmental and degradation issues. There are. But in most cases the *change* in these indicators shows there is improvement in the state of the planet – many things are going in the right direction. And where there are environmental issues, their root cause lies in either bad economic policy, the lack of policy, especially property rights, or the

<sup>20</sup> B. Lomborg, *The Skeptical Environmentalist, Measuring the Real State of the World* (Cambridge, 2001).

inability to implement the right institutional arrangements. Environmental problems are not the result of trade. They would exist even if there were no international trade. Nor can restrictive trade policies solve environmental problems: that must come from within by each society making intelligent choices and implementing rules that give the best outcome at least cost.

International trade is good for the environment on two counts. Trade occurs *only* because it is more efficient – in other words, there is less waste. And less waste means less of the planet's resources are used in producing the outputs people want. Second, trade means higher incomes.

### **Why So Many Disbelievers**

Many people would be familiar with the evidence presented above. After all, it is based on official statistics and analysis by international institutions such as the OECD, World Bank and IMF, and can be repeated. However, there are still a large number of people who refuse to accept the factual picture. This gets to the core of the ethical challenge of trade policy.

Why is it that so many people and NGO's believe trade should be restricted as a means to solving the world's poverty and environmental problems? Lomborg spends a deal of his book addressing this issue – as did Simon in *Hoodwinking the Nation*. Indeed, my interpretation is that Lomborg seemed to anticipate he would be pilloried and vilified on producing his book. If so, he was right. The Danish Committee on Scientific Dishonesty ruled that Lomborg's positions were in many cases incorrect. Not to worry that Lomborg's study was a thoroughly referenced literature review, not a scientific study. But the point is not so much whether Lomborg is right or not, it is that all too often there is incorrect reporting of issues, Lomborg cites many such examples.

The ethical challenge of trade policy is that the right message needs to be conveyed to the public, which can then make intelligent choices. The International Panel for Climate Change did not use the internationally agreed methodology to evaluate historical growth across countries in the world so they overstated the impact of global warming. They were pinged by Ian Castles, the former head of Australia's Bureau of Statistics.<sup>21</sup> Not as much media coverage there though.

It would be nice just to blame the media for all of this. The media and journalists are definitely involved (see Figure 9.15), but they have to appeal to a wide audience. So good stories – that is, bad news – get reported. Scientists need funding to follow problems, so what if the problem gets a little exaggerated or is 'unbalanced'? Green groups and aid agencies need to focus the world's attention on their problems – that is their job. A host of incentives and arrangements plus the human psyche explain how reality becomes lopsided. Lomborg suggests we cannot change this lopsidedness – rather, we should compensate for it. Just how needs a lot of thought,

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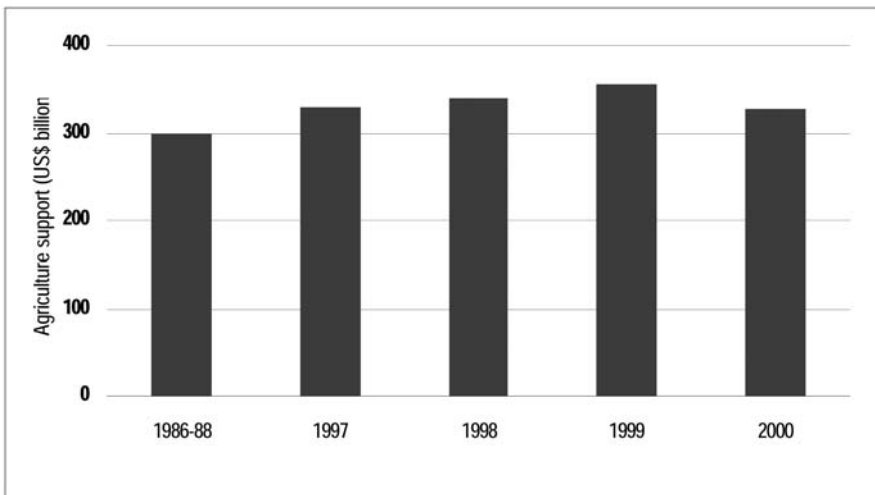
21 I. Castles, D. Henderson, 'The IPCC Emission Scenarios: An Economic-Statistical Critique', *Energy & Environment*, 14/2&3 (2003): 159–85.

but political leadership would be a good place to start, as well as an insistence on good professional, independent analysis of issues in an open, transparent way.

Maybe then we would have the aid community and green groups demanding the removal of trade barriers, not their erection. And the problem is serious. Take just agricultural trade alone. Over 80 per cent of the US\$1 billion a day in subsidies by rich countries are perverse. Perverse means they harm both the economy and the environment (Figure 9.15). Green groups should be campaigning for their removal – yet mostly they do not. They certainly did not do so in Seattle.

One group, Oxfam, have changed their rhetoric, however. They now see that free trade is a powerful force for good and are starting to argue for it. Other groups such as the World Wildlife Fund have actively campaigned for the removal of fishing subsidies. These subsidies are there to encourage fishing and must therefore encourage the depletion of stocks of fish.

With more honest reporting and education of the public on the true nature of things and a degree of skepticism on all material produced by all interest groups, a better outcome may be achieved.



**Figure 9.15 OECD agricultural support remains well above US\$300 billion a year**

*Data source: OECD (2000 and 2001).*

## Summary

Open trade is a powerful force for good in the world. It alleviates poverty, cuts out waste, makes better use of the planet's resources, makes people richer and in turn drives better environmental outcomes. Trade increases prosperity and integration of countries and is a force for peace in the world. Indeed, it was the driving force



behind the push by Cordell Hull, former US Secretary of State, to establish the original GATT. If NGOs were seriously concerned about promoting a peaceful prosperous world, alleviating poverty and malnutrition, and putting the planet on an environmentally sustainable path – and what bigger moral issue do we have in the world today – they should be arguing for free trade, not opposing it. The ethical challenge for trade policy is in the lap of the NGOs opposed to open trade. They need to conduct their own professional analysis of the statistical evidence and satisfy themselves of the benefits of an open trade policy.

## Chapter 10

# The Ethical Challenges of Political Corruption in a Globalized Political Economy

Alfredo Rehren

With the downfall of the end of the Cold War and the democratization of most authoritarian regimes in Latin America, the late 1980s inaugurated a ‘third wave democratization’ and a new international political order. The crumbling of the ‘socialist utopia’ left anti-capitalist forces around the world ideologically disarmed. The idea of democracy as an electoral procedure where authorities are elected in free, non-exclusionary and competitive elections and the respect for basic political liberties and human rights, built upon the respect for private property, market economics and free trade constituted the core of a new world-wide consensus. Nonetheless, China and most Muslim countries remained, by cultural diversity and political traditions, out of this scheme. In two decades, the world underwent a unique and sweeping process of globalizing capitalist democracies.<sup>1</sup>

Together with globalization and democratization, political corruption emerged in the 1980s and 1990s with great vigour in almost all latitudes. This chapter discusses how globalization has changed the context in which political corruption unfolds around the world. In so doing, it reviews the notion of corruption and critically assesses the process of privatization, the responsibility of Western business and multinationals in the emergence of corruption, and international attempts to fight it. Particular emphasis is placed upon the ubiquity of the phenomenon and how it has adapted to a new international environment, threatening global markets and potentially eroding the fundamental ethics of capitalism, business and democracy.

### **Reconceptualizing Political Corruption in a Globalized World**

Globalization can be thought of as a ‘widening, deepening and speeding up of worldwide interconnectedness in all aspects of contemporary life’ including political, military, economic, cultural, migratory and environmental dimensions of world affairs. However, it is in the economic and financial spheres and the restructuring of world business where globalization has been more notorious and dynamic. The

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1 Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, 1991); Katherine Fierlbeck, *Globalizing Democracy: Power, Legitimacy and the Interpretation of Democratic Ideas* (Manchester, 1998).

opening of new markets, expansion of free trade, dispersed production at a global scale and subcontracting characterize this new economic order. Globalization has been marked by an unprecedented subjection of the international economy to the discipline of a global integrated market under neoliberalism, leaving the traditional nation-state 'borderless' and deeply immersed in a highly uncertain socio-political and economic environment.<sup>2</sup>

Corruption can be understood as the abuse of public office for private gain. Nye defined it as 'behavior which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence.' Van Klaveren also defined corruption from a behavioural perspective, underscoring how those occupying public positions illegitimately maximized individual income by manipulating the demand for public goods and services. In a much broader approach, Friedrich identified corruption as favours conferred by public authorities induced by money or other stimuli that ran against the 'public interest'.<sup>3</sup>

The first two definitions are 'market-centered', focusing upon the nature and content of the exchange, while Friedrich's brings corruption closer to the realm of democratic politics by focusing upon the public interest and public opinion.<sup>4</sup> However, previous definitions of corruption failed to take into account the structural and institutional settings within which corrupt exchanges took place. An exception is the political economy approach, which addressed corruption as rent and profit-seeking activities, considering the institutional linkages existing between politics and markets.<sup>5</sup>

## Globalizing and Political Corruption

Before the age of globalization, corruption was largely a country specific phenomenon, restricted to a few multinationals trying to penetrate closed and state-controlled developing economies, bribing politicians, highly placed bureaucrats or dictators and their cronies.<sup>6</sup> However, the growing links of the global political economy encompassed new markets, giving business the opportunity to expand

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2 David Held, Anthony McGrew, David Goldblatt, Jonathan Perraton, *Global Transformations: Politics, Economic and Culture* (Stanford, 1999), pp. 2–4, 23.

3 Joseph Nye, 'Corruption and Political Development: A Cost-Benefit Analysis', *American Political Science Review*, 61 (1967), p. 67; C. J. Friedrich, 'Political Pathology', *The Political Quarterly*, 37 (1966), p. 74; Jacob Van Klaveren, 'The Concept of Corruption', in A. J. Heidenheimer, M. Johnston, V. T. Levine, *Political Corruption: A Handbook* (New Brunswick, 1978), pp. 149–163.

4 For a discussion of the definition of corruption see John Gardiner, 'Defining Corruption' in A. J. Heidenheimer, Michael Johnston (eds), *Political Corruption: Concepts and Contexts*, 3rd Edition (New Brunswick, NJ, 2002).

5 Joseph LaPalombara, 'Structural and Institutional Aspects of Corruption', *Social Research*, 61 (1994); Susan Rose-Ackerman, *Corruption: A Study in Political Economy* (New York, 1978).

6 George Moody-Stuart, *Grand Corruption: How Business Bribes Damage Developing Countries* (Oxford, 1997).

operations and profits worldwide in a much more competitive environment. Privatization of state enterprises, participation of the private sector in the delivery of social services, administration of public infrastructure, public utilities, energy resources and expansion of private banking made international competition fierce. With the expansion and diversification of world trade, corruption became enmeshed in a myriad of autonomous networks operating across countries and business in the developed and developing world, where subcontracting and outsourcing are the core of a new international productive scheme.<sup>7</sup> According to a World Bank survey, forty percent out of 3,600 firms operating in sixty-nine countries paid bribes.<sup>8</sup>

A few examples illustrate how 'dirty money' flows from international finances into the realm of politics and vice-versa.<sup>9</sup> The Bank of Credit and Commerce International (BCCI) whose operations in Europe during the 1980s pulled together arm dealers, terrorist groups and secret services, appeared connected to international scandals such as Irangate, the Contras in Nicaragua, the Mujaheddin in Afghanistan and even the Pakistani nuclear industry.<sup>10</sup> In the privatization of Venezuela's airline Viasa, the assets were valued by Banco Santander, a close partner to Iberia, Spain's state airline that finally bought the company. Citicorp got involved in money laundering with Raúl Salinas, brother of Mexican President Salinas de Gortari and laundering bribes from privatizations carried out in Argentina in the 1990s.

Corruption has started to be considered a malaise harming international competition and foreign investment as well as growth and development in recently democratizing countries. Several studies demonstrated that foreign investment, growth and fiscal revenues were negatively correlated with corruption.<sup>11</sup> As a tax over foreign investment, corruption diminished the profits of business or simply transferred costs to consumers. Public works projects often attract private investment because they provide an opportunity for construction firms and/or corrupt governmental officials to grab big sums of money in one quick operation. Besides, for any incumbent government weighing the probability of winning the votes of the unemployed, public works schemes remain politically attractive. Moreover, such projects can provide fresh unaccountable resources for electoral campaigns and steady party financing as the cases of Japan and Italy demonstrate.

In theory, increasing trade openness and adherence to international norms should reduce corruption.<sup>12</sup> Yet, with the intensification of global trade and finance, non-state actors like multinational corporations acquired more autonomy, including

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7 Maurice Punch, *Dirty Business: Exploring Corporate Misconduct* (London, 1996), p. 2.

8 Julie B. Nesbit, 'Transnational Bribery of Foreign Officials: A New Threat to the Future of Democracy', *Vanderbilt Journal of Transnational Law*, 31 (1998): 1273–92.

9 Lawrence Malkin and Yuval Elizur, 'The Dilemma of Dirty Money', *World Policy Journal* (Spring 2001): 13–23.

10 Punch, *Dirty Business*, p. 11.

11 Paolo Mauro, 'The Effects of Corruption on Growth, Investment, and Government Expenditure: A Cross-Country Analysis', in Kimberly Ann Elliot (ed.), *Corruption and the Global Economy* (Washington, DC, 1997).

12 Wayne Sandholtz and Mark Gray, 'International Integration and National Corruption', paper delivered at the Annual Meeting of the American Political Science Association, San Francisco, California, 30 August–2 September 2001.

greater opportunities for bribery. Also, the emergence of civil society as a new political actor opened the way for the conduct of global inter-societal international relations, conducted mainly through non-governmental organizations. Transparency International (TI), an offspring of the World Bank, became a global actor fighting corruption. As a network with chapters in almost every country, it has campaigned for transparency in the conduct of governmental business since 1993, cooperating with the World Bank and national governments on National Integrity Systems.<sup>13</sup> Also, through the elaboration of the Corruption Perception Index, the Bribery Index and the recently implemented Global Corruption Barometer (2003), TI has contributed to increasing world public awareness of corruption.

### **Combating Global Corruption**

Several international organizations and governments have proposed measures to control corruption. The United States must be credited, through the enactment of the Foreign Corrupt Practices Act (FCPA) in 1977, as the first government to criminalize the bribery of foreign government officials. It also urged OECD countries to adopt similar legislation by the end of the 1980s.

Whether the United States pursued a moral goal with the FCPA, caused by the scandals of some American corporations, or tried to improve their competitive edge, promoting business transparency in an expanding world market, is unclear. Apparently, both goals were articulated in the legislation drafted in the post-Watergate era. However, the modifications introduced in 1988 allowed US corporations to make certain questionable payments for services and *bona fide* expenses in host countries. Helping US businesses compete with European corporations in 'Big Emerging Markets' seems to have always been a goal behind the US anti-corruption drive of the Clinton years. In fact, Transparency International's Bribery Index shows that the United States government is perceived around the world as exercising undue influence upon other governments to advance the interests of US business.<sup>14</sup>

Within the OECD, the penalization of bribery produced a complex process of negotiations that started in 1994 and ended in 1999 when the *Convention on*

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13 Frederik Galtung and Jeremy Pope, 'The Global Coalition Against Corruption: Evaluating Transparency International', in A. Schedler, L. Diamond, M. F. Plattner (eds), *The Self-Restraining State: Power and Accountability in New Democracies* (Boulder, 1999); Fredrick Galtung.. 'Transparency International's Network to Curb Global Corruption', in Gerald E. Caiden, O. P. Dwivedi,, Joseph Jabbra (eds), *Where Corruption Lives* (Bloomfield, CT, 2001); Rick Stapenhurst, Shr J. Kpundeh, *Curbing Corruption: Toward a Model for Building National Integrity* (Washington, DC, 1999); Hongyinn Wang, James N. Rosenau, 'Transparency International and Corruption as an Issue of Global Governance', *Global Governance*, 71 (2001), p. 25.

14 Kimberly Ann Elliot, 'Corruption as an International Policy Problem: Overview and Recommendations', in Kimberly Ann Elliot (ed.), *Corruption and the Global Economy* (Washington, DC, 1997); Tipton F. McCubbins, 'Somebody Kicked the Sleeping Dog-New Bite in the Foreign Corrupt Practices Act', *Business Horizons* (January–February 2001), pp. 27–32.

*Combating Bribery of Foreign Public Officials in International Business Transactions* entered into force.<sup>15</sup> The OECD had recommended earlier to its member countries the enactment of legislation to end the tax deductibility of bribes to foreign public officials, something that always troubled the United States.<sup>16</sup>

Several other regional agreements such as the Inter-American Convention Against Corruption and resolutions adopted by the World Trade Organization, the International Chamber of Commerce, the Council of the International Bar Association, the Council of Europe and the European Union have contributed to a global network against corruption.

An interesting development in controlling corruption has been the alliance between the World Bank and the International Monetary Fund. While traditionally the World Bank was oriented to finance development projects and the IMF to impose fiscal discipline in developing countries, both institutions realized that corruption was endangering their policies. As a result, the IMF became more of a development bank, while the World Bank switched to new goals, mainly capacity and institution building, focusing upon 'good governance' in order to minimize the threat to global democratization.

The need to limit corruption appears as a structural necessity for a good international business climate to prosper and for the maintenance of global governance. Nonetheless, the existing institutional network built to fight corruption is, for some authors, a scheme, advocated by global capitalism to secure free and expedient access to newly developing markets. According to this view, World Bank and the IMF continue to function as prime facilitators in privatizing and deregulating international markets.<sup>17</sup> Anti-corruption measures are seen as 'window-dressing the liberal, capitalist nature of these institutions' real intentions.<sup>18</sup>

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15 David Metcalfe, 'The OECD Agreement to Criminalize Bribery: A Negotiation Analytic Perspective', *International Negotiations*, 5 (2000): 129–155.

16 Carl Pacini, Judyth A. Swingen, Hudson Rogers, 'The Role of the OECD and EU Conventions in Combating Bribery of Foreign Public Officials', *Journal of Business Ethics*, 37 (2002), p. 397. The authors provide data on the status of the bribery and tax deductibility legislation for every OECD country. See also Arnold J. Heidenheimer, Holger Moroff, 'Controlling Business Payoffs to Foreign Officials: The 1998 OECD Anti-Bribery Convention', in Heidenheimer, Johnston (eds), *Political Corruption* and the collection of articles in OECD, *No Longer Business as Usual: Fighting Bribery and Corruption* (Paris, 2000).

17 See World Bank, *Helping Countries Combat Corruption: The Role of the World Bank* (1997). Critical perspectives are Leo Panitch, "'The State in a Changing World": Social-Democratizing Global Capitalism?' *Monthly Review*, 50 (1998): 11–23; Dexter Whitfield, *Public Services or Corporate Welfare: Rethinking the Nation State in the Global Economy* (London, 2001); Demetrios Argyriades, 'The International Anticorruption Campaigns: Whose Ethics?' in Gerald. E. Caiden, O. P. Dwivedi, Joseph Jabbra (eds), *Where Corruption Lives* (Bloomfield, CT, 2001).

18 Fierlbeck, *Globalizing Democracy*, p. 189.

## Privatization and Political Corruption

The privatization of state enterprises in previously socialist oriented economies implicated some Western businesses in corrupt practices. Such developments cast a sobering light on capitalist ethics, the legitimacy of private property and democratic governance. The successful attraction of foreign investment under the hegemonic direction of the Communist Party in China helped to generate corrupt networks consisting of party leaders, bureaucrats and foreign business.<sup>19</sup>

Newly democratizing countries in Latin America launched privatization schemes which allowed incoming presidents and their political entourages to enrich themselves and finance networks of partisan loyalists and cronies.<sup>20</sup> Collor de Mello in Brazil, Carlos Andrés Pérez in Venezuela, Allan García and Alberto Fujimori in Perú and Carlos Menem in Argentina, were elected as democratic presidents but their governments became corrupt. Collor was impeached and Carlos Andres Pérez forced to resign before impeachment; Alan García and Fujimori fled the country on corruption charges and Menem kept himself in power thanks to the skilful manipulation of the constitution, presidential decrees and control of the Supreme Court. Nonetheless, he had to face the courts once out of power because of numerous charges of corruption. Corruption has been an endemic mechanism of long-time enforced clientelistic networks dominated by the PRI in Mexico. The politics of oil corrupted both *Accion Democrática* and the *COPEI*, parties that alternated in power for three decades in Venezuela.

Enlarged revenues for corruption also followed in the aftermath of privatization, especially in the regulation of utilities and services. Big dividends were extracted from consumers through the raising of utility rates, even when privatization was clean. Deferring corrupt rents for the near future based on tacit agreements to loose controls from weak regulatory agencies, attests to the ubiquity and sophisticated nature of corruption. Quick deregulation, a requisite of today's globalization, ushered the savings and loans association scandal in the United States in the 1980s. The federal government and tax payers lost billions of dollars while several legislators got involved in the scandal.<sup>21</sup>

The introduction of global markets and privatization has increased the opportunities for 'grand-corruption' and opened the way for political elites in developing markets, in particular, to use graft, fraud, bribery, kickbacks and inside knowledge to enrich themselves.<sup>22</sup> Such corruption creates a socially explosive situation in democratizing countries and undermines the legitimacy of newly elected

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19 White, Gordon. 'Corruption and the Transition from Socialism in China', in Michael Levi, David Nelken (eds), *The Corruption of Politics and The Politics of Corruption* (Oxford, 1996); Max Boissot, John Child, 'From Fiefs to Clans and Network Capitalism: Explaining China's Emerging Economic Order', *Administrative Science Quarterly* 41 (1996): 600–628.

20 See Stephen Haber (ed.), *Crony Capitalism and Economic Growth in Latin America: Theory and Evidence* (Stanford, 2002).

21 Dennis Thompson, 'Mediated Corruption: The Case of the Keating Five', *American Political Science Review*, 87 (1993): 369–81.

22 Gerald E. Caiden, 'Corruption and Governance', in Caiden, Dwivedi Jabbra (eds), *Where Corruption Lives*.

leaders. What is paradoxical about privatization is that the process was supposed to minimize the opportunities for corruption by diminishing the size and economic role of the State.<sup>23</sup>

### **Globalization and the Corruption of Business Ethics**

In a globalizing world, business ethics are crucial for the future of capitalism and democracy. Corporations have a social responsibility beyond shareholders to all those that contribute to the creation of wealth. Managers are not merely 'a-moral profit maximizers,' but must refrain and guard their firms from corrupt activities.<sup>24</sup> According to Rose-Ackerman, the corporation is a 'moral actor' and 'business organizations and individual entrepreneurs have a duty to maintain the systems in which they operate even when this might be against their narrower goals.'<sup>25</sup>

Nevertheless, Western businesses and multinationals must bear considerable responsibility in the development of bribery and corruption. Guided by profit maximization and the apparent goal to report profitable returns to shareholders in their home countries, these organizations have adopted moral relativism in their practices abroad, blaming corruption on locally established cultural and political customs. But what Western businesses have actually done is to create a myth about their ethics, concealing the reality of their corrupt practices at home. Compared to the crude East and Third World practices, corruption in the West seems much more sophisticated.<sup>26</sup> From this perspective, international arrangements to fight corruption can be interpreted as a 'false rationalization,' or even a form of 'moral imperialism.'<sup>27</sup>

### **Global Political Corruption: Undermining the Ethics and Legitimacy of Democracy**

While democracy has increasingly seemed to be an unrivalled form of government, corruption scandals sent a worrying signal about the delicate balance existing between democracy and corruption. On the one hand, globalization seemed to have exacerbated the corrupt tendencies of democracy and on the other hand, changes in the nature of democratic institutions and processes contributed on its own to corruption around the world. Corruption scandals coincided with a crisis of representation. The

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23 See Susan Rose Ackerman, 'Una administración reducida significa una administración más limpia?', *Nueva Sociedad*, 145 (1996) and *Corruption and Government: Causes, Consequences, and Reform* (Cambridge, 1999).

24 A. W. Cragg, 'Business, Globalization, and the Logic and Ethics of Corruption', in John Douglas Bishop (ed.), *Ethics and Capitalism* (Toronto, 2000), p. 134.

25 Susan Rose-Ackerman, "'Grand' Corruption and the Ethics of Global Business', *Journal of Banking and Finance*, 26 (2002), p.1898.

26 Indher P. Khera, 'Business Ethics East vs. West: Myths and Realities', *Journal of Business Ethics*, 30 (2001): 29–39.

27 A. W. Cragg, 'Business, Globalization, and the Logic and Ethics of Corruption', p. 134.



lack in confidence and decline in support for traditional political institutions, such as political parties and labour unions, and the decline in political participation were eroding democratic legitimacy.<sup>28</sup>

The magnitude of the crisis, however, has sometime been minimized on the grounds that dissatisfaction is with the performance of democracy and not with democracy *per se*: That is to say, ‘dissatisfaction with the regime’s effectiveness does not translate necessarily into the delegitimization of democracy.’<sup>29</sup> But changes in the nature of representation, transformation of the linkages between politicians and citizens, party organization and finance have provided an environment conducive for corrupting democracy.

Capitalist democracies have a proclivity toward being corrupt. From a socio-cultural perspective, market individualism and moneymaking are basic ingredients for individual success in life as well as for the corruption of society. Structurally, decentralization of economic and political power makes difficult to separate the sphere of influence of the market from that of politics. In fact, multiple exchanges take place normally between politicians and business supporting each other, allowing for illegitimate acquisition of power or personal enrichment. And while the market sustains growth but generates social inequality and poverty – intrinsic causes of corruption – democracy makes individuals politically equal, granting them the power to participate, to overturn governments and to make elected authorities accountable.

According to Della Porta and Vanucci, ‘corrupt decisions and actions in a democracy are always covert for the reason that they could not be justified in public –that is, to those affected– if they were to become known.’ Warren concludes that ‘corruption *in a* democracy is always corruption *of a* democracy, something not true of other political systems.’<sup>30</sup>

### **Political Parties and Corruption**

Democracies distinguish themselves from other regimes because the opposition –through free, competitive and non-exclusionary elections – always has the chance to become government.<sup>31</sup> Open competition, together with institutionalized party systems, help to ensure democratic legitimacy and a check on corruption. A strong and well-organized opposition provides ‘credible action against corruption, both in the political arena and through independent judiciary and independent agencies... and follow through on direct responses to corruption by citizens and civil society groups.’

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28 See Russel J. Dalton, *Citizen Politics in Western Democracies* (Chatham, 1988); Seymour M. Lipset, William Schneider, *The Confidence Gap: Business, Labor, and Government in the Public Mind* (New York, 1983).

29 Hans-Dieter Klingemann, ‘Mapping Political Support in the 1990s: A Global Analysis’, in Pippa Norris (ed.), *Critical Citizens: Global Support for Democratic Governance* (Oxford, 1999), pp. 32–3.

30 See Donatella della Porta, Alberto Vanucci, *Corrupt Exchanges: Actors, Resources and Mechanisms of Political Corruption* (New York, 1999), p. 10 cited by Mark E. Warren, ‘Corrupting Democracy’, p. 12.

31 Robert A. Dahl, *Poliarchy: Participation and Opposition* (New Haven, 1971).

Where opposition parties are weak, internally divided by factions and have fragile ties to civil society, they will always yield to 'elected elites engage[d] in entrenched corruption.'<sup>32</sup> Political parties that remain in power for a long time, such as the PRI in Mexico and the Liberal Democratic Party in Japan, or multiparty coalitions that impede any real change in government, like the Socialists and Christian Democrats in Italy, are vulnerable to corruption.

Transparency International released in 2003 the first Global Corruption Barometer where 30,487 people in 44 countries were asked, among other questions, to rank the most corrupt institutions in their countries. Thirty percent chose political parties; 13.7 percent the courts; 11.5 percent the police and then came medical and educational services and licensing of business in a range between 7.0 and 8.5 percent. Finally, tax revenue, customs, utilities, immigration and least mentioned of all, the private sector with 3.1 percent.<sup>33</sup> The data highlights the strong linkage existing between political parties and corruption as perceived in global public opinion, phenomenon well documented in the press where parties and leaders usually appear at the center of corruption scandals.

Why did political corruption expand in the 1980s and 1990s? A review of the scholarly work on the evolution of political parties shows that corruption was accelerated by a change in nature of political parties. Traditional parties, including those with a mass class-based orientation, transformed themselves into a 'business firm.' organization. Party leaders became 'political entrepreneurs' whose chief motivation was to gain 'material benefits –either from the salary and related perks of office or from involvement in forms of corruption.'<sup>34</sup> Reviewing Kirchheimer's notion of the *catch-all-party* that abandoned ideological class commitments, Panebianco's *electoral-professional party* stressed the central role of experts, and Katz and Mair's socially detached *cartel party* that turned to the state for financial backing, Hopkin<sup>35</sup> suggests that:

the *catch-all* and *electoral-professional* models of party organization (and to an extent also the *cartel party*) have striking similarities to the... 'economic' or 'business firm' model...[where] new sources of finance have to be sought, either from sectional interests (*catch-all*) or by taking a 'cut' of taxation in the form of state subsidies for political parties (*cartel*)...As parties are only tenuously attached to social groups...politicians are free to collect their selective benefits from political office, with only the periodic opportunity for the electorate retrospectively to punish them in favour of other similar politicians.<sup>36</sup>

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32 Michael Johnston, 'Party Systems, Competition, and Political Checks Against Corruption', in Heidenheimer, Johnston (eds), *Political Corruption*, pp. 784–5.

33 Transparency International, *Global Corruption Barometer* (July 2003).

34 Jonathan Hopkin, 'Political parties, political corruption, and the economic theory of democracy', *Crime, Law and Social Change*, 27 (1997), p. 260.

35 See O. Kirchheimer, 'The Transformations of Western European Party Systems', in J. LaPalombara, M. Weiner (eds), *Political Parties and Political Development* (Princeton, 1966); A. Panebianco, *Political Parties: Organization and Power* (Cambridge, 1988); R. Katz, P. Mair, 'Changing Models of Party Organization and Party Democracy. The Emergence of the Cartel Party', *Party Politics*, 1 (1998): 5–28.

36 Hopkin, 'Political parties, political corruption, and the economic theory of democracy', p. 266.

There are also indications that electoral systems can influence political corruption. The evidence supports the general proposition that legislators elected in polls with low voter participation ‘may increase corruption because it raises barriers to entry.’ Also, with a smaller number of parties present at the polls, ‘voters have less opportunity to oust corrupt politicians or parties.’ So it is relatively difficult to hold incumbents to account. Two-party systems are apparently more effective in curbing corruption because corrupt incumbents may be punished more directly than in proportional representation systems. While the open-list model under proportional representation would seem to enhance competition,<sup>37</sup> it also encourages intraparty competition, factionalism and clientelism. Such features tend to increase the cost of campaign financing and bolster corrupt behavior, conditions which may have spurred, for instance, electoral reform in Italy and Japan in the mid-1990s.<sup>38</sup>

Bernard Manin observed that democracy moved from traditional partisan democracy to a *democratie du public*. While in the first case parties selected candidates based on partisan loyalty, compromise with party platforms and class interests, in the *democratie du public*, candidates were selected on the bases of their images and appeal to the general public. Consequently, once in office, they assumed the role of trustees and behaved with autonomy from partisan ideological stands and views. Direct linkages with constituencies, articulated through the media and public opinion polls, bypassed traditional partisan structures.<sup>39</sup>

Changes in the nature and structure of modern political parties have made party and intra-party competition into individual contests, weakening party discipline, encouraging factionalism and giving rise to political entrepreneurship. As the media, especially television, made politics and electoral campaigns much more presidential, the need to garner resources to finance politics became more pressing than ever. All these factors have contributed to corrupt tendencies within political parties and democracies. But it is globalization that has served as a catalyst. While opening new markets, privatizing, deregulating and advancing technocratic government, globalization not only created the conditions for political entrepreneurs to flourish, but reinforced the trends toward corruption within political parties.

### **Political Financing and Global Corruption**

A recent study on regulations and subsidies for political campaigns in 104 countries determined that 79 and 59 percent of the countries surveyed enjoyed free political broadcasts and direct public subsidies respectively and 49 percent had some subsidies in kind.<sup>40</sup> However, when looking at regulations (see Table XI.1), parties enjoyed

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37 Torsten Persson, Guido Tabellini, Francesco Trebbi, ‘Electoral Rules and Corruption’, *Journal of the European Economic Association*, 1/4 (2003), pp. 960–1.

38 Persson, Tabellini, Trebbi, ‘Electoral Rules and Corruption’, p. 962 footnote 2, cite John Carey and Matthew Shugart, ‘Incentives to Cultivate a Personal Vote: A Rank Ordering of Electoral Formulas’, *Electoral Studies*, 14 (1995): 417–439.

39 Bernard Manin, *Principes du gouvernement représentatif* (Paris, 1966).

40 Michael Pinto-Duschinsky, ‘Financing Politics: A Global View’, *Journal of Democracy*, 13 (2002), p. 75.

incredible leeway to receive resources from abroad, to spend without limits, and to hide the identity of individual donors. In addition, they had no ban on contributions, paid advertising on television or corporate donations, leaving ample space for discretionary action and abuse.

**Table 10.1 Regulations and subsidies in 104 countries**

<b>Regulations</b>	<b>Percentage</b>
No disclosures rules	38%
No ban on foreign donations	51%
No campaign spending limits	59%
No disclosure of individual donors	68%
No contributions limits	72%
No ban on paid election advertising on TV	78%
No ban on corporate donations	84%

*Source:* Michael Pinto-Duschinsky, 'Financing Politics: A Global View,' *Journal of Democracy* 13 (October 2002), p. 75. I have inverted the percentages given by Pinto-Duschinsky in order to highlight the lack of regulations, rather the existence of regulations as he does.

Why do politicians leave room for discretionary action and run the risk of corruption? Aren't they interested in drafting legislation to keep politics honest and transparent? Why don't they do so, if they also approve public subsidies? At the light of the data, the political economy approach that looks at the party as a 'cartel party' or 'business party' is a plausible explanation. Here the logic is to maximize revenues beyond public subsidies and give individual politicians incentives to behave as 'political entrepreneurs' or 'business politicians' in order to extract resources from the market and exploit 'corruption opportunity structures' afforded by party finance regulation.<sup>41</sup>

Globalization has extended the scope of corrupt political financing.<sup>42</sup> More and more resources flow across countries buying influence through campaign financing. The data in Table 10.1 reveals that in 51 and 84 percent of the countries studied there were no bans on foreign and corporate donations respectively. As we know, large amounts of campaign money make it through transnational corporations and affiliates grouped in networks throughout the countries where they operate, lobby, or form ad-hoc foundations to finance political ads.

Global political corruption is further compounded by linkages existing between politicians, money laundering and organized crime. The infiltration of governments, parliaments, regional and local authorities by organized crime has been clearly documented. The Medellín's cartel in Colombia even elected candidates to regional office and presumably financed the campaign of former President Ernesto Samper.

41 Véronique Pujas, Martin Rhodes, 'Party Finance and Political Scandal: Comparing Italy, Spain and France', in Heidenheimer, Johnston (eds), *Political Corruption*, p. 740.

42 Jane Bussey, 'Campaign Finance Goes Global', *Foreign Policy*, 118 (2000): 74–84.

The justice minister in Taiwan reported that 4 to 10 percent of members of the National Legislature had gang affiliations.<sup>43</sup>

The outlook for international attempts to curb global corruption remains grim. However, the United Nations Convention Against Corruption signed in Mexico in December 2003 is a step forward and complements measures like Foreign Corrupt Practices Act, the OECD Bribery Convention and the Inter-American Convention Against Corruption. In particular, it bans private corruption – illicit payments or bribes among businesses – a vital step for the health of markets that will certainly help to control global political finance and corruption.

### **Corrupt Representation**

Robert Dahl underscored two decades ago that a crucial dilemma of pluralist democracies was the inclination of its popularly elected authorities to govern with interests groups. The marginalization of the general electorate, either because of lack of integrity or sincerity or for power seeking goals, threatens democratic legitimacy. It distorts the public interest and betrays the civic conscience of citizens.<sup>44</sup> Popularly elected leaders in many recently inaugurated democracies have effectively defrauded their citizens by downgrading the public interest in decision-making.

Likewise, established legislators who steer important committees approving governmental programs or regulatory schemes often become relatively more exposed to interest group politics and lobbies. Expertise and networking gives them a thorough know-how of the working intricacies of governmental power structures, and seniority concentrates partisan influence, attracting donations for reelection. Consequently, incumbency rates have increased in most legislatures around the world and role performance has been conditioned by the logic of reelection, instilling in representatives a penchant for corruption.

Since political clientelism reduces citizens' autonomy to a dependent material linkage with individual leaders and/or their machine parties, it serves to erode deliberative representation and weakens democracy. Clientelistic networks trap citizens in what Donatella della Porta labels a 'vicious circle': clientelism-corruption-clientelism.<sup>45</sup> Analyzing the Italian case, she concludes that clientelism's needs of material incentives to invest in the search for power increased the cost of politics so much, that vote buying forced politicians to be corrupted. By investing bribes in vote buying, corrupt politicians became more competitive.<sup>46</sup>

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43 Louise I. Shelley, 'Transnational Organized Crime: The New Authoritarianism', in H. Richard Friman, Peter Andreas, *The Illicit Global Economy and State Power* (Lanham, MD, 1999), pp. 33–4.

44 Robert A. Dahl, *Dilemmas of Pluralist Democracies: Autonomy vs Control* (New Haven, 1982).

45 Paul Haywood, 'Political Corruption: Problems and Perspectives', *Political Studies*, 45 (1997), p. 427.

46 Donatella della Porta, Alberto Vannucci, 'The Perverse Effects of Political Corruption', *Political Studies*, 45 (1997), pp. 534–5.

Finally, deliberative representation is threatened by the rise of technocratic government in the age of globalization. Today, non-elected technocrats or senior advisers are well placed to deliver favors to special interests because of their strategic position in the policy-making process. These top-level advisers are not directly accountable to the electorate and often figure prominently in partisan and corrupt networks that are associated with crony capitalism in transitional democracies.

### **Political Corruption and Democratic Legitimacy**

Does corruption undermine democratic legitimacy? What is the impact of corruption on social capital? How does corruption affect trust in elected representatives and the trustworthiness of democratic institutions?

A survey on individuals who experienced corruption in four Latin American countries concluded that they were 'less likely to believe in the legitimacy of the political system and also less likely to exhibit high levels of interpersonal trust.'<sup>47</sup> A more recent survey conducted in sixteen mature and newly established democracies found that citizens in countries with higher levels of corruption reduce citizen support for democratic political institutions. But corruption had less of a negative effect on evaluations of the political system among government supporters than those who voted for the opposition. In other words, the impact of corruption was 'filtered through the voter's political allegiance.'<sup>48</sup> This is a significant finding since it makes it possible for corrupt governments to remain in power using corrupt means and questionable policies. If this is so, corruption in a democracy can survive and prosper as long as corrupt governments are able to maintain or expand their electoral support and preempt the implementation of anticorruption measures.

Corruption scandals over a long time set in motion enduring shifts in public opinion affecting the well-being of democracy. Corruption reduces deliberative democracy to the discussion of factional interests, delegitimizing political representation, the political process, the role of political parties, democratic institutions and making democracy unsustainable.<sup>49</sup>

Democratic institutions cannot be trusted just because they are staffed by popularly elected authorities. In fact, democratic institutions can never be trusted because they are staffed by self-interested people. And only and insofar as those public officials

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47 The four countries were El Salvador, Nicaragua, Bolivia and Paraguay. Mitchell A. Seligson, 'The Impact of Corruption on Regime Legitimacy: A Comparative Study of Four Latin American Countries', *The Journal of Politics*, 64 (2002), p. 429.

48 The countries studied were Australia, Britain, Canada, Czech Republic, Germany, Hungary, Ireland, Italy, Japan, Latvia, New Zealand, Norway, Russia, Slovenia, Sweden and the United States. Christopher J. Anderson, Yuliya V. Tverdova, 'Corruption, Political Allegiances, and Attitudes Toward Government in Contemporary Democracies', *American Journal of Political Science*, 47 (2003): 91–109.

49 See Michael Johnston, 'The Political Consequences of Corruption: A Reassessment', *Comparative Politics*, 18 (1986): 459–477; M. Johnston, 'Public Officials, Private Interests, and Sustainable Democracy: When Politics and Corruption Meet', in Elliott (ed.), *Corruption and the Global Economy*.

act as it is in their interest to do what they are expected or trusted to do, that is fulfilling the interest placed in them, they are able to transmit trustworthiness to democratic institutions. Social capital built upon interpersonal trust usually thrives with democracy. But corruption erodes ‘the moral foundations of trust’ and that is why it has a devastating effect on democracy.<sup>50</sup> The erosion of public trust particularly hurts the poor because they need more than any other sector in society to believe in democratic leadership: ‘while the powerful, the rich and the well-informed can afford to trust, the poor may suffer badly from the breakdown of trust.’<sup>51</sup>

## Conclusion

Corruption harms capitalist democracies because it privileges the role of elites in the policy-making process at the expense of the broader public interest. Corruption particularly discriminates against the interests of the poor, whose power to influence governmental decision-making is weak. Entrepreneurial or cartel parties where factions and leaders struggle to maximize support by extracting resources from the market, are favoured by such conditions.

Global corruption involves the corruption of political elites across nations who use their formal positions, contacts and networks to remain in power and enrich themselves illegitimately at the expense of the majority. It also has a demonstrative effect at lower political and bureaucratic levels. What might appear as an isolated phenomenon at the top is usually well connected down the hierarchical ladder. Global corruption is expressed within brokerage networks with petty-corruption in top-down schemes, especially when party machines with clientelistic styles of intermediation dominate without or weak political opposition.

The challenge to capitalist democracies comes from both corrupt political parties and corporations. But because globalization is an essentially corporate phenomenon, corrupt and non-transparent businesses practices advance global corruption. Likewise, political parties which develop similar tendencies find themselves at odds with the transparent and inclusionary nature of deliberative democracy. Corruption in an age of global capitalism may increase alienation and social violence and fuel nationalism, trends that could endanger moves toward global democracy.

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50 Russell Hardin, ‘Trust in Government’, in Valerie Braithwaite, Margaret Levi (eds), *Trust and Governance* (New York: 1998), pp. 10–17; Eric M. Uslaner, *The Moral Foundations of Trust* (Cambridge, 2002), pp. 242–3.

51 Clauss Offe, ‘How can we trust our fellow citizens?’, in Mark E. Warren (ed.), *Democracy and Trust* (Cambridge, 1999), p. 53.

## Part 4

# Morality, Law and the Practitioners



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## Chapter 11

# The Ethical Challenge of Terrorism and Rogue Regimes

Richard V. Allen<sup>1</sup>

It is an honour to contribute to a study of ethics and foreign policy, especially as the world now experiences, and will face well into the future, a prolonged period of lethal threats. It is remarkable also that while a large portion of that world lives in conditions of relative and perhaps momentary calm (the industrialized countries generally referred to as ‘the West,’ including Japan), there are now ever-present expectations of sudden, even massive violence being perpetrated by new and highly refined means. The groups involved are engaged in activities which transcend boundaries, and have no fixed location, much less a form of legal existence in the international order.

In other words, at the moment, the expectations of the worst come not from hostile nations with large forces arrayed on the borders of other states, but from groups bound by qualities and beliefs that bear no reference to the classical concepts of sovereignty and national interests. While classical confrontations and territorial ambitions are still relevant, the most urgent threats come from amorphous, transnational movements that claim religious or ideological legitimacy for their existence and their actions.

The theme of this volume suggests that there is, in fact, a linkage between ethics and foreign policy, and in this context we take the word ‘ethics’ to be roughly synonymous with ‘morals,’ and ‘morality.’ Therefore, we need to strive for a better understanding of the role ethics can and should play in deliberations about policy choices, and especially about the implementation of policies ultimately decided upon. In order to go about this in an intellectually structured way, instead of merely lurching to policy choices of preference or, for that matter, corrupt and self-serving policy choices, the discussion needs to be anchored in some level of common understanding as a basis for rational discourse. Indeed, if the premise of a common

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understanding and framework is to be rejected, dialogue, much less argument, becomes impossible.

Without inferring the superiority of the Christian tradition, it is certainly true that we derive much of our thinking about the role of morals and ethics in decision making from biblical and canonical sources. But as important as these are, even when coupled with the power and conviction of faith, they do not serve us entirely when confronted with much of practical life, even while they serve as a proper foundation for thinking about statecraft. Thinkers well before the advent of Christianity and well after believed that these qualities must be supplemented by additional skills, or ‘practical wisdom,’ otherwise known as ‘prudence’ – by which we do not mean mere ‘caution.’

As Alberto Coll has observed: ‘the notion of prudence or practical wisdom is basic to a way of thinking about the ethical dilemmas of foreign policy.’ It has two hallmarks. First, ‘it recognizes the considerable difficulty of translating ethical intentions and purposes into policies that will produce morally sound results,’ and second, it places heavy emphasis upon the character of the statesman, for ‘character is seen as a key component in the ability to act morally in the political world.’ The examination of prudence in the realm of decision-making takes two modern forms, as in the classical divide between ‘rational idealism,’ as Reinhold Niebuhr identified it, and ‘historical realism.’

Rational idealists affirm the perfectibility of man and the ultimate progression of history, even its inevitable outcome, and would be typified by the views of Thomas Paine, Walt Whitman and, in the political realm, by Woodrow Wilson. Some would consider rational idealism a form of modern Gnosticism by virtue of its claim to have discovered all essential truth. This suggests that an impossible ideal is achievable, so long as it is rationally conceivable. In terms of human action, one of the most significant achievements of the rational idealists was the Kellogg-Briand Pact of 1928. This elaborate construct outlawed war as an instrument of national policy, but didn’t last beyond Mussolini’s decision to take Ethiopia.

On the contrary, historical realism begins with assumptions concerning the essential fallibility of man, emphasizes strictures on human nature, and forswears the predictability of the course of history. The deepest roots of such realism are found in Aristotle, Aquinas, Augustine, Edmund Burke and James Madison, and in the last century Reinhold Niebuhr, Dean Acheson, and Winston Churchill. Ernest Lefever, one of the finest modern students of the nexus between ethics and public policy, says that ‘to the historical realist, the ‘impossible ideal’ is relevant because it lends humility without despair and hope without illusion.’ So there are, after all, profound differences among historical actors in each tradition – between Machiavelli and Burke, between Thomas Paine and James Madison, between Wilson and Churchill.

Rational idealism and historical realism have threaded themselves through the recent past, notably within the last fifty years of the 20th century. These five decades present the analyst with a fascinating plethora of examples to be dissected, cases in which great good was done and, or course, unhappy cases where great wrong was the result of human action. Crucially, as the 20th century came to a close, most of us were relatively content to be in a world that, despite aberrations and even perversity,

including widespread poverty and disease, seemed generally to be operating within the bounds of agreed rules.

But before turning to the modern examples and assessing the present, I think we must look a bit more closely at the essential characteristics of what Aristotle called the ‘spoudaios,’ or the ‘mature man,’ a leader for whom prudence is the central attribute. In the *Nicomachean Ethics* (VI, 1140b, 6–11), Aristotle attributes to Pericles ‘and men like him...practical wisdom, because they can see what is good for themselves and what is good for men in general; we consider that those can do this who are good at managing households or states.’ It is not just a matter of possessing prudence, or good judgment, as an abstract virtue, independent of the real world. Rather, it is a matter of formulating and implementing, of persuading and leading. Then Aristotle says, ‘practical wisdom...must be a reasoned and true state of capacity to act with regards to human goods....plainly, practical wisdom is a virtue and not an art.’

Thomas Aquinas, perhaps the most articulate and influential later interpreter of Aristotelian thought, spends considerable time on the question of virtue (Questions 47 and 49, *Summa Theologiae*), and properly considers prudence, in the identical sense that Aristotle understood it, noting that prudence is both true and perfect ‘for it takes counsel, judges and commands aright in respect of the good end of man’s whole life; and this alone is prudence simply so-called....’ Finally, Aquinas elaborates in Question 49 of the *Summa* each of what he calls the ‘quasi-integral parts of prudence,’ which is ‘right reason applied to action.’

The components are (1) *Memory*, because prudence requires the memory of many things; (2) *Understanding* or *Intelligence*, since prudence is right reason applied to action, the whole process of prudence needs to have its source in understanding; (3) *Docility*, or the capacity to be taught by others of great experience and wisdom; (4) *Shrewdness* or *acumen*, the ability to respond and decide correctly in sudden and unexpected circumstances; (5) *Reason*, denoting not the power of reason, but its good and proper use; (6) *Foresight*, which he argues is the most important part of prudence, because while the past and the immediate present are beyond our ability to change, a statesman must have the clear capacity to weigh carefully the consequences his actions may bring; (7) *Circumspection*, which compares the suitability of the means with the end; and (8) *Caution*, particularly because ‘of the evils man has to avoid, some are of frequent occurrence...and against them caution is directed either that they may be avoided altogether, or that they do less harm.’

The timeless wisdom elaborated by Aristotle and Aquinas is, in essence, embodied in every modern democracy in some form as the ideal, if not always the norm. It surely expresses the desired characteristics of the ideal leader, and all those who serve in elected or appointive positions of power and influence. It is also not our task to measure the depth or width of the gap between what should be and what is, but rather to keep in the forefront of our thinking and our actions the basic principles expressed in the traditional notions that have formed the guidelines of our democratic growth. The elaboration of western thought has always, and until recently at least, carried these principles and embedded them deeply in our consciousness – and hence in the structure of modern democracies. Of course, some modern relativists will deny that normative principles should apply to individual, community, or national behaviour, but they will usually be found in the splendid isolation of university campuses and

in the odd corners of coffee houses in major cities such as San Francisco, Auckland and especially Berlin.

But even they conduct the debate within the generally accepted rules of society, and while discourse with them about details is not always pleasant or polite, there can be, and often is, consensus on basics. In the international arena, standards of conduct have been defined in The Congress of Vienna in 1815, in the Hague Conventions of 1899 and 1907, in the Geneva Protocol of 1925 and the Geneva Conventions of 1949, in the Charter and Covenants of the United Nations, in the Principles of the Nuremberg Tribunal and in countless other international agreements. But these are instruments that address what is not permissible, as opposed to what should be the actual substance of the behaviour of nations. Nothing in these and other international agreements provide us with guidance concerning the behaviour of rogue states or modern terrorist organizations.

On the other hand, treaties and compacts pertaining to mutual defence, such as the North Atlantic Defence Treaty and other multilateral and bilateral instruments, identify aggression against one signatory as a *casus belli* and require others to come to the aid of a state that has been attacked. These pacts have served the world well – because a potential aggressor knows well the consequences of offensive action against a nation so protected. Even when such treaties did not exist, the victim of an attack could frequently, but not always, count on collective action to expel an aggressor. Deterrence is always less costly than the deployment of armed forces and subsequent conflict, as was so convincingly demonstrated by NATO over four decades in confrontation with the Soviet Union.

The United Nations was established in 1945 precisely to provide a forum for the advancement of the welfare of all member states, to serve as an instrument to head off conflict before it occurred, and to help resolve conflicts that became unavoidable. Just a few months after its birth, Winston Churchill spoke on March 5, 1946 at Fulton Missouri, expressing his hope and confidence in, as he put it:

A world organisation [that] has already been erected for the prime purpose of preventing war, UNO, the successor of the League of Nations, with the decisive addition of the United States and all that that means, is already at work. We must make sure that its work is fruitful, that it is a reality and not a sham, that it is a force for action, and not merely a frothing of words, that it is a true temple of peace in which the shields of many nations can some day be hung up, and not merely a cockpit in a Tower of Babel. Before we cast away the solid assurances of national armaments for self-preservation we must be certain that our temple is built, not upon shifting sands or quagmires, but upon the rock.

While that speech became more notable for his classic statement of the beginning of the Cold War as he declared ‘from Stettin in the Baltic to Trieste in the Adriatic, an iron curtain has descended across the Continent,’ nothing could mask Mr. Churchill’s enthusiasm for the United Nations, which he believed could become a highly effective instrument of lasting peace. Those of us alive at the time shared that hope, and we believed that the United Nations would, after a fashion, enforce a generally agreed moral code of conduct by which all member states would abide, and which would intimidate and deter those who shunned membership. In its first true test involving significant conflict, the outbreak of war on the Korean Peninsula,

the United Nations had incredible good luck. The Soviet delegation had recently walked out of the Security Council. By its absence, it was unable to veto the Uniting For Peace Resolution authorizing the forces that eventually engaged North Korea and China to prevent the subjugation of South Korea.

On the other hand, as Arthur Schlesinger has observed, 'few problems in international politics are even cast in the mould for unequivocal ethical approval or disapproval. Most foreign policy decisions are self-evidently matters of prudence and manoeuvre, not of good and evil.' Because most foreign policy matters are 'morally neutral or ambiguous...moral principles cannot be decisive.'<sup>2</sup>

In more than 40 years of interest and participation in the fields of foreign affairs and national security, I have found little on which to agree with Professor Schlesinger. Yet on this score I am sure he is right, just as he is when he declares that 'no nation that rejects national interest as the mainspring of its policy can survive.' Here we begin to have a clearer view of the front edge of the quite popular notion that 'national interest' is but a subterfuge for narrow selfish interest. The implication is that pursuit of one's own national interest, especially if not in conformity with the prevailing numerical majority of members of the United Nations, is by definition a narrow and even selfish pursuit, somehow running directly against the basic tenets of international law. That, of course, is to confuse international law with what the United Nations does or says or permits, which is an entirely separate problem, since the United Nations is not a government at all.

It is certainly true that small states place greater store in the United Nations than do larger ones, perhaps because they feel a sense of protection through association with a numerical majority. From this has emerged the modified version of 'multilateralism,' frequently (though not always) invoked as an excuse to do nothing in the face of imminent danger or even catastrophe. The United Nations, now vastly transformed by virtue of the composition of its membership, now permits numbers to determine which actions it will take. It even permits rogue states to ascend to important positions, such as allowing Libya, of all nations, to chair the Human Rights Commission. The late great American Democrat Senator, Daniel Patrick Moynihan, my colleague in a Republican White House 35 years ago, had a name for this phenomenon. He called it 'Defining Deviancy Down,' by which he criticized the constant lowering of the standards of truly deviant behaviour to the point at which even the most outrageous behaviour, even bordering on the criminal, would be countenanced and tolerated. As for 'multilateralism,' the United States has long been an advocate, but not at the price of immobilizing itself or others. In fact, 'multilateralism' has from time to time been invoked as a reason not to act, and the consecutive failures of the multilateralists in Rwanda, Bosnia, Kosovo, and elsewhere underscore this point.

What is interesting, it seems to me, is our assessment of the relative worth of conventional means, ordinary and customary institutions and devices, methodologies and strategies, dialogue and diplomacy when dealing with modern forces of terror, whether rooted in nation states or independent of them.

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2 Arthur Schlesinger, 'National Interests and Moral Absolutes', in Ernest W Lefever, *Ethics and World Politics: Four Perspectives* (Baltimore, MD, 1972), p. 26.

If the date of the emergence of modern terrorism is fixed in 1972, at the time of the Munich Olympics and the massacre of Israeli athletes that took place there, we can create a convenient historical bracket for the discussion of dealing with the incredibly complex subject of terrorism and the rise of what we now call 'rogue states.' Far earlier, of course, throughout the 20th century, we became familiar with revolutionary terror. This includes terror as enshrined in Leninist doctrine by the early 1900s, and then institutionalized with the creation of the Soviet Union in 1917, followed not long after by the rise of fascism and national socialism in Italy and Germany. We should also recall the sheer terror visited upon China, Korea, the Philippines and most of Southeast Asia by imperial Japan during World War II.

For a highly refined and microscopic view of day-to-day terror, we need only read Gavin Dawes's accounts in 'Prisoners of the Japanese,' or the slender volumes of Christopher Browning's 'Ordinary Men' or Jan Gross's 'Neighbours,' both of which focus on the Polish aspect of The Holocaust. Nor can we overlook the highly refined terror of regimes in East Germany, Czechoslovakia, and Romania, or the terror of the 'Great Leap Forward' and the 'Cultural Revolution' in the People's Republic of China. These accounted for tens of millions of deaths, far more than Hitler's legions managed to murder in Eastern and Central Europe during World War II.

What distinguishes the terror that began at Munich from these other examples is that it marked the beginning of an era in which terror became stateless. Murderous acts were no longer specifically directed by one state against another in pursuit of some specific interest or grievance, but by amorphous 'movements' bound by either religious fervour or ideological fanaticism. So it was with the Baader-Meinhoff gang in Germany, the Symbionese Liberation Army in California, and other home-grown groups, mostly in the Middle East. All possessed an animus against Jews generally and the State of Israel in particular. In the thirty years since Munich, we have become nearly numbed by the steady growth of terrorist movements, and almost daily we read and hear of some new terrorist act committed by organizations that actually claim 'credit' for their outrage.

The great watershed event of our times was the attack on the United States on September 11, 2001, when we were attacked in a way, and with such brute force, that no one could have imagined possible. As we know now, nearly 3,000 lives were lost in New York, some 200 in the attack on the Pentagon, and dozens in a field in Western Pennsylvania as a result of the heroic response of passengers aboard the third aircraft bound for Washington and destined for the White House or the United States Congress. It was, in the words of President Franklin D. Roosevelt on December 8, 1941 as he asked Congress for a Declaration of War, 'a day that would live in infamy.'

The response of the President and Congress of the United States was immediate and strong – the President pledged to find and deal with those who had perpetrated the attack. Beyond that, and this is important, he promised the nation and the world to lead a long-term struggle to eliminate the threat of terrorism with a global reach. There could have been no doubt whatsoever that the United States would move on Afghanistan's Taliban regime, which had provided a haven and other forms of support for Osama bin Laden and his Al Qaeda fighters. Nor could there have been any doubt about the outcome. This was despite the whining of those, including

many of our own retired military figures, who argued that the United States would suffer the fate of the British in the 19th century and the Soviets in the 20th century – humiliation, catastrophe, and defeat in a ‘quagmire.’

So, we and our coalition partners attacked in Afghanistan, and the Taliban regime was quickly defeated and ousted. That we have not yet completely rooted out the remnants of Al Qaeda nor can even be certain that we have or can in the future locate and deal with Osama bin Laden is less important than the continuation and expansion of the war against terror. Some argue that not finding Osama and getting hands on his terrorist warriors is the equivalent of failure. Others suggest that the United States should be permitted its response against Al Qaeda as a form of justifiable retribution for September 11th, but that to venture beyond that stage is undesirable and dangerous.

In the State of the Union Address of 2002, President Bush described his intentions to pursue terrorists, to punish and isolate states that harbour, finance or otherwise support terrorist movements. He stated clearly that no one would be beyond the reach of the United States and its allies in this cause. He described a trio of nations that support terrorism, and even practice domestic terrorism against their own populations, labelling Iraq, Iran, and North Korea as an ‘axis of evil.’ It was highly instructive to hear the shrieks of horror in response to this initiative and some, including many in New Zealand, accused the President of actually exacerbating a bad situation with respect to all three. There followed a huge wave of invective against the United States and the President, with the New Zealand media taking a back seat to no one.

Countless political commentaries called into question the intellect of our leadership. This was nothing new, since even Ronald Reagan, twice-elected Governor of California and twice elected President of the United States, was regularly dismissed as a ‘lightweight’ and a ‘grade B movie actor.’ According to these commentators, America had become reckless and ‘unilateralist,’ a ‘warmonger,’ a ‘rogue power’ itself. We heard glorious accusations that George Bush had become a ‘war criminal’ in the fashion of Adolph Hitler, ably assisted by his jackbooted assistant in London, Mussolini, otherwise known as Prime Minister Tony Blair.

Then the United States announced a fundamental restatement of its national security policy, the essence of which is that it will no longer wait to receive the first blow from a terrorist state or a hostile nation, and that it will be fully prepared to protect itself by taking pre-emptive actions against a known threat.

In vain the United States and its principal allies urged the United Nations to act together in dealing with Iraq, but the attempts were unsuccessful. Deeply divided, with France, Germany, Russia, and China in steely opposition, the United States came to the determination to act, meaning to bring about regime change – the stated policy of the United States since 1998 and the second Clinton Administration. It is more than passing strange that everyone agreed that Saddam Hussein’s Iraq was in gross violation of numerous Resolutions of the United Nations, that everyone agreed Iraq had weapons of mass destruction and had actually used them on the Iraqi people, but that consensus could not be reached on dealing forcefully and directly with the threat. So, it was left to the United States, Great Britain, and Australia, as leaders, to forge a workable coalition to deal with Saddam. Germany, already marginalized by



its own timidity and fixed position of disagreement with the United States, counted for little. France, led by a preening Gaullist deeply worried that he could not assume the functional equivalence of the 'presidency' of Europe, actually attacked and threatened the newest candidates for membership in the European Union. These were exclusively states that had suffered under the Soviet imperium. Chirac declared them 'immature' and 'badly behaved,' suggesting that their accession to the Union could actually be derailed if they sided with the United States, the UK and the 'Coalition of the Willing.'

So here we are, victorious in Iraq at a cost in lives and treasure. Weapons of mass destruction have not yet been found, though we have clearly established that Iraq did have the capability to produce them. The intelligence that informed the decision to invade and replace the murderous Baathist regime is under attack as having been fudged or distorted, and the task of rebuilding Iraq falls to the United States and others willing to assist. Some argue that the United States is a new imperial power, and that its power and reach threatens regional and even global stability. Others ask the provocative questions 'where will it end,' and 'who will be next?' The more nervous among us suggest that it could be anyone. But there is indeed an agenda, and it concerns the continuing threat posed by movements and states that actively support terror, as well as those that manufacture weapons of mass destruction and export them, or export the underlying technologies that make such weapons possible.

We have made no secret of the fact that our strategy has changed, and that we, the United States, will not sit passively by as the capacity to traffic in such weapons grows. In concert with others, or in need be by ourselves, the United States intends to deal effectively and thoroughly with either terrorists or rogue states that fall into the category of threats to us or to our allies and friends. To that end, we have made massive readjustments in our defence budget, our intelligence budget and collection procedures. We have reorganized internally to address the issues of homeland security in hundreds of ways, and we have extended our cooperation with some ninety different nations. We have stepped up counter-terrorist training in places where terror is bred. We have cracked down hard on nations in which laxity toward terrorism is practiced. The outcome of successive and successful wars in Afghanistan and Iraq has changed the shape – and the thinking – of others in the region who may have entertained notions of taking the terrorist path as an instrument of national policy.

Oddly, many have failed to listen carefully to our message. The war against terror is a long-term project, and the United States is settling in – and, I might add, budgeting its resources accordingly – to wage that war. We are firmly backed by our most traditional ally, Great Britain under Prime Minister Tony Blair, and ably supported by the strong contributions of Australia and numerous other states. This discomfits some of our critics, who fear a superpower with the resources, and capabilities and determination to conduct a protracted struggle against the enemies of freedom and democracy. For others, the leadership of the United States represents a political challenge – here one thinks of my friend of more than twenty-five years, Jacques Chirac, mainly concerned with the place of France in such an uncertain world, and determined to protect French economic interests at virtually any cost.

And the United Nations – what place and what role will it have in a world where the search for terrorists knows no boundaries? What if the United Nations is not engaged? If its power and reach are ineffectual, and if its agencies are ignored by rogue states, what useful services can it provide, what mediating role can it play?

Let us take, for example, the well-known International Atomic Energy Agency and one of its most highly valued offspring, the Nuclear Non-Proliferation Treaty. Let us take it in the context of one or two clearly established ‘rogue’ states – North Korea and Iran. It is incontestable and proven beyond the shadow of a doubt that both regimes (a) support terrorism, and (b) seek to acquire nuclear weapons. It is equally incontestable that any United Nations-centred agreement to prevent the spread of a nuclear weapons capability is ineffective, even feckless. The Nuclear Nonproliferation Treaty has no enforcement mechanism, and is routinely ignored by any nation inclined to acquire weapons capability. North Korea has admitted it is in breach of its solemn obligations under the NPT, and openly threatens to use its weapons to attack its neighbours and even parts of the United States. Do you think for a moment that the United States is going to wait for the United Nations to address this problem? Certainly not. Nor is it foreordained that the same strategy used to address Iraq will be the preferred method of dealing with Pyongyang, because the unfortunate geostrategic position of the city of Seoul, capital of South Korea, militates against a purely military approach. As long as more than 12 million people reside within reach of more than 12,000 artillery pieces manned by more than 1.2 million troops in North Korea, caution will be the order of the day. Because we hesitate to apply the same remedy to North Korea that was applied to Iraq is a concession to stark reality, but it in no way diminishes our determination not to permit North Korea to engage in nuclear blackmail against South Korea, Japan or the United States. It is for that reason we have insisted that we will not engage in bilateral talks with North Korea, only multilateral and regional discourse, including the People’s Republic of China, North Korea’s main patron and supplier. It is a simple case of ‘different strokes for different folks.’

As for Iran, the President of the United States, in spite of all the deficiencies perceived by his comfortably distant and often vicious critics, has declared that we will consider a nuclear-capable Iran to be unacceptable. It is that simple. We do not accept the right of Iran to acquire or develop nuclear weapons, and we will be prepared to act.

In Cracow, Poland, President Bush announced the creation of an international Proliferation Security Initiative, under the terms of which allied nations will intercept ships and aircraft carrying weapons of mass destruction, missiles or what is called ‘enabling technologies’ in territorial airspace, land area and on the seas. Twelve major countries are already in active discussions to implement this initiative, which will be broadened in space and time. In taking such initiatives, we and like-minded countries are serving the interests of all nations.

Are these policies, actions and measures that comport with classical standards of ethics? I think the answer is clearly ‘yes,’ because the intention behind such actions is designed to protect and enhance the safety of innocent populations everywhere.

I am constantly struck by the argument that the root cause of all the discomfort, the revolutionary fervour and the violence can be found in the failure to produce a

lasting settlement in the Middle East, or that ‘poverty and injustice’ are to blame. Create a workable solution to the ongoing crisis between Jews and Arabs, it is said, and these problems will subside, and eventually disappear. It seems that distance from the Middle East, or non-engagement in its problems, increases the level of misinformation when it comes to these convenient theories. Osama bin Laden and his twenty effective terrorists of September 11 did not come from poverty-stricken families or backgrounds. On the contrary, they were either rich or well-to-do, and well-educated.

What is at stake here is a jihad against Western civilization. The Saudis, for example, are practitioners and supporters of Islamic fundamentalism with all that implies. This includes moral and considerable financial support for bin Laden and the radical *madrassas* everywhere, those religious schools that teach hatred of the West and promote violence and terror as a means to wiping the world clean of Jews and Western culture and influence.

Here we come face to face with a phenomenon that is beyond the capacity of many to grasp, or perhaps beyond their willingness to grasp. This hatred of which I speak is something so deep, so ingrained, so ideological that it may well be beyond any repair. No traditional instruments of Western origin are capable of dealing with it – and certainly not the soft ways of international diplomacy or the byways of the United Nations. These are not merely differences to be adjusted by compromise and mutual understanding; these are the elements of a declaration of war upon western civilization.

We hear the argument that we need to eliminate the conditions that breed terror, conventionally identified as conditions rooted in poverty and desperation. But while it is certainly true that more, much more, needs to be done to eradicate poverty and disease and desperation, the Islamists and Wahabbists are not the slightest bit interested. Rather, they focus on the literal elimination of the West and its way of life, and with such evils there can be no compromise. Only if we begin to think in these terms – within the concept of *irreconcilability* – will we begin to grasp the dimensions of this larger conflict.

In the final analysis, we have come late to the recognition that the underlying ideals of Western civilization – *our civilization* – are now at risk, and in some ways under direct attack. For those who believe that by responding with the reach of national power and enhanced enforcement we are betraying the fundamental premises of our society and that we are subverting not only ideals but our ethics, I can say only that we are in conditions of major disagreement. There is no ‘multilateralism’ that can address the emergency now upon us, and there is precious little time to waste in organizing an effective defence.

These are the considerations that inform the attitudes of American leaders, in the Congress and certainly within the Administration. This is not a frivolous exercise; it is a mission, the correctness of which most Americans are convinced. Americans believe that its execution will make the world safer, not more dangerous.

Whether we are considered hopeless unilateralists, reckless cowboys, bullies, nationalists, or out of touch with reality, we Americans still believe in the free play of ideas and the essential worth of free and independent societies. The United States is accustomed, perhaps even insensitive, to criticism of its policies and its conduct.

We have made major mistakes in the last half-century, and will continue to make mistakes, but we have almost always been there for our friends, and without asking much in return. You may recall that we don't have much experience in running an empire, that we are a diverse nation with global interests, that we are governed by a Constitution that has endured for more than two centuries. We must also adjust to the huge sectional and conflicting interests of 300 million people, and fund major expenditures for national defence and international security, now on the order of \$400 billion. We do this in our own interest, to be sure, but also in the belief that most of the time, the interests of the United States are in basic harmony and do not conflict with the interests of others. By and large we do a good job.

If we do not have support for what we do, we will at least ask for understanding that we take actions because we believe the time has come for choosing a path. We pray intensely for a successful outcome, and that ours may be a contribution to the future security of the world.

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## Chapter 12

# The Ethics of Foreign Policy

Hon. Phil Goff

The New Zealand government puts great store in promoting an active, equitable, and responsible foreign policy. I begin this chapter with a few general observations, in particular to focus attention on the all-too frequent assumption that moral principles are soft ‘PC’ thinking which has no place in the real world.

Moral philosophy and ethics have provoked almost endless discussion. In Western societies the debate goes as far back as Socrates. In the modern world, Woodrow Wilson was perhaps the first world leader to step forward and put ethics and universal values at the heart of his nation’s foreign policy; others have tended to fall short of his lofty ideals. More recently, there has been a resurgence of interest in the ethics of international relations. Global terrorism, shifting power relationships in a global environment marked by American pre-eminence, an enlarging European Union, and the growing weight of China in the Asia-Pacific region are several, but not all, of the drivers of this renewed interest. Then there are the added debates over issues such as global free trade, the sustainability of the environment and human rights.

The late Robin Cook proclaimed an ethical foreign policy in 1997, in a speech he gave just ten days into the new British Labour Government’s term of office. Premised on the fact that ‘this is a new age of internationalism’ and a ‘world in which nation states are interdependent’, Cook announced a strategy which ‘supplies an ethical content to foreign policy and recognises that the national interest cannot be defined only by narrow *realpolitik*.’<sup>1</sup>

Cook specifically placed the ethical dimension to foreign policy in the human rights context. He argued that an ethical foreign policy must support the demands of other peoples for the democratic rights on which we insist for ourselves and that henceforth, human rights would therefore be placed at the heart of British foreign policy. He also emphasised the need to give new momentum to arms control and disarmament, and to push respect for the environment further up the international agenda.

The elements that Robin Cook highlighted as some of the key components of an ‘ethical’ foreign policy have been very much at the heart of New Zealand foreign policy over recent years. Today, the need for the international community to translate shared concerns into principled and appropriate action has never seemed more evident. How we order our foreign relations, the quality of our decisions and actions, and what obligations and duties we are prepared to assume are not just

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1 Speech by Robin Cook MP, British Foreign Secretary, 12 May 1997.

matters of hardheaded calculation. Inevitably, they invoke moral judgments and ethical principles.

There are those who argue that ethics and the actual conduct of nations have, observably, little in common. The business of foreign affairs, it is said, is to defend the nation and maximise its power. Differences of civilisation, culture, religion, and even of linguistic concepts are, in any event, too great to lead to an effective single system of ethics, by which to manage the world's affairs. We must all readily concede that these propositions accurately describe much of international behaviour.

This is an egotistical world. We are organised on the basis of sovereign states. It is the primary duty of all governments to provide for the security and well-being of their people. In the conduct of security and foreign policy, little quarter is given. National interests abound. The realists are right, too, when they put their finger on the serious cultural and other hurdles we face in promoting international cooperation. The scope for misunderstanding is large. The situation is often manipulated and exploited for political gain. I would also add that, for so long as many of the current disparities continue among peoples, the difficulties in the way of forming a common front on many problems will not grow smaller.

But 'realism' is often taken too far. The arguments tend to discount the worth of genuine acts of generosity, or enlightened self-interest. Let us look back. The Marshall Plan in Europe, and the similar rehabilitation of Japan, was undertaken for a variety of motives. Both actions went far beyond what historic precedent and narrow self-interest required. George Marshall's speech unveiling his blueprint asserted that 'It is logical for the United States to do whatever it is able to do to assist in the return of normal economic health in the world, without which there can be no political stability and no assured peace.'<sup>2</sup>

Winston Churchill characterised the Marshall Plan as 'the most unsordid act in history', and President Truman said that it was 'the dividing line between the old era of world affairs and the new...the dividing line between the old era of national suspicion, economic hostility, and isolationism, and the new era of mutual co-operation.'<sup>3</sup> Altruism paid off. Lasting democracies were established, as well as new standards of international conduct relating to war.

As one of the founders of the new collective approach to security, President Franklin D. Roosevelt, put it to the US Congress on 1 March 1945 on his return from the Yalta Conference: 'The structure of world peace cannot be the work of one man, or one party, or one nation...It must be a peace which rests on the cooperative effort of the whole world.'<sup>4</sup> Realism has also failed to keep up with some obvious changes to the global environment. An enormous and growing body of international law and standards has been negotiated, beginning with the United Nations Charter and the 1948 Universal Declaration on Human Rights.

While many treaties and conventions may be honoured more in the breach than in the observance, they do weave a valuable fabric of principles, duties and

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2 See e.g. OECD, 'A tribute to George Marshall's Vision', Paris, 27 May 1997, p. 30.

3 Ibid. Speech by William M. Daley, pp. 9–10.

4 See for example Lawrence Halprin, *The Franklin Delano Roosevelt Memorial* (San Francisco, CA, 1997), p.123.

obligations, standards and codes of conduct, which lie at the heart of the search for ethical international behaviour. These agreements are not lightly disregarded by governments, even where their actions may stretch the limits. Governments go to enormous lengths to justify and legitimise their actions in terms of international law. Rarely, if ever, will a government acknowledge that its actions have breached international law; and this in itself reinforces the underlying force of international agreements. A recent example is the efforts of members of the coalition of the willing to justify their invasion of Iraq using the United Nations Charter.

These agreements have contributed to an evolving culture of universal human rights, which increasingly intersects with other major preoccupations such as globalization, trade, development, and the environment. The six core Human Rights international treaties, the Kyoto Protocol on Climate Change, arms control treaties, the war crimes tribunals, and the International Criminal Court are other examples, old and new, of a political reality, with which all governments must come to terms, sooner or later.

Before that point is reached, countries may need to show courage and leadership in maintaining the necessary momentum in support of such initiatives. The International Criminal Court is an example where views are highly polarized. In this case, countries supportive of the Court have come under extreme pressure to undermine or circumvent the Statute establishing it. This has happened bilaterally, and also in fora such as the UN Security Council. New Zealand has consistently been in the forefront of those states supporting the Court, including in the debates in the Security Council. With over 100 states endorsing the ICC, the tide has now turned irreversibly in its favour despite the difficulties along the way.<sup>5</sup> If we are to put an end to crimes against humanity, we must change the climate of impunity, and make clear that perpetrators will be held to account. This inevitably means surrendering an element of national control to the hands of the Court.

Moreover, security itself can no longer be defined narrowly in traditional military or economic terms. This is not a new idea. President Dwight D. Eisenhower was no dreamy idealist: his views were informed by fighting a bloody and tragic world war. In his Second Inaugural Address on 21 January 1957, the President said:

Yet this peace we seek cannot be born of fear alone: it must be rooted in the lives of nations. There must be justice, sensed and shared by all peoples, for without justice the world can know only a tense and unstable truce. There must be law, steadily invoked and respected by all nations, for without law, the world promises only such meager justice as the pity of the strong upon the weak. But the law of which we speak, comprehending the values of freedom, affirms the equality of all nations, great and small.<sup>6</sup>

The United Nations was created in 1945, ‘to save succeeding generations from the scourge of war’<sup>7</sup> – to ensure that the horrors of the World Wars were never to be

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5 On 28 October 2005 Mexico deposited its instrument of ratification of the Rome Statute of the International Criminal Court, becoming the 100th State Party to the ICC. New Zealand ratified the Statute on 7 September 2000.

6 See e.g. <http://www.yale.edu/lawweb/avalon/presiden/inaug/eisen2.htm>.

7 Preamble to the Charter of the United Nations.



repeated. However some of the biggest security threats of today, and in the period ahead, go well beyond States waging aggressive war. Since 11 September 2001, we have had to come to grips with the challenge of global terrorism, as demonstrated to horrifying effect by Al Qaeda. An entire nation, Afghanistan, was subverted by this group of non-state actors. As tragically proven yet again in Bali, in London, in Beslan and Madrid, fanaticism and racial hatred threaten us all. But there are also other threats: an upwardly spiralling world population, pressure on scarce and finite resources, environmental degradation and pollution, glaring social and economic inequities, and disease: Highly Pathogenic Avian Influenza (HPAI) is the latest example.

These threats cannot be addressed by force of arms. Nor does political or economic power provide immunity. Indeed, since 11 September, the world's most powerful country, militarily and economically, has felt uniquely vulnerable to non-traditional threats. Realism in the 21st century requires a wide definition of security, and a commensurately wider means of defence.

The opening words of the United Nations Charter reinforce the indivisibility of security, economic development and human freedom, where it is said that the organisation was created 'to reaffirm faith in fundamental human rights' and 'to promote social progress and better standards of life in larger freedom.'<sup>8</sup> Undoubtedly the perceptions about what constitutes a security threat differ widely across the globe. For those facing starvation, or death from HIV/AIDS or malaria, or displaced by civil war, issues such as terrorism and the proliferation of weapons of mass destruction can be, to say the least, somewhat abstract.

In examining death tolls, that is certainly the case. The sheer number of deaths due to poverty and infectious diseases is staggering. Twelve million people die from HIV/AIDS, tuberculosis and malaria each year, and 95 per cent of all HIV infections occur in developing countries. Another 7 million die from other infectious diseases. 14 million people die every year from hunger, and extreme poverty and disease are mutually reinforcing. If we use causes of the most individual deaths as a criterion, infectious diseases and extreme poverty would be the two most pressing security threats, followed by, in the order of magnitude, civil wars, international wars, and terrorism.

On the other hand, numbers of deaths alone might mislead. Previous casualties do not necessarily tell us much about a threat's future destructive potential. For example, a major terrorist attack involving weapons of mass destruction (wmd) has not yet happened. Second, such numbers say little about indirect effects. The terrorist attacks of September 11, while comparatively low in casualties, had significant ripple effects throughout the international system, leading directly to the war in Afghanistan and creating circumstances that contributed to the war in Iraq, as well as a global economic turndown.

It also requires more strenuous efforts to overcome the obstacles of difference and to persuade those who may need convincing that self-interest and ethics are not opposed. They are an integral whole. Convincing the skeptics, however, will be extremely difficult. Amid the goodwill and achievements of past efforts, the

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8 Ibid.

prevalence also of foot-dragging, double standards, and inconsistencies, leaves little room for doubt on that score. But we must not allow the cynicism we see around us in international affairs to diminish the expectations and ethical behaviour we should demand of ourselves, and each other, as members of the global community. It seems a common risk for those who speak in favour of ethical principles that they might give an unwanted impression of naivety, or of cloaking a claim to moral and cultural superiority, even revelation.

Such is not my claim in any way. Nor would it be that of most, if not all, New Zealanders. It is true that we promote ourselves as a good international citizen. We admire activism, doing the right thing, helping out, giving others a fair go, being as good as your word, telling it like it is. These are all, in fact, basic ethical principles dressed up in familiar language. In no way, however, are they unique to this country.

But history, geography, size and culture have come together to reinforce a particular set of values, a typical New Zealand character and approach. We should be frank. We are fortunate in ways that many others are not. We do not share a land border with an historical enemy. We are culturally diverse but, by any comparative measure, harmoniously integrated. There are no extremes of wealth. There are no bitter religious divisions. Corruption is rare. We have an uncrowded, reasonably fertile land. We have no strategic resources others want. We are economically developed and quite well off.

This may sound like a recipe for smugness in a country that can afford the moralism of distance and the virtue that comes from lack of fear or temptation. I do not believe we have fallen into that trap, but neither should I be the judge of that. What is amply clear is that New Zealand does not have the capabilities, in power terms, to muscle its way through problems. Going it alone is not an option for us. We need to be team players. We need to leverage off others with similar interests, and to form coalitions.

If, however, we are to have our say, and hope to be heard, let alone taken notice of, we must also have the right credentials. That means having a reputation for responsibility and integrity. We must belong to the relevant clubs. We must be seen willing to pull our weight, have the ability to cooperate, and pay our dues.

But more than that, to achieve our foreign policy goals we need to have influence, and to have influence we need to be dependable, constructive, and useful. We may demonstrate this when we are a member of the Security Council, or through chairing a United Nations Committee, or facilitating an outcome from a negotiating process. The issue concerned may be of direct national interest to New Zealand, or of broader common interest to the international community, or it may be one of particular interest to others and less to us but on which others have sought our support. Involving ourselves in this way means that we can call upon others for their support on issues of concern to us.

If our contribution in the international arena is to have real meaning, we must add value of a distinctive kind. We must know our own mind, have an independent point of view, and be prepared, in a principled way, to speak out. We must also be prepared to act. While principles are fine, without consequent action, they serve little practical purpose. I would note here that action might include military force, as

a last or appropriate resort. A principled foreign policy does not equate to pacifism. Principles are worth fighting for.

My use of terms like ‘team’, ‘club’ and ‘arena’ are borrowed from sport, and they presuppose rules – clearly understood, accepted and practical rules. It is a key tenet of New Zealand foreign policy that our long-term security lies best in a world of ethically based rules. The United Nations and related organisations are central to the making and upholding of such rules. Our response to the conflict in Iraq illustrated, and explains, the basis of our policy approach. As a principled country, we were keen to: maintain our commitment to the United Nations as the pre-eminent body to resolve international conflicts; affirm our belief in the importance of international law as the best guarantor of international security, especially of small states like New Zealand; support the elimination of weapons of mass destruction; respond to the humanitarian needs of the people of Iraq; and maintain a network of bilateral contacts with countries of similar views.

Once the immediate conflict ended in Iraq, we moved in a substantial way, in terms of our size and other commitments, to help give effect to UN Security Council Resolution 1483 with the rebuilding of Iraq. Similarly, New Zealand is currently contributing actively to 12 peacekeeping and peace support operations. We have been a significant contributor in this respect. Our most concentrated recent deployment was in support of the peace process in Timor Leste, which involved more than 5,660 personnel during the period from 1999. At its height, our contribution involved around half of the Army’s infantry combat force, a third of the Air Force’s helicopter force, and two-thirds of the Navy’s combat force. This resulted in New Zealand being listed among the top twenty of the UN’s troop contributing countries.

This is a period of huge UN peacekeeping activity, despite the criticisms of the organisation. With 66,500 UN peacekeeping troops in the field in 17 complex missions, it runs the world’s largest military operation, bar Iraq. All of this costs money, and the UN’s peacekeeping bill has now topped US\$5 billion for the first time ever. New Zealand’s own contribution to this bill now stands at US\$10.5 million per annum.

Our sizeable contribution to Operation Enduring Freedom has involved all three of our Armed Services in the fight against terrorism, and the rehabilitation of Afghanistan. We still have a Provincial Reconstruction Team of over 120 personnel in Afghanistan, as well as other personnel operating under the Operation Enduring Freedom and United Nations umbrellas.

Action at the global level, however, must be supported by active regional and bilateral relations. As a member of the Asia-Pacific region, we have over many decades – some of them marred by deep conflict – sought to ensure our security and prosperity in partnership with Asian and Pacific countries. These years have witnessed the full re-emergence of many Asian nations from hundreds of years of colonial rule. The process of welding together ancient and highly diverse cultures into a coherent, regional voice continues. It has been accompanied by an assertion of distinctive Asian values and ethics born of the great religions native to and nurtured in the region, Hinduism, Islam, Buddhism and others.

The ever-growing strength of China is adding to the region’s dynamism. India, Asia’s other giant, is engaging substantively once more with the countries of

Southeast and East Asia. Closer to home, New Zealand's relations with our Pacific Island neighbours have undergone a significant transformation in recent years. We are now home to many of these peoples. The same can be said of Asian migration that, on current trends, may see a doubling of New Zealanders of Asian origin to some 13 per cent of the total population within twenty years. In both cases, our own European and Maori values and ethics are being further diversified and enriched. The character of our foreign policy will increasingly reflect its changing domestic roots.

Within the UN, our membership of the Pacific Islands Forum Group has increasingly formed part of the New Zealand identity. The group is unusual in that its membership spans the 'North-South' divide between developed and developing countries. Under the active chairing of Nauru, Fiji, New Zealand, Samoa, and now Papua New Guinea, the profile and impact of the Forum Group has grown. This was particularly evident in delivering significant outcomes from the 'Barbados + 10' Summit on Small Island Developing States, held in Mauritius in January, 2005, which New Zealand chaired. New Zealand's active participation in the Group, and the effort that we put into supporting the interests of our smaller developing country neighbours, helps identify us as a country that is not purely self-interested and is willing to apply its efforts to assisting others. In the United Nations, where numbers count, that gives us leverage when we need support on issues of interest to us.

I conclude by making some remarks from the Government's perspective, on what is one of the basic tenets of our foreign policy – human rights. Human rights are fundamental. This is not only a matter of moral conviction. Deprivation and abuse of all such rights threatens stability and development. Such circumstances must be challenged. And we do, consistently, in the appropriate fora and in bilateral contacts. As Minister of Foreign Affairs I approved policy guidance, seeking to integrate human rights concerns more squarely into our bilateral relations with other governments.

If they are to be effective, however, challenges to the practices of others must be carefully thought through. Specific circumstances require specific approaches – whether through bilateral, regional or multilateral means. And patience and persistence as well. If possible, criticism should acknowledge any progress made and look to constructive solutions. Disrespect fails to persuade. It is not a catalyst for early change.

There have been gains. With the end of the Cold War and its ideological competition for third country loyalty, the scope for addressing deficient human rights situations has increased. There were 40 democracies two decades ago. Today, there are well over a hundred.<sup>9</sup> Timor Leste has won independence.

There is greater transparency nationally and internationally. The internet is an important instrument in this. So are satellite communications. New country alignments are forming, depending on the issues. There is a greater emphasis on

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9 More than 100 countries have signed the Warsaw Declaration of the Community of Democracies (see UN document A/55/328, annex I), and in 2002 that Community endorsed the Seoul Plan of Action (see UN document A/57/618, annex I), which listed the essential elements of representative democracy and set forth various measures to promote it.

regional arrangements. Economic, social and cultural rights are receiving greater attention internationally. The media continue to play a vital role. They report from the spot, often at high risk to life and limb. They have the power to expose human rights abuses, and to put them on our agenda thousands of kilometers away.

In New Zealand, government action on human rights is complemented in many valuable ways by the actions of non-governmental groups and other members of civil society with an interest in human rights. Indeed, some commentators suggest that the roots of contemporary ethical foreign policy are to be found in the evolution of the NGO movement, particularly following the experience of Biafra.<sup>10</sup> They help set our agenda of action. There is a demonstration that the protection of human rights is a collective responsibility. This is a principle that deserves wider international recognition.

The UN Secretary General's recent report 'In larger freedom: towards development, security and human rights for all' sets this out squarely: 'Human rights are as fundamental to the poor as to the rich, and their protection is as important to the security and prosperity of the developed world as it is to that of the developing world. It would be a mistake to treat human rights as though there were a trade-off to be made between human rights and such goals as security and development.'<sup>11</sup>

Despite valuable progress in human rights at the international level, there is, overall, little cause for celebration. Indeed, the Secretary General's report states that 'the system for protecting human rights at the international level is today under considerable strain.'<sup>12</sup> Progress is most often incremental and slow. But if you look at the achievements of the last 30 years, human rights has been one of the big success stories of the United Nations and of the multilateral system.

There are shortcomings, too, I believe, in the way the treaty body system itself works. This has been recognised in the recent UN Summit outcome, in which world leaders resolved 'to improve the effectiveness of the human rights treaty bodies, including through more timely reporting, improved and streamlined reporting procedures and technical assistance to States to enhance their reporting capacities and further enhance the implementation of their recommendations.'<sup>13</sup> It was also agreed to convert the Human Rights Commission into a more focused and possibly smaller – and ideally less politicised – Human Rights Council,<sup>14</sup> although many details were left unresolved and will be problematic. Sensitive issues are involved, as well as serious resource constraints. The Summit has given practical recognition to the resource problems faced by the Office of the United Nations High Commissioner for Human Rights, by doubling its regular budget resources over the next five years.<sup>15</sup>

Moreover, the number of countries prepared to speak out consistently is quite small. New Zealand is prepared to do so. The principle of non-interference in the

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10 See, e.g., David Chandler, *From Kosovo to Kabul: Human Rights and International Intervention* (London, 2002).

11 A/59/2005, p. 37, paragraph 140.

12 Ibid. p. 37, paragraph 141.

13 A/60/L.1, paragraph 125.

14 Ibid. paragraphs 157–160.

15 Ibid. paragraph 124.

domestic affairs of others, particularly of those close by, can strongly inhibit action, not least when retaliation in kind would yield a good harvest.

For New Zealand, there is much to preoccupy us closer to home in our Pacific region. The problems facing many countries here include ethnic and demographic stress, marginal economic viability, and failing infrastructures. The consequences have been dire, in the cases of Bougainville and the Solomon Islands. We are deeply engaged on the ground in helping to restore, as a first step, their basic stability and governability. We have 35 personnel in the Regional Assistance Mission in Solomon Islands (RAMSI), and also have personnel on the ground in Bougainville as part of the Peace Monitoring Group there.

The coups in Fiji and continuing constitutional difficulties have involved a breadth of individual and political rights, and set back the nation's development. There are no quick, simple fixes. To say the ultimate responsibility lies with the nations themselves is to state the obvious, but, in the case of the Solomons alone, truth and reality are unlikely to become one for a long time to come. Outside donors will need to provide assistance of a very wide nature. To redress, however, the damage to life and society, human rights assistance will be essential to future viability.

With this in mind, we have adjusted our overseas development assistance objectives. We have also increased New Zealand's Overseas Development Assistance by 23 per cent this year, the largest increase in our ODA ever. NZAID's brief encompasses human rights issues directly and indirectly. They are present in the design of the good governance, education and health activities of our programs.

We will also continue to strengthen national human rights institutions where available. I have sought to concentrate on several issues only from the personal perspective of a New Zealand politician. I am conscious that there remains much more to be said, and that there are pressing aspects of ethics in foreign policy that I have not covered. One example is the evolving concept of humanitarian intervention, which has been described as 'perhaps the most dramatic example of the new power of morality in international affairs.'<sup>16</sup>

The recent Report of the Secretary General's High-level Panel on Threats, Challenges and Change, states: 'A more secure world: Our shared responsibility', puts it thus:

The successive humanitarian disasters in Somalia, Bosnia and Herzegovina, Rwanda, Kosovo and now Darfur, Sudan, have concentrated attention not on the immunities of sovereign Governments but their responsibilities, both to their own people and to the wider international community. There is a growing recognition that the issue is not the "right to intervene" of any State, but the "responsibility to protect" of every State when it comes to people suffering from avoidable catastrophe – mass murder and rape, ethnic cleansing by forcible expulsion and terror, and deliberate starvation and exposure to disease. And there is a growing acceptance that while sovereign Governments have the primary responsibility to protect their own citizens from such catastrophes, when they are unable or unwilling to do so their responsibility should be taken up by the wider

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16 See Leslie H. Gelb, Justine A. Rosenthal, 'The Rise of Ethics in Foreign Policy – Reaching a Values Consensus', *Foreign Affairs*, 82/3 (2003): 2–7.

international community – with it spanning a continuum involving prevention, response to violence, if necessary, and rebuilding shattered societies.<sup>17</sup>

Heads of State and Government at the 2005 World Summit<sup>18</sup> have said that they clearly accepted that responsibility and will act in accordance with it.<sup>19</sup> This includes the possible use of collective action under Chapter VII of the United Nations Charter in the case of manifest failure to protect by national authorities. This is seen by some as the most significant outcome of the recent Summit, and it is certainly a very useful statement of principle. We may not know for some time, however, how ready Security Council members will be to implement it in individual cases, and to overcome the political differences that have prevented action in, for example, Darfur. Implementation will also require States to be willing to commit troops, at short notice, and quite possibly to take casualties, to protect humankind quite possibly a very long way away.

Another is the important issue of ethics in trade. The recent Summit was unequivocal in its commitment to trade liberalization and to ensure that trade plays its full part in promoting economic growth, employment and development for all. As the Summit Outcome says, ‘A universal, rule-based, open, non-discriminatory and equitable trading system, as well as meaningful trade liberalization, can substantially stimulate development worldwide, benefiting countries at all stages of development.’<sup>20</sup> Hopefully, this stated commitment will be given practical effect in the Doha outcome. It is simply not plausible for developed countries to affirm on the one hand their commitment to development, and on the other to continue with practices that beggar the Third World. New Zealand has certainly played its part in leading the charge.

A third is the right to life itself, which stands ultimately behind our efforts in the field of disarmament and arms control. New Zealand has continued to lead in this area, but it is an uphill battle. The norm against proliferation of nuclear weapons continues to face challenges, and is unwittingly undermined by those who already have them. In the words of the Secretary General’s High-level Panel:

Lacklustre disarmament by the nuclear-weapon States weakens the diplomatic force of the non-proliferation regime and thus its ability to constrain proliferation...Despite the end of the cold war, nuclear-weapon States earn only a mixed grade in fulfilling their disarmament commitments.<sup>21</sup>

The Panel’s gloomy assessment pre-dated the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, and its failure to reach an outcome. As regards biological and chemical weapons, the High-level Panel reiterated the obligation and historic opportunity fully to eliminate all declared

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17 United Nations, 2004, p. 65, paragraph 201.

18 Held at United Nations Headquarters in New York from 14 to 16 September 2005.

19 UN document A/60/L1, p. 31, paragraph 138.

20 *Ibid.* p. 9, paragraph 27.

21 Report of the Secretary-General’s High-level Panel on Threats, Challenges and Change, p. 42, paragraphs 118 and 119.

chemical weapons stockpiles by the agreed target date of 2012, and emphasised that verification of the Chemical Weapons Convention should be further strengthened, and the long-standing impasse over a verification mechanism for the Biological and Toxin Weapons Convention, which has undermined confidence in the overall regime, should be overcome.<sup>22</sup>

Given the genesis of the Summit, which was the Secretary General's 'Fork in the Road' speech on the need to revisit the system of collective security following the invasion of Iraq,<sup>23</sup> and the threats we face, it is both extraordinary and depressing that the Summit Outcome says nothing at all about disarmament and non-proliferation. The impossibility of agreeing on language on disarmament and non-proliferation is of deep concern to New Zealand, and judging from the statements made at the Summit, also to many other countries. This gives a misleading message and one we must strive to correct, given the urgency of addressing this aspect of international peace and security.

It seems to me that, as members of the global community, we already have ample evidence to understand that we are talking about our own survivability in what is a very fragile ecosystem. As the Secretary General says in his report 'In larger freedom',<sup>24</sup> we fundamentally depend on natural systems and resources for our existence and development. Many of the environmental challenges we face require cooperation at the regional and global levels, and it is not possible for individual countries to deal with them effectively on their own. If we do not do this, we will be lost. Global solutions do work. A classic example is the Montreal Protocol on Substances that Deplete the Ozone Layer. This is effectively reducing the risk of harmful radiation, which is of particular relevance to New Zealand given its proximity to the southern ocean ozone 'hole'.<sup>25</sup> The Secretary General identifies three further major challenges for the international community which now require particularly urgent action: desertification, biodiversity, and climate change.<sup>26</sup>

Ethical conduct is not optional. To ensure we are successful, it is in our self-interest to learn how best to live together, make the right decisions, and adjust our conduct according to appropriate duties, obligations and standards. In doing this, we can properly account to ourselves, and to others.

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22 Ibid. p. 43, paragraphs 125 and 126.

23 Speech by Kofi Annan, Secretary-General of the United Nations, in the United Nations General Assembly on 12 September 2003.

24 A/59/2005, p. 19, paragraph 57.

25 'In larger freedom: towards development, security and human rights for all', A/59/2005, p. 19 paragraph 57.

26 Ibid.



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## Chapter 13

# International Security and the Law: Is International Law Still Relevant During Armed Conflict?

K. J. Keith

International law is and should remain relevant during armed conflict. In this chapter, I focus on two principal themes: the right of a state to use armed force in international relations, and the law applicable to the parties to an armed conflict once it has begun. The hallowed Latin tags are *ius ad bellum* and *ius in bello*. I conclude by examining the broader implications of international law in conflict, and address the question of whether new challenges, especially since the vile atrocities of 11 September 2001, call for new laws.

### **The Right to Use Force**

The legality or illegality of the use of force in a particular situation has no consequence for the application of international humanitarian law. Shakespeare made this reality clear four centuries ago, when in the dawn before the battle of Agincourt of 1415, he has Henry V disguised and talking to his Welsh archers:

King Henry: ... methinks I could not die any where so contented, as in the King's company; his cause being just, and his quarrel honourable.

Williams: That's more than we know.

Bates: Aye, or more than we should seek after; for we know enough, if we know we are the King's subjects: if his cause be wrong, our obedience to the King wipes the crime of it out of us.

When the written body of international humanitarian law was last updated in the mid-1970s, there was an early suggestion that aggressors should not have the benefit of that body of law. That suggestion gained absolutely no support, and is flatly contradicted by the terms of the first additional protocol of 1977 to the 1949 Geneva Conventions for the Protection of Victims of War. The provisions 'must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the origin or nature of the armed conflict or

on the causes espoused by or attributed to the Parties to the conflict.’ That is to say, the ends cannot justify the means.

As the invocation of the law at the Battle of Agincourt demonstrates, this body of law has long existed in various forms. First, we have the law of arms (the expression Shakespeare uses), and the law of war. Second, there is the law of armed conflict, in recognition of the fact that law applies to internal armed conflicts, and that ‘wars’ are now rarely declared. This is also the expression commonly used by armed forces. Finally we have international humanitarian law, the expression made popular by the 1974–77 diplomatic conference which adopted the 1977 protocols.

A hugely important achievement of international law making of the past century has been the prohibition on the use of armed force in international relations, with certain exceptions. The Covenant of the League of Nations, the Kellogg-Briand Pact of 1928 for the prohibition of war, and the prosecution at Nuremberg of German leaders for crimes against peace (waging a war of aggression) provided the foundation for the principle stated in article 2(4) of the Charter of the United Nations: ‘All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.’ The complement to that provision is article 2(3): ‘All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered’.<sup>1</sup>

The Charter provides for the use of force, first, with the sanction of the Security Council under chapter VII, when it decides that there is an act of aggression or a threat to or breach of the peace. Second, force can be used for self defence in article 51:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.<sup>2</sup>

These provisions give rise to a number of issues, two of which have been prominent in recent debates. These are: the use of force for humanitarian purposes (humanitarian intervention, for instance in Kosovo); and the pre-emptive or precautionary use of force as an aspect of self defence. This matter was highlighted by President Bush’s

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1 ‘Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations’, G.A. res. 2625, Annex, 25 UN GAOR, Supp. (No. 28), U.N. Doc. A/5217 at 121 (1970).

2 ‘CHAPTER VII: Action with respect to threats to the peace, breaches of the peace, and acts of aggression’ <http://www.un.org/aboutun/charter/chapter7.htm>.

National Security Strategy announced in September 2002.<sup>3</sup> A third, more specific question has been at the heart of the dispute over the validity of the use of force against Iraq. This concerns whether America was authorised by the resolutions relating to Iraq adopted over the preceding decade by the Security Council under chapter VII. The United States, the United Kingdom and Australia contended that the use of force was so authorised, as appears from the statements they made when they took military action in March 2003.<sup>4</sup>

They did not in those statements make use of the two other, broader arguments. However, the American position may be more nuanced than those of the United Kingdom and Australia, and may involve elements of pre-emption, along with an assessment of the Security Council's actions and Iraq's breaches of the law including Council resolutions. That choice of justification is in itself important in terms of legal technique. It may be compared to the Kennedy administration invoking a narrow concept of 'quarantine', rather than the broader justification of self-defence to justify its naval actions against USSR and other eastern bloc vessels during the Cuban missile crisis. The position was somewhat similar in Kosovo, where, with the exception of one speech by Prime Minister Blair, there was official silence about the legal justification. It may be thought that an action which may be unlawful is nevertheless justifiable on some broader basis.

The Kosovo case and other similar situations (such as Tanzania's actions in Uganda at the time of the Idi Amin atrocities, and the situations in Rwanda, Somalia and the former Yugoslavia)<sup>5</sup> led to an initiative by the Canadian government to establish a commission on intervention which prepared a challenging report with the title *Responsibility to Protect*.<sup>6</sup> The title involves an interesting change of emphasis, from right to responsibility, and from intervention to protection. As Sir Adam Roberts has remarked, the difficulties in this area arise from pressures created by the very success of international law since World War Two. Until 1945, what governments did to their own people was in most respects within their domestic jurisdiction. The development of extensive bodies of human rights law has changed all that. Yet, while mechanisms short of the use of force have been laboriously developed, they plainly

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3 *The National Security Strategy of the United States of America* (2002), see [www.whitehouse.gov/nsc/nss.html](http://www.whitehouse.gov/nsc/nss.html).

4 See Lord Goldsmith (17 March 2003) 646 Hansard (Lords) WA2-WA3; Attorney-General's Department and Department of Foreign Affairs and Trade 'Memorandum of Advice on the Use of Force Against Iraq', 18 March 2003 available at <http://www.pm.gov.au/iraq>; Press Briefing by Ari Fleischer (13 March 2003) available at <http://www.whitehouse.gov>.

5 A more specific instance of humanitarian intervention arises where the use of force is designed to protect the lives of nationals of the state using force, as in the Israeli action to rescue the passengers of an El Al plane which had been hijacked to Entebbe airport in Uganda. One question raised by such exercises of power is whether it can be said, in terms of article 2(4), that the use of force is against the territorial integrity or political independence of the other state. It might also be said, by reference to the role of fundamental human rights in the Charter, that such actions are not inconsistent with the Purposes of the United Nations.

6 International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (2001).

have not always prevented gross breaches. Real support – political and financial – for those mechanisms too often is lacking.

I turn now to self defence and focus in particular on the opening phrase of article 51 ‘Nothing in the present Charter shall impair the inherent right’ and on the condition ‘if an armed attack occurs against a member of the United Nations’. The first phrase suggests that article 51 is a savings clause. Customary international law, it assumes, already recognises the right of self-defence. It is not to be taken away by the new Charter provisions, in particular article 2(4). The parties to the Kellogg Briand Pact had similarly been careful to reserve their right of self-defence, as the Nuremberg Tribunal recognised.<sup>7</sup>

That right is often put in the terms used in a diplomatic exchange between the British and American governments arising out of the *Caroline* incident nearly two centuries ago.<sup>8</sup> Here, an action might (in what might now be recognised as a ‘High Noon’ situation), be taken in response to an instant threat, leaving no choice of means and no moment for deliberation. That is to say, an armed attack may not have had actually to have ‘occurred’ or to be ‘occurring’.

But doctrine and much state practice are against any broad reading of the right. A noted British scholar and later a Judge of the International Court of Justice, Sir Humphrey Waldock, would allow anticipation: ‘When there is convincing evidence not merely of threats and potential danger but of an armed attack actually being mounted then an armed attack may be said to have begun to occur, though it has not passed the frontier.’<sup>9</sup> Allow me to highlight just one very strong piece of state practice against a broad reading. When in 1981 the Israeli air force destroyed an Iraqi nuclear facility at Osirik, the Security Council unanimously adopted a resolution which condemned the strike as a clear violation of the Charter and the norms of international conduct.<sup>10</sup>

We must also question whether widening the right of self-defence, in the terms proposed by the US Administration in September 2002, makes sense in policy terms. Louis Henkin, writing in 1987 said this:

It is not in the interest of the United States to reconstrue the law of the Charter so as to dilute and confuse its normative prohibitions. In our decentralized international political system with primitive institutions and under developed law enforcement machinery, it is important that Charter norms – which go to the heart of international order and implicate war and peace in the nuclear age – be clear, sharp and comprehensive; as independent as possible of judgments of degree and issues of fact; as invulnerable as can be to self-serving interpretations and to temptations to conceal, distort, or mischaracterize events. Extending the meaning of ‘armed attack’ and of ‘self-defence’, multiplying exceptions to the prohibition on the use of force and the occasions that would permit military intervention,

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7 See (1947) 41 AJIL.

8 See Harris, *Cases and Materials on International Law* (5 ed, 1998), p. 894.

9 C. H. M. Waldock ‘The Regulation of the Use of Force by Individual States in International Law’, *Hague Recueil* 81 (1952), pp. 498.

10 Security Council Resolution 487 (19 June 1981).

would undermine the law of the Charter and the international order established in the wake of world war.<sup>11</sup>

And just a month before the National Security Strategy was announced by President Bush, Henry Kissinger argued as follows:

America's special responsibility, as the most powerful nation in the world, is to work toward an international system that rests on more than military power – indeed, that strives to translate power into cooperation. Any other attitude will gradually isolate and exhaust us. ... It is not in the American national interest to establish preemption as a universal principle available to every nation.<sup>12</sup>

Applying his last sentence, consider for instance India and Pakistan, the Korean peninsula, and Israel and its neighbours. It is against such established principles and statements that United States policy has to be measured. Among other things President Bush has argued:

For centuries, international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against forces that present an imminent danger of attack. Legal scholars and international jurists often conditioned the legitimacy of preemption on the existence of an imminent threat – most often a visible mobilization of armies, navies, and air forces preparing to attack. We must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries. Rogue states and terrorists do not seek to attack us using conventional means. They know such attacks would fail. Instead, they rely on acts of terror and, potentially, the use of weapons of mass destruction – weapons that can be easily concealed, delivered covertly, and used without warning. ... The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction – and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively. The United States will not use force in all cases to preempt emerging threats, nor should nations use preemption as a pretext for aggression. Yet in an age where the enemies of civilization openly and actively seek the world's most destructive technologies, the United States cannot remain idle while dangers gather. ... The purpose of our actions will always be to eliminate a specific threat to the United States or our allies and friends. The reasons for our actions will be clear, the force measured, and the cause just.<sup>13</sup>

Soon after the policy was announced, the International Institute for Strategic Studies emphasised that the Strategy envisioned a narrow role for pre-emption, namely targeting terrorists and rogue states. The argument for pre-empting terrorists is

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11 Louis Henkin 'Use of Force: Law and US Policy' in Louis Henkin et al (eds.), *Might and Right, International Law and the Use of Force* (New York, 1989), p. 45.

12 Henry Kissinger 'Beyond Baghdad', *New York Post*, 11 August 2002, p. 24.

13 'V. Prevent Our Enemies from Threatening Us, Our Allies, and Our Friends with Weapons of Mass Destruction', <http://www.whitehouse.gov/nsc/nss/2002/nss5.html>.

persuasive, it says, referring to Al Qaeda, but the argument for pre-empting rogue states is debatable:

The claim that rogue state leaders respond less to deterrence rests more on conjecture than hard evidence. Iraq and North Korea – the only countries the Strategy explicitly labels as rogue states – have, in the past at least, both shown they understand deterrence. (Oddly, Iran, which Bush named as a member of the ‘axis of evil’ in his January 2002 State of the Union address, merits no mention in the Strategy other than as a target of Iraqi chemical weapons.) Baghdad heeded warnings during the 1991 Gulf War that it faced catastrophic retaliation if it used WMD.<sup>14</sup>

It went on to identify practical problems: what is the right target; attacking a rogue state first could precipitate the catastrophic attacks that pre-emption seeks to prevent; it may simply be too difficult (referring to North Korea); and pre-emption poses potential costs both abroad and at home.

### **The Law Applicable in Armed Conflict or International Humanitarian Law**

Three nineteenth century wars in Europe, the United States and New Zealand support the principle that ‘even wars have limits’, as the International Committee of the Red Cross declared a few years back. They also indicate common ground on those limits, a common ground based on humanity. In 1859 Henry Dunant, a Swiss businessman, set out to Castiglione to seek the support of Napoleon III for an agricultural venture in north Africa. Instead he came upon the carnage of the battle of Solferino which in just one day had left 40,000 casualties, the most destructive day of battle since Waterloo. The result was the setting up of the organisation which became the ICRC and the preparing of the Geneva Conventions for the protection of victims of war, the first in 1864, and the most recent in 1949, updated by the Protocols of 1977.

Those rules were directed at the outset to international armed conflicts; it was only in 1949 that basic principles for internal armed conflicts were included in common article 3 of the conventions of that year and in 1977 a separate protocol on non international armed conflicts was elaborated. But civil wars have occurred since time immemorial and it was one of them – the United States civil war – which produced the first detailed modern statement of the law in Francis Lieber’s rules for the behaviour of Union soldiers towards the soldiers and civilians of the Confederate states promulgated by President Lincoln on 24 April 1863.<sup>15</sup> Lieber is one of the great legal scholars of the nineteenth century, now unjustly neglected.

At about the time President Lincoln promulgated Lieber’s Code, wars were being waged in New Zealand. The ‘binding laws for Tauranga’ as issued by the Maori side to the British Commanding officer before the Battle of Gate Pa were as follows:

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14 ‘The Bush National Security Strategy: What does ‘Preemption’ Mean?’, *Strategic Comments* 8/8 (2002).

15 Adjunct-General’s Office, *Instructions for the Government of Armies of the United States in the Field* (1863) reprinted in Schindler and Toman (eds.), *The Laws of Armed Conflict* (1988).

Rule 1. If wounded or (captured) whole, and butt of the musket or hilt of the sword be turned to me (he) will be saved.

Rule 2. If any Pakeha being a soldier by name, shall be travelling unarmed and meet me, he will be captured and handed over to the direction of the law.

Rule 3. The soldier who flees, being carried away by his fears, and goes to the house of the priest with his gun (even though carrying arms) will be saved; I will not go there.

Rule 4. The unarmed Pakehas, women and children will be spared.

The end. These are binding laws for Tauranga.<sup>16</sup>

Those obligations are essentially negative. A positive obligation was included in the Maori order for the day, in the words of the New Testament: 'If thine enemy hunger, feed him, if he thirst, give him drink.' The 1949 Conventions, their Protocols and associated treaties (such as those on conventional weapons, biological and chemical weapons and land mines) now extend to hundreds of pages. Their essence can however be captured in a page, as in this statement of basic rules prepared by the ICRC in 1978:

1. Persons *hors de combat* and those who do not take a direct part in hostilities are entitled to respect for their lives and their moral and physical integrity. They shall in all circumstances be protected and treated humanely without any adverse distinction.
2. It is forbidden to kill or injure an enemy who surrenders or who is *hors de combat*.
3. The wounded and sick shall be collected and cared for by the party to the conflict which has them in its power. Protection also covers medical personnel, establishments, transports and equipment. The emblem of the red cross or the red crescent is the sign of such protection and must be respected.
4. Captured combatants and civilians under the authority of an adverse party are entitled to respect for their lives, dignity, personal rights and convictions. They shall be protected against all acts of violence and reprisals. They shall have the right to correspond with their families and to receive relief.
5. Everyone shall be entitled to benefit from fundamental judicial guarantees. No one shall be held responsible for an act he has not committed. No one shall be subjected to physical or mental torture, corporal punishment or cruel or degrading treatment.
6. Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering.
7. Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilian population and property. Neither the civilian

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16 See A J Harrop, *England and the Maori Wars* (London, 1937), pp. 218–219.



population as such nor civilian persons shall be the object of attack. Attacks shall be directed solely against military objectives.<sup>17</sup>

Something of the same set of obligations for internal armed conflicts is to be found in common article 3 of the 1949 Conventions, now significantly elaborated by the second additional protocol of 1977. Article 3 requires as a minimum:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed “hors de combat” by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) Violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture;

(b) Taking of hostages;

(c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;

(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted Court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

(2) The wounded and sick shall be collected and cared for.<sup>18</sup>

Those obligations as found in the 1949 Conventions are now binding as a matter of treaty obligation on 192 states or almost all the nations of the world. The 1977 Protocols are now accepted by 161 states (Protocol I) and 156 (Protocol II) – with the United States and some Asian states being the major exceptions. Many of those 1977 provisions are however considered to have the force of customary international law and accordingly to be binding on all states. Indeed there is a strong argument that the law applicable to non-international armed conflicts as stated in the 1977 additional protocol is now to be supplemented by significant parts of customary international law. For instance the appeals chamber of the International Criminal Tribunal for former Yugoslavia affirmed that customary rules (in addition to treaty based ones) govern internal armed conflict:

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17 1978 *Red Cross Fundamental rules of International Humanitarian Law Applicable in Armed Conflicts* reprinted in Adam Roberts, Richard Guelf (eds.), *Documents on the Law of War* (Oxford, 1989) p. 469; see also International Committee of the Red Cross, *Basic rules of the Geneva Conventions and their Additional Protocols* (Geneva, 1988) available at [www.icrc.org](http://www.icrc.org).

18 ‘Statute of the International Tribunal for Rwanda’, adopted by S.C. Res. 955, U.N. SCOR, 49th Sess., 3453d mtg. at 3, U.N. Doc. S/RES/955 (1994), 33 I.L.M. 1598, 1600 (1994).

[They] cover such areas as protection of civilians from hostilities, in particular from indiscriminate attacks, protection of civilian objects, in particular cultural property, protection of all those who do not (or no longer) take an active part in hostilities, as well as prohibition of means of warfare proscribed in international armed conflict and the ban of certain methods of conducting hostilities.<sup>19</sup>

Individuals, the chamber also ruled, could be found criminally responsible for the breach of such rules, just as they could for breach of the rules applicable in international armed conflict. To support that conclusion it cited New Zealand and American military manuals.

This body of law, with its supporting (if not always effective) institutions, both national and international, derives directly from the essential proposition of military strategy and tactics (and religion, ethics and philosophy many would add) that wars are limited. In the words of Sir Michael Howard, one of the great military historians of our time: 'war ... [is to be distinguished from] riot, piracy, brigandage, generalized insurrection and random violence ... The wars of which we speak consist of the purposive and instrumental use of force by legitimized authorities.'<sup>20</sup> It is also a body of law in the implementation of which all nations have an interest – and indeed an obligation – under the Conventions: 'The High Contracting Parties undertake to respect *and to ensure respect* for the present Convention in all circumstances.' The final phrase, elaborated in 1977 as mentioned earlier, rejects any argument denying applicability based on the alleged lack of justness of the cause.

Recent events highlight the significance of all the 1978 fundamental rules and indeed much of the detail of the 1949 conventions. I mention just three matters. The first is the right of persons charged with offences (including war crimes) to benefit from fundamental judicial guarantees (paragraph 5 of the fundamental rules spelled out in detail in the third and fourth 1949 Conventions and the 1977 Protocols): consider the position of those held by the United States in Guantanamo Bay and elsewhere, a matter which has caused great controversy in the United States and beyond, and which is and will be the subject of rulings by United States courts.

The second is the flat prohibition on the use of torture, a matter highlighted by Alan Dershowitz's advocacy of empowering judges to issue warrants authorising torture<sup>21</sup> and by a sharply contrasting ruling of the Israeli Supreme Court holding torture unlawful.<sup>22</sup> And third are the positive obligations on occupying powers (as the United States and the United Kingdom acknowledged they were in Iraq at the end of the initial stage of the conflict there with the consequence that the 1907 Hague Rules also apply) including the obligations to ensure food, medical supplies, and

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19 *Prosecutor v Tadi* (2 October 1995) Case No IT-94-1-AR72 reprinted in (1996) 35 ILM 32, 69–70.

20 Michael Howard, 'Temperamenta Belli : Can War be Controlled?' in Michael Howard (ed.), *Restraints on War : Studies in the limitation of Armed Conflict* (New York, 1979).

21 Alan Dershowitz, *Why Terrorism Works: understanding the threat responding to the challenge* (New York, 2002).

22 *Public Committee against Torture in Israel v State of Israel* (6 September 1999) HC 5100/94.

health establishments and facilities to the population to the fullest extent of the means available to them.

### **Is the Law Silent in the Midst of War?**

The great Roman writer and lawyer, Cicero, once declared that *inter arma silent enim leges* – that in war the law falls silent. I trust that the material I have already covered rejects any such broad denial of the law. But especially since 11 September 2001 there have been related arguments directed at the two areas of law I have considered. One argument directed at the law painstakingly developed over the last century to place limits on the use of force is brutal. Professor Michael Glennon said this in the May/June 2003 issue of *Foreign Affairs*:

Still other analysts worry that admitting to the death of the UN's rules on the use of the force would be tantamount to giving up completely on the international rule of law. The fact that public opinion forced President Bush to go to Congress and the UN, such experts further argue, shows that international law still shapes power politics. But distinguishing working rules from paper rules is not the same as giving up on the rule of law. Although the effort to subject the use of force to the rule of law as the monumental internationalist experiment of the twentieth century, the fact is that that experiment has failed. Refusing to recognise that failure will not enhance prospects for another such experiment in the future.

Indeed, it should have come as no surprise that, in September 2002, the United States felt free to announce in its national security document that it would no longer be bound by the charter's rules governing the use of force. Those rules have collapsed. "Lawful" and "unlawful" have ceased to be meaningful terms as applied to the use of force. As Power said on October 20, "the president believes he now has the authority [to intervene in Iraq] ... just as we did in Kosovo." There was, of course, no Security Council authorization for the use of force by NATO against Yugoslavia. That action blatantly violated the UN Charter, which does not permit humanitarian intervention any more than it does preventive war. But Powell was nonetheless right: the United States did indeed have all the authority it needed to attack Iraq – not because the Security Council authorized it, but because there was no international law forbidding it. It was therefore impossible to act unlawfully.<sup>23</sup>

Much might be said about this passage. I make three points about it. The first is that no government in the Iraq case has taken such an anarchic position. They have argued that their actions are lawful in terms of the Charter and the Security Council resolutions. The second point is related – the national security strategy document does not announce a denial of the Charter's rules. And, third, in some cases, as in Kosovo, governments take refuge essentially in silence. They appear to see value in not openly challenging the fabric of the law.

The attack on the body of international humanitarian law has been somewhat more specific. Some of the attacks will be tested in the United States Courts. They have also been challenged in various ways by actions of the ICRC. The attacks

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23 Michael Glennon 'Why the Security Council Failed', *Foreign Affairs* 82/3 (2003), p. 16.

began soon after 11 September 2001 with contentions that the body of international humanitarian law had to be radically reshaped. Over the course of the following two years careful analysis of the detail of that law has shown the general challenge to be without merit. That analysis includes a high level informal meeting held early in 2003 by a Harvard University / Swiss Government organised conference; a series of regional seminars organised by the ICRC throughout 2003; and the declaration adopted in December 2003 by the International Conference of the Red Cross and Red Crescent 'Protecting Human Dignity'.<sup>24</sup> In that document, the more than 350 delegations (of national societies and governments) stated their conviction 'that the existing provisions of international humanitarian law form an adequate basis to meet challenges raised by modern armed conflicts'. What was called for, that Conference declared, was better implementation, not more law and especially not fundamentally different law.

The emphasis on implementation points to the central importance of good processes including the teaching and dissemination of the law, discipline, inspection, supervision, protection, fact finding, prosecution and prosecution in national and international courts. To quote the great American judge Felix Frankfurter, the history of liberty has largely been the history of procedural safeguards.<sup>25</sup> Consider the principles and procedures established for the inspection of weapons of mass destruction and the careful, painstaking, judicious work of Hans Blix and his team in Iraq.

A related point is the need to be careful with words. 'The war against terror' has a ring about it, like the war against poverty or the war against drugs, but we should not slip into thinking that because of that usage, actions in self defence involving armed force can be lawfully taken against such acts of 'war'. Something more has to be shown, as the Security Council recognised was the case with the provision of safe havens to Al Qaeda by the Taliban in Afghanistan.<sup>26</sup> Francis Bacon had this to say, in effect about arguments that we face new problems requiring new law, in his essay *Of Judicature*: 'Above all things integrity is their positive and proper virtue. Cursed (saith the law) is he that removeth the landmark.' That, I take it, is directed as much against lawyers, including those advising governments, as it is against judges.

I conclude with two other broad points. The first is that the existing body of international law by its very nature and its means of formation is likely to conform closely with the long term policy needs and national interests of governments, especially the major ones. And the second related point is the advantage that accrues to governments from a rule-based system, and from conforming to it. The point can be made in terms used by Henkin or Kissinger quoted earlier or more grandly. Ahron Barak, the recently retired President of the Supreme Court of Israel, in speeches and judgments (for instance holding torture by the State security authorities to be unlawful) flatly rejected Cicero's nihilism:

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24 Declaration of the 28th International Conference of the Red Cross and Red Crescent, adopted at Geneva 2–6 December 2003, available at [www.icrc.org/eng/conf28](http://www.icrc.org/eng/conf28).

25 Felix Frankfurter in *McNabb v United States* (1943) 318 US 332, 347.

26 Security Council Resolution 1378: 14 November 2001.

The struggle against terrorism is not conducted “outside” the law but “within” the law using tools that the law makes available to a democratic state. Even when the cannons speak, the military commander must uphold the law. The power of society to stand up against its enemies is based on the recognition that it is fighting for values that deserve protection. The rule of law is one of those values.<sup>27</sup>

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27 Barak ‘The Role of a Supreme court in a Democracy and the Fight against Terrorism’, lecture given on 18 July 2003 at Cambridge University. See also *Marcus v the Minister of Defence* 45 PD(1), pp. 467, 470–47.

## Chapter 14

# Pious Hope or Realist Instrument? Challenges from the Pursuit of International Criminal Justice

Susan Lamb<sup>1</sup>

### Introduction

In the half-century since the Nuremberg trials of the Nazi leadership, the United Nations has established numerous other international criminal tribunals in response to a variety of conflicts globally, including in Yugoslavia, Rwanda, East Timor, Cambodia and Sierra Leone.<sup>2</sup> The Prosecutor of the fledgling International Criminal Court – which, unlike its predecessors, was established as a permanent institution with aspirations of global reach – has also since opened investigations into the situations in the Democratic Republic of Congo, Uganda and Darfur, Sudan.<sup>3</sup>

These international criminal tribunals – many of which have now produced a substantial corpus of jurisprudence and practice – have transformed the quest to end

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1 *Chef de Cabinet*, United Nations International Criminal Tribunal for Rwanda (ICTR). The views expressed herein are those of the author alone and do not represent those of the ICTR and the United Nations in general.

2 In 1993, the UN's International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague became the first international criminal tribunal to be set up since the Nuremberg and Tokyo trials after the second world war. It was followed a year later by the UN International Criminal Tribunal for Rwanda (ICTR), based in Arusha, Tanzania. Since then, numerous other war crimes tribunals, all with more or less international input, have been – or are being – set up to deal with atrocities in Sierra Leone, Cambodia, Timor-Leste and Iraq. Recently, Lebanon has asked the UN for help in setting up a tribunal of international character to try the assassins of Rafik Hariri, the former Lebanese prime minister who was killed last year ('Bringing the Wicked to the Dock', *Economist*, March 9 2006).

3 Last October, the International Criminal Court (ICC) issued its first indictments – against Joseph Kony and four members of his Lord's Resistance Army (LRA) in northern Uganda. More indictments have since been issued in relation to the conflict in Congo, which is estimated to have claimed 4 million lives since 1998. The court has also been mandated by the Security Council to investigate the current crisis in Darfur, in western Sudan, and is monitoring five other violence-racked countries, including Côte d'Ivoire and the Central African Republic (See <http://www.icc-cpi.int/cases.html>, accessed 24 March 2006).

impunity for the most serious crimes known to humanity from a utopian ideal into a working reality, in theory even if not yet fully in practice.<sup>4</sup>

These tribunals nevertheless represent early experiments in international criminal justice and their operation and achievements to date raise a number of key questions. What are the major challenges facing the operation and legitimacy of international criminal tribunals and how might these be overcome? Are they cost-effective and have they achieved the objectives for which they were established? How should this be measured? What has been their legacy for the societies that they seek to transform? What message have they sent to other societies on the brink of ethnic or political violence? What is – and what ought to be – the inter-relationship between these tribunals and other elements of the organized international community?

### **Key Questions and Dilemmas for the Operation and Establishment of International Criminal Tribunals**

#### *The Establishment of International Tribunals as a Political Act of Contrition?*

It is often contended that international tribunals, rather than forming part of a deliberate policy promoting international justice, are instead frequently established more as acts of political contrition following the egregious failure of the international community to swiftly confront the situations which lead to their establishment in the first place.<sup>5</sup> Can these tribunals be dismissed as mere fig-leaves: as easy alternatives for those states unwilling or unable to invest the manpower and *materiél* necessary to have prevented or arrested the atrocities giving rise to their creation?

This pessimistic view is not universally shared. For instance, David Scheffer, the former United States Ambassador-at-large for war crimes, notes that despite this oft-made criticism of the motives underpinning the ICTY's establishment, in reality, those framing international policy in the Balkans made no express linkage between the policy failures occurring during the wars and the need to address the commission of serious violations of international humanitarian law in their aftermath:

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4 Previously, the worst perpetrators of international crimes usually managed to elude justice. By contrast, it is now accepted that there can be no immunity for the worst violations of international humanitarian law, not even for heads of state. For example, Serbia's president, Slobodan Milošević, was indicted for war crimes in 1999 and stood trial in The Hague prior to his death in custody earlier this year. After more than ten years at large, the arrest of Ratko Mladić, the Bosnian Serb army chief allegedly responsible for the Srebrenica massacre, is widely anticipated. In Chile, Augusto Pinochet is finally facing a real possibility of trial 17 years after the end of his dictatorship. Saddam Hussein, Iraq's former dictator, is currently undergoing trial before a special tribunal in Baghdad. In March 2006, Ellen Johnson-Sirleaf, the newly-elected Liberian president, requested the extradition from Nigeria of Charles Taylor to the Special Court for Sierra Leone ('Bringing the Wicked to the Dock', *Economist*, 9 March 2006).

5 See for example Ralph Zacklin, 'The Failings of Ad Hoc International Tribunals', *Journal of International Criminal Justice* 2 (2004), pp. 541–545, 543.

One of the common refrains in histories and commentaries about the ICTY is that the Tribunal served as a token alternative to the harder choice of military intervention by Western powers during the critical years of 1993, 1994 and 1995 .... An unfortunate logic results that scars the integrity of the ICTY with the belief that the Tribunal was the crutch upon which a timid Western alliance leaned to ease its conscience, while avoiding the risks (military, political, mortal) that a decisive military strategy would have incurred. In reality, as someone deeply engaged in both the judicial and politico-military policy-making of 1993, when the ICTY was formally created, I recall there being almost no connection between the judicial and military strategising. There is no doubt that the Clinton Administration, which I served at the time as senior adviser and counsel to the US Permanent Representative to the United Nations, Dr Madeleine Albright, proudly cited the ICTY as an important initiative in the overall policy process for the Balkans. [D]iscussions and decisions regarding military and other enforcement options .... did not turn on the excuse that we had established a criminal tribunal to cover our backside. The failure to act militarily resulted from decisions and circumstances that had nothing to do with the ICTY, and should be critiqued on their own merits.<sup>6</sup>

Further, there were strong incentives to act by establishing international tribunals, and to do so fast.<sup>7</sup> The dissolution of Yugoslavia was viewed at the time as a terrifying portent of a post-cold war Europe, particularly should the contagion of inter-ethnic conflict spread to the former Soviet Union. The overwhelming scale of the Rwandan tragedy also contained, and continues to contain, important externalities in terms of the ongoing conflicts in the Great Lakes region. The ending of impunity for these crimes was therefore seen as an important goal in and of itself.

It is also undisputable that the establishment of the *ad hoc* tribunals expressed a deep revulsion over the overwhelming scale of atrocities committed in the Balkans and Rwanda and a conviction that impunity for such crimes was no longer tolerable.<sup>8</sup>

### *The Alleged Conflict between Justice and Peace*

Debate has long raged about the best way to respond to gross violations of international humanitarian law. Is it more important to punish the perpetrators or to bring an end to the atrocities? Can one, in other words, secure both justice and peace, or are the two naturally antagonistic? In this context, the purpose and value of the ICC and the other *ad hoc* international criminal tribunals has been closely scrutinized. Critics of these tribunals complain that they are selective and politicised, deliver only partial justice and perpetuate bitterness, thus preventing social and ethnic reconstruction.<sup>9</sup>

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6 David Scheffer, 'Three Memories from the Year of Origin, 1993', *Journal of International Criminal Justice* 2 (2004), pp. 353–4 (footnotes omitted).

7 Erik Møse, 'Main Achievements of the ICTR', *Journal of International Criminal Justice* 3 (2005), pp. 920–943, 940.

8 Ibid.

9 In the 1980s, the concept of truth and reconciliation thus tended to predominate over the quest for justice. Truth-telling, perhaps encouraged by amnesties, appeared to be an effective way of revealing the previously suppressed stories of the victims and the perpetrators of the covert state-sponsored violence in Latin America. The first truth and reconciliation commission was set up in Chile in 1990. Others followed in quick succession in El Salvador,



Others, however, argue that ending impunity is vital, not only to reduce the victims' anger and resentment (which may otherwise fuel a never-ending cycle of reprisals and counter-reprisals) but also to deter further atrocities.

It is true that the objectives of 'peace' and 'justice' may frequently appear to clash within an ongoing conflict, especially where the objective of 'peace' (interpreted as a cessation of hostilities) may inevitably require the acceptance of a *status quo* which may include, for instance, territorial acquisition obtained by aggression or ethnic cleansing.<sup>10</sup> Further, international force commanders may complain of mission conflict in circumstances where they are dependent on the goodwill of warring factions, but simultaneously requested to take decisive measures against those among them accused of war crimes.<sup>11</sup> Nor, however, are amnesties acceptable in the context of crimes of this magnitude<sup>12</sup> – or even always effective in bringing about a cessation of hostilities.<sup>13</sup> Conversely, the threat of prosecution has not always been viewed as a direct impediment to peace. In fact, the UN Security Council, by establishing the *ad hoc* tribunals for Rwanda and Yugoslavia under Chapter VII of the UN Charter,

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Chad, Haiti, South Africa, Ecuador, Nigeria, Peru, Sierra Leone, South Korea, Uruguay, Timor-Leste, Ghana, Panama, Congo, Liberia and Morocco ('Bringing the Wicked to the Dock', *Economist*, March 9 2006).

10 On the blunt contradictions between 'peace' and 'justice' at various points of the Balkan conflict, for example, see Jean Manas: 'Although many outside intervenors (or would-be intervenors) pursued both peace and justice in the former Yugoslavia, they rarely faced up to the fact that, at any level of specificity, the two ideals are in tension: the pursuit of justice entails the prolongation of hostilities, whereas the pursuit of peace requires resigning oneself to some injustices' ('The Impossible Trade-Off: "Peace" vs. "Justice" in Settling Yugoslavia's Wars', in R. Ullman (ed.), *The World and Yugoslavia's Wars* (New York, 1996), p. 43).

11 In the Balkans conflict, international forces in the field thus originally adopted a restrictive interpretation of their law enforcement role. Force commanders argued either that international forces lacked the power to effect arrests of war crimes suspects, that such powers would arise only coincidentally (such as when forces encountered suspects by chance), or that their exercise would usually be impracticable or even dangerous for international forces (Amnesty International Report, EUR 63/11/96, April 1996; *Ibid*, *Bosnia: The International Community's Responsibility to Ensure Human Rights*, EUR 63/14/85, June 1996). The overall view of the American contingent of IFOR/SFOR was, until the late 1990s, that IFOR/SFOR 'had the authority to arrest any indicted war criminals it encounters or who interfere with its mission, but it will not try to track them down' (*idem*).

12 It is now generally accepted that, under international law, amnesties cannot apply to gross violations of international humanitarian law. International law rejects impunity for serious crimes, such as genocide, war crimes, crimes against humanity and torture. International treaties, including the UN Convention against Torture, the Geneva Conventions, and the Rome Statute of the International Criminal Court, require parties to ensure alleged perpetrators of serious crimes are prosecuted.

13 In Sierra Leone, for example, the amnesty negotiated as part of the 1999 Lomé peace agreement did not prevent the resumption of atrocities a few months later and was therefore annulled. In northern Uganda, a five-year-old government amnesty, while successful in bringing thousands of middle- and low-ranking rebels in from the bush, has failed to persuade Joseph Kony and the LRA leadership to lay down arms ('Bringing the Wicked to the Dock', *Economist*, March 9 2006).

envisaged a direct correlation between their creation and the restoration of peace and security.<sup>14</sup>

Further, as conflicts begin to abate, a greater convergence can often be observed between the goals of peace enforcers and the proponents of international justice.<sup>15</sup> Certainly, the *ad hoc* tribunals' effectiveness as foreign policy instruments increased over time, particularly as the international community moved out of the peace enforcement mode and toward post-conflict reconstruction.<sup>16</sup> This would suggest that the tribunals are therefore important as transitional justice mechanisms, and come to play a central role in building a sustainable peace.<sup>17</sup>

Far from being antagonistic, reconciliation and punitive justice are instead both necessary. While the two approaches are largely complementary, the appropriate mix of the varying instruments available (including fact finding commissions, community justice and criminal prosecutions) may nevertheless vary according to local conditions and raise sensitive issues of phasing.<sup>18</sup>

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14 UN Security Council Resolutions 805, S/RES/808 (1993), 22 February 1993 ('*Convinced* that in the particular circumstances of the former Yugoslavia the establishment of an international tribunal ... would contribute to the restoration and maintenance of peace') and 955, S/RES/955 (1994), 8 November 1994 ('*Convinced* that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law ... would contribute to the process of national reconciliation and to the restoration and maintenance of peace'). In practice, the absence of any amnesty provision in the Dayton peace accord also did not prevent the former Yugoslav President Milošević from agreeing to it.

15 For instance, NATO-led other international forces in the territory of the former Yugoslavia during the Balkans conflict came to pursue an increasingly aggressive strategy toward the apprehension and arrest of ICTY indictees in the conflict's aftermath. Frustrated and thwarted by the impunity enjoyed by many war crimes suspects indicted by the ICTY post-Dayton, they became increasingly willing to openly seek out indictees and effect arrests, if necessary by force. (See Susan Lamb, 'The Powers of Arrest of the International Criminal Tribunal for the Former Yugoslavia', *British Yearbook of International Law*, 70 (1999): 165–244).

16 See e.g. Scheffer, 'Three Memories from the Year of Origin, 1993', p. 354: 'As the years progressed, ... I believe that the ICTY and what it stands for became increasingly important in the policy-making process to stiffen the spines of policy-makers to act more decisively'.

17 It is widely recognized that ongoing and unresolved grievances can fester and cause the same conflict to re-ignite in later years. See Payam Akhavan, 'Justice and Reconciliation in the Great Lakes Region of Africa: the Contribution of the International Criminal Tribunal for Rwanda', *Duke Journal of Comparative and International Law* 7 (1997): 325–348. See further Mary Robinson, then-UN High Commissioner for Human Rights: 'It will require an integrated approach ... [to] peacekeeping to understand that today's human rights violations are the causes of tomorrow's conflicts' (Romanes Lecture, delivered at Oxford University, 11 November 1997).

18 Sometimes, as in South Africa, it may be better to start with truth and reconciliation, and prosecute later. At other times, as in Iraq, prosecution has come first, and truth and reconciliation may follow when or if the violence ends. Sierra Leone is the only country that has set up a truth and reconciliation commission and an international criminal tribunal simultaneously ('Bringing the Wicked to the Dock', *Economist*, March 9 2006).

*International Criminal Tribunals as Instruments of Deterrence*

Have international tribunals been effective at deterring future atrocities? It is easy to point to apparent failures. Despite Nuremberg, genocide has continued. The creation of the ICTY failed to prevent the massacres in Srebrenica and Kosovo. Conflict in the Democratic Republic of Congo continues unabated, despite the creation of a tribunal for neighbouring Rwanda. The indictment of Joseph Kony and other members of the LRA leadership has not stopped the Ugandan killings, and since the referral of Darfur to the ICC, the violence there has, if anything, worsened.<sup>19</sup> It is of course impossible to measure whether these situations would have been still bleaker in absence of the possibility, no matter how theoretical, of international criminal prosecution. As one commentator further notes:

If [the ICTY] is deemed to be ineffective, since its existence did not have the deterrent effect of stopping hostilities following its creation in 1993 (e.g. It did not stop the 1995 Srebrenica massacre), perhaps that represents an unrealistic expectation in light of the hatred, mass killings and inhuman and degrading conduct that had gone on. Even on the domestic criminal level, the role that law plays as a deterrent is a much discussed issue.<sup>20</sup>

It may be too early to judge what effect the ICC will have in preventing future violations of international humanitarian law, but it is difficult to imagine that its existence will not have an impact on the calculus of leaders contemplating such atrocities.<sup>21</sup>

*Structural Lessons*

The numerous international tribunals established to date differ in terms of their modalities of creation, financing, proximity to the conflicts they seek to adjudicate and their degree of national composition. What lessons can be drawn from the experiences of these various examples thus far?

The ICTR and ICTY, while doing good work, are regarded by some as slow, costly and remote,<sup>22</sup> while the special tribunals in Cambodia, with its majority of local judges, and in Iraq, where Saddam Hussein's trial before an all-Iraqi bench continually threatens to collapse in chaos, are regarded by many as counter-examples,

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19 Ibid.

20 Johnson, *op. cit.*, p. 378.

21 For an encouraging early example of the deterrent effect of international criminal tribunals, see the example of Carlos Castaño, one of Colombia's top paramilitary commanders. According to ICC Prosecutor Luis Moreno Ocampo, after Colombia ratified the ICC Statute, Castaño allegedly laid down his weapons because he realized that he might become vulnerable to ICC prosecution. (See Elizabeth Rubin, 'If not Peace, then Justice', *New York Times*, 2 April 2006). In general terms, deterrence is nonetheless a notoriously difficult concept to measure, involving as it does a theoretical estimate of crimes that might have been committed in its absence.

22 E.g. Zacklin, 'The Failings of Ad Hoc International Tribunals', pp. 542–543 (alleging that the tribunals have a combined budget in excess of \$US250 million per annum, representing more than 10 percent of the total annual UN regular budget).

lacking both impartiality and competence.<sup>23</sup> The Special Court for Sierra Leone, set up jointly by the UN and the Sierra Leonean government in 2002, was the world's first 'hybrid' court. Financed by voluntary contributions from UN member states, it operates under international law but with a mixture of local and international judges. Based in Sierra Leone's capital, it was also the first modern international criminal tribunal to be based in the country where the crimes were committed.<sup>24</sup>

Despite the criticism of some tribunals as unwieldy instruments, with cumbersome bureaucratic structures,<sup>25</sup> the unavoidable reality is that the investigation and prosecution of international crimes, including genocide, often cannot be accomplished without the creation of a comprehensive international infrastructure.<sup>26</sup> Further, these tribunals must frequently conduct their investigations in hostile environments, or in states with minimal, or compromised, infrastructures. The cases prosecuted are some of the most complicated imaginable, frequently involving multiple defendants and crimes of enormous magnitude and scale.<sup>27</sup> Trying complex cases of this nature would be expensive for any legal system.<sup>28</sup>

As for the allegation that the tribunals are costly and inefficient, those competent in the areas of administration and resource management would have a valuable view. Evaluation of the costliness or otherwise of the tribunals is nonetheless a difficult exercise, creating an irresistible temptation either to misuse statistics or to compare crude figures or other variables which are not designed to be compared.<sup>29</sup> It is also

23 'Bringing the Wicked to the Dock', *Economist*, March 9 2006.

24 *Ibid.*

25 E.g. Zacklin, 'The Failings of Ad Hoc International Tribunals', pp. 542–543 (alleging that the tribunals outstrip or rival in size many of the specialized agencies of the United Nations, and dwarf core offices and departments of the UN Secretariat).

26 The total number of posts in both *ad hoc* tribunals includes staff across a diverse range of functions, including field staff, translators, security personnel, lawyers, investigators and administrators (Møse, 'Main Achievements of the ICTR', p. 942).

27 For example, the *Bagosora et al* ('Military I') case, presently ongoing before ICTR, has four defendants, all high-ranking military officials and commanders. Its indictment includes charges of genocide, conspiracy to commit genocide, crimes against humanity and violations of the laws and customs of war. The indictment contains an illustrative list of incidents encompassing several regions of Rwanda. The Prosecution case sat for 202 trial days and called 82 witnesses.

28 For example, the *Lockerbie* trial amounted to total costs of £75m (source: BBC News, 13 March 2002) or USD 140m, whereas the US federal government allegedly spent approximately \$US60 million to prosecute and defend Timothy McVeigh; the perpetrator of a single complex criminal incident (the Oklahoma City bombing (<http://www.cnn.com/US/9705/28/mcveigh.4pm>)).

29 The following examples may nevertheless put the vexed question of the *ad hoc* tribunals' costliness into perspective. The total annual budgets of both tribunals is approximately equal to the production costs of the movie 'Titanic', about twice the value of the bonus paid to its director, and one sixth of its box-office revenues as of March 1998 (*Wall Street Journal*, 26 March 1998, p. B11). A quarter of a billion dollars is also slightly less than the value of the UK market for pet accessories in 2002 (Source: 'Pet Products and Pet Accessories', Industry Sector Analysis report on the UK Pet Products and Pet Accessories Market by Industry Canada, <http://strategis.ic.gc.ca/epic/internet/inimr-ri.nsf/fr/gr110098f.html>). On the other

notable that tribunals such as the Special Court for Sierra Leone, established instead through voluntary contributions, have also struggled.<sup>30</sup>

Further, it is undisputed that the combined budget of the *ad hoc* tribunals is dwarfed both by the costs of the armed conflicts themselves<sup>31</sup> and their aftermath.<sup>32</sup>

Finally, it is hoped that international criminal tribunals, which seek to end impunity for the most serious crimes known to humanity and to develop the law, would not be judged only on the basis of administrative and budgetary considerations. The crucial role played by these tribunals in advancing the cause of justice ensures that their impact and performance cannot be measured in financial terms alone.<sup>33</sup>

### *International Criminal Tribunals as Instruments of Reconciliation*

The *ad hoc* tribunals, located in The Netherlands and Tanzania respectively, have suffered from a perception that they are too geographically remote from where the crimes were committed, meaning that the victims and their families are denied

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hand, the annual budget of the ICTR is approximately 1/6th of the 2003 GNI of the Republic of Rwanda (<http://unstats.un.org/unsd/snaama/resultsCountry.asp>).

30 See Report of the Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S/2004/616, 23 August 2004, para. 43: 'Partly in reaction to the high costs of the original tribunals, the financial mechanisms of the mixed tribunals for Sierra Leone and for Cambodia have been based entirely on voluntary contributions. ... [In] the case of the Special Court for Sierra Leone, my doubts about the sustainability and security of the court's operations being financed through voluntary contributions have been borne out. Less than two years into its operation, and at the very moment when trials were about to begin, the Court has confronted a serious financial crisis. As such, any future financial mechanism must provide the assured and continuous source of funding that is needed to appoint officials and staff, contract services, purchase equipment and support investigations, prosecutions and trials and do so expeditiously. .... The operation of judicial bodies cannot be left entirely to the vagaries of voluntary financing' (footnotes omitted).

31 The economic costs of the Kosovo war alone on neighbouring countries also runs into billions of dollars, with the IMF and World Bank estimating at the time that the humanitarian costs, caused by the flood of refugees out of the Yugoslav province of Kosovo, coupled with the disruption of trade in the region, would require financing of \$2.2 billion for the six States of the region most vitally affected (<http://www.worldbank.org>, accessed 08 June 1999).

32 A World Bank study which attempted to assess the human, social and economic costs of Rwanda's genocide estimates that per capita GDP in Rwanda would probably be between 25 per cent and 30 per cent higher today if the conflict had not taken place. About one fourth of the population in poverty today can be said to be poor as a result of the genocide (see 'Rwanda: the impact of conflict on growth and poverty', *Social Development Notes: Conflict Prevention & Reconstruction*, 18 (2004), [http://lnweb18.worldbank.org/ESSD/sdvext.nsf/67ByDocName/RwandaTheImpactofConflictonGrowthandPoverty/\\$FILE/DN18\\_Web.pdf](http://lnweb18.worldbank.org/ESSD/sdvext.nsf/67ByDocName/RwandaTheImpactofConflictonGrowthandPoverty/$FILE/DN18_Web.pdf))

33 Johnson, *op. cit.*, p. 78 (noting, with regard to the ICTY, that the test should instead 'focus on whether, in its 10 years ... the Tribunal has contributed positively to the development of international criminal law, international humanitarian law and human rights law; the facts surrounding terrible atrocities have been uncovered and those who committed them held accountable; and judicial proceedings have been conducted in accordance with the highest standards of international due process, including fully honouring the rights of the accused').

direct and immediate access to their work. It has also been alleged that the tribunals' outreach activities to victim communities has failed to bridge the gap in knowledge and appreciation of its work at the grass-roots level, and that their contribution to national reconciliation has been negligible.<sup>34</sup>

In establishing the *ad hoc* tribunals, the Security Council expressed its hope that the prosecution of persons most responsible for serious violations of international humanitarian law would contribute to the process of national reconciliation.<sup>35</sup> Although reconciliation is a process which must emerge from within the countries affected by conflict, it is certainly an objective of the tribunals to contribute to this process. The judicial proceedings of the tribunals represent the core element in their contribution to reconciliation.<sup>36</sup>

In addition, both *ad hoc* tribunals have established outreach programs designed to disseminate and promote their work to victim groups and all sectors of society within the Balkans and Rwanda. The impact of these and future measures should be assessed closer to the end of the tribunals' mandate and, in the last resort, by the populations of these regions themselves. It is nonetheless clear that these tribunals are trying, within the resources available and despite numerous constraints, to contribute to the process of reconciliation.

Admittedly, these tribunals may have been more visible in the former Yugoslavia and Rwanda had they been established in-theatre and if judicial proceedings had taken place there.<sup>37</sup> However, for reasons of efficiency, security and impartiality, this was not considered possible in the 1990s.<sup>38</sup> The need, when establishing a criminal tribunal, to balance these factors against the benefits of greater accessibility for the victim communities they represent is unsurprising given that these communities are frequently located in regions decimated by armed conflict and suffering from ongoing insecurity. Thus, while the experience of the more recently-established tribunals

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34 See e.g. Zacklin, 'The Failings of Ad Hoc International Tribunals', p. 544 (noting that victim perceptions could certainly be improved, although acknowledging also that such criticisms often result from misperceptions as to the tribunals' role, leading to expectations that inevitably cannot be fulfilled).

35 See e.g. Security Council Resolution 955, 8 November 1994, *op. cit.*

36 Møse, 'Main Achievements of the ICTR', p. 938: 'By conducting fair trials, listening to the parties, establishing the facts and applying the law in an impartial manner, the [ICTR] decides on the individual guilt or innocence of an accused in respect of each of the charges against them. Whenever a judgement is delivered, an oral summary is given by the presiding Judge, interpreted into the two official languages of the Tribunal as well as Kinyarwanda and transmitted directly into Rwanda. .... More generally, the judgements provide a broader picture of the events in 1994 and the period preceding them, even if it cannot be expected that the Tribunal provides a full, comprehensive historical record'.

37 Geographical proximity between international criminal tribunals and the victim communities they represent may well be an ideal. Sierra Leone's court is in many ways regarded as a model, with its two-to-one mix of foreign and local judges and ambitious outreach program. However, even this outreach program has not been immune from criticism ('Bringing the Wicked to the Dock', *Economist*, March 9 2006).

38 Møse, 'Main Achievements of the ICTR', p. 938.

located in-theatre warrant objective study, the optimal location of any future tribunal would still need to be evaluated in the light of all the circumstances.

### *Multiple and Competing Objectives of International Criminal Prosecution*

Although international criminal tribunals are primarily set up to prosecute and punish those bearing the greatest responsibility for particular violations of international humanitarian law, these tribunals also embody a number of secondary objectives, some of which are not readily comparable to those found in domestic criminal courts. Besides efficiently prosecuting a person for having allegedly committed a given crime, another result of the trial may be to establish the historical record – to determine what in fact happened and who did what. This may require much more time and effort than would be necessary simply to complete the case.<sup>39</sup>

These supplementary objectives may not always be easy to square with the requirement of expeditious criminal prosecutions. The *ad hoc* tribunals in particular have been criticized for delays in bringing detainees to trial as well as during the trial stage. Some of this criticism may have been justified, but it is important also to recall the reasons why proceedings are time-consuming, as well as the various measures adopted over the years to address them.<sup>40</sup> The *ad hoc* tribunals have responded to these criticisms and recent indicators show encouraging improvements in the number and speed of trials completed before them. Further, when, on rare occasions, the rights of an accused have been violated, these tribunals have not hesitated to acknowledge both the fact that violations have occurred and the right of the accused to a remedy.<sup>41</sup>

While international tribunals are directed to focus their attention upon persons ‘most responsible’ for gross violations of international humanitarian law, this notion of greatest responsibility is not self-explanatory. Systematic violations of the sort punished by international criminal tribunals are usually complex events, involving multiple institutional actors and many-sided conflicts. The assessment of greatest individual (as opposed to institutional) responsibility in such settings is seldom straightforward.<sup>42</sup> Further, all international criminal tribunals operate in contexts

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39 Ibid. p. 934.

40 Ibid. p. 933.

41 See e.g. *Prosecutor v. Barayagwiza*, Case No. ICTR-97-19, Judgement (AC), 3 November 1999, para. 105 and *Ibid*, Decision (Prosecutor’s Request for Review or Reconsideration) (AC), 31 March 2000, para. 74. See also *Prosecutor v. Semanza*, Case No. ICTR-97-20-A, Decision (AC), paras. 127–128.

42 The *ad hoc* tribunals and the ICC have jurisdiction only over natural persons (*see* Articles 6 and 7(1) of the ICTY Statute, Articles 5 and 6(1) of the ICTR Statute and Article 25(1) of the ICC Statute). They have no competence to adjudicate the criminal responsibility of collectivities such as political parties or military units, although their role may be highly significant to an understanding of the particular crimes subject to investigation or prosecution. The objective behind the notion of individual responsibility is the particularization and individualization of criminal conduct. In so doing, it is hoped to break vicious circles of wholesale condemnation of entire national or ethnic groups and thus the reductive attribution of collective guilt.

where countless gross violations of international humanitarian law have occurred. Resource and other constraints ensure that large numbers of deserving incidents will therefore never face prosecution before international tribunals. While all such tribunals have made genuine attempts at evenhandedness, this inevitable selectivity masks a number of difficult policy choices and priorities must compete.<sup>43</sup>

In practice, this had meant that international tribunals have tended to indict relatively few individuals, and there is a growing trend toward a focus on the upper echelons of the political and military leadership. However, it is clear that to ignore middle-ranking and low-level perpetrators entirely would create an unacceptable impunity gap.<sup>44</sup> Complementary national prosecutions and other alternative mechanisms of redress, far from being supplanted by international criminal tribunals, retain a vital role the overall objective of ending impunity for serious violations of international humanitarian law.<sup>45</sup>

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43 While the ICTY Office of the Prosecutor (OTP) has prosecuted notorious incidents such as the Srebrenica massacre (see e.g. *Prosecutor v. Krstić*, Case No. IT-95-33), another case, by contrast, entailed few human casualties but instead, extensive damage to cultural monuments (see e.g. *Prosecutor v. Strugar*, Case No. IT-01-42). On one occasion, the ICTY OTP declined to open an investigation in response to certain allegations; a decision which it justified partially on the basis of its inherent discretion to set priorities and to assess the likelihood of obtaining sufficient evidence to substantiate charges against high-level accused or against lower-level accused for particularly heinous offences (see Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, source: <http://www.un.org/icty/pressreal/nato061300.htm>). The ICTY OTP case portfolio includes indictments against individuals from all major warring factions during the Balkans conflict. While all persons convicted by the ICTR so far are Hutu, the ICTR Statute is generally formulated and UN Security Council Resolution 1503 of 28 August 2003 (S/RES/1503 (2003)), which concerns the ICTR's so-called 'completion strategy', refers to 'investigations of the Rwandan Patriotic Army' (RPF). The ICTR Prosecutor has taken account of the mandate of the ICTR, as emphasized by the Resolution, so as to investigate reports of violations by the RPF. He is currently evaluating the evidence against such persons (Møse, 'Main Achievements of the ICTR', p. 934). The Special Court for Sierra Leone has also indicted persons from both sides of the conflict, despite the criticism this has engendered in some quarters (see 'Bringing the Wicked to the Dock', *Economist*, March 9 2006).

44 Aimed only at the worst culprits, international justice is at best a blunt instrument. Some commentators thus suggest that truth-telling mechanisms, backed up by traditional methods of mediation and reconciliation, might be particularly appropriate in this context (Ibid).

45 In this context, the so-called principle of complementarity, embodied in the ICC Statute, is a welcome innovation. According to this principle, the ICC is complementary to national criminal jurisdictions and a case before it is admissible only following a determination that the state in question is unwilling or genuinely able to carry out the investigation or prosecution of international crimes for itself (Articles 1 and 17(1)(a), ICC Statute). It will nonetheless be interesting to observe how the ICC comes to interpret this principle in practice: see further infra.



*Limits to the Enforcement Powers of International Criminal Tribunals*

Despite the remarkable progress made by international criminal tribunals in recent years, real limitations on their capacities nevertheless remain. Having no enforcement capacity of their own, international criminal tribunals must depend on the co-operation of states in order to gain access to vital evidence and individuals, or the willingness of peacekeeping or other international forces in the field to undertake enforcement functions on their behalf.<sup>46</sup>

Further, the jurisdictional reach of the *ad hoc* tribunals is limited to the territories of the former Yugoslavia and Rwanda. Other similar tribunals are likewise linked to the situations in particular countries, even though numerous other candidates equally in need of such tribunals can be identified. This has left the international community open to allegations of double-standards, and the successive establishment of further *ad hoc* tribunals has entailed repeated start-up costs.

The ICC, as the world's first permanent international criminal tribunal, was designed to provide a fairer, cheaper, and more effective way of dealing with the most serious violations of international humanitarian law. However, it is also the first to have lacked any direct UN involvement and has faced strong opposition from many countries, most significantly the United States of America. Further, the ICC's jurisdictional reach is also limited. It may not prosecute crimes committed before its inception in 2002. Under its Statute, it cannot bring a prosecution unless the state with jurisdiction over the offence is genuinely unable or unwilling to do so.<sup>47</sup> How, in time, this provision will come to be interpreted will have immense significance for the ICC's effectiveness.<sup>48</sup> Further, it has jurisdiction only over nationals of countries which have ratified its Statute – approximately 100 have done so to date – or over those whose crimes were committed in a country which has. The exception to this rule is if the Security Council refers the matter to the ICC, as in the case of Sudan, a non-member. The ICC is further hampered by the refusal of many states in some of the world's most unstable regions to sign up to it. Nor have the United States, China and Russia signed all three veto-wielding permanent members of the Security Council and thus with the ability to block any Security Council referrals.<sup>49</sup>

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46 See further Lamb, 'The Powers of Arrest of the International Criminal Tribunal for the Former Yugoslavia'.

47 Article 17(1)(a) of the ICC Statute.

48 Sudan, for example, insists it is perfectly capable and willing to try those responsible for Darfur and is refusing to co-operate with the ICC ('Bringing the Wicked to the Dock', *Economist*, March 9 2006).

49 It should nevertheless be observed that despite its traditional opposition to the ICC, the United States did not exercise its power of veto in relation to the Security Council's referral of the situation in Darfur, Sudan, to the ICC (*see* UN Security Council Resolution 1593 of 31 March 2005 (S/RES/1593 (2005))).

## Concluding Remarks

No impartial observer can conclude that international criminal tribunals have not made an immense contribution to the elucidation and development of norms of international humanitarian law and to the ending of impunity for some of the worst crimes known to humanity. They have thereby assisted national reconciliation and truth telling by uncovering facts, ascertaining the truth, holding perpetrators accountable and refuting those who seek to deny that atrocities ever occurred.

Despite this, significant challenges remain. The response of the international community to serious violations of international humanitarian law has to date been selective and uneven. This has formed a large part of the rationale for the establishment of the ICC as a permanent organ of international criminal justice. While the gradual expansion of the jurisdictional reach of that body is encouraging, its scope is still far from universal: in no small measure because the international legal order in which it is embedded is itself still far from being able to enforce a genuine and universal commitment to human security.

It is also true that international criminal tribunals are limited in what they can achieve on their own. They cannot, for instance, eradicate the root causes of conflict or eliminate deeply-held prejudices and distrust. Nor can they single-handedly reinvigorate national judicial structures and societies, or create national reconciliation.<sup>50</sup> Nonetheless, their presence has irrevocably changed the international legal landscape<sup>51</sup> and the perceptions of leading national and international policy makers.<sup>52</sup> The success of these Tribunals should be judged not solely according to those it indicts and successfully prosecutes, but also in terms of the extent to

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50 See e.g. Secretary-General's Report, summary (noting that international criminal tribunals will be most effective if viewed as part of a creative and coordinated approach which involves and empowers national justice systems, and the need for an integrated approach which is comprehensive, strategically planned, carefully integrated and sensibly sequenced).

51 For an example of shift in consciousness wrought by emerging legal norms in this area, see Rubin (quoting ICC Prosecutor Luis Moreno-Ocampo) 'If not Peace, then Justice': "What happened to the native populations in the US and Latin America [during the colonial conquests] could not happen today with the ICC. We are evolving. Humanity is not just sitting. There is a new concept. The history of human beings is war and violence; now we're saying this institution is here to prevent crimes against humanity."

52 For an interesting insight into the impact of international criminal tribunals on the calculus of decision-makers, see 'The Battle against the Tyrants', Sunday Times, 13 July 2003 (citing Robert McNamara, Secretary of Defence to both John F Kennedy and Lyndon B Johnson during the Vietnam war: 'Contrary to the US position, it is very much in the interests of the world to establish the [ICC], and in the interests of the US as well ... should be an accepted, established code defining what is legal and illegal action for both military and political leaders, and such a code will surely be developed as a result of the existence of the court. This will, I believe, over time be a strong deterrent to unacceptable actions. At the time of the Vietnam war there was no legal code forbidding action such as the use of Agent Orange. I never in the world would have allowed it to be used if I had thought it was illegal.'

which they serve to encourage the emergence of more ethical domestic and foreign policy.<sup>53</sup>

Far from being a panacea, international criminal tribunals are in reality only one of the panoply of measures required in situations of gross violations of international humanitarian law. Their legacy will therefore only be complete when they form a mere part of a co-ordinated and comprehensive overall strategy for addressing the totality of the legal, institutional, social and psychological consequences of mass victimization and terror.

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53 Domestically, international criminal tribunals provide an impetus to national courts to prosecute their own citizens for crimes over which the court has jurisdiction; internationally, international criminal tribunals act to curb the worst excesses of those involved in committing such crimes (even if the extent to which this is the case may be hard to measure; see *supra*) and provide mechanisms of redress in circumstances where such deterrence fails.

## Conclusion

# Some Reflections on Ethics and Foreign Policy

Stephen Haigh, David B. MacDonald and Robert G. Patman

For all of the contributors to this book, ethics remains an important consideration in the making of foreign policy. However, there is little agreement on what precisely constitutes ethical behaviour in this sphere. The meaning of ethics is essentially contested, as are the various means through which an ethical approach to foreign policy should be pursued. In many ways, the views of our contributors reflect both a longstanding dichotomy between ideals and interests in foreign policy, and a sense that such compartmentalisation is increasingly difficult to sustain in a world where morality and power are moving closer together.

At the idealist end of the theoretical spectrum, there is an enduring belief in a global community or 'international society' as one sees in the English School of International Relations, which articulates the idea that the world is hardly an anarchical environment. According to this perspective, states are constrained by norms or expectations of good behavior. They do not generally commit aggressive acts because to do so is to violate their international legitimacy. Defending sovereignty and security is acceptable, but engaging in 'pre-emption' or 'prevention' is not. While terrorism constitutes a threat to world order, 'rogue superpowers' might constitute a more destabilizing influence.

The obverse of this view holds that in a situation of international anarchy with no agreed upon rules of the game, and a weak international community, strong hegemonic powers have a duty to stop global lawlessness and disorder. This is doubly the case if other western powers, the EU, for example, are unable to see the dangers posed by terrorism, or are manifestly unwilling to stop them. While some contributors downplay terrorism and see US hegemony as they biggest obstacle to world peace, others see the threat of Islamic terrorism as a far more pressing concern.

With the war on terror currently in its sixth year, it made sense to begin with an understanding of some of the normative dimensions of American foreign policy. David MacDonald suggests an exploration of American history and culture to make sense of how it perceives itself and the world around it. That America sees itself as inherently moral and good, irrespective of the types of foreign policy it conducts, is problematic. There is a frequent disconnect between self-perceptions of America's character and the foreign policies it pursues. Much of this can be traced to the long history of exceptionalism, which since the 17th century has stressed America's innocence, chosenness, and goodness, as well as its closeness to Hebrew ideals. The recent revival of evangelical Christianity and the Americanisation of the Holocaust

provide updates of older traditional exceptionalist myths. Yet to what extent the instrumentalisation of another group's genocide can succeed in rallying Americans together is debatable. This type of exceptionalist rhetoric may have a short shelf-life, depending on the receptivity of the public to it. Is such a narrative designed to promote American interests or to weld America more firmly to the defense of Israel, at a time when anti-Semitism is on the rise in the Middle East and Western Europe? Time will tell.

James R. Flynn clearly outlines the case for an ethically robust form of American hegemony – the successful world sovereign should be able to keep the rest of the world reasonably happy with its overwhelming power. Of course, Flynn assumes that America will continue to maintain its pre-eminence for the foreseeable future, which is a debatable conclusion, but one shared by most of the contributors to this volume. Whether or not Paul Kennedy's declinist thesis continues to hold water is a matter of opinion. In any event, Flynn suggests some ground rules for how the world's only superpower should behave if it cares about how it is perceived abroad. In light of the growing literature on anti-Americanism which presents America as an almost passive recipient of the world's anger, this important chapter suggests ways in which America might mitigate against the effects of anti-American anger while ensuring its primacy. Much of this chapter suggests concrete solutions for ending some of America's more intractable quagmires, while exercising more of Joseph Nye's 'soft power'.

It is apposite that Flynn chooses to offer a sort of moral recipe for the United States as a World Sovereign. If America were to assume that mantle, how might she achieve a truly ethical foreign policy? First, prudence dictates that she should never take sides in morally ambiguous disputes, something she has historically been wont to do. Prudence entails moderate talk as well: rhetoric about the war on terror, for example, creates false friends and false enemies. Second, America ought to support the United Nations, not use it as an instrument of narrow national interest. Defying or ignoring the United Nations by carrying out vigilante justice can only undermine US sovereignty in the long run. What applies to the United Nations specifically applies generally as well: America needs to seek consensus, to use her power in the service of peace and order. Suasion is always better than force.

Radical ideas, no doubt. But if a conclusion can be drawn, it is that we are morally obliged to search for ways in which starkly realist conceptions of the national interest – power, security, independence, influence – might coexist with broader ideals: the extension of universal liberal norms, humanitarian intervention when those norms are seriously contravened, structural efforts to help the otherwise helpless, the prevention of unjust wars. Traditional thought does not have a good track record.

Barry Cooper sees the purpose of politics as austere: to provide shelter for citizens and to defend the realm. The business of politics – the national interest – is state survival and security, and it is a dangerous form of utopianism to believe otherwise. Why dangerous? Because – and this, said Cooper, is what Aristotle would call the tragedy of political life – politics is conducted in an amoral world. Stripped bare, the essence of inter-state relations is aggression and threat – ultimately, the threat of annihilation. The state, then, is founded in violence and exists because of it, which puts security objectives and 'higher' moral ideals at loggerheads. The Greeks

delivered this truth 2000 years ago, and nothing has changed since. Indeed, current developments confirm their teachings in spades. To ignore such wisdom would be naive, and quite possibly fatal.

Security remains a key concern in international politics and foreign policy. International policing, as Beth Greener-Barcham argues, has become more frequent since the 1990s, in light of failing states in Papua New Guinea and the Solomon Islands. Should police serve as peacekeepers? Perhaps they might make the best peacekeepers – approaching political and ethnic violence for what it is – lawlessness and social instability. This chapter suggests that small states like New Zealand and medium size ones like Australia may play an important role in regional policing and peace-keeping, and moreover, may successfully apply what they have learned to policing operations in Africa or the Balkans. The problems of ‘quasi-states’ (to use Robert Jackson’s term) is that while they have the appearance of being sovereign states, they have an inability to defend their borders, or to maintain control domestically. Outsiders seeking to promoting human rights and safeguard the stability of the state are often welcome. Yet there are problems which Greener-Barcham rightly identifies. First, how do we draw the distinction between a state’s national interests and its professed altruism? Are states intervening to help restore order, or to increase their regional influence? The Solomon Islands raised questions about Australian designs on this failing state. Was Australia trying to promote stability, or seeking to further ‘manage’ the region? Second, there continue to be communications problems between states about what New International Policing means in both theory and practice. And third and perhaps the most important point – policing often reinforces the status quo. Is it truly ethical to rebuild the state as it was, or should humanitarian intervention work to consider alternative political options?

In their penetrating assessment of British decision-making in relation to the invasion of Iraq, Nick Wheeler and Rachel Owen assert that crucial ‘landmarks of integrity’ were substantively demolished in the days preceding the war. Comparing Iraq to Kosovo, they brought to light a crucial distinction between illegal acts that are nonetheless legitimate, and those that lack legitimacy. In 1999, Russia and China rightly argued that intervention in Kosovo would constitute a breach of international law. But the UN Security Council voted 12–3 against their denunciation, maintaining that an imminent threat of genocide amounted to ‘a textbook case of mitigation by virtue of exceptional circumstance’, in which decisive action by the international community was considered imperative. According to Wheeler and Owen, the outcome of that vote conferred legitimacy upon NATO’s intervention even when, in the strict sense, it contravened international law. Four years later, the Security Council voted against the proposed US/British action in Iraq, but to no avail. By ignoring the vote and invading Iraq, the ‘coalition of the willing’ not only breached international law but acted in opposition to the express wishes of the wider international community. As such, the war in Iraq was as illegitimate as it was illegal.

Much of the knowledge we possess about world events comes from news media. In Afghanistan, Iraq, Darfur or the Democratic Republic of Congo, we rely on journalists to provide accurate and impartial appraisals of current events. As Jeremy Hall notes, however, accuracy and unbiased coverage are imperiled in many of today’s modern conflicts. This is so for a number of reasons. First, in modern

war zones, 'front lines are poorly delineated and the line between combatants and civilians is often unclear'. Second, the internet has effectively blurred the distinction between the consumers of news and their creators. Third, the media, as it has always been, is subject to bias, particularly during wartime, when it can sometimes function as a propaganda arm of the government. This may be inadvertent and journalists sometimes to not have much of a choice. The media relies on government and the military for up to date information. They also rely on the military for access to war zones. The creation of the embedded journalist has further blurred distinctions between reporters and combatants. Thus: 'a reporter whose day to day activities are so closely entwined with those of a military unit – and who shares their daily travails – is likely to develop a close sympathy with them.' Self-censorship is nearly impossible to avoid. The American government has learned since Vietnam that allowing reporters unrestricted access can backfire on those seeking to prosecute war. Civilian deaths, destruction of property, and the necessity of war can all be problematised by reporters if they see too much. Media spectacles from Iraq, like the Jessica Lynch affair and the contrived toppling of Saddam's statue in Baghdad's Fardus Square demonstrate how ratings and sensationalised reporting and image-making are sometimes more important than accuracy. Ultimately Hall outlines two constants in media reporting: 'people will always seek to learn about conflict which affects them, and those in power will always look to put the best possible face on any conflict that they partake in.'

States and the international bodies they create are the conventional actors of the international system, but in recent times there has been a surge in the roles and number of other political 'dramatis personae'. In an age of globalising forces, non-state bodies – non-governmental organisations, civil society, multinational corporations, regional fora and the media – exert an increasingly profound influence on foreign policy. That influence makes them the proper focus of ethical scrutiny.

From a constructivist perspective, Dirk Nabers engages with the importance of norms, morality and expectations in foreign policy, through an examination of Germany and Japan. Both countries, despite or perhaps because of their turbulent pasts in the 20th century pride themselves on being moral actors, promoting high standards of conduct which include 'the renunciation of the use of force and the promotion of multilateralism and equality in international affairs'. At the same time, Japan remains more firmly wedded to the American military orbit and overtly supported the current war in Iraq. Germany on the other hand took a firmer anti-war position, become a staunch critic of the war alongside France. Nabers suggests that much of this may stem from geopolitical differences. Japan needs America to help deal with regional threats like North Korea. Germany has few such fears. American pressure is another key factor, with American leaders putting strong pressure on Japan to openly support the war on terror. Thus while norms are crucial, a country's ability to operationalise them to its satisfaction clearly depends on its domestic and regional security.

In the form of catastrophic fires in Sumatra and Borneo in 1997, the environment featured as part of Simon Tay's incisive portrayal of another species of non-state actor – this time a regional bloc of small to medium-size states – and its potential to shape and influence foreign policy. The fires, along with persistent troubles in Myanmar,

illustrate how strongly-held norms of non-intervention militate against ASEAN's attempts to instill a sense of community in its members so that they act in the wider interest of the region. The history of ASEAN is one of 'nervous uncertainty', in which the pendulum swings between ceding a degree of sovereignty to the regional body and retreating behind the walls of narrow self-interest. The key here is a broad cultural/ historical tendency to perceive 'inter-dependence' as a euphemism for 'interference', a charge that ASEAN too often avoids simply through inaction. The key problem it seems is that morality is exercised largely by the strong against the weak. Myanmar/Burma is usefully deployed as a species of scapegoat when ASEAN member states seek to display some resolve. Larger entities like China, however are unlikely to be criticised. In short, a form of double standard seems to exist. Tay remains hopeful for ASEAN, however, observing with only a tinge of irony that agreement to let problems lie fallow constitutes a minimal form of community.

Andrew Stoeckel suggested that a grievously overlooked area in this regard is the activity of non-governmental organisations. He began with a syllogism: the open trade market is highly efficient; efficiency generates economic prosperity; economic prosperity leads to cleaner, more bountiful environments, to better-fed, more highly educated populations, and to longer, more productive lives in conditions of reduced material inequality. Theoretically then, the big 'North-South' issues – hunger and poverty, income inequality, and environmental sustainability – are amenable to trade liberalisation policy, and should not be so intractable. So why are they? Stoeckel pointed the finger at the non-governmental organisations that spearhead the anti-globalisation movement, accusing them of playing a 'cruel hoax' on the world's poor. Non-governmental organisations, he said, are in denial – and by failing to acknowledge that freer trade would significantly redress the developing world's ills, they stand revealed as complicit in much of the suffering. The relevant ethical challenge, then, might actually be to convince the NGO community to promote free trade instead of opposing it.

Alfredo Rehren poses the question: 'Is there a more dangerous threat to democracy than corruption?' Defining political corruption as the use of public office for private gain, he listed its main sources: clientelism; patronage parties and bureaucracies; the introduction of market economies and privatisation; globalisation, in which corrupt local officials take bribes from international businesses; and crooked party and campaign financing practices. A long list indeed, and one which mounts a serious ethical challenge to the globalised economy and the fundamentals of democracy. Economies suffer distortions through bribery, competitive declines, and the rise of underground markets. Democracy suffers because social programmes are manipulated by elites – and because political participation makes little sense: why bother with civic institutions when you can bribe legislators, regulators, and bureaucrats? So what can be done about this? While corruption will not disappear, steps can be taken to curb it. Most important is the need for transparency in financing, purchasing schemes, contracting out, campaigning, outsourcing, and procurement. State reform is crucial too: political appointees are no substitute for a professional civil service, an active civil society, in which non-governmental organisations are supported and encouraged, is of vital necessity; and finally, investigative journalists should be trained to detect corruption and expose it in free media.



Finally, our practitioners section highlighted a number of diverging views – from those manifestly against the assertion of American power in Iraq to those who had a hand in its development.

Cooper's argument for politics-as-necessity was taken up by Richard Allen, who suggests that Aristotelian ethics is the clearest lens through which to view American foreign policy. US statecraft begins with the understanding that politics is morally neutral – that it cannot be cast in terms of good and evil. Navigating its murky waters requires prudence, judgment, and practical wisdom, virtues that come together in the exercise of right reason. The need for right reason has never been more pressing. Now, in a jihad against the very ideals of Western civilisation, 'amorphous movements' have struck the American homeland, causing great loss of life. What can be done to counter the novel and ominous threat of stateless terror? Well, let there be no doubt that this is a war – and prudence requires the continuation and even expansion of that war by all reasonable means. Such a policy does not betray the American tradition; rather, it is the only way to safeguard it against fanatics who would see the democratic way of life extinguished. Do 'reasonable means' include unilateral action? Allen concludes by noting that the United States has always supported the United Nations, and would continue to do so where and whenever it resists the impulse to 'define deviance down', or abdicate its responsibility to intervene against threats to international peace and order. Inactivity is itself an action, and, in the case of Iraq, America simply could not afford to stand by while the United Nations prevaricated.

Great powers aspiring to ethical behaviour in the international arena are faced with difficulties on a rather heroic scale. Smaller states have certain inbuilt advantages, yet the pursuit of justice and fairness must still be weighed against self-interest. Speaking as a representative of his Labour-led government, Phil Goff gave a measured account of how New Zealand pursues its interests while insisting upon the observance of ethical foreign policy norms. New Zealand consistently acts according to four central tenets, involving commitment to the UN system and its associated institutions; to principles of international law; to active work in support of the elimination of weapons of mass destruction; and to quick and vigorous response to humanitarian need whenever such need arises. Special emphasis is given to upholding principles of human rights: New Zealand firmly, if carefully, challenges gross violations wherever they occur. New Zealand has certain advantages – size, geography, and international reputation – that allow it to take such a position. Nevertheless, her representatives take every opportunity to express the conviction that an ethical foreign policy serves the long-term interests of all states, no matter how powerful.

Like war crimes, terrorism is an extraordinary or 'desert island' case, one that mounts a supreme challenge to the possibility of an ethical foreign policy. Speaking eloquently about the relevance of traditional *jus armorum* – the laws of war – to the altered circumstances under which armed conflict is now prosecuted, Ken Keith put the question, 'Is it necessary to change the laws of war because of terrorists?' He outlines the 'ticking bomb' problem, in which a terrorist plants a device in a crowded building, if he is captured, then should torture be allowed if it is the sole means of extracting information that would save lives? The answer is no. The rule

of law must be upheld *pro forma*, and having judges issue writs to permit torture would undermine the rule of law. Keith also addressed the legality of 'pre-emptive deterrence', which has been promulgated in the 2002 US National Security Policy as a lawful form of self-defence. This, he averred, amounts to a reinterpretation of existing international law, not to its abandonment. He quoted Francis Bacon: 'Above all things integrity is their positive and proper virtue. Cursed sayeth the law is he that removeth that landmark.'

The idea of an 'uneasy relationship' between justice and security recurs throughout this volume, and receives a starkly explicit airing in Susan Lamb's analysis of the inner workings of the International Criminal Tribunal for the Former Yugoslavia (ICTY). Lamb noted that the tribunal has been plagued with the dilemma of whether to pursue justice at all costs or to ensure stability and security on the ground. These two propositions have often been mutually exclusive, as when territory controlled by known war criminals becomes the venue for peacekeeping and aid operations. In such cases, arresting criminals would jeopardize the lives of UN personnel, so that, in the interests of stability and security, gross injustices have been 'frozen into place' on the ground. Yet she notes that in the long term, a stable society can never be assured when known war criminals go unpunished within its borders.

What emerges from this volume is the uneven and sometimes contradictory role of ethics in foreign policy and international relations more broadly. Certainly, there are changes in the air. The recent Congressional elections prove that the moral certitudes of the Bush administration has lost some favour with its electorate. Anti-Americanism has also risen sharply since 2001, suggesting that even in its moment of victimisation, America did not possess the moral capital to change the international rules of the game. While some criticism of America is irrational and unfounded, some is clearly focused on the unequal distribution of power in the world and the means by which that power is operationalised. While terrorism, failed states, and weapons of mass destruction are very serious problems, they need to be considered alongside other issues such as poverty, corruption, injustice, and the destruction of the environment.

Ultimately, as we concluded in our introduction to this volume, the era of globalization is having the effect of putting ethics higher up on the agenda of foreign policy. Realism will certainly remain a significant lens through which to focus on foreign policy. But Realism, shaken by the peaceful resolution of the Cold War in the late 1980s, and by its inability to explain the traumatic events of 9/11, seems to be seriously challenged by a globalizing world that often defies state-centric solutions to its problems. The concept of national interest is unlikely to disappear as a key benchmark of makers of foreign policy. However, it can be anticipated that, as globalization intensifies in the twenty-first century, the notion of the national interest will need to be re-defined and broadened to take account of the moral concerns or norms of an increasingly interconnected world.

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