

**THE U.S. ARMY WAR COLLEGE GUIDE  
TO NATIONAL SECURITY ISSUES**

**VOLUME II:  
NATIONAL SECURITY POLICY AND STRATEGY**

**4th Edition**

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Editor**

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**PART I**

**THE NATIONAL SYSTEM AND ENVIRONMENT**



## CHAPTER 1

### CRAFTING NATIONAL INTERESTS IN THE 21ST CENTURY<sup>1</sup>

Alan G. Stolberg

When you're asking Americans to die, you have to be able to explain it in terms of the national interest.<sup>2</sup>

—Henry Kissinger

The most fundamental task in devising a grand strategy is to determine a nation's national interests. Once they are identified, they drive a nation's foreign policy and military strategy; they determine the basic direction that it takes, the types and amounts of resources that it needs, and the manner in which the state must employ them to succeed. Because of the critical role that national interests play, they must be carefully justified, not merely assumed.<sup>3</sup>

—Robert J. Art

Both Henry Kissinger and Robert Art make it clear that the identification of national interests is crucial for the development of policy and strategy. Interests are essential to establishing the objectives or ends that serve as the goals for policy and strategy. "Interests are the foundation and starting point for policy prescriptions." They help answer questions concerning why a policy is important.<sup>4</sup> National interests also help to determine the types and amounts of the national power employed as the means to implement a designated policy or strategy.

The concept of interest is not new to the 21st century international system. It has always been a fundamental consideration of every actor in the system. Despite what many academics have maintained, national interests are not only a factor for nation-states. All actors in the international system possess interests. Using Barry Buzan, Ole Weaver, and Jaap de Wilde's units of analysis, the need to have interests is equally applicable to *international subsystems* (groups or units that can be distinguished from the overall system by the nature or intensity of their interactions with or independence on each other) like the Association of Southeast Asian Nations and the Organization of Petroleum Exporting Countries, *individual units* (actors consisting of various subgroups, organizations, and communities) such as nations of people that transcend state boundaries and multinational corporations, *subunits* (organized groups of individuals within units that are able or try to affect the behavior of the unit as a whole) like bureaucracies and lobbies, and finally, *individuals* that all possess separate personal interests as they participate in the overall system.<sup>5</sup> Some academics choose to distinguish between national interests (interests involved in the external relations of the actor) and public interests (interests related within the boundaries of the actor).<sup>6</sup> For purposes of this essay, given the closing gap between the influence of external and internal issues in the 21st century international system brought about by the associated components of a rapidly globalized world, there will be no distinction made between external and internal interests. In effect, they all fall under the concept of the national interest.

There is a generally accepted consensus among academics that interests are designed to be of value to the entity or actor responsible for determining the interest for itself. This could include

those interests that are intended to be “a standard of conduct or a state of affairs worthy of achievement by virtue of its universal moral value.”<sup>7</sup> However, there is less agreement over the question of whether all nation-state interests are enduring, politically bi-partisan, permanent conditions that represent core interests that transcend changes in government,<sup>8</sup> in contrast to those interests that may be altered over time and or respond to change in the international system.<sup>9</sup>

There is also disagreement over whether national interests are designed purely for the sake of advancing the power of an actor with the object of attaining greater security for that actor,<sup>10</sup> or whether interests can be guided by values and ethics with the intent of doing some type of good for parts of the international system, or the overall system in general. This might include collaboration and coordination with other actors in the international system.<sup>11</sup> It may also require the interest-crafting actor to subordinate certain interests that only benefit it for the sake of other interests that are of greater value to additional actors in the system.

Finally, there is disagreement over the categorization and determination of intensity or prioritization of interests. Terms like survival, vital, critical, major, serious, secondary, extremely important, important, less important, humanitarian, and peripheral have been used to categorize interests in academic writings and official government documents.<sup>12</sup> Some categorize how significant the interest is in terms of chronological relationship to the actor that determines the interest (near term versus longer term impact), while others relate categories to the intensity of the substantive influence that the interest is determined to have on the actor. Categorization is directly related to the question of prioritizing interests based on intensity, deciding which types of interests are more important than others. Perhaps of equal importance is the amount of distinction made between the categories in the prioritization process. In a zero-sum environment, this distinction could determine whether or not an actor’s resources, and in what amount, would be allocated toward the attainment of the interest.

After developing a detailed definition of national interests and analyzing their uses, this essay will propose a process that future policymakers can use to craft reasonably attainable statements of national interests. The paper assesses the issue of fixed or adjustable interests over time to understand what degree of flexibility that crafters of interests might have. Similarly, it examines whether policymakers create interests only for the purpose of advancing the power, and thus security, of a state, or if they can also be developed based on ethical and value-driven intent. Finally, the essay examines the creation of a set of category definitions that will provide necessary flexibility for a 21st century policymaker.

In the end, the focus of this chapter will be the development of a series of issues or questions that any policymaker can use as a guideline to assist in the development of national interests that are within the realm of the possible.

## **DEFINITION OF NATIONAL INTERESTS**

In a very generic sense, national interests are “that which is deemed by a particular state (actor) to be a . . . desirable goal.”<sup>13</sup> The attainment of this goal is something that the identifying actor believes will have a positive impact on itself. Realization of the interest could enhance the political, economic, security, environmental, and/or moral well-being of a populace and the state (actor) or national enterprise to which they belong.<sup>14</sup> This holds true within the territory of the actor, as well as in any external relations that the actor may undertake outside of the administrative control of that actor.<sup>15</sup>

Interests would be the concern of the actor as a whole, “or at least (for) a sufficiently substantial subset of its membership to transcend the specific interests of (any) particular groups” within the actor.<sup>16</sup> For the United States, the executive body of the federal government, rather than the legislative or judicial, has the primary responsibility for determining the national interests that address

perceived needs and aspirations external to the geographic borders of the nation. The determination of internal or domestic interests is more complex with executive and legislative bodies at federal, state, and local levels interacting in the political process to reach decisions.

## USES FOR NATIONAL INTERESTS

Interests serve as the foundation and guiding direction for the formulation of policy. For a nation-state, there is more often than not a direct correlation between the nation's interests and foreign policy. In most cases, "statesmen think and act in terms of interest."<sup>17</sup> Those interests believed to be the most significant for the attainment of a policy objective (the actor's wants and needs)<sup>18</sup> will earn the greatest amount of emphasis during the policy formulation process. They should be designed to tell the policymaker why and how much he should care about an issue. Interests help determine what kind and how much attention should be given to both challenges or threats and opportunities. They also assist the policymaker in identifying key issues during the policy formulation process. Examples could include: How are current developments affecting interests? Are hostile forces able to negatively impact the interests? Is there sufficient power (both military and nonmilitary) available to protect the interests? How much of that power must be used to defend the interests?<sup>19</sup> In effect, the understanding of an actor's interests helps the actor determine the degree of importance to be given to an issue.<sup>20</sup>

## FIXED OR CHANGING INTERESTS

Some political scientists, like Hans Morgenthau, believe that national interests are permanent features of the international system. Regardless of what government is in power, the interests of a nation-state remain fixed components of the policymaking process. They are "unaffected by the circumstances of time and place."<sup>21</sup> Some interpret this to mean that nation-states possess permanent, unchanging core interests. This would imply that the United States has core interests, potentially in existence since the beginning of the republic in the later part of the 18th century, that have never changed since their inception. This analysis will suggest that adjustments have, in fact, taken place over the course of time.

Morgenthau, himself, indicates that the key concept of interest is not to be defined "with a meaning that is fixed once and for all."<sup>22</sup> Morgenthau believed the generic concept of interest was unchanging in terms of its importance to the international system. But this did not mean that individual interests could not be adjusted or newly created in order to take into account changes in the international system.

Other theorists have argued that interests are likely to be "a diverse, pluralistic set of subjective preferences that change periodically, both in response to the domestic political process itself and in response to shifts in the international environment. The national interest therefore is more likely to be what the policymakers say it is at any particular time."<sup>23</sup> Like most actors in the international system, the United States has had both changing and unchanging national interests over an extended period of time. Some interests have been a more consistent focus of various policies and strategies than others, and all have had different degrees of importance over both the long and short terms. Some of these interests changed or adjusted because of shifting world conditions and/or domestic political considerations.<sup>24</sup>

Using a portion of the preamble of the Constitution, all seven national security strategies drafted during the course of the Clinton administration identified three core interests that have remained timeless in some manner, shape, or form for the United States: "provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." These were translated in those national security strategies into the modern day interests of:

enhancing security at home and abroad (security), promoting prosperity (economic well-being), and promoting democracy and human rights (democratic values).<sup>25</sup>

For purposes of 21st century America, these three core interests may be defined as:

*Security:* "Protection of the people (both home and abroad), territory, and institutions of the United States against potential foreign dangers."<sup>26</sup> This has always included defense of the American homeland. Domestically, it would now include protection of critical infrastructure such as energy, banking and finance, telecommunications, transportation, water systems, and cyber networks.<sup>27</sup> America's expansion into the world that began in the 19th century resulted in a broadening of the external portion of this core interest to now include components like protection against WMD proliferation, freedom of movement, access to key facilities, and assurance that U.S. national security institutions are transformed to meet the challenges and opportunities of the 21st century.

*Economic Well-Being:* "Promotion of (American) international trade and investment, including protection of United States private economic interests in foreign countries."<sup>28</sup> The 19th century American entry onto the world stage also ensured that this core interest would evolve to now incorporate expanded global economic growth through free markets and trade, to include the advance of globalization.<sup>29</sup>

*Democratic Values:* Until the 20th century, this core interest was confined to ensuring that the domestic democratic process and associated values framed the traditional American tenets of "life, liberty, and the pursuit of happiness." The nation's continued expansion into the world witnessed a change that in the 21st century can be said to include the promotion of democracy and human rights abroad.<sup>30</sup>

All three of these, now 21st century core interests, have also evolved as a result of the American experience in the aftermath of the two world wars of the 20th century into what can be considered a fourth core interest for the United States:

*Stable and Secure World Order:* A favorable world order based on the "establishment of a peaceful international environment in which disputes between nations can be resolved without resort to war and in which collective security rather than unilateral action is employed to deter or cope with aggression."<sup>31</sup> Requirements for global stability in the 21st century world would also include secure alliances and coalitions, the security of regions or countries in which the U.S. has a sizable economic stake, and the need to respond to humanitarian or other concerns, such as response to natural and manmade disasters, protecting the global environment, minimizing destabilizing refugee flows, and support for health problems like HIV/AIDS and food and water shortages.<sup>32</sup>

## REALISM OR MORALITY-BASED INTERESTS

Once the appropriate interests have been determined, the next question is why should the actor care enough to do anything about them. Is the underlying rationale for any kind of action to be one of realism or morality, or can both be utilized to explain the need to pursue certain interests? The complexity of the international system creates a decisionmaking problem that forces the crafter of national interests to make hard "choices concerning moral and national values; national treasure and even blood; and the time, energy, and influence that a government expends on external matters."<sup>33</sup>

The realist school of thought is founded on the premise that as a tool for the policymaker the national interest is intended to identify what is in the best interest of his state in its relations with other states.<sup>34</sup> The term "best" is defined in terms of power and security. Realists view national security as the primary basis of a state's national interest because of the threat of anarchy and constraints on sovereign states that are part of the international system. Anarchy in the international system would be manifested as "disorder, disarray, confusion, or chaos." This could either be interpreted as a description of the general condition of the international system, or as the absence



of any authoritative institutions, rules, or norms that are more powerful than any sovereign state actor and, thus, have the ability to ensure security in the overall system.<sup>35</sup> The result is a lack of security for the actors that are members of the system.

In addition to anarchy, realists are also very sensitive to threats to a state's interests that are posed by "external constraints on their freedom of maneuver from international treaties, the interests and power of other states, and other factors beyond the control of the (state) such as geographic location and dependence on foreign trade."<sup>36</sup>

According to realism, the absence of security caused by anarchy and constraints in the system causes states to orient their interests on "the acquisition and management of power," more often than not to be related to some form of the military element of national power.<sup>37</sup> The result, according to Morgenthau, is the need to focus an actor's national interests on meeting its security requirements by "protect(ing) (its) physical, political, and cultural identity against encroachments by other nations."<sup>38</sup>

For the national interest, the emphasis in realism is on doing what is primarily and almost solely to the advantage of that particular state actor. It is done with an express focus on power and security. In contrast, morality-based interests are defined "more broadly to encompass intangible values like human rights, freedom from economic deprivation, and freedom from disease." While military power could still be the national power element of choice, morality-based interests would promote concepts such as "the values of national self-determination and economic egalitarianism."<sup>39</sup> The last part of the 20th century witnessed a surge in support for these kinds of morality-based interests through the execution of humanitarian intervention in places like Somalia, Haiti, Bosnia, and Kosovo. Humanitarian intervention is "the use of armed forces by a state, a group of states or an international organization on the grounds of humanitarianism (not for self gain) with the specific purpose of preventing or alleviating widespread suffering (human rights abuses) or death."<sup>40</sup> Morality-based interests are not developed only to benefit the actor that crafts the interest. Rather, they are designed so other actors in the international system are also likely to benefit.

Given the complex world of the 21st century, neither one of these approaches is likely to be the sole rationale for why any given interest will be developed to guide policymaking. The bi-partisan Commission on America's National Interests assessed that the difference between realism and morality-based interests was more an alternative expression of valuation between the two as opposed to two dichotomous poles in contraposition to each other. The American people are oriented on the survival and well-being of the United States, while at the same time, owing much to historically embedded values, they are concerned about human rights and the welfare of individuals in other countries.<sup>41</sup>

In addition, Joseph Nye, the Dean of the Kennedy School at Harvard and clear promoter of the morality component through his advocacy of soft power, argues that national interests are a set of shared priorities that often include issues of human rights and democracy. "A democratic definition of the national interest does not accept the difference between a morality-based and an interest [realism]-based foreign policy."<sup>42</sup> There is both constant tension and constant cooperation between the two underlying rationales that help guide the formation of interests. Given the situation of the moment, each one will have its own applicability. Henry Kissinger, a most noted supporter of the realist school, described it best when he stated that:

The alleged dichotomy of pragmatism (realism) and morality seems to me a misleading choice. Pragmatism without a moral element leads to random activism, brutality, or stagnation. We must always be pragmatic about our national security. We cannot abandon national security in pursuit of virtue. But beyond this bedrock of all policy, our challenge is to advance our principles in a way that does not isolate U.S. in the long run.<sup>43</sup>

The issues associated with the 21st century world will require the crafter of national interests to simultaneously be both a pragmatic realist and an advocate of morality. Based on circumstances, sometimes one theoretical foundation will have greater influence than the other for the development of interests. With all of the many complex issues that will be present in the 21st century, this is likely to be true for American policymakers so long as the United States intends to maximize its influence on a global basis.

## CATEGORIZATION AND INTENSITY OF INTERESTS

To determine what types of resources to allocate in what amount toward the attainment of an interest, the crafter of national interests must understand the categorization and determination of the intensity of the interest. This part of the crafting process is necessary to address key policy questions like: Which issues matter most? Why should people care? How much should the populace be willing to pay to deal with identified threats or take advantage of recognized opportunities?<sup>44</sup>

The determination of priority—usually expressed in terms of the intensity of an interest—is crucial because, from the perspective of the policymaker, interests may very well come into conflict with each other. This conflict could be over the resources that an actor would require to attain the interests, including the time and attention of key decisionmakers.<sup>45</sup> Such resources are likely to be limited in some manner for any decisionmaking body, thus requiring prioritization before the interest crafting process is complete.

The most difficult problem in this part of the process is usually the determination of the intensity or stake that an actor has in a specific issue. The leadership of the interest crafting actor must address its desire to influence issues and events, both external and internal, its willingness to use any or all elements of national power to defend or advance certain interests in preference to others, and potentially its willingness to do so at the expense of other actors.<sup>46</sup>

Categorization is important not only because it can be used as a framework for systematic evaluation of national interests, but also because it can provide “a way to distinguish immediate from long-range” interest concerns using time as a basis.<sup>47</sup> Identified academic sources used between two and four different categories of interests, and two National Security Strategies published during the Clinton administration used three categories.<sup>48</sup> The categories are designed to delineate the different levels of intensity or order of priority for any respective interest.

The principal difference among these approaches is whether they use a separate category for survival interests, or whether they consider survival interests and vital interests essentially one and the same. “The major difference between a survival interest and a vital interest” is “in the nature and imminence of a military threat” to the actor.<sup>49</sup> Both terms address the life of the actor, one deals with the imminent danger of death while the other is only potentially fatal. In this case, the time difference is the key.<sup>50</sup> If one believes there are specific interests where the very survival or existence of the actor, and little more, is at stake, then four categories are necessary.

For purposes of this assessment, using the work of Neuchterlein, Art, and The Commission on America’s National Interests, this study will use four prioritized categories of intensity, from high to low (Survival, Vital, Important, Peripheral).

### **Survival.**

These represent the single most important interests for any actor. This is the very essence of the actor’s existence—the protection of its citizens and their institutions from attack by enemies, both foreign and domestic. It addresses an imminent threat of attack and is an interest that cannot be compromised.<sup>51</sup> If not attained, it will “bring costs that are catastrophic, or nearly so.”<sup>52</sup> Whatever can be done would be done to ensure the survival of the actor, to include the use of military force.

*Examples:* Prevent, deter, and reduce the threat of nuclear, biological, and chemical weapons attacks on the interest crafting actor or its military forces abroad; Ensure the survival of allies and their active cooperation in shaping an international system in which the actor crafting the interest can thrive; Prevent the emergence of hostile major powers or failed states on the borders of the actor crafting the interest.<sup>53</sup>

### **Vital.**

A vital interest exists when an issue is so important to an actor's well-being that its leadership can only compromise up to a certain point. Beyond that point, compromise is no longer possible because the potential harm to the actor would no longer be tolerable.<sup>54</sup> If the interest is achieved, it would bring great benefit to the actor; if denied, it would carry costs to the actor that are severe but not catastrophic.<sup>55</sup> Such costs could severely prejudice but not strictly imperil the ability of the actor's government to safeguard and enhance the well-being of its populace.<sup>56</sup>

*Examples:* Prevent the regional proliferation of weapons of mass destruction (WMD) and delivery systems; prevent the emergence of a regional hegemon in important regions; promote the well-being of allies and friends and protect them from external aggression.<sup>57</sup>

### **Important.**

These interests would be significant but not crucial to the actor's well-being. They could cause serious concern and harm to the actor's overseas interests, and even though the result may be somewhat painful, would be much more likely be resolved with compromise and negotiation, rather than confrontation.<sup>58</sup> It could increase its "economic well-being and perhaps its security" and, thus, contribute to "making the international environment more congenial" to its overall interests. The potential value, as well as potential loss of these interests, would be moderate and not great.<sup>59</sup> Important interests differ from vital and survival interests in the degree of danger perceived to the actor, and the amount of time available to find a peaceful solution to the issue.<sup>60</sup>

*Examples:* Promote pluralism, freedom, and democracy in strategically important state actors as much as feasible without destabilization; discourage massive human rights violations in foreign countries; prevent and, if possible at low cost, end conflicts in strategically less significant geographic regions.<sup>61</sup>

### **Peripheral.**

These interests neither involve a threat to the actor's security or the well-being of its populace, nor seriously impact the stability of the international system.<sup>62</sup> They are desirable conditions, but ones that have little direct impact on the ability of the actor to safeguard its populace.<sup>63</sup>

*Examples:* Promoting the economic interests of private citizens abroad;<sup>64</sup> enlarging democracy everywhere for its own sake; preserving the territorial integrity or political constitution of other actors everywhere.<sup>65</sup>

## **THE INFLUENCE OF INTERESTS ON 21ST CENTURY POLICY AND STRATEGY MAKING.**

Just as the development of national interests is complex, so is the actual application of interests in the policy and strategy formulation process. The importance of national interests to the process is significant, as described by Lord Palmerston, the British foreign minister in 1856: "When people

ask me . . . for what is called a policy, the only answer is that we mean to do what may seem to be best, upon each occasion as it arises, making the interests of our country one's guiding principle."<sup>66</sup>

As we have seen, the crafter participating in the development of interests must take the following issues into account: How flexible can the interest of the moment be in relation to the actor's core interests of the period? Must the interest be based on either realism or morality, or rather; can it be some combination of the two? Where does the interest fit in terms of how it is to be categorized with what degree of intensity?

Perhaps the most complicating factor that the crafter must take into account will be the influence of domestic politics on the interest formulation process. The concept that resource allocation by type and quantity will be impacted by the identification of the interest designed to guide a policy creates a critical linkage between the two. The connection is key because, in a democracy, it is the government of a state actor that will have to sustain the investment of resources required to attain the interest. Interests with greater fidelity and less ambiguity are easier for governments and populations to support because they have a clearer idea of why it is they are being asked to do something, like allocate money or military forces.<sup>67</sup> At the same time, such a detailed understanding could lead to a lack of support on the part of either the government, the people, or parts thereof, if the interest is assessed to be too low on the scale of intensity.

If they are to develop relevant and executable 21st century interests, a most important understanding for those participating in the interest development process must be that they are endowed with a degree of flexibility allowing them to discern the limits of domestic politics in terms of what types of interests are likely to be supportable. This must entail the provision of the maximum amount of data available for the development and resulting identification of the interests at hand. The greater the fidelity and degree of consensus on categorization and level of intensity, the greater the possibility that the public will support actions to protect or advance the interest.

But even with the proper address of all the most important issues, resulting in a logical, supportable interest, at times governments and populations do not support some interests with a high level of intensity. Conversely, political bodies often support other interests that are identified with a low level of intensity. The explanation for this behavior is typically found in the internal political decisionmaking of the actor. For example, sometimes domestic lobbies exercise a significant amount of influence on parliaments or the American Congress, with resulting impact on decisions that determine whether some interests will be supported at the level necessary to achieve attainment.

One such example comes from the period between 1992 and 2001 when the relatively small Armenian lobby in Congress, strongly supported by the Armenian-American community, prevented the United States from providing any direct aid to Azerbaijan. This was in response to the Azerbaijani blockade of Armenia, which was at war with Azerbaijan over the enclave of Nagorno-Karabakh. American government policymakers felt it important to provide support for Azerbaijan because it was just emerging from the former Soviet Union and lay in a very sensitive geographic region bordering the Caspian Sea and Iran. However, they were prevented from doing so even though assistance to Azerbaijan could have fallen within the parameters of a vital interest in an effort to protect the state and its Caspian Sea-based hydrocarbon resources from external aggression.<sup>68</sup>

To recapitulate, the interest crafting process should include the following to ensure the greatest opportunity for the development of interests that are both appropriate and supportable for any actor. These issues and questions must be addressed during the course of the process (the conclusion of which is when the national interest is identified and ready for use to guide the development of policy and strategy):



- They should be designed to tell the policymaker why and how much he should care about an issue. Part of this is framed by the determination of where realism and morality fit in the process.
- Interests help determine what kind and how much attention should be given to challenges or threats, as well as opportunities.
- They also assist the policymaker in identifying key questions to address during the policy formulation process. Examples could include:
  - How are current developments affecting the actor’s interests?
  - Are hostile forces able to negatively impact the actor’s interests?
  - Is there sufficient power (both military and non military) available to protect the actor’s interests?<sup>69</sup>
  - Which issues matter the most? Where do they fit in terms of the interest prioritization levels of intensity? Survival, Vital, Important, or Peripheral?
  - Why should people care?
  - How much would the populace be willing to pay to deal with identified threats and challenges or take advantage of recognized opportunities? Is it enough?

## SUMMARY

In the end, while some may believe as Lord Palmerston stated to the House of Commons in 1848 that “we have no eternal allies and we have no perpetual enemies. [Only] our interests are eternal and perpetual, and those interests it is our duty to follow,”<sup>70</sup> the challenges and opportunities found in the 21st century will require the flexibility to craft interests that can work in this complex world, writ large. They may be rationalized in terms of either realism or a morality-based approach, or by a combination thereof, in accordance with the particular circumstances of the issue. In turn, this rational determination is likely to drive how future policymakers decide to categorize and prioritize future interests. It will not be easy, but it must be done.

## ENDNOTES - CHAPTER 1

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## CHAPTER 2

### THE NATIONAL SECURITY COMMUNITY, REVISITED

Walter H. Leach

At the time of this writing, a search on *Google.com* for “national security community” registers about 62,500 hits. The abstract to a 1998 National War College paper entitled “U.S. National Security Structure: A New Model for the 21st Century” defines the national security community as the Department of Defense (DoD), Department of State, and the National Security Council (NSC).<sup>1</sup> In a chapter titled “Strengthening the National Security Interagency Process” by John Deutch, Arnold Kanter and Brent Scowcroft, they add the Central Intelligence Agency (CIA).<sup>2</sup> Interestingly, a group called the National Security Network addresses a so-called “progressive national security community,” highlighting a partisan political divide in making national policy.<sup>3</sup> In site after site, authors use the term without definition, indicating the authors assume the reader knows its definition. Who are the major players in the national security community today? The Congress, think tanks, interest groups, and the media all exert significant influence over American security policy and strategy formulation. How do they formally and informally interact? To whom are they accountable and from whom do they get their feedback? Answering these questions will illuminate potential opportunities and barriers to successful policymaking and strategy formulation.

#### THE CONGRESS

The first and arguably most direct role player to be considered is the Congress. While the Constitution vests the President with executive powers, it gives the Congress the legislative responsibility to make the laws of the land and wield the power of the purse. Additionally, the Constitution allows the President to make treaties with foreign governments “by and with the Advice and Consent of the Senate. . . .”<sup>4</sup> When the Executive branch implements foreign policy, expenditure of government funds is usually involved, so the Congress has a formal role to play in the appropriations process.

One vivid example of struggle between these two branches occurred in May 2007 as President Bush vetoed an Iraq War supplemental appropriation. When this legislation was introduced, the policy of the United States was to use military forces in Iraq to train Iraqi security forces, provide security to the Iraqi people, and to support reconstruction efforts. Critics frequently labeled the President’s policy “stay the course,” and he rejected calls for a scheduled withdrawal of U.S. troops. The supplemental appropriation language called for establishing a timetable for withdrawal of U.S. combat troops from Iraq as conditions for providing supplemental funding to continue the war effort. The President repeatedly stated his intention to veto the bill as it was being drafted.

Leaders of the Democratic majority in Congress also clearly stated their intention to carry out what they saw as the will of a majority of the American people. Their intent was to begin the process of disengaging American combat forces from what congressional Democrats were labeling an Iraqi civil war. On May 2, 2007, the House of Representatives failed to override the President’s veto and then set to work trying to develop another legislative vehicle that would accomplish a transition of responsibility from U.S. to Iraqi forces. They also wanted to encourage the Iraqi government to take further responsibility for political reconciliation.<sup>5</sup> On July 11, the *Washington Post* reported on various efforts by Democrats and Republicans to force the administration’s hand, either to amend the mission and focus of the troops in Iraq or to pull out the combat troops entirely.<sup>6</sup> Those congressional actions were directed squarely at changing U.S. policy in a national security area.

While this power struggle illustrates direct conflict, how does the Congress routinely influence policy and strategy formulation in the national security community? The answer is through appropriations and oversight. Congress provides appropriations as well as oversight for all the players in U.S. foreign policy – including the Departments of State and Defense and the CIA. While not enumerated in the Constitution, congressional oversight logically flows from its appropriations role.<sup>7</sup> The leaders of the foreign policy agencies routinely go to Capitol Hill to testify before various committees and to answer questions, both in and out of committee sessions. Members of Congress also have individual, direct access to the Executive agencies by sending letters of inquiry. Operating beneath the level of public awareness, but arguably no less important, are the relationships between mid-grade professionals in these agencies and the professional staffs of the House and Senate. Separate from the personal staffs of Members, these professional staffs exist to provide expertise to committees in drafting legislation. To that end, committees frequently hire staffers with former service in and around the Executive agencies. Informal communication between the Executive and Legislative branches is continuous at the staff level. Agency staffers and congressional staffers can frame the debate and set the stage for successful legislation. They also provide early warning to their superiors when a confrontation appears likely. Much of the effective give-and-take between the branches is concentrated at this level, while the Members and agency senior executives work more directly in the media spotlight.

As a body within the Executive Office of the President, the NSC is largely immune from direct congressional pressure. At the same time, the primary members of both the principals and deputies committees – the Secretaries and Deputy Secretaries of Defense, State and Treasury, the Director and Deputy Director of the CIA, and the Chairman and Vice Chairman of the Joint Chiefs of Staff are each subject to congressional oversight in their roles within their respective organizations. The President ultimately determines the extent to which the NSC formally cooperates with Congress.

The NSC Staff is also mostly immune from direct congressional pressure. The President can claim executive privilege to protect NSC staff members from congressional scrutiny. At the same time, the NSC Staff must remain cognizant of the role and power of Congress, even as they serve the President. Similar to the previous discussion of relationships, the working-level relationships between Congress and the NSC Staff can foster harmonious or acrimonious interactions that help or hinder the advancement of U.S. policy. When the Executive and Legislative branches come into direct conflict and neither is prepared to compromise, the opportunity may arise for the Judiciary to involve itself in settling issues of Constitutional powers.

In asking the question, “Who is the Congress accountable to?” a researcher turns to the Constitution. All Constitutional legislative powers are vested in the Congress.<sup>8</sup> In their role as legislators, Members advance the interests of the Nation, thereby supporting and defending the Constitution. At the same time, the Constitution makes Members accountable to their constituents via regular elections.<sup>9</sup> These legislative and representative roles are generally complimentary, yet there are occasions where Members are forced to choose between these two interests. For the purposes of this paper, it is sufficient to recognize there can be significant tension between the two roles.<sup>10</sup>

The People provide regular feedback to the Congress in a variety of ways. The most obvious method is through elections. Every 2 years in the House and every 6 years in the Senate, Members wishing to continue their service must stand for reelection by their constituents. Between elections, Members receive feedback from their constituents and other interested citizens through written or electronic contact with Members’ offices, personal visits in Washington or in the home district, and through financial contributions. Members may occasionally receive contradictory feedback from their constituents and the rest of the country, reflecting conflict between their twin roles.

In their Constitutional role as legislators, Members also receive feedback from both the Executive branch and the Judiciary. The Executive branch feedback process includes the staff-level

communication previously described, as well as formal proposals or draft legislation the President may send to Congress. Additionally, the Executive provides the Congress feedback via the People. The President can use the bully pulpit to connect with the American electorate via the media. If he is successful, the electorate can increase or modify the feedback they provide the Congress. The Judiciary provides feedback to the Congress by ruling on challenged laws, with the Supreme Court as the final arbiter. When considering controversial legislation, Congress always has an eye on the likely Constitutionality of the legislation, as well as on the various ways opponents may choose to challenge the Constitutionality of the law through the courts.

With two formal lines of accountability, Members of the House of Representatives are always in a race for reelection and Senators are finding they have less and less time where reelection does not impact everything they do. This introduces a tangled web of relationships that usually operates just below the public consciousness. The most logical result of this perpetual campaign scenario is strengthening of the representative role (accountable to the People) vis-à-vis the legislator (accountable to the Nation) role. Also becoming increasingly visible with each new campaign is the growing impact of money.

While any campaign organization is expensive to operate, for truly competitive races the desired level of media saturation can cost enormous sums. To comply with ethics restrictions while also raising the required resources to compete, Members must separate their personal schedules and their staffs into congressional and campaign foci. Interest groups can help fill the fundraising need. These organizations attempt to educate Members and hopefully improve resulting legislation. At the same time, they bring various financial resources to bear in ways that can benefit a Member (or the opposing candidate). Members receive direct, although informal, feedback in the levels of campaign contributions being steered their way by these interest groups, especially as compared to contributions to their opponents. Interest groups are the focus of a separate section later in this paper. While many writers have lamented the perceived connections between politicians and money, the national security professional needs to recognize the numerous influencers operating behind the scenes attempting to sway the course and content of legislation that may impact national security policy.

As noted earlier, the high cost of media advertising drives ever more time and effort into campaign fundraising. While serving various roles, the presence and actions of the media complicate the numerous relationships involved in U.S. policymaking. The media is the focus of the final section of this chapter.

## THINK TANKS

Of the many influences on U.S. foreign policy formulation, the role of think tanks is among the most important and least appreciated. A distinctively American phenomenon, the independent policy research institution has shaped U.S. global engagement for nearly 100 years. But because think tanks conduct much of their work outside the media spotlight, they garner less attention than other sources of U.S. policy—like the jostling of interest groups, the maneuvering between political parties, and the rivalry among branches of government.<sup>11</sup>

— Richard N. Haass, Dir, Policy Planning  
U.S. Department of State

A think tank is an organization that conducts policy-oriented research. Think tanks provide ideas and analysis on myriad foreign and domestic policy issues. They further serve to assist the public in making informed decisions about these subjects.<sup>12</sup> According to Richard Haass, their

primary contribution is to bridge the gap between academia and government. While government bureaucrats are too busy in their day-to-day roles to “take a step back and consider the broader trajectory of U.S. policy,” academicians are generally focused on “arcane theoretical and methodological debates only distantly related to real policy dilemmas.”<sup>13</sup> Much of the academic research in any policy field does not end up in a form useful to policymakers. Think tanks serve a useful function as they review the extant literature and distill or synthesize these material into a useful format.<sup>14</sup> More broadly, think tanks serve civil society in five ways: generating ideas, providing talent to government, offering venues to gather policy professionals, engaging the public, and serving as a middle ground between opposing parties.<sup>15</sup>

Think tanks, operating outside the government bureaucracy, have the freedom to challenge the conventional wisdom. They may be independent or associated with interest groups. Observing the *modus operandi* of the administration, think tanks develop new approaches to policy challenges as well as innovative concepts. At the same time, think tanks may also determine that the current administration’s approach to an issue is right on target. Recognizing emerging trends and problems, think tanks can translate the challenges into actionable policy issues.<sup>16</sup> During World War II, the Council on Foreign Relations initiated a project entitled War and Peace Studies that ultimately generated 682 memoranda for the State Department. It was their flagship publication, *Foreign Affairs*, which published “The Sources of Soviet Conduct” in 1947, providing the intellectual foundation for the strategy of containment. Think tanks also serve as intellectual support for political campaigns, generating policy papers and providing advice to candidates on a wide range of issues.<sup>17</sup> In their role as idea generators, they also serve as recyclers. As the number of information sources and paths of information transfer explode, gatekeepers of that process gain power. As R. Keohane and Joseph Nye noted in 1998, “To understand the effect of free information on power, one must first understand the paradox of plenty. A plentitude of information leads to a poverty of attention. Attention becomes a scarce resource, and those who can distinguish valuable signals from white noise gain power.... Brand names and the ability to bestow an international seal of approval will become more important.”<sup>18</sup>

In addition to their work generating ideas, think tanks also make available a wide range of intellectual talent, with appropriate policy focus, for incoming administrations to draft into government service. Almost as important, think tanks also provide fertile ground for outgoing public servants to remain engaged in the policy realm. Stepping back from the day-to-day grind of government service allows these professionals time to ponder their experience from a wider perspective. Snaring a retiring high-profile public servant can add luster to a think tank’s reputation and possibly enhance donations.<sup>19</sup> One of the latest examples of the revolving door between government and think tanks is the move of former Defense Secretary Donald Rumsfeld from his post at the helm of the DoD to a visiting fellowship at the Hoover Institute at Stanford University.<sup>20</sup> Figure 1 below gives some idea of the prevalence of this trend. An extensive list is available in Appendix Two of Donald Abelson’s 2006 book, *A Capital Idea: Think Tanks and U.S. Foreign Policy*. Consider one cautionary note about the revolving door. Individuals who may consider moving in either direction may constrain their policy research or innovation, or worse yet, moderate their actions or the report of their findings with a view to remaining in the good graces of their possible future employers.

Think tanks also serve as hosts for gatherings of policy professionals. Whether hosting a single-issue lecture or convening a multiday symposium, these gatherings foster debate and understanding. While they shape opinions, these meetings can also lay the foundation for new ideas to successfully enter the policy arena. Just as importantly, these meetings can also serve to demonstrate why some new ideas need more time for thought before being implemented. Think tanks can also



	<b>Think Tank</b>	<b>Government Position(s)</b>
John Bolton	American Enterprise Institute	US Amb to UN, Undersecretary of State
Zbigniew Brzezinski	Center for Strategic and International Studies	National Security Advisor
Paula Dobriansky	Council on Foreign Relations	Undersecretary of State
Leslie Gelb	Council on Foreign Relations	Dir, Policy and Planning, State Dept
Richard Holbrooke	Council on Foreign Relations	Asst Secretary of State
Zalmay Khalizad	RAND	US Amb to UN, Afghanistan and Iraq
Henry Kissinger	Council on Foreign Relations	Secretary of State, National Security Advisor
Jessica Matthews	Carnegie Endowment For International Peace	Deputy Undersecretary of State, Director of Global Issues at NSC
Richard Perle	American Enterprise Institute	Asst Secretary of Defense
George Schultz	Hoover Institution	Secretary of State, Secretary of Treasury, Secretary of Labor
Strobe Talbott	Brookings Institution	Deputy Secretary of State, Senior Director at NSC

**Figure 1. The Revolving Door.<sup>21</sup>**

provide nonpartisan venues for government officials to announce new initiatives or for foreign officials to engage the wider U.S. policy community.<sup>22</sup>

Using both the public media and their own publishing resources, as well as the Internet, think tanks attempt to engage and educate the public. While some reflect the philosophical leanings of associated interest groups, others serve as independent judges of public policy and government performance. In fulfilling this role, they also build confidence in public policy and public officials. Even where government fails to deliver sufficient results, think tanks help shine light on policy failures and suggest corrective actions. The appearance of independence from government is vital in this role. Additionally, these organizations serve as interpreters of current events for citizens, providing various viewpoints on the issue of the day.<sup>23</sup> Researcher Diana Stone suggests, however, that think tanks' engagement with the public is a one-way relationship. That is, there is little formal structure in most think tanks to receive and process public feedback. She also notes that think tanks are focused heavily on policy elite and around governmental centers of power, effectively limiting their engagement mission.<sup>24</sup>

Similar to their role in providing venues for professionals, think tanks can also provide venues for mediation between opposing groups. The United States Institute of Peace occasionally serves as a conduit for behind-the-scenes political negotiations, while also providing negotiation training to U.S. diplomats. The Carnegie Endowment hosted meetings over 8 years on South Africa, establishing an ongoing dialogue focused on South Africa's future and helping enable its political transition. Additionally, the Center for Strategic and International Studies has been involved in mediating divisions between Greeks and Turks and ethnic groups in the former Yugoslavia.<sup>25</sup> In this role, think tanks can serve an important support function for the U.S. Government in lessening tensions.

At this point, it is apparent that think tanks must maintain some level of positive reputation among both the public and the policy community to have any broad impact. Indeed, many think tanks strategize about garnering media attention through seminars, conferences and public lectures. They also reach out widely to academics, policymakers, and journalists to get the message out. These events bring credit to the think tank as well as educate others about their work. Some

think tanks pursue academic audiences through university lectures or pursue a more formal influence through congressional testimony. Virtually all think tanks now have Internet home pages making their products widely available for download. While Donald Abelson argues that think tank influence is quite difficult to assess accurately, he notes that some think tank directors use media coverage as a gauge of their own organization's policy influence.<sup>26</sup>

While the word "independent" is frequently used in describing think tanks or their roles, most often, the word refers to the relationship between think tanks and the government. It should not be construed to mean that think tanks are necessarily impartial, nor that they come to their conclusions or operate in the policy world without outside influence. Looking internationally, Stone claims that the term think tank brings a certain prestige to an organization, and that the definition has become very elastic, especially in a non-Anglo-American setting. Think tanks reflect their native political environment, and the independence from government influence expected of a U.S. or U.K. think tank should not be assumed for others.<sup>27</sup>

To be able to afford all of the activity related above, and the amount of professional expertise at their fingertips, where do think tanks get their funding? There are four primary avenues of funding think tanks in the United States. Many, if not all, think tanks accept donations from private individuals. Considered separate from these individual donations are endowments or major contributions of wealthy individuals. Private foundations provide another source of funding, as do government grants and contracts.<sup>28</sup> These funding sources are also a source of feedback. As an organization produces results that are favorable to a donor, the tendency would naturally be for that donor to consider maintaining or increasing the funding stream. Similarly, if the think tank fails to deliver significant enough results, or somehow works against the values and interests of the donor, the natural tendency would be to eliminate or decrease future funding.

At the same time, donors can choose to overlook short-term results in making funding decisions, while think tanks can also choose to operate without regard for the opinions of their funding sources. Human nature suggests that these situations would be exceptions to the rule. This fact should not be construed to be a guarantee of partisanship on any given issue, but simply a cautionary note not to assume impartiality. Indeed, James McGann, Senior Fellow at the Foreign Policy Research Institute told a Foreign Press Center audience, ". . . most people don't talk about it, most institutions will rail against what I'm about to do, because they don't want to be pegged in being one quadrant or another in terms of left, center, right, but the reality is those people who are in the know know what – where think tanks fall."<sup>29</sup> Knowing this, donors select the think tanks they choose to support, and think tanks tend to generate ideas and products that reflect their employees and donors. This polarization of some think tanks toward ideological positions can provide utility where they balance each other, but this tendency can also leave the ideological center with less of a policy voice.

Think tanks as organizations have no direct line of accountability. As mentioned above, they are indirectly accountable to their funding sources. Losing a funding source could lead a think tank to find other sources of revenue which, in turn, may or may not lead to a change in organizational focus. In a broader sense, think tanks are also accountable to their target audience(s), as losing a significant portion of their audience will reduce their perceived influence. This loss of influence may, in turn, also affect their funding. At the individual level, think tank scholars are directly accountable to their boards of directors.

## INTEREST GROUPS

In 1787, writing in Federalist #10, James Madison defined faction as ". . . a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some

common impulse of passion, or of interest, adversed [sic] to the rights of other citizens, or to the permanent and aggregate interests of the community.”<sup>30</sup> Today an interest group can be broadly defined as any group of nonelected individuals that organize themselves in an attempt to influence public policy. While focused on the national security community, this paper nevertheless recognizes that interest groups not claiming any interest in security policy can have impacts on policy and strategy formulation.

An *About.com* web page entitled “Issues, Organizations, and Interest Groups” gives some feel for the Wild West nature of the world of interest groups. At the time of this writing, the website contained 211 links to interest groups from across the political sphere. From well-known groups like the National Rifle Association and Greenpeace to polar opposites such as National Right to Life and Planned Parenthood to lesser-knowns such as Stewards of Family Farms, Ranches, and Forests, this website barely scratches the surface of interest groups vying to impact policy. To illustrate the scope of such groups, the *Encyclopedia of Associations* lists 22,200 U.S. national organizations; 22,300 international organizations; and 115,000 regional, state, and local organizations.<sup>31</sup> (Note that under an expansive reading of this definition, some Federal agencies such as the Department of Veterans Affairs and Office of National Drug Control Policy could be considered interest groups – and these executive branch organizations’ websites are listed on the *About.com* website. This paper does not consider government agencies as interest groups.)

Interest groups obviously vary significantly in terms of size, focus, influence, and name recognition. On one end of the spectrum is Asian Pacific Americans for Progress (APAP), a little-known, liberal-leaning group based on the U.S. West Coast. In May 2007, this group hosted a conference call with Elizabeth Edwards, wife of presidential candidate John Edwards. For 30 minutes, she took questions from 65 call-in sites – mostly people’s homes. APAP, begun in 2004 to support candidate Howard Dean, claims no more than 7,500 members nationwide.<sup>32</sup>

At the other end of the spectrum reside well-known groups such as the American Association of Retired Persons (AARP). A visit to the AARP website shows they are open to anyone over 50 years old and claim over 37 million members. The organization is well known for their advocacy on behalf of seniors for affordable prescription drugs and protection of Social Security or Medicare from changes that would decrease benefit payments to seniors. Their other interests are wide-ranging, from homeowner insurance to the Taxpayer Bill of Rights to telecom deregulation and liability issues for volunteer drivers.<sup>33</sup>

Neither of these groups is primarily interested in or directly related to foreign policy. However, virtually all interest groups play at least an indirect role in the foreign policy process. For example, the national security professional might see the greatest impact of AARP in their tenacious defense of spending in the Social Security and Medicare accounts. Foreign policy funding of all types competes with other spending in the budget process. Thus, any argument for resource growth for the DoD or the State Department will require either a tax increase or a reduction in other government spending (or both). The case for discretionary spending growth is problematic, as AARP (among others) stands ready to mobilize 37 million seniors to oppose any resulting spending reductions or tax increases.

A significant majority of the American public agrees with the statement, “Congress is too heavily influenced by interest groups.”<sup>34</sup> While political scientists across the spectrum cannot agree on the extent of interest group influence over the Congress, they uniformly reject “as crude and exaggerated” the public view of an interest group stranglehold on Congress.<sup>35</sup> At the same time, the American system of government has several facets that tend to increase the influence of interest groups when compared to other forms of government. Perhaps most importantly, the First Amendment to the Constitution guarantees the right of American individuals or groups to be

heard through freedoms of the press, speech, and assembly. The diffusion of power in the American political system also serves to increase the power of interest groups. The separation of powers into three branches enhances the influence of interest groups by preventing excessive accumulation of powers in any single branch. Further diluting the centralization of power is the concept of Federalism, or reserving power to the states that is not explicitly granted to the Federal government. Furthermore, the limited power of any single political party in the American system tends to raise the relative influence of all actors in the system. Finally, the independent judiciary gives interest groups a route of appeal when legislative or executive actions stifle minority rights or harm group interests.<sup>36</sup>

Interest groups play important roles in representative government. They tend to organize either around broad public policy issues or narrowly focused issues. Organizing is easier for small groups that share a significant stake in a given issue. Because of its small size, the impact of any policy change will be more keenly felt, meaning individual motivation and energy are easier to come by and maintain as the interest group advances its agenda. With small size, however, usually comes small influence. The amount of time and energy involved in organizing a large public policy interest group is more extensive. Likewise, the potential impact of any given policy will be more diluted as it reaches across a larger population, meaning the individual motivation and energy level is more difficult to sustain.<sup>37</sup> At the same time, the influence of a large group is likely to be greater than of a small group, since larger membership represents a larger constituency, and generally, access to a greater pool of resources. Interest groups formed to represent other groups (e.g., business groups, labor organizations, associations of like-minded groups) have similar dynamics.

An example of interest group engagement in governance is the effort to bring greater transparency to the congressional practice of earmarking. Earmarks are specific appropriations inserted into legislation by a single Member of Congress that benefits his or her state or district. Referring to earmarks, the President of Americans for Tax Reform stated, "Transparency is the next big thing."<sup>38</sup> A *Wall Street Journal* article asserts that this trend has accelerated at the state level—Kansas, Minnesota and Texas are among 19 states that have passed or are considering laws mandating public transparency of government spending. In the 2006 election cycle, congressional democrats campaigned on bringing greater transparency to earmarks. Legislative progress on the issue has been spotty, however, as some 32,000 earmark requests are working their way through the 2007 legislative session.<sup>39</sup>

In addition to their efforts to implement change, interest groups' expertise can be an important asset to Members of Congress, the Executive branch and the Judiciary. The arcane and technical aspects of much of American business, agricultural, and scientific life, for example, are generally outside the experience and expertise of Members and their staffs.<sup>40</sup> Interest groups step forward to fill the void, educating Members and theoretically helping to improve the final legislative product. Members frequently reach out to those interest groups with which they have established trusted relationships. According to research from as far back as the 1960s, these relationships may form the basis for much of the sway interest groups have over policy.<sup>41</sup> Clearly, relationships continue to matter.

At the individual level, interest groups often hire lobbyists to represent their views to the government. As lobbyists work to educate Members, they, and the interest groups that employ them can become sources of financial support Members can tap for campaign expenses. The image of a congressman receiving money from a lobbyist gets to the heart of the public's troubled perceptions. In many cases, however, the public perception is misguided, as the greater power in the relationship often belongs to the Member. As needy as each Member of Congress is for campaign funds, the universe of available lobbyists with funds is so large that Members can afford to be somewhat choosy. This inverts the relationship, forcing lobbyists to compete and to bring value



beyond their money to the table.<sup>42</sup> While not dependent on interest group money, members of the President's administration are also recipients of interest group lobbying. This lobbying attempts to steer Federal policymaking as well as the content of legislation the administration may propose to Congress. Finally, interest groups can also directly lobby the administration to threaten a presidential veto of legislation.

In addition to hiring lobbyists, interest groups also can form Political Action Committees (PACs) to collect and disburse money on behalf of political candidates or specific issues. PACs are limited to accepting no more than \$5,000 from an individual, political party committee, or other PAC within any given calendar year. PACs may give no more than \$5,000 to any candidate's reelection committee or more than \$15,000 to any national party committee annually.<sup>43</sup> These PACs serve as conduits for the "soft money" that has replaced direct contributions to candidates over the years. As Congress tightened campaign contribution laws in an effort to head off ethics crises and the worsening of public perception, limits on these direct contributions, known as "hard money" weakened their overall impact. PACs and soft money emerged out of the resulting political environment, and efforts to control or limit PACs have suffered from limited congressional enthusiasm as well as Constitutional issues regarding limiting free speech.

When working to influence policy, interest groups can adopt an inside strategy, an outside strategy, or some combination of the two. Inside strategies focus their efforts on influencing change from the inside the organization. This strategy requires connections with centers of power and influence inside the organization, which will then change the direction of the whole institution. Lobbying is an example of an inside strategy, wherein an interest group pays an individual or lobbying firm to communicate directly with select Members of Congress in order to influence their votes on a piece of legislation or more broadly across a range of bills impacting their interests. An inside strategy is the most direct approach and when correctly planned and executed, is more effective than an outside strategy. An inside strategy also has the possibility of being executed with less public scrutiny than an outside strategy. Ultimately, however, an inside strategy requires access to resources such as money, a substantial membership list or perhaps established relationships that facilitate access. Without such resources, interest groups have little hope of effectively working inside the organization.

An outside strategy attempts to bring external pressure on the organization. The use of public pressure, shame, protest actions and civil disobedience are samples of tools of an outside strategy. The appeal of the outside strategy is that it does not necessarily require large sums of money, a large membership or any direct connection at all to the target organization. Before the advent of the Internet, the media was a primary tool of the outside strategy, especially for resource-poor groups. Groups such as Earth First – an environmental action group known to use protest actions to garner media attention – hope to receive free publicity through news coverage. Just as terrorists attempt to communicate to their target audience via media coverage of their attacks, some interest groups create disruptions to garner public attention to their interests. Fortunately, these groups are a tiny minority, and a more common outside strategy is a simple media campaign that relies on repetition and a wide reach of press releases and "talking head" opportunities to get the message out. This is one avenue where PACs excel. Their large monetary resources, limited in terms of direct contributions to favored candidates, are available for wide ranging media campaigns on behalf of both candidates and issues. Additionally, a University of Michigan study concluded that a media-based outside strategy is generally only effective for those groups with enough resources to also attempt an inside strategy.<sup>44</sup> It appears that in addition to relationships, size also matters.

While PAC money buys expensive media campaigns, the increasing ubiquity of the Internet has dramatically reduced the cost of Internet-based campaigns. With the lowered financial bar to entry comes a vastly more congested public space, in which it becomes ever more difficult to

make a message stand out. It is clear that both large national interest groups and narrowly focused groups can now mobilize their members with little resource outlay. At the same time, the media still plays an enormous role both in political campaigns and in governance.

## THE MEDIA

In the absence of a functioning media, much of the foregoing discussion about the national security community would become moot. The Executive branch would make policy, the Legislature would make laws, and the Judiciary would continue to interpret them as before. In that case, however, all three branches would be more isolated from the People, and think tanks and interest groups would be hard pressed to generate the influence they enjoy today. The media serves as a conduit energizing the informal connections highlighted elsewhere in this chapter. Complicating the picture is the fact that the media cannot cover these issues without also affecting them, both directly and indirectly. The media impacts the national security environment in many ways. Most importantly, the media serves as a communications channel between the government and the People. It also serves as a democratic watchdog over government, guarding against the inappropriate accumulation and exercise of power. Somewhat less recognized outside of journalistic circles, but arguably no less important, is the media role of framing.

Framing can represent the context within which the media presents information. Given the finite news cycle, how much space or time does any single news item deserve? Editors are always challenged to maximize a story's accuracy, depth, and context while minimizing the time or space allotted. Limiting context, however, affects the framing and ultimately the consumer's interpretation of the story. For example, is a news item presented with enough context to allow the consumer to distinguish a conspiracy just unmasked from a simple case of human error? Was this news event even out of the ordinary? Framing can also relate to whether or not an item is covered at all. When an editor reaches the limit of a given news cycle's coverage, any remaining lower-priority stories, according to his sole judgment, are left out—many never to be reconsidered. In choosing not to cover one story, while covering another, the editor has in a small way personally framed the larger public debate. A familiar example in military circles is the media's perceived predilection to report daily U.S. casualties in Iraq as well as the body count from insurgent attacks. A source of contention for military professionals is the editorial choice to ignore information contained in Coalition press releases documenting progress in security, civil society, and basic services. The military professional grouses about the preponderance of negative coverage, while the media editor laments that most press release information, while perhaps valuable to the overall context, simply is not news. This media framing presents the war as a recurring drumbeat of costs paid without also providing the balancing compilation of benefits purchased in part through the efforts and sacrifices of those paying the costs.

In any close observation of the media and the government, it is helpful to remember that they share the same ultimate customer—the People.<sup>45</sup> While on the surface, relations between the government and the media frequently appear strained, there are institutional continuities working beneath the surface that make for a symbiotic relationship. These continuities include the media's ongoing need for access to information and the government's need for the means to communicate with the People. While both parties want more control over the relationship, they make extensive use of each other to achieve their objectives. The media exerts pressure on the government to provide greater access to information—in some cases information that the government does not want to release. The government, in turn, devotes resources both to crafting strategies to communicate its message to the People via the media and to responding to media requests for information.<sup>46</sup> In that relationship, both parties hold some power.

The news cycle drives the media's recurring appetite for information. Theoretically, the government has the power to grant or withhold access. (Notwithstanding the idealized picture of the investigative journalist digging through the system looking for a sympathetic source.) If the government wants to fulfill the media's request, it generally must do so on the media's timeline. If it fails to do so, the story may not get the extent of coverage the government desires. Likewise, if the government does not want the story to get wide coverage, delaying a response until after deadline can have that effect. For stories that editors feel have sufficient impact, however, such government delays do no good. In fact, the media can report on the government's lack of responsiveness, and thereby contribute to heightening public attention to a subsequent story.

When compared with the government-media relationship, the relational dynamic between the media, think tanks, and interest groups is somewhat more one-directional. Here, the pull of the media news cycle is enhanced by the push of these groups' desire to generate media coverage for their ideas. Indeed, it may be more accurate to portray a media responsibility of filtering in this relationship. In today's fast-paced and crowded news environment, not every think tank or interest group press release or report is worth a slice of finite media coverage, and the media therefore decides what receives coverage and what does not.

The proliferation of Internet websites and satellite/cable television channels containing news and commentary have led to saturation of the media marketplace. Newspaper circulation is declining around the country, and the ability to turn a profit is more problematic.<sup>47</sup> Conventional wisdom asserts that pursuing high quality journalism costs additional resources, and these added resources detract from the profit margin of a news organization. With shareholders always looking over the shoulder, the pressure for profits frequently leads to cost-cutting measures, which in turn degrade the quality of in-depth reporting. The Chairman of the Tribune Company, Jack Fuller, spoke on the tension between business and journalistic priorities:

. . . those of U.S. who put out newspapers are important . . . participants in the system of public governance. If we take that seriously, as we should, our jobs as leaders of newspaper enterprises is to find the sweet spot where we can fulfill both our fiduciary obligation to the shareholders and our social obligation to provide communities the kind of information they need in order for people to make their sovereign choices wisely.<sup>48</sup>

To determine if objective measures of newspaper quality are available, Koang-Hyub Kim and Philip Meyer began by reviewing a study published in 1989 by Leo Bogart. In his conclusions, Bogart declared that indicators such as accuracy, civic-mindedness and impartiality in reporting were too subjective to be measured. What Kim and Meyer went on to find, however, was that for seven quality indicators they isolated, quality was indeed directly related to profitability. (Higher quality led to higher profits.) But they noted, "Quality journalism, in the minds of some, is more cost than gain." Perhaps more ominously for newspapers in general, the researchers' final conclusion was that those focused on cutting costs were achieving short-term gains while masking the long-term costs in terms of reduced readership as quality inevitably suffers.<sup>49</sup>

How does this phenomenon affect the national security community? As pressures build on newspapers, and media more generally, to generate additional profits to justify stock price increases, the time, effort and resources devoted to news collection and quality reporting will likely decline. Reporting may depend more and more on inside sources cuing reporters to evolving issues. Perhaps the various interrelationships in the community will become more complicated as the Internet opens up ever wider spaces for individuals and groups for report news, leak information, or opine on the issues of the day. The Internet will certainly increase the relative power of any

connected, enterprising individual. It remains to be seen if it will lead to more in-depth, quality reporting.

## CONCLUSION

While the Executive branch bears the primary burden for national security policy, it functions in an environment with other actors clamoring for influence. The Congress wields significant sway in policy debates. In a movement gaining momentum over many years, think tanks have greatly increased in number. While their direct influence remains difficult to measure, there is little contention over the idea that their influence continues to grow. Metaphorically elbowing their way onto the stage are interest groups, large and small, that sometimes bring access to tremendous resources—resources that are important to the Congress for the almost-perpetual campaigning required. Providing much of the discussion space for each of these parties to interact is the media. The national security community is a morass of intersecting relationships of feedback and accountability. Whether forecasting the second-order effects of a policy proposal or attempting to shepherd policy changes through the process, the national security professional needs to remain attuned to the many players involved, and to choose his sources wisely.

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## CHAPTER 3

### MAKING NATIONAL SECURITY POLICY IN THE 21ST CENTURY

Alan G. Stolberg

Otto von Bismarck is often credited with saying that “[l]aws [expressions of policy] are like sausages. It is better not to see them being made.” Then at the beginning of the last century, Upton Sinclair wrote about the gory details of the sausage making industry in his work the *The Jungle*. While the book is more than a century old it demonstrates its current relevancy, “I dare anyone to read the book and enjoy a ballpark frank the same day. Policymaking, much like sausage-making, is a messy enterprise . . . sometimes tedious and frequently stomach-wrenching.”<sup>1</sup>

Making policy, especially national security policy, has never been a science, and the art form remains inexact at best. Whether in the 19th or the 21st century, national security policymaking is complex, depends on numerous variables, and often has had to rely on a bit of luck. The level of difficulty becomes even more pronounced when considering a policy that must progress beyond grand conceptualization to actual implementation. At the same time, if the question driving the policy is direct and understandable; if there has been a thorough analysis of the foreign and domestic strategic context; if policymakers identify and prioritize interests in a rationale manner; if they acknowledge relevant domestic political considerations; if they stipulate facts and assumptions and develop logical end states, supporting objectives, and measures of effectiveness; and if there is a thorough risk assessment, then it is possible to develop policy that can actually be implemented to attain the desired goal.

In the Washington community, the words policy and strategy are often used interchangeably. This is often convenient, but the terms have distinct meanings. Policy is “*what* to do about something,” not *how* to do it. The implementing strategy provides the “*how* to do it.” A more formalized definition for policy would be: a course of action or guiding principle that provides guidelines, boundaries, and limitations intended to influence and determine decisions and actions in pursuit of identified objectives.<sup>2</sup> Policy itself is nothing new, and not only applicable to governments. Every human being makes policy decisions on a daily basis. It is the determination of what to do in life. As an example, a schoolchild has to decide whether or not to arrive at school on time. If the policy decision is to be on time, then he or she must develop a strategy to execute the policy decision: For example, the schoolchild might ensure that the alarm clock works and is set, plan to beat the brother or sister to the bathroom, or have clothes laid out the night before ready to wear. One can argue that strategy is the “bridge” or “distinct plan between [the] policy and operations.” Strategy is how an entity uses its abilities (power) to get what it wants.<sup>3</sup> In a military sense, strategy is “the use that is made of force and the threat of force for the ends of policy.”<sup>4</sup> But it is the policy that creates the direction for that strategy.

Clearly a policy and supporting strategy must be very tightly aligned in order for the policy outcome to be attained. There is no completely clear delineation between where a policy ends and the implementing strategy begins. *Both* a given *policy* and its implementing *strategy* should have the same end state/goals. In turn, the ways (courses of action) and general means (resources) identified by the policymaker will provide the strategist direction for the development of detailed courses of action as well as setting policy limits or expressing policy preferences for ways or means that the strategist must consider. *The crucial difference between the policy and strategy, as well as a principal connection between the two, is that there must be policy approval for each component of the supporting strategy. There must be a policy decision (approval) made for the separate ways and means of the strategy. The policy decision for the strategy ways and the policy decision for the strategy means will confirm*

*that both are acceptable to the leadership of the policymaking actor, thus confirming policy approval for the overall strategy.* For example, a course of action (way) to use force to attain a certain end state/goal will typically require policy approval at the highest levels of a government. The same is true for the quantity and quality of the specific military forces being employed as the resource (means) to implement the course of action (way). It is this policy approval for the ways and means of the strategy that forms a tie that must remain solid to ensure that the political and strategic end state/goals remain completely aligned.

While the actual crafting process for both policy and strategy are similar, the focus of this document is the formulation or making of policy as applied to the national security arena in the 21st century. National security can be defined as “a collective term encompassing both national defense and foreign relations.”<sup>5</sup> “In general, it is the study of the security problems faced by [actors], of the policies and programs by which these problems are addressed, and also of the government processes through which the policies and programs are decided upon and carried out.”<sup>6</sup> It relates both externally and internally to the actor – the foreign and domestic components of national security.

With an overall intent of making Bismarck’s and Sinclair’s descriptions of policymaking somewhat less applicable for the 21st century, this analysis will describe in detail a policy formulation model developed between 2004 and 2009 by the faculty and students of the National Security Policy Program (NSPP) at the U.S. Army War College. It identifies a series of variables or directive steps to be addressed in the national security policymaking process. These variables are:

- Define the Policy Issue
- Strategic Context: Foreign and Domestic
- Identify and Recommend Prioritization of U.S. National Interests and Domestic Political Considerations
- Facts/ Assumptions/Factors Framing Policy Development
- Determine Desired Policy Issue End State/Goal
- Determine Policy Supporting Objectives and Measures of Effectiveness
- Identify Policy Options
- Analyze and Validate Each Policy Option
- Analyze Risk for Each Option
- Compare Policy Options and make Recommendations
- Consideration and Decision by Leadership
- Monitor Implementation
- Receive Feedback on Success or Failure of Policy and its Implementation and Assess

This assessment will examine each variable of the Policy Formulation Model in detail. The first four steps in the Model to be evaluated (Define the Policy Issue; Strategic Context; National Interests and Domestic Political Considerations; and Facts/ Assumptions/Factors) represent the components of the initial overall analysis, sometimes termed “mission analysis,” that must be made to form an initial understanding of the overall issue that the policy is being designed to address.<sup>7</sup>

While the order that the variables or steps are in have been judged by succeeding NSPP classes as the most logical, there is clearly no single, mechanistic way of developing policy. It is not a linear, step-by-step process that is amenable to a simple checklist form of management. Some steps can happen simultaneously, and some might be combined. Arguably, every individual’s decision-making process is somewhat different. Some people see the entire process as one tightly connected continuum and thus are able to fuse some of the variables/steps together. Others may approach the variables/steps in a different order than the one described here and assess them accordingly. However, the decisionmaking processes of some individuals are wired in such a manner that they



must examine each variable/step piece-by-piece as laid out in this study. Any of the three approaches can work equally well. The key is not the order in which they are evaluated, but rather that none of the variables/steps are left out. In the end, leaving out variables/steps of the policy formulation model, regardless of whether intentional or not, will significantly heighten the risk of creating poor or less effective or efficient policy. The goal for the following pages is to reduce the chances of that happening.

## DEFINE THE POLICY ISSUE

The definition of a policy issue is a question asked of the policymaker that will require a policy response. It is a question that will ask *what* to do about something, not *how* to do it. What should the U.S. response be if Iran tests a nuclear device is a good example of a question used to define the policy issue. From the very beginning, the process of defining the appropriate policy issue will focus the entire formulation process on the key issue that the process exists to support. This defining procedure creates the conditions for the issue to be injected into the actor's ultimate policy decisionmaking process.<sup>8</sup>

In framing the question that will drive the policy process, the policymaker should ask himself specific subquestions such as where do we plan to go with the policy (the overall intent of the policy – what is it attempting to achieve); why would we want to go there (what benefit will we derive from a successful implementation of the policy); how will we get there (what ways and means might we use to attain the policy's designated end state); and what will we do when we get there (what follow-on actions will we take after attainment of the initial end state)?<sup>9</sup>

## STRATEGIC CONTEXT: FOREIGN AND DOMESTIC

Analyzing the strategic context is necessary for an understanding of the conditions within which the policy will be formulated. The conditions to be addressed would include those that are both externally (foreign) and internally (domestic) driven. They are conditions that are created by events taking place both outside and inside the boundaries of the policymaking actor. Perhaps the most important component of the context would be the necessity to initially identify the issue's root causes and effects (such as the cultural and historical origins of a particular question being addressed). The actors in question would be both the policymaking actor, as well as all other actors that are relevant to the policy in question. This would include all applicable actors, both potential allies and adversaries, in the international system (e.g., nation-states, international organizations, nonstate actors), as well as all relevant domestic actors.<sup>10</sup>

In a cultural vein, this might include an analysis of the identity, political culture, and resilience of the actors involved in the issue at stake.<sup>11</sup> This would be necessary at both the individual and the collective level. "Identity can be comprised of race, gender, generation, family, clan, class, ethnicity, tribe, religion, locality, nation and region . . . identity normally determines purpose, values, and interests." It represents a foundation for policy in its effort "to attain or preserve those interests."<sup>12</sup> Political culture refers to "a political system, political tradition, political institution, decisionmaking, (potentially) faith and religion, and strategic culture (the impact of cultural factors on strategic behavior)." While identity creates the underlying value foundation for an actor to come together on a given issue, it is political culture that provides the "instrument and means" to unify the actor toward desired "actions and results."<sup>13</sup> Finally, resilience is the "capacity or ability of a culture to resist, adapt, or succumb to external forces." It helps U.S. determine the ability of a culture's values and interests to change, and the associated impact on that actor's policy and strategy. There could be a direct correlation between the permanence, or lack thereof, of an actor's culture, and your ability to influence the actor.<sup>14</sup>

An examination, or what Clausewitz calls a “critical analysis,” of the historic background of the root causes and effects of a particular issue will permit “the discovery and interpretation of equivocal facts” as they occurred in the past, along with the ability to trace “effects back to their causes.”<sup>15</sup> In the end, this part of the analysis reveals what came before the policymaking effort that the actor is presently undertaking. All policy issues have a history, and understanding that history is important.

The cultural and historic analysis would be applied to relevant domestic and international law; domestic, regional and global policies and strategies, to include the significance of long term core objectives and strategies; and relevant stakeholders, audiences, and policy community interests.

## **DOMESTIC AND INTERNATIONAL LAW**

Evaluation would include those tenets of international law (rules, principles, customs, and agreements) that could have the force of law on all the relevant actors.<sup>16</sup> These same principles would apply to the respective domestic laws that could impact each actor.

### **Regional and Global Policies and Strategies, to Include the Significance of Long-Term Core Objectives and Strategies.**

The policymaker assesses in detail previous and existing policies and strategies on the issue or related issues for each relevant actor. It is very important to identify the ends, ways, and means employed by these policies and strategies over the course of time. Differentiating between the ability of the prior policies and strategies to attain both long-term and short- or near-term objectives may permit the evaluator to understand what policy can be successfully implemented over the course of time. It is critical to distinguish between policies oriented on near term objectives rather than potentially more vital longer-term goals simply because attainment of the longer-term goals is sometimes more important for the policy issue at hand.<sup>17</sup> The answer to the question “did components of the policies and strategies change or remain the same and why in either case” should show where the ends, ways, and means succeeded and where they failed. It could also provide sufficient information to determine weaknesses and opportunities created by previous policies and strategies that the current policymaking actor could take advantage of and change in the new or modified policy.

### **Relevant Stakeholders, Audiences, and Policy Community Interests.**

The policymaker must determine all actors that might be interested in or able to influence the policy in some manner. It will be important to know their views on the policy being considered. Do they support it or will they oppose it, and why. The answer to the “why” will tell the policymaker what would need to be done to convince these actors to support the policy in question. Stakeholders are those actors that have a stake or interest in the policy being considered because the actor can affect or be affected by the policy.<sup>18</sup> They could range from interest groups and the general population to branches of the Armed Forces, departments of the executive branch, or members of the legislative body of government.

Audiences might be elements of the society that are not directly involved in the policy process, nor need they have a particular interest in the specific policy, but nevertheless can influence the process if they perceive the issue to be important enough. Their general support may also be required for the policy to be resourced and implemented. These audiences might encompass parts of the media, the general population, or other actors within the international system such as other nation-states or international organizations.

Finally, policy communities are those communities of actors within or outside the respective governments responsible for, interested in, or with influence over the national security and foreign policymaking issue in question. They are often also stakeholders. They would include the specific elements of the executive and legislative branches such as the relevant departments and agencies, the Executive Office of the President, and components of Congress, as well as interested think tanks. In the end, if Executive branch departmental policy objectives are compatible with the nation's overall desires and goals, if they have public support, if they can provide needed long-term direction, if they possess the fidelity from which sufficiently detailed ways or course of action programs can be developed, and if, once executed, there can be a measure of the results, then there is a good chance that the policy end state will be attainable.<sup>19</sup>

## **IDENTIFY AND RECOMMEND PRIORITIZATION OF NATIONAL INTERESTS AND DOMESTIC POLITICAL CONSIDERATIONS<sup>20</sup>**

National interests are "that which is deemed by a particular state (actor) to be a . . . desirable goal."<sup>21</sup> The attainment of this goal is something that the identifying actor believes will have a positive impact on itself. Realization of the interest could enhance the political, economic, security, environmental, and/or moral well being of a populace and the state (actor) or national enterprise to which they belong.<sup>22</sup> This holds true within the territory of the actor, as well as in any external relations that the actor may undertake outside of the administrative control of that actor.<sup>23</sup>

In order for the crafter of national interests to determine what types of resources to allocate in what amount toward the attainment of an interest, he must understand the categorization and determination of the intensity of the interest. This part of the crafting process is necessary to address key policy questions like: Which issues matter most? Why should people care? How much should the populace be willing to pay to deal with identified threats or take advantage of recognized opportunities?<sup>24</sup>

The determination of priority—usually expressed in terms of the intensity of an interest—is crucial because, from the perspective of the policymaker, interests may very well come into conflict with each other. This conflict could be over the resources that an actor would require to attain the interests, including the time and attention of key decisionmakers.<sup>25</sup> Such resources are likely to be limited in some manner for any decisionmaking body, thus requiring prioritization before the interest crafting process is complete.

The most difficult problem in this part of the process is usually the determination of the intensity or stake that an actor has in a specific issue. The leadership of the interest crafting actor must address its desire to influence issues and events, both external and internal, its willingness to use any or all elements of national power to defend or advance certain interests in preference to others, and potentially its willingness to do so at the expense of other actors.<sup>26</sup>

Categorization is important not only because it can be used as a framework for systematic evaluation of national interests, but also because it can also provide "a way to distinguish immediate from long-range" interest concerns using time as a basis.<sup>27</sup> Identified academic sources used between two and four different categories of interests, and two National Security Strategies published during the Clinton administration used three categories.<sup>28</sup> The categories are designed to delineate the different levels of intensity, or order of priority for any respective interest.

The principal difference amongst these approaches is whether they use a separate category for survival interests, or whether they consider survival interests and vital interests essentially one and the same. "The major difference between a survival interest and a vital interest" is "in the nature and imminence of a military threat" to the actor.<sup>29</sup> Both terms address the life of the actor, one deals with the imminent danger of death while the other is only potentially fatal. In this case,

the time difference is the key.<sup>30</sup> If one believes there are specific interests where the very survival or existence of the actor, and little more, is at stake, then four categories are necessary.

For purposes of this assessment, using the work of Neuchterlein, Art, and the Commission on America's National Interests, this study will use four categories of prioritization levels of intensity, from high to low (Survival, Vital, Important, Peripheral).

### **Survival.**

These represent the single most important interests for any actor. This is the very essence of the actor's existence – the protection of its citizens and their institutions from attack by enemies, both foreign and domestic. It addresses an imminent threat of attack and is an interest that cannot be compromised.<sup>31</sup> If not attained, it will “bring costs that are catastrophic, or nearly so.”<sup>32</sup> Whatever can be done would be done to ensure the survival of the actor, to include the use of military force.

*Examples:* Prevent, deter, and reduce the threat of nuclear, biological, and chemical weapons attacks on the interest crafting actor or its military forces abroad; Ensure the survival of allies and their active cooperation in shaping an international system in which the actor crafting the interest can thrive; Prevent the emergence of hostile major powers or failed states on the borders of the actor crafting the interest.<sup>33</sup>

### **Vital.**

A vital interest exists when an issue is so important to an actor's well-being that its leadership can only compromise up to a certain point. Beyond that point, compromise is no longer possible because the potential harm to the actor would no longer be tolerable.<sup>34</sup> If the interest is achieved, it would bring great benefit to the actor; if denied, it would carry costs to the actor that are severe but not catastrophic.<sup>35</sup> Such costs could severely prejudice but not strictly imperil the ability of the actor's government to safeguard and enhance the well-being of its populace.<sup>36</sup>

*Examples:* Prevent the regional proliferation of weapons of mass destruction (WMD) and delivery systems; prevent the emergence of a regional hegemon in important regions; promote the well-being of allies and friends and protect them from external aggression.<sup>37</sup>

### **Important.**

These interests would be significant but not crucial to the actor's well-being. They could cause serious concern and harm to the actor's overseas interests, and even though the result may be somewhat painful, would be much more likely be resolved with compromise and negotiation, rather than confrontation.<sup>38</sup> It could increase its “economic well being and perhaps its security” and, thus, contribute to “making the international environment more congenial” to its overall interests. The potential value, as well as potential loss of these interests, would be moderate and not great.<sup>39</sup> Important interests differ from vital and survival interests in the degree of danger perceived to the actor, and the amount of time available to find a peaceful solution to the issue.<sup>40</sup>

*Examples:* Promote pluralism, freedom, and democracy in strategically important state actors as much as feasible without destabilization; discourage massive human rights violations in foreign countries; prevent and, if possible at low cost, end conflicts in strategically less significant geographic regions.<sup>41</sup>

### **Peripheral.**

These interests neither involve a threat to the actor's security or the well-being of its populace, nor seriously impact the stability of the international system.<sup>42</sup> They are desirable conditions, but ones that have little direct impact on the ability of the actor to safeguard its populace.<sup>43</sup>



*Examples:* Promoting the economic interests of private citizens abroad;<sup>44</sup> enlarging democracy everywhere for its own sake; preserving the territorial integrity or political constitution of other actors everywhere.<sup>45</sup>

Once identified, the interests should be examined for legitimacy and political viability with the domestic audience. The policymaker must begin by identifying the potential stakes or interests that all relevant domestic actors have in the policy issue. These domestic actors could include specific elements of the executive and legislative branches such as the relevant departments and agencies, the Executive Office of the President and Congress, think tanks, the media, interest groups, lobbies, and the general population. In some cases, the judicial branch of government may also have an interest. Different components of each actor may have a role to play that will mandate examination. For example, in the case of Congress, one must assess not only the positions of the legislators themselves, but also the thinking of their staffs, both personal and committee, that can influence either the member or the process.<sup>46</sup>

Once the actors and their interests are identified, the policymaker must analyze them to discover shared, complimentary, and diverging interests so he can determine potential domestic support as well as opposition and the reasons behind those positions. To be assessed as legitimate, the policy would have to conform to both international law and the domestic laws of the policymaking actor. A violation of one or both would render the policy illegitimate. Beyond that, the policymaker is looking for the effect – actual or perceived – of the issue under consideration on the group in question, existing positions/policies, ideological stances, or other interests (for example, economic) that might be involved in even the slightest way with the issue. An evaluation of political viability with the domestic audience, whether it be the entire group or the separate domestic actors, would examine whether or not the identified audience considering its own interests would be likely to support the policy. It is critical that the policymaker understand any specific issues that generate disagreement, as well as those policy components that catalyzed strong support. The understanding of why the domestic audience supports or opposes a policy or parts of a policy is key to a determination of whether or not the policy will ultimately have the support required for execution. Leaving any constituency that potentially can influence the policy decisionmaking process out of the analysis creates risk to the ultimate policy approval authority and should be avoided.<sup>47</sup>

## **FACTS/ASSUMPTIONS/FACTORS FRAMING POLICY DEVELOPMENT**

To ensure the policy conforms to the direction of the leadership, it is absolutely necessary that the leadership provide clear and detailed guidance for the specific issue that the policy is addressing. Thereby, those crafting the details of the policy will know all the constraints, restraints, resource considerations, time available, and enablers with which they must work.

Constraints are restrictions imposed on the policymakers, requiring them to either avoid or specifically ensure that some type of action is carried out.<sup>48</sup> Restraints are restrictions internally imposed by the policymaker; they represent the act of holding back. Restraint is a self-imposed limitation or restriction on the will or any action under consideration.<sup>49</sup> Resource considerations are those that relate directly to the availability of the means required to support the implementation of the policy. Means can be tangible or intangible. Examples of tangible means are forces, personnel, equipment, and money. Intangible resources include things like “will” and courage.<sup>50</sup> Knowledge of the time available, both the time at the policymaker’s disposal prior to the beginning of the execution of the policy and the time that the policy, once implemented, will have to run its course and attain the designated objective or end state, will be crucial for an understanding of the policy planning assumptions under which the policymaker must operate. Finally, enablers are those resources required, usually in a supporting role, to make the policy feasible or possible.<sup>51</sup> Examples might be communications, logistics, or intelligence in support of a specific policy.



As a method of analysis, resources can be evaluated using the framework of the elements of national power. The policymaker evaluates each element of power for potential utility in support of a policy option. “American security professionals have traditionally categorized the elements of power in terms of the acronym DIME for the diplomatic, informational, military, and economic elements. This concept has been expanded in some of the most recent national level strategies to DIMEFIL: diplomacy, information, military, economic, finance, intelligence, and law enforcement.”<sup>52</sup>

Other issues for evaluation are any assumptions, information gaps, and blind spots in the information required to formulate an executable policy. The intent is to identify the data, challenge it when it is in question, and determine what blind spots might exist after the previous questions are resolved. An assumption is the belief that something is true – in this case, information related to the policy issue in question; it is information that can be taken for granted as a fact.<sup>53</sup> Information gaps exist when all the information is not known about specific issues relating to the policy in question.<sup>54</sup> The information may or may not exist. Blind spots occur when certain information cannot be known or observed within the information base related to the ongoing policy process.<sup>55</sup> The policymaker can believe that the information is there, but is unable to find it for a variety of reasons.

### **DETERMINE DESIRED POLICY ISSUE END STATE/GOAL**

The end state/goal for the policy represents objectives that if accomplished create the enduring and overarching conditions that resolve the policy issue. If done correctly, the end state will serve to answer the question posed by the earlier described Policy Issue that asked what to do about a given issue. The policymaker works to design a policy to attain this end state. An example of an end state would be an Iran in total compliance with the Non-Proliferation Treaty.

Caution should be raised in the development of end states. Some feel that government planners have a tendency to create goals that are “very rosy and foolish ends,”<sup>56</sup> and therefore never completely within reach. As a result, it is important to be circumspect about developing end state conditions that are actually attainable. While there may be rationale political reasons to declare grandiose objectives for public consumption (e.g., total democratization); being able to have a more practical approach in private is key to determining the best means in the right amount for the implementation of the ways. Dennis Ross articulates a very simple, pragmatic approach when describing national security objectives: “The basics of statecraft would seem self-evident: have clear objectives; tailor them to fit reality.”<sup>57</sup>

### **DETERMINE POLICY SUPPORTING OBJECTIVES AND MEASURES OF EFFECTIVENESS**

Enabling or intermediate objectives/conditions necessary to achieve the overall end state should be identified (e.g., Iran open to International Atomic Energy Agency (IAEA) inspection, formal diplomatic document that Iran must sign pledging its cooperation). As was the case with the Facts, Assumptions, and Factors Framing Policy Development, the evolution of the supporting objectives should be framed in conjunction with each relative element of national power. Thus, some supporting objectives might be attained with components of the diplomatic and economic elements of national power, while others could require the military and law enforcement elements.

The determination of qualitative and, to the extent possible, quantitative metrics that measure attainment of the end state is key to knowing if the policy is working and whether it has succeeded, either completely or partially. Naturally, measures of effectiveness (MOE) can also inform the policymaker when the policy is failing and requires modification or adjustment. Continuing with the

Iranian example, applicable MOE of the policy could be the amount of weapons grade uranium destroyed or number of WMD manufacturing plants dismantled. It is difficult but not impossible to develop meaningful quantitative measures of effectiveness for national security and foreign policy issues (e.g., numbers of enemy attacks conducted, numbers of friendly casualties, capital earned from exports, population attitudes as measured by polling data). But these types of MOE, by themselves, are likely to be insufficient to determine whether all the conditions established by the end state objectives have been met. It is far more difficult to quantify political decisions on the part of an actor (the opposing one in this case). As a result, qualitative measures take on a high degree of importance for national security and foreign policy effectiveness assessment.

In the United States, the Government Performance and Results Act of 1993 requires executive departments and agencies to focus on outcomes and results. Output measures are defined as “the tabulation, calculation, or recording of activity or effort and can be expressed in a quantitative or qualitative manner.” Output is the actual doing of something. The document goes on to define outcome measures as “assessment of the results of a program activity compared to its intended purpose.”<sup>58</sup> Outcome tells U.S. what difference the output made. It is the evaluation of the ultimate outcome measures that the policymaker must focus on in determining the success or failure of the policy.

## **IDENTIFY POLICY OPTIONS**

The policymaker should now develop a spectrum of policy options—each designed to attain the policy’s objective goals in support of the desired end state. These policy options must give senior decisionmakers a number of truly different choices or approaches from which to select,<sup>59</sup> to include doing nothing except maintaining the status quo, as well as creating distinctly different policies than currently exist (assuming a policy exists for the issue being addressed).

For policy options to be executable, they consider both ways and means. This is where policy and strategy blatantly overlap, since theoretically policy provides ends, and strategy determines ways and means. In the real world, a policy is useless and potentially dangerous if it has not been assessed realistically in terms of the ways and means necessary to implement it. Thus, policymakers must consider the availability and utility of ways and means just as the strategists who eventually implement the policy must.

Ways are the courses of action explicit enough to provide sufficient guidance to those charged with providing the resources and implementing the policy. A way tells the policymaker how the means or resources will be used (e.g., military force will deter). This is in contrast to means that describes the resources necessary to execute the way (e.g., forces, people, and money).<sup>60</sup> An example of a valid policy option might be use multilateral diplomacy to attain Iranian compliance with the Non-Proliferation Treaty. Note that even though detailed ways and means were considered in the policy development process, the policy statement does not give detail other than the preference for multilateral negotiations. Again, like the cases of the Facts, Assumptions, and Factors Framing Policy Development and Determining Policy Supporting Objectives, the development of ways and means should be framed in conjunction with each relative element of national power. Some policy options might emphasize components of the diplomatic and economic elements of national power, while others could emphasize the military and law enforcement elements. It is highly unlikely that only one element of national power would be used in any one option. Rather, each option should be examined to determine all of the elements of national power that could be brought to bear to ensure appropriate execution of the specific policy option under consideration.

## ANALYZE AND VALIDATE EACH OPTION

The policymaker should now evaluate each policy option in detail to determine its ability to attain the identified end state objectives. If applicable in the specific case, the options should each be assessed with respect to the opposing actor(s). This might require an evaluation that would compare and contrast opposing military forces, also known as a Blue vs. Red Assessment. Similarly, it might be an analysis of the impact of specific sanctions on an adversary's economy or the potential response of an opposing country's population to a specific strategic communications theme. Such analysis is key to determining potential direct as well as second and third order effects of the policy. It also gives the policymaker insight into both the composition of the course of action in terms of its diplomatic, economic, military and informational elements and the possible type and size of forces and other resources that might be necessary in support of the option, although such information can only be tentative at this stage.

The next step in the assessment of the policy options is to use an evaluation tool known in the Department of Defense as the FAS (feasibility, acceptability, suitability) test. This test requires the policymaker to assess each option for its feasibility, acceptability, and suitability to attain the policy end state objectives.

An evaluation of suitability (called adequacy in current joint doctrine, although the term has not caught on in the policy community) determines if the option will reasonably attain the policy objective end state.<sup>61</sup> This evaluates the overall ability of the policy to succeed in its stated end state objective. If all the prior analysis in the model is valid, and the ways and means are believed to be executable, then the policy option should be suitable for the issue in question. Again, the converse is also valid. If any of the initial assessment proves to be faulty, or components of the ways and means not executable, then in all likelihood the particular policy option being assessed will not be suitable for this issue.

The measure of feasibility determines if the policy option can be accomplished with available resources over a contemplated amount of time.<sup>62</sup> The successful implementation of any policy will require the availability and employment of certain resources derived from the national elements of power. To this end, there will have to be a sufficient amount of resources present or reasonably producible to allow the course of action to be conducted.

Acceptability assesses if the policy option is proportional, and if the benefit of the option is worth the cost. It is also designed to determine if the option is compliant with domestic and international law, and is militarily and politically supportable.<sup>63</sup> There are three types of cost associated with the acceptability part of the FAS test. The first relates to the material cost associated with the execution of the course of action. This is typically a quantifiable number that has a fiscal measure. The second type of cost is the political cost of a policy. If measurable at all, it is an expression in terms of both domestic and international politics of support for the policy and the actor implementing it. The greater the political support, the less the cost. The inverse is also true – if the policy fails to generate political support, the potential cost of implementation increases. The third type of cost might be called the moral cost. From the perspective of the international community, a policy that complies with international law and is sanctioned by international organizations would have a lower moral cost than one that circumvents international law. At the same time, a policy that results in high civilian casualties or that permits genocide or ethnic cleansing could have a steep moral cost (both domestic and international). The combined political and moral cost assessment gives an indication of the potential legitimacy of a policy.

While the categories of costs are convenient, the analysis cannot be done strictly by those categories. One of the most important costs to be considered crosses all three categories. It is the

willingness of the actor to endure the material, political, and moral costs associated with casualties to its own armed forces/security forces or its civilian population. Similarly, the FAS test must be done holistically, not by stovepipe categories since there are potentially conflicts among the categories. For example, assassination of a key leader might be feasible but not acceptable, and generally acceptable ways like economic sanctions may not achieve the goal in a timely enough manner to be feasible. A policy option that does not pass the FAS test is not a valid option and must be adjusted or discarded.

## **ANALYZE RISK FOR EACH OPTION**

The risk associated with a policy option is the chance of incurring loss, danger, or misfortune<sup>64</sup> while executing the option. An evaluation of all potential risks to each possible policy option is necessary to ensure the ultimate gain from attaining the end state objective will be greater than the negative consequences of implementing the policy. If the potential risk is assessed as greater than the ultimate gain, there is possibly more to lose than to gain from an execution of the option. There are a number of risk-related issues to evaluate to ensure a thorough risk analysis.

The first risk-related issue is a series of questions about timing the policy implementation—how quickly must the policy be implemented and should it be implemented at all? The policymaker assesses the risk of immediate execution, delayed execution, or nonexecution (maintaining the status quo). Could rushing the policy's execution increase the risk; conversely, could delaying implementation intensify the risk? Is there greater risk to either approach? At the same time, is there greater or less risk to implementing the new option, and would it be advantageous to simply opt for maintenance of the status quo? Sometimes it may be better to do nothing new because of the potential risk for any policy option.

The second risk-related issue also concerns time. It is an assessment of the risk of executing the policy option over an extended period. Does the policy have a shelf life? Will concerns like possible decreasing support by the policymaker's population, legislative body, or media, or exhaustion of the Armed Forces (both for personnel and equipment) pose a significant risk to the ability of the actor to execute the policy over an extended period of time. If the answer is yes, then adjustments may have to be made for the policy option to have the best chance of success.

Third, the policymaker must assess his own risk assessment. What is the probability of each potential risk occurring, and what are the probable consequences for policy implementation? What happens if multiple risks occur? Might there be some mitigation of consequences, or would there be intensification of otherwise acceptable effects?

The fourth risk-related issue the policymaker must assess is an analysis of the positive and negative second and third order effects of implementing the policy option. This part of the risk evaluation looks at the indirect results of the policy option's implementation. The option being evaluated will naturally cause effects—the direct effect is actually its purpose—but some of the effects will be unintended. Unintended consequences can have either a positive or negative effect, but the policymaker should be aware of them regardless. The policymaker must assess the linkage between his policy and all its potential effects. "Effects have causes [and] can . . . become causes of another effect(s). . . . Effects that were intentionally caused to produce a specific outcome can spawn an effect that was unintended and/or unpredicted. These unintended or unpredicted effects spawned from the original cause can be unwelcome if these are counter to the objectives."<sup>65</sup>

The fifth component of the risk assessment is an assessment of how sensitive the policy option is to changes in external and internal factors. If certain variables related to the environment or strategic situation change, will this change the risk assessment? Here we are talking about things like unexpected technological changes (for example, acquisition of nuclear weapons), sudden political power shifts (for example, a new alliance), radical shifts in public opinion like might be



expected after a major terrorist attack, and other such occurrences that might affect the policy. Will the changes increase or decrease the chance of success of the policy option? How likely are such environmental changes? Can they be managed if they do occur?

The sixth component is closely related to the fifth. In this case the policymaker looks specifically for potential policy spoilers that would mandate a change of policy. A policy spoiler is an event that would corrupt, mar, or render the policy option useless.<sup>66</sup> It tells the policymaker what action could occur that would prevent the policy, while it is in a state of execution, from attaining its end state objective. The event in question could be developed and executed by an adversary directly responding to the implementation of the policy, or it could be the result of impersonal forces like as weather or illness. In either event, it would have the effect of spoiling the policy option if the option were to be put into place.

A seventh part of the risk assessment is the determination of potential ways to mitigate any identified policy spoilers. This anticipates the development of a number of “reserve” mitigating policy changes to serve in a contingency role to respond to policy spoilers. Mitigation of spoilers could require the modification of the ends, ways, or means. End state objectives may have to be modified to more realistically fit the altered situation, different courses of action may have to be selected, and/or there could be a forced increase or reallocation of resources.<sup>67</sup>

The final part of the risk assessment is a determination of whether or not the residual risk is acceptable. This evaluation includes all risks that had been identified, to include the policy spoilers. Based on the knowledge of the existing risks and available mitigators, the policymaker must decide if the risk is acceptable. Once again we question whether it is riskier to implement the policy than not. It is crucial to understand that the policy formulation process is dynamic, changing, and replete with unknowns (information gaps and blind spots). The result is that it is impossible to develop a policy that is risk-free. The policymaker’s job is to mitigate and manage risk.

There is no single methodology for the conduct of a risk assessment—as is true of any other component of the assessment processes found in the model. Absolutely crucial is the determination and addressal of the decisive questions associated with each particular concern, whether it be the identification of policy spoilers in the Analyze Risk for Each Policy Option or information gaps during the course of the overall mission analysis in the Facts, Assumptions, Factors portion conducted at the beginning of the process. Keying to the right questions for each issue is crucial, such as for the objective of determining policy spoilers: What can the opposing actor do to make the proposed policy unable to attain the chosen end state goal? Another “right question,” this time for understanding information gaps, would be: What do I know, what don’t I know, and what information is missing that is crucial to knowing enough to establish an executable policy? It is the detailed assessment of the information contained in the answers to these questions, and others like them, that will determine the value of the model’s analytic effort.

## **COMPARE POLICY OPTIONS AND MAKE RECOMMENDATIONS**

With each policy option assessed individually, the policymaker next conducts a comparative analysis of the policy options and makes a recommendation on which option can best attain the objective with acceptable risk. It is the comparison of the options against each other that will likely identify the best policy option for execution.<sup>68</sup> The basis for analysis of the options is very situational dependent. Some situations will cause the policymaker to emphasize political considerations, while others may emphasize military or economic. Some situations demand efficient policy options over effective but inefficient options; other situations may place little weight on efficiency and stress instead timeliness. The policymaker simply needs to know which criteria are most significant in the particular situation he faces.



## **Consideration and Decision by Leadership.**

Once the policymaker provides a recommended policy to the policy decisionmaker, the issue leaves the policymaking process and enters a separate decisionmaking process controlled by the decisionmaker. For the American government, this process is usually the interagency decision-making process established by presidential directive. In the case of the Obama administration, Presidential Policy Directive-1 established the interagency process for national security and foreign policy decisionmaking.<sup>69</sup> Using this process or one like it, a democratically elected leadership will likely reach its decision through value judgments and consensus building.<sup>70</sup>

## **Monitor Implementation.**

Implementation begins after the senior political decisionmaker selects the policy that will be executed. Those lower level policymakers that conducted the initial policy formulation analysis and made a recommendation to the senior leadership must now observe the policy in its execution stage. Typically, someone other than the policymaker is responsible for implementation, but that does not relieve the policymaker of responsibility to monitor execution.

## **Receive Feedback on Success or Failure of Policy and its Implementation and Assess for Adjustment.**

This step might be combined with the preceding, but there is value in addressing the functions separately. Feedback – an element of the monitoring process – is key in determining whether the policy is a success or failure as measured by the identified measures of effectiveness. There should be a formal institutionalized process requiring periodic meetings with colleagues in all relative government departments and agencies for the exchange of information on the implementation of the policy. Should he receive information indicating the policy is producing results different than those desired, the policymaker must assess those results (they may be more positive than the intended consequences) and make policy adjustments as necessary. The ends, ways, or means may have to be modified. If the price is too high, the policy could be adjusted with action taken to limit the original ends, reallocate the resource means, or enhance the ways with additional means.<sup>71</sup> In any case, the monitoring/feedback/assessment process must be sensitive to policy spoilers and other environmental changes and should identify and track second and third order effects as they manifest themselves. The system must not hesitate to intervene, perhaps with new policy, should execution prove ineffective or counterproductive.

## **SUMMARY**

Making national security and foreign policy in the 21st century is a complex task. There is more information available to the policymaker than ever before, which makes the overall mission assessment conducted in the early stages of the Model both easier and more difficult to complete. It is easier because access to more knowledge allows increased situational awareness. But it is also potentially more difficult than in the past because of the expanse of knowledge that must be digested. Understanding the key elements of the model will be critical to ensuring that a thorough analysis is conducted at every step.

Ross's summation of statecraft could be applied to all policymaking steps writ large:

. . . frame them so they are more easily accepted by others; develop and utilize the means and the resources to act on them; quietly and openly condition attitudes and expectations about what needs to be done; recognize the key points of leverage that we and others possess; carefully consider how to get those who have influence to join us, and work to get them to apply the leverage they have; know how to wield

carrots and sticks; develop a sense of timing for when to apply pressure and when to offer a way out; read how others--friends and adversaries--are interpreting what we are doing; don't leave anything to chance; and above all, follow through meticulously.<sup>72</sup>

Policies will inevitably change, especially those policies where there are opposing players actively working to counter the policy. Policy formulation should not anticipate certitude.<sup>73</sup> The 21st century policymaker's environment is one of change and adaptation. Opposing players are thinking actors and will do all that is possible to counter the established policy. The policymaker must ultimately develop policies flexible enough to be modified and adaptive as required. If the policy is not formulated with that flexibility in mind, it will likely fail. In the end, using the Policy Formulation Model with a flexible approach will make success much more likely.

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## CHAPTER 4

### NATIONAL SECURITY AND THE INTERAGENCY PROCESS

Gabriel Marcella<sup>1</sup>

Power is the capacity to direct the decisions and actions of others. Power derives from strength and will. Strength comes from the transformation of resources into capabilities. Will infuses objectives with resolve. Strategy marshals capabilities and brings them to bear with precision. Statecraft seeks through strategy to magnify the mass, relevance, impact, and irresistibility of power. It guides the ways the state deploys and applies its power abroad. These ways embrace the arts of war, espionage, and diplomacy. The practitioners of these three arts are the paladins of statecraft.<sup>2</sup>

—Chas W. Freeman, Jr.

The United States is a fully equipped, globally deployed, interagency superpower. It is the indispensable anchor of international order and the increasingly globalized economic system. Nothing quite like it has ever existed. Indeed such great powers as Rome, Byzantium, China, Spain, England, and France achieved extraordinary sophistication, enormous institutional and cultural influence, and longevity, but they never achieved the full articulation of America's global reach.

Today the United States forward deploys some 250 diplomatic missions in the form of embassies, consulates, and membership in specialized organizations. It possesses a unified military command system that covers all regions of the world, the homeland, and even outer space. It is the leader of an interlocking set of alliances and agreements that promotes peace, open trade, the principles of democracy, human rights, and protection of the environment. American capital, technology, and culture influence the globe. American power and influence is pervasive and multidimensional. All the instruments of national power are deployed. Yet the challenge of strategic integration, of bringing the instruments into coherent effectiveness, remains. Presidents and their national security staffs strive to achieve coherence, with varying levels of success through use of the "interagency process."

The interagency decisionmaking process is uniquely American in character, size, and complexity. Given ever expanding responsibilities and the competition for resources, it is imperative that national security professionals master it in order to work effectively within it. The complex challenges to national security in the 21st century will require intelligent integration of resources and unity of effort within the government. It is also imperative that changes be made to make the system and the process more effective.

The United States first faced the challenge of strategic integration in an embryonic interagency process during World War II. Mobilizing the nation, the government, and the Armed Forces for war and winning the peace highlighted the importance of resources and budgets, of integrating diplomacy with military power, gathering and analyzing enormous quantities of intelligence, conducting joint and combined military operations, and managing coalition strategies and balancing competing regional priorities, for example, the European versus the Pacific theater in national strategy. From the war and the onset of the Cold War emerged a number of institutional and policy innovations. Among them: the structure of the modern Department of State, Department of Defense (DoD) (from the old War and Navy Departments), a centralized intelligence system, the Marshall Plan for the reconstruction of Europe, the unified military command system, the Air Force, the predecessor of the U.S. Agency for International Development (Point Four), the North

Atlantic Treaty Organization (NATO) and other alliances, military assistance pacts, military advisory groups, and the U.S. Information Agency.

There is probably no period in American history like the late 1940s and early 1950s that demonstrates the kind of national and institutional learning that John P. Lovell calls “purposeful adaptation.” He defines it as “the need to develop and pursue foreign policy goals that are sensitive to national needs and aspirations and to the realities of a changing world environment.”<sup>3</sup> The evolution of the interagency process parallels America’s purposeful adaptation to changing global realities of the last 5 decades. But it is not an orderly evolution because of serious structural and cultural impediments, such as discontinuities from one administration to another and poor institutional memory.<sup>4</sup> Prominent historical markers along the path of learning and adaptation included such documents as National Security Council (NSC) 68, the intellectual framework for the containment strategy against the Soviet Union. Though not a policy document, the Weinberger Doctrine articulated criteria for the use of military power that dramatically influenced the shape of American strategy in the 1980s and 1990s.

There are countless examples of how American statesmen codify in writing the patterns of “purposeful adaptation.” The tragic events of September 11, 2001 (9/11), had such an impact on American national security that the George W. Bush administration created a Department for Homeland Security. It also published a series of strategy documents on counterterrorism, homeland security, military strategy, and infrastructure security. Bush’s National Security Strategy (NSS) dramatically redefined the philosophical underpinnings of the U.S. role in the world. Because the attacks of 9/11 represented an assault on international order and exposed the vulnerabilities of the United States to asymmetric warfare by nonstate actors, the NSS of September 17, 2002, spoke of the need to redefine the Westphalian concept of sovereignty for the purpose of reestablishing order and security in the international system.<sup>5</sup>

When the United States reluctantly inherited global responsibilities in 1945, American statesmen faced three challenges: forging a system of collective security, promoting decolonization, and building a stable international financial order. These and 4 decades of intense threat from the other superpower had a decisive impact on shaping the interagency process. With the end of bipolar ideological and geopolitical conflict, the foreign policy and defense agenda was captured by free trade, democratization, subnational ethnic and religious conflict, failing states, humanitarian contingencies, ecological deterioration, terrorism, international organized crime, drug trafficking, and the proliferation of the technology of weapons of mass destruction (WMD). The dawn of the 21st century calls for a relook at the adequacy of the interagency system, not only because of the changing agenda, but also because of the nature and extent of the global responsibilities the United States has taken on.

## **THE NATIONAL SECURITY COUNCIL: THE PERMANENT TENSION BETWEEN COORDINATION VS. POLICYMAKING.**

To bring strategic coherence, consensus, and decisiveness to the burgeoning global responsibilities of the emerging superpower, the National Security Act of 1947 created the National Security Council. Its functions:

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

. . . other functions the President may direct for the purpose of more effectively coordinating the policies and functions of the departments and agencies of the Government relating to the nation’s security . . .

. . . assess and appraise the objectives, commitments, and risks of the United States . . .

. . . consider policies on matters of common interest to the departments and agencies of the Government concerned with the national security.

The statutory members are the President, the Vice President, and the Secretaries of State and Defense. By statute, the Director of Central Intelligence and the Chairman of the Joint Chiefs of Staff are advisors. Other advisors, including additional cabinet members such as the Secretary of the Treasury, may be invited. The President chairs the meeting; but the Council need not convene formally to function. Formal NSC meetings are rare. Indeed, by late 1999 the Clinton NSC had met only once: March 2, 1993. There are alternatives to formal meetings, such as the ABC luncheons of Secretary of State Madeleine Albright, Secretary of Defense William Cohen, and Assistant to the President for National Security Affairs Sandy Berger, or the Deputies' breakfasts and lunches. The President himself may at any time meet informally with members of his cabinet. In recent years, televideo conferencing facilitates such senior level consultations.

The "NSC system" of policy coordination and integration across the departments and agencies operates 24 hours a day. The Assistant to the President for National Security Affairs directs the staff. The emergence of the modern "operational presidency,"<sup>6</sup> brought to the NSC greater authority over the development and implementation of policy, thus creating a new power center that competes for jurisdiction with the Departments of State and Defense.

The NSC staff, known as the Executive Secretariat, has varied in size and function. In 1999 the staff comprised about 208 (of which 101 were policy personnel and 107 administrative and support personnel) professionals covering regional and functional responsibilities. Under the George W. Bush administration, the NSC staff was cut nearly in half. Staffers are detailed from the diplomatic corps, the intelligence community, the civil service, the military services (12 military Officers were in policy positions in September 1999), academia, and the private sector. The staffing procedures are personalized to the president's style and comfort level. The structure of the staff, its internal and external functioning, and the degree of control of policy by the president varies. Carter and Clinton were very centralized, Reagan and George Bush, Senior, less so. As examples, the first two Presidential Decision Directives of the Clinton administration, dated January 20, 1993, set forth the structure and function of the NSC staff and groups that reported to it, as shown in Figure 1. The day-to-day policy coordination and integration was done by the NSC Staff, divided into the functional and geographic directorates shown in Figure 2.

The Principals Committee members were the cabinet level representatives who comprised the senior forum for national security issues. The Deputies Committee included deputy secretary level officials who monitored the work of the interagency process, did crisis management, and when necessary, pushed unresolved issues to the principals for resolution. Interagency Working Groups (IWGs) were the heart and soul of the process. They were ad hoc, standing, regional, or functional. They functioned at a number of levels, met regularly to assess routine and crisis issues, framed policy responses, and built consensus across the government for unified action. The fluid nature of the process meant that IWGs did not always have to come to decisions. The system preferred that issues be decided at the lowest level possible. If issues were not resolved there, they were elevated to the next level and when appropriate, to the Deputies Committee. Who chaired the different IWGs and committees varied between the NSC director and senior State Department officials.

# National Security Council System

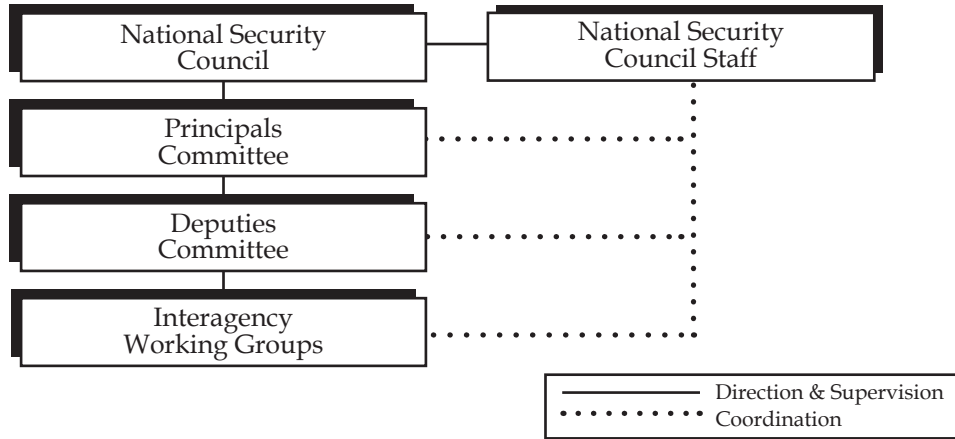


Figure 1. National Security System Under Clinton.

# National Security Council Staff

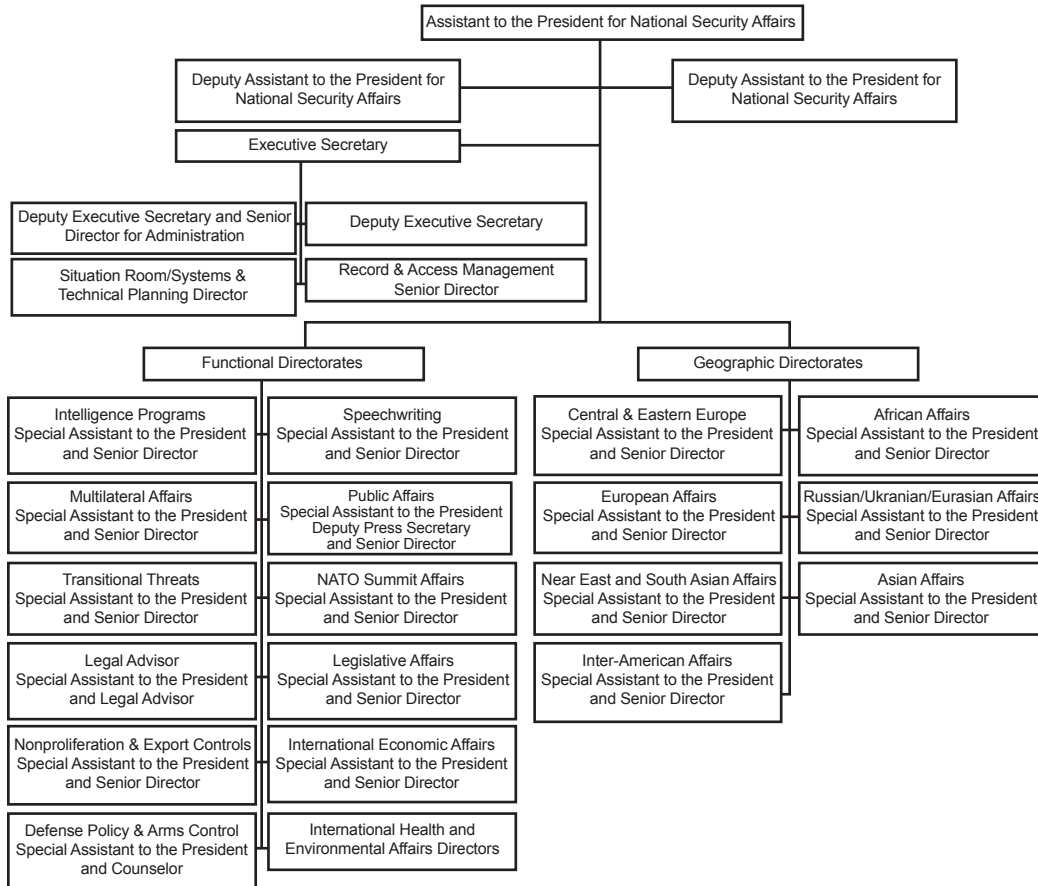


Figure 2. Clinton's National Security Council Staff.



Dramatic changes came with the election of George W. Bush. Comfortable with a corporate style executive leadership and surrounding himself with very experienced national security statesmen like Secretary of State Colin Powell (former Chairman of the Joint Chiefs of Staff, Assistant to the President for National Security Affairs, and White House Fellow), Vice President Richard Cheney (former Congressman, Secretary of Defense, and White House Chief of Staff), and Defense Secretary Donald Rumsfeld (former Secretary of Defense, Ambassador to NATO, and Congressman), President George W. Bush centralized policy authority by establishing new structures and procedures.<sup>7</sup>

The process began with new nomenclature for presidential directives. National Security Presidential Directive 1 (NSPD-1), dated February 13, 2001, established six regional Policy Coordinating Committees (PCCs) and 11 (later 15) PCCs to handle functional responsibilities.<sup>8</sup> In 2005 they were as follows (see Figure 3):

Regional PCCs:

- Europe
- Western Hemisphere
- East Asia
- South Asia
- Near East and North Africa
- Africa

Functional PCCs (with department responsible in parentheses)

- Democracy, Human Rights, and International Operations (NSC)
- International Development and Humanitarian Assistance (State)
- Global Environment (NSC and National Economic Council)
- International Finance (Treasury)
- Transnational Economic Issues (NEC)
- Counter-Terrorism and National Preparedness (NSC)
- Defense Strategy, Force Structure, and Planning (Defense)
- Arms Control (NSC)
- Intelligence and Counterintelligence (NSC)
- Records Access and Information Security (NSC)
- International Organized Crime (NSC)
- Contingency Planning (NSC)
- Space (NSC)
- HIV/ AIDS and Infectious Diseases (state and Health and Human Services)

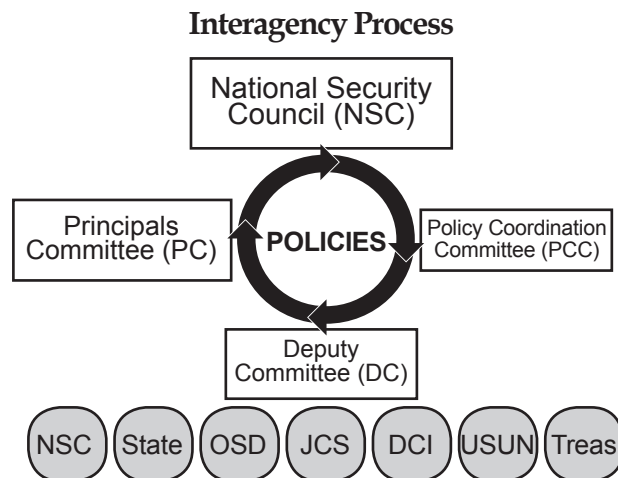


Figure 3. Bush Administration Interagency Process.

The plethora of existing IWGs was abolished by NSPD-1. The activities of IWGS were transferred to the new PCCs. The PCCs were the most important structural changes made by the Bush administration. According to NSPD-1, they were the “Day-to-day fora for interagency coordination of national security policy. They shall provide policy analysis for consideration by the more senior committees of the NSC system and ensure timely responses to decisions made by the president.” The centralization of authority over national security matters reached levels not seen for many years. However, it remained to be seen whether the system would work effectively. In the Spring of 2003, a senior national security careerist who was intimately involved with policymaking referred to interagency relations as “the worst in 20 years.” An experienced foreign policy hand commented: “The inter-agency system is broken” and averred that instead of centralization of authority, there is fragmentation.<sup>9</sup> Explanations for this state of affairs varied. They included the intrusion of group think dynamics among senior neo-conservative decisionmakers, the role of strong personalities, the bypassing of the Assistant to the President for National Security Affairs, Condoleezza Rice, as well as the deliberate isolation of the Department of State.<sup>10</sup>

Another important interagency reorganization made by the Bush administration was the creation of the Department of Homeland Security (DHS), and a unified military command, the Northern Command. The creation of DHS involved the transfer of responsibilities, people, and resources from existing agencies and departments to a new entity. DHS has over 170,000 employees and an anticipated budget of 40 billion dollars. It constitutes the largest reorganization of the U.S. Government since the creation of the Defense Department. DHS combined 22 agencies “specializing in various disciplines,” such as: law enforcement, border security, immigration, biological research, computer security, transportation security, disaster mitigation, and port security.<sup>11</sup> Though it is a national security department it will not be involved in power projection, a crucial difference with the Defense Department. Yet, it will use many skills and resources that reside across the agencies: military, diplomatic, law enforcement, intelligence, and logistics. Homeland Security also involves the concept of federalism, whereby some 87,000 state and local jurisdictions share power with federal institutions. The challenge of integrating federalism injects into national security planning will be immense.

Policy is often made in different and subtle ways. Anthony Lake, writing in *Somoza Falling: The Nicaraguan Dilemma, A Portrait of Washington At Work*, discusses how the answer to an important letter can help set policy. Hence the importance of interagency coordination and the importance of being the one (bureau, office, agency) that drafts it, “. . . policy flows as much from work on specific items—like the letter from Perez [to Carter]—as it does from the large, formal interagency ‘policy reviews’ that result in presidential pronouncements.”<sup>12</sup> Each action is precedent for future actions. Speeches, press conferences, VIP visits, and presidential travels are important. Lake elaborates “Policy is made on the fly; it emerges from the pattern of specific decisions. Its wisdom is decided by whether you have some vision of what you want, a conceptual thread as you go along.”<sup>13</sup>

The NSC staff does the daily and long-term coordination and integration of foreign policy and national security matters across the vast government. Specifically, it:

- Provides information and policy advice to the President
- Manages the policy coordination process
- Monitors implementation of presidential policy decisions
- Manages crises
- Articulates the President’s policies
- Undertakes long term strategic planning
- Conducts liaison with Congress and foreign governments
- Coordinates summit meetings and national security related trips

There is a natural tension between the policy coordination function of the NSC and policymaking. Jimmy Carter's Director of Latin American Affairs at the NSC, Robert Pastor, argues that:

... tension between NSC and State derives in part from the former's control of the agenda and the latter's control of implementation. State Department officials tend to be anxious about the NSC usurping policy, and the NSC tends to be concerned that State either might not implement the President's decisions or might do so in a way that would make decisions State disapproved of appear ineffective and wrong.<sup>14</sup>

The NSC staff is ideally a coordinating body but it oscillates between the poles, taking policy control over some issues while allowing the State or Defense to be the lead agency on most national security and foreign policy issues. On some key issues, such as the Kosovo crisis of 1998-99, the NSC staff may take over policy control from State. Similarly, policy towards Cuba and Haiti in 1993-95 was handled directly out of the White House because of the deeply-rooted domestic dimension of those issues. In virtually all cases, however, major policy must be cleared through the NSC staff and the National Security Advisor. This process of clearing makes the NSC staff a key element in the policymaking process. In general, the clearance process involves a review by the appropriate NSC staff director to assure that the new policy initiative is consistent with the president's overall policy in that functional or regional area, that it has been coordinated with all appropriate departments and agencies, and that all obvious political risks associated with the new initiative have been identified and assessed. This process makes all the relevant departments stakeholders in the final policy statement. The Oliver North Iran-Contra caper created an autonomous operational entity in the NSC staff. But that was an aberration that does not invalidate the general rule. The salient point is that proximity to the President gives the NSC staff significant policy clout in the interagency process. Such clout must be used sparingly lest it cause resentment and resistance or overlook the policy wisdom and skills available elsewhere in the executive departments.

#### **TOWARD A THEORY OF THE INTERAGENCY PROCESS: HOW DOES THE PRESIDENT MOBILIZE THE GOVERNMENT?**

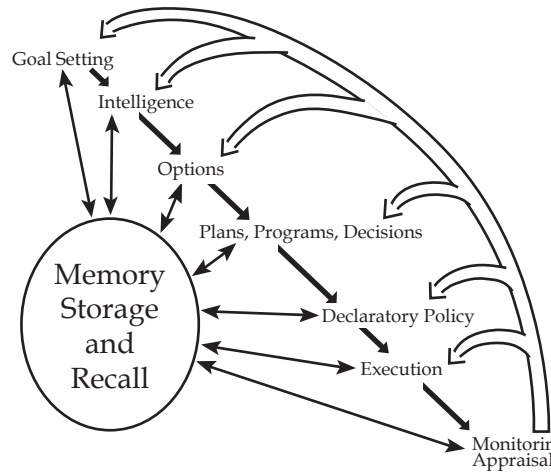
The interagency is not a place. It is a process involving human beings and complex organizations with different cultures, different outlooks on what is good for the national interest and the best policy to pursue—all driven by the compulsion to defend and expand turf. The process is political (therefore conflictual) because at stake is power, personal, institutional, or party. The "power game" involves the push and pull of negotiation, the guarding of policy prerogatives, the hammering out of compromises, and the normal human and institutional propensity to resist change.<sup>15</sup> Regardless of the style of the president and the structures developed for the management of national security policy, the interagency process performs the same basic functions: identifies policy issues and questions, formulates options, raises issues to the appropriate level for decisions, makes decisions where appropriate, and oversees the implementation of decisions throughout the executive departments.

It is helpful to view policy at five interrelated levels: conceptualization, articulation, budgeting, implementation, and post-implementation analysis and feedback. Conceptualization involves the intellectual task of policy development, such as a presidential directive. Articulation is the public declaration of policy that the president or subordinates make. It is critical in a democracy in order to engage public support.

Budgeting involves testimony and the give and take before Congress and its various committees to justify policy goals and to request funding. Implementation is the programmed

application of resources in the field to achieve the policy objectives. Post-implementation analysis and feedback is a continuous effort to assess the effectiveness of policy and to make appropriate adjustments. It is conducted by all the agencies in the field. The General Accounting Office of the Congress makes extensive evaluations of the effectiveness of policy implementation. Congressional hearings and visits in the field by congressional delegations and staffers also make evaluations that help refine policy.

The ideal system (see Figure 4) would have perfect goal setting, complete and accurate intelligence, comprehensive analysis and selection of the best options, clear articulation of policy and its rationale, effective execution, thorough and continuous assessment of the effects, and perfect learning from experience and the ability to recall relevant experience and information.



**Figure 4. Ideal Foreign Policy Process.**<sup>16</sup>

Such perfection is impossible. The reality is shown in Figure 5:

TASK	CONSTRAINTS
Goal Setting	National interests are subject to competing claims; goals established through political struggle
Intelligence	Always incomplete, susceptible to overload, delays and distortions caused by biases and ambiguity in interpretation
Option Formulation	Limited search for options, comparisons made in general terms according to predispositions rather than cost-benefit analysis
Plans, Programs, and Decisions	Choices made in accordance with prevailing mind-sets, influenced by groupthink and political compromise
Declaratory Policy	Multiple voices, contradictions, and confusion, self-serving concern for personal image and feeding the appetite of the media
Execution	Breakdowns in communication, fuzzy lines of authority, organizational parochialism, bureaucratic politics, delays
Monitoring and Appraisal	Gaps, vague standards, rigidities in adaptation, feedback failures
Memory Storage and Recall	Spotty and unreliable, selective learning and application of lessons

**Figure 5. Policy in Practice.**<sup>17</sup>

Effective policy requires control, resources, and a system of accountability. The most compelling challenge for the executive is to retain policy control. Since Presidents do not have the time or expertise to oversee policymaking in detail (though Jimmy Carter tried), they delegate responsibility. But “nobody is in charge” is an often-heard refrain of the interagency process. By delegating

responsibility, control becomes more diffused and the policy effort diluted. Moreover, the quest for resources brings in another stakeholder. Congress has the constitutional responsibility to scrutinize policy initiatives and vote monies for foreign affairs and national defense. By then, a literal Pandora's box of players and expectations is opened. The numerous congressional committees and their staffs have enormous impact on national security and foreign policy.

The President begins to mobilize his government immediately upon election. A transition team works closely with the outgoing administration for the purpose of continuity. He begins nominating his cabinet, which must then be confirmed by the Senate. Some 6,000 presidential level appointees will fill the subcabinet positions, staff the White House and the NSC, take up ambassadorships (serving ambassadors traditionally submit their resignation when the occupant of the White House changes), as well as second, third, and fourth level positions in the Executive departments. The purpose of these nominations is to gain control and establish accountability to the President and his agenda. In his first administration, President William Clinton faced serious difficulties because he never finished staffing his government.

Thus there is a high turnover and the injection of new talent, at times inexperienced and equipped with new predispositions about national security, at the top echelons of American government every time the part that controls the White House changes. Continuity of government resides in the nonpartisan professionals (neutral competence) of the federal civil service, the diplomatic service, the military, and the intelligence community. The transition to a new administration is a period of great anticipation about the direction of policy. Consequently, the entire interagency produces transition papers to assist and inform the newcomers, and to also protect the institutional interests of the various departments from unfriendly encroachment.

The first months of a new administration are a period of learning. Newly appointed people must familiarize themselves with the structure and process of policymaking. This necessity invariably leads to a trial-and-error atmosphere. In anticipation of the passing of the mantle, think tanks and the foreign policy and defense communities prepare for the transition by writing papers recommending the rationale for policy. These will inform the new administration about the central commitments of U.S. policy and provide opportunities for departments and agencies to define institutional turf and stake a claim to resources. The administration itself will also mandate policy reviews that eventually produce new guidance for policy.

Making speeches and declaring policy and doctrines is another way for the President to mobilize the government. The State of the Union message is one of the preeminent sources of presidential activism that engages the interagency. The congressionally mandated *National Security Strategy* (NSS) document, which bears the President's signature and is supposed to be produced annually, is eagerly awaited, though not with equal intensity across departments, as an indicator of an administration's direction in national security and foreign policy.

The NSS is eagerly awaited for another reason; it is the best example of "purposeful adaptation" by the American government to changing global realities and responsibilities. It expresses strategic vision, what the United States stands for in the world, its priorities, and a sensing of how the instruments of national power, the diplomatic, economic, and military will be arrayed. Since it is truly an interagency product, the NSS also serves to discipline the interagency system to understand the President's agenda and priorities and to develop a common language that gives coherence to policy. It is also more than a strategic document. It is political because it is designed to enhance presidential authority in order to mobilize the nation. Finally, the NSS tends to document rather than drive policy initiatives. This is especially true in election years.

The first NSS in 1987 focused on the Soviet threat. The Bush administration expanded it by including more regional strategies, economic policy, arms control and transnational issues, and the environment. The Clinton document of 1994 proposed "engagement and enlargement," pro-



moting democracy, economic prosperity, and security through strength. The 1995 version added criteria on when and how military forces would be used. By 1997, the integrating concepts of “shape,” “prepare,” and “respond” for the national military strategy came into prominence. To the core objectives of enhancing security, promoting prosperity, and democracy were added fighting terrorism, international crime, and drug trafficking, along with managing the international financial crisis. Homeland defense against the threat of mass casualty attacks and regional strategies completed the agenda.

Another instrument is the presidential national security directives process. Administrations have titled these documents differently, and they have produced them in greater or lesser quantity. The two Clinton administrations produced at least 73 Presidential Decision Directives and the George W. Bush administration issued 44 National Security Presidential Directives by December 2005. Other administrations’ totals and titles are as follows: George H. W. Bush, 79 National Security Decision Directives; Reagan, 325 National Security Decision Memoranda; Carter 63, Presidential Directives; Nixon-Ford, 348 National Security Decision Memoranda; and Kennedy-Johnson, 372 National Security Action Memoranda. Each administration will try to put its own stamp on national security and foreign policy, though there is great continuity with previous administrations. Whereas Reagan emphasized restoring the preeminence of American military power and rolling back the “evil empire,” Clinton focused on strengthening the American economy, open trade, democratization, conflict resolution, humanitarian assistance, fighting drug trafficking and consumption, counterterrorism, and nuclear nonproliferation. The events of 9/11 imposed a national defense priority on the George W. Bush administration. In response, the Bush administration—in addition to the NSPDs mentioned above—created a new category of Homeland Security Presidential Directives (HSPD). Some policy documents serve jointly as NSPDs and HSPDs. For example, NSPD-43 on Domestic Nuclear Detection is also HSPD-14.<sup>18</sup>

Presidential national security directives are macro level documents, often classified, that take much deliberate planning to develop. They result from intensive interaction among the agencies. The process begins with a presidential directive to review policy that tasks the relevant agencies to develop a new policy based on broad guidance. For example, Clinton’s PDD-14 for counternarcotics emphasized greater balance between supply and demand strategies. Because of the many constraints placed on the use of economic and military assistance to fight the “war on drugs” and to help Colombia, PDD-14 evolved into the Colombia-specific PDD-73. This, in turn was superseded in the Bush administration by NSPD-18, which, thanks to 9/11 and the terrorism in Colombia, went further and provided support for both counternarcotics and counterterrorism activities in Colombia. The evolution of these policy documents over nearly 10 years nurtured the growth of significant institutional memory in the interagency with respect to the Colombian conflict.

The learning went both ways because Colombian officials had to adapt to the Washington policy process. Because of the global reach of American power and influence, such adaptation is becoming more common. Clinton’s celebrated PDD-25 set down an elaborate set of guidelines for U.S. involvement in peace operations. It became so effective as a planning device that the United Nations adopted it in modified form for planning its own peace operations, an excellent example of the international transfer of American purposeful adaptation. Other nations also used the terminology and organizing principles for their strategic and operational planning in multilateral peacekeeping.

Another instructive example is the Latin American policy PDD-21. Effective on December 27, 1993, it emphasized democracy promotion and free trade. It was addressed to more than 20 departments and agencies: Vice President, Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, Secretary of Commerce, Secretary of Labor, Director of the Office of Management and Budget, U.S. Trade Representative, Representative of the United States to the

United Nations, Chief of Staff to the President, Assistant to the President for National Security Affairs, Director of Central Intelligence, Chair of the Council of Economic Advisors, Assistant to the President for National Economic Policy, Chairman of the Joint Chiefs of Staff, Administrator of the Agency for International Development, Director of the Arms Control and Disarmament Agency, Administrator of the Environmental Protection Agency, and Director of the U.S. Information Agency.

The point of listing departments and agencies is to identify the interagency stakeholders in regional policy, though the size of the stake will vary greatly among them according to the particular issue. The stakeholders are related by functional interdependence; they have different resources, personnel, and expertise that must be integrated for policy to be effective. It is an iron rule of the interagency that *no national security or international affairs issue can be resolved by one agency alone*. For example, the DoD needs the diplomatic process that the Department of State masters in order to deploy forces abroad, build coalitions, negotiate solutions to conflict, conduct noncombatant evacuations (NEO) of American citizens caught in difficult circumstances abroad, and administer security assistance. The Department of State in turn depends on the logistical capabilities of the DoD to deploy personnel and materials abroad during crises, conduct coercive diplomacy, support military-to-military contacts, and give substance to alliances and defense relationships. The Office of National Drug Control Policy, a new cabinet level position, must rely on a range of agencies to reduce the supply abroad and consumption of drugs at home. Finally, all require intelligence input to make sound decisions.

These patterns of functional interdependence, whereby departments stayed within their jurisdictions, began to fray in the George W. Bush administration. Press reports in the spring of 2003 focused on the Bush “policy team at war with itself.”<sup>19</sup> Accordingly, there was a “tectonic shift” of decisionmaking power from the Department of State to Defense because of the strong personalities and neo-conservative ideology of Secretary of Defense Donald Rumsfeld and subordinates, principally Deputy Secretary Paul Wolfowitz. Such a shift is unnatural and will likely correct itself in the future. But the prospect of the DoD dominating foreign policy raised concerns about the effectiveness of policy and the U.S. standing in the world. The inattention to functional interdependence was a contributing factor to the ineffectiveness of postwar reconstruction planning for Iraq in 2003.<sup>20</sup> In October 2003 President Bush attempted to improve the Iraq reconstruction effort by placing his National Security Advisor, Condoleezza Rice, in charge. The correction allegedly upset Secretary of Defense Donald Rumsfeld. Earlier in the year the President had (via NSPD-24) given authority over the Iraq reconstruction to the Defense Department.<sup>21</sup>

The problems associated with post-conflict reconstruction in Iraq led to an upsurge of recommendations on how to improve the system for the future. For example, the House of Representatives and the Senate proposed the “Winning the Peace Act of 2003,” which would create within the Department of State a permanent office to provide support to the new position of Coordinator of Reconstruction and Stabilization. A comprehensive study published in November 2003 by Hans Binnendijk and Stuart Johnson of the National Defense University advocated major focus on transforming military institutions to perform “stabilization and reconstruction” operations. It also recommended harnessing interagency capabilities via the creation of a rapidly deployable National Interagency Contingency Coordinating Group to meet the need of a national level group to plan and coordinate post-conflict operations.<sup>22</sup> At this juncture, it is important to note that in July 2004, the Office of Coordinator of Reconstruction and Stabilization took form in the Department of State under the leadership of Ambassador Carlos Pascual. Yet, 1 year later, the office was still understaffed and under budget, an example of an unfunded mandate. The Congress, which legislated the office and is a stakeholder in national security, by July 2005 had not provided sufficient funding for the Office to do its job properly.<sup>23</sup> By December 2005, as detailed later in this chapter, a

new National Security Presidential Directive (44) would give the Department of State the responsibility to manage interagency efforts to conduct reconstruction and stabilization.

Ideally in response to the promulgation of a presidential directive all agencies will energize their staffs and develop the elements that shape the policy programs. But this takes time and seldom creates optimum results, in part because of competing priorities on policymakers, limited time, constrained resources, and congressional input. For example, the Haiti crisis of 1992-94 and congressional passage of the North America Free Trade Act consumed most of the energy of the Clinton administration's NSC staff and the Bureau of Inter-American Affairs of the Department of State during 1993-94 to the detriment of other Latin American policy. The Central American crisis of the 1980s also crowded out the broader agenda for Latin American policy.

In theory, once the policy elements are put together, they are costed out and submitted to Congress for approval and funding, without which policy is merely words of hopeful expectation. The reality, however, is that a presidential directive is not a permanent guide to the actions of agencies. Rarely is it fully implemented. The culture of the various executive departments will modify how directives are interpreted. For example, for the military oriented Defense Department, a directive is an order to be carried out. For State, a directive may be interpreted as the general direction a policy should take. Presidential policy can be overtaken by new priorities, new administrations, and by the departure of senior officials who had the stakes, the personal relationships, know how, and institutional memory to make it work. A senior NSC staffer, Navy Captain Joseph Bouchard, Director of Defense Policy and Arms Control, remarked in 1999 that one could not be sure about whether a directive from a previous administration was still in force because the government does not maintain a consolidated list of these documents for security reasons. Moreover, directives and other presidential documents are removed to presidential libraries and the National Archives when administrations change. A senior Defense Department official stated that directives are rarely referred to after they are final, are usually overtaken by events soon after publication, and are rarely updated. In this respect the interagency evaluation of PDD-56's effectiveness, published in May 1997, is instructive: "PDD-56 no longer has senior level ownership. The Assistant Secretaries, Deputy Assistant Secretaries, and the NSC officials who initiated the document have moved on to new positions."<sup>24</sup> The loss of institutional memory is not necessarily fatal. The permanent government retains much of the wisdom for the continuity of policy. That wisdom is always available to an administration. It must learn how to tap it.

## **PDD 56: EPHEMERAL OR PURPOSEFUL ADAPTATION?**

It is useful to examine PDD 56 as an example of an interagency product and as a tool intended to influence the very process itself. Directives normally deal with the external world of foreign policy and national security. PDD 56 was radically different, for it went beyond that and attempted to generate a cultural revolution in the way the U.S. Government prepares and organizes to deal with these issues. PDD 56, The Clinton Administration's Policy on Managing Complex Contingency Operations, was perhaps the mother of all modern Directives. It is a superb example of codifying lessons of "purposeful adaptation" after fitful efforts by American civilian and military officials in the aftermath of problematic interventions in Panama (1989-90), Somalia (1992-94), and Haiti (1994-95).<sup>25</sup> The intent was to institutionalize interagency coordination mechanisms and planning tools to achieve U.S. Government unity of effort in complex contingency operations and in post-conflict reconstruction. It tried to institutionalize five mechanisms and planning tools:

- An Executive Committee chaired by the Deputies Committee (Assistant Secretaries)
- An integrated, interagency Political-Military Implementation Plan
- Interagency Rehearsal

- Interagency After-Action Review
- Training.

The philosophy behind the document was that interagency planning could make or break an operation. Moreover, early involvement in planning could accelerate contributions from civilian agencies that are often excluded from or are culturally averse to strategic and operational planning. An excellent *Handbook for Interagency Management of Complex Contingency Operations*, issued in August 1998, contains in easy digestible form much wisdom about how to do it right. PDD 56 was applied extensively and adapted to new contingencies, such as Eastern Slavonia (1995-98), Bosnia from 1995, Hurricane Mitch in Central America, the Ethiopia-Eritrea conflict since 1998, and the Kosovo contingency of 1998-99. The March 1999 review commented: "PDD 56 is intended to be applied as an integrated package of complementary mechanisms and tools . . . since its issuance in 1997, PDD 56 has not been applied as intended. Three major issues must be addressed to improve the utility of PDD 56." It recommended:

- Greater authority and leadership to promote PDD 56
- More flexible and less detailed political-military planning
- Dedicated training resources and greater outreach.

Reflected in the three recommendations were the recurring problems of the interagency: the need for decisive authority ("nobody's in charge"), contrasting approaches and institutional cultures (particularly diplomatic versus military) with respect to planning, and the lack of incentives across the government to create professionals expert in interagency work. PDD 56 was a noble effort to promote greater effectiveness. It may bear fruit if its philosophy of integrated planning and outreach to the interagency takes root. In late 1999 the PDD 56 planning requirement was embedded as an annex to contingency plans. Bush's February 2001 NSPD-1 tried to provide some life support to PDD-56 by stating: "The oversight of ongoing operations assigned in PDD/NSC-56 . . . will be performed by the appropriate . . . PCCs, which may create subordinate working groups to provide coordination for ongoing operations." The failures in post-conflict planning and reconstruction for Iraq in 2003 underlined the importance of taking PDD-56 seriously. Fortunately, as mentioned previously, there are enough people in government who retain the expertise and who can be tapped as necessary. Much of the wisdom contained in PDD-56 and its *Handbook* is invaluable in the business of post-conflict reconstruction and stabilization.

As the result of the purposeful adaptation engendered by the mistakes made in the reconstruction and stabilization of Iraq, the Bush administration promulgated National Security Presidential Directive-44, on December 7, 2005: "Management of Interagency Efforts Concerning Reconstruction and Stabilization." It speaks eloquently of the need for a coordinated U.S. Government effort for harmonizing interagency responses across the spectrum of conflict: complex contingencies, peacekeeping, failed and failing states, political transitions, and other military interventions. NSPD-44 states:

The Secretary of State shall coordinate and lead integrated United States Government efforts, involving all U.S. Departments and Agencies with relevant capabilities, to prepare, plan for, and conduct stabilization and reconstruction activities. The Secretary of State shall coordinate such efforts with the Secretary of Defense to ensure harmonization with any planned or ongoing U.S. military operations across the spectrum of conflict. Support relationships among elements of the United States Government will depend on the particular situation being addressed.<sup>26</sup>



The document closes with the statement: "This directive supersedes Presidential Decision Directive/NSC-56, May 20, 1997, 'Managing Complex Contingency Operations'." It may supersede but it cannot erase from collective and personal memory banks the excellent and very useful ideas contained in PDD 56. Such a concept would threaten the notion of purposeful adaptation. A companion to NSPD 44 is Department of Defense Directive 3000.05, "Military Support for Stability, Security, Transition, and Reconstruction (SSTR) Operations," promulgated in late 2005.

## **THE OPERATIONAL LEVEL OF THE INTERAGENCY PROCESS: AMBASSADOR, COUNTRY TEAM, AND COMBATANT COMMANDERS**

To this point, we have discussed the national strategic level of the interagency process, that is, what occurs in Washington. Actually, the interagency process spans three levels: the national strategic, the operational, and the tactical. In the field, policy is implemented by ambassadors and their country teams, often working with the regional combatant commanders (COCOMs) if the issue is principally security or political-military in nature. Ambassadors and combatant commanders are not only implementers, they frequently shape policy via their reporting to Washington through a continuous flow of cables, after action reports, proposals for new policy initiatives, as well as direct consultations in Washington with senior officials and members of Congress. They also comment on how to shape policy initiatives that originate from Washington.

There is a permanent conversation between the embassy and the respective regional bureau in Washington, which includes a broad distribution of the cable traffic to such agencies as the White House, the Defense Department, the regional combatant command, Department of Treasury, Commerce, the Joint Staff, the intelligence community, as well as other organizations, such as the Coast Guard, when there is a "need to know." The "need to know" almost always includes other embassies in the region, or major embassies in other regions, and even at times, for example, the American Embassy to the Vatican. The ambassador and combatant commander often conduct one-on-one meetings over the multiplicity of security issues.

The embassy country team at the embassy is a miniature replica of the Washington interagency system. In the country team the rubber proverbially meets the road of interagency implementation. Ambassadors and COCOMs rely on each other to promote policies that will enhance American interests in a country and region. COCOMs have large staffs and awesome resources compared to the small staffs and resources of ambassadors. Moreover their functions are different. The ambassador cultivates ties and is a conduit for bilateral communications through the art of diplomatic discourse. He or she promotes understanding of U.S. foreign policy, promotes American culture and business, and is responsible for American citizens in that country. The ambassador is the personal emissary of the President, who signs the ambassador's formal letter of instruction. The letter charges the ambassador "to exercise full responsibility for the direction, coordination, and supervision of all executive branch Officers in (name of country), except for personnel under the command of a U.S. area military commander . . ." There is enough ambiguity in the mandate to require both ambassador and COCOM to use common sense and, in a nonbureaucratic way, work out issues of command and control over U.S. military personnel in the country. In effect control is shared, the ambassador having policy control and the COCOM control over day-to-day military operations. Thus it is prudent that both work closely together to ensure that military operations meet the objectives of U.S. policy.

This is particularly the case in military operations other than war. Before and during noncombatant evacuations, peace operations, exercises, disaster relief, and humanitarian assistance, such cooperation will be imperative because of the different mixes of diplomacy, force, and preparation required. A successful U.S. policy effort requires a carefully calibrated combination of diplomatic



and military pressure, with economic inducements added. The security assistance Officer at the embassy (often the commander of the military advisory group) can facilitate communication and bridge the policy and operational distance between the ambassador and the COCOM. The State's Political Advisor to the COCOM, a senior ranking foreign service Officer, can also provide the diplomatic and foreign policy perspective on military operations.<sup>27</sup> The personal and professional relationship between the Foreign Policy Advisor (formerly called the Political Advisor) and the COCOM is the key to success.

The COCOM represents the coercive capacity of American power through a chain of command that goes to the president. He and his sizable staff oversee the operational tempo, deployments, readiness, exercises, and training of divisions, brigades, fleets, and air wings-resources, language, and culture that are the opposite of the art of diplomacy. Since all military activities have diplomatic impact, it is prudent that both work harmoniously to achieve common purpose. Ambassador and Commander interests intersect at the Military Assistance Advisory Group (also called Military Advisory Group, Military Liaison Office, and Office of Defense Coordination ) level. The commander of the MAAG, which is an important arm of the country team since it provides training and military equipment to the host country, works for both the ambassador and the COCOM.

In the spectrum from peace to crisis to war, the ambassador will tend to dominate decisions at the lower end of the spectrum. As the environment transitions to war, the Commander assumes greater authority and influence. Haiti 1994 is an excellent example of how the handoff from ambassador to COCOM takes place. The American ambassador in Port-au-Prince, William Swing, was in charge of U.S. policy until General Hugh Shelton and the U.S. military forces arrived in September of that year. Once the military phase was completed, policy control reverted to Swing, thus restoring the normal pattern of military subordination to civilian authority. In the gray area of military operations other than war or in what is called an "immature" military theater, such as Latin America, disputes can arise between ambassadors and COCOMs about jurisdiction over U.S. military personnel in the country. The most illustrative was in 1994 between the Commander in Chief of the U.S. Southern Command, General Barry McCaffrey, and the U.S. Ambassadors to Bolivia, Charles R. Bowers, and Colombia, Morris D. Busby. The dispute had to be adjudicated in Washington by the Secretaries of State and Defense.<sup>28</sup> Elevating a dispute to such a level is something the system would rather not do. The fact is that ambassador and COCOM must work closely together to coordinate U.S. military activities. Another distinction is that COCOMs have a regional perspective of strategies, and programs, while ambassadors are focused on advancing the interests of the United States in one country.

An important step forward in synchronizing interagency activities at the theater level has been the creation of the Joint Interagency Coordination Groups. These are literally interagency cells located at the combatant commands and staffed by personnel from across the government. Though in their infancy and not endowed with policymaking authority, these groups offer the foundation for greater strategic and operational integration in the future.

## **THE CONTINUING CHALLENGES IN THE INTERAGENCY PROCESS**

The tensions generated by cultural differences and jealousy over turf will always be part of the interagency process. The diplomatic and the military cultures dominate the national security system, though there are other cultures and even subcultures, within the dominant cultures. The former uses words to solve problems while the latter uses precise doses of force. Cultural differences are large but communicating across them is possible.<sup>29</sup> Figure 6 compares the cultures of military Officers and diplomats.

<b>Military Officers</b>	<b>Foreign Service Officers</b>
Mission: prepare for and fight war	Mission: conduct diplomacy
Training a major activity, important for units and individuals	Training not a significant activity. Not important either for units or individuals
Training a major activity, important for units and individuals	Little formal training, learning by experience in doing desired activities (negotiating, reporting)
Uncomfortable with ambiguity	Can deal with ambiguity
Plans and planning—both general and detailed—are important core activities	Plan in general terms to achieve objectives but value flexibility and innovation
Doctrine: important	Doctrine: not important
Focused on military element of foreign policy	Focused on all aspects of foreign policy
Focused on discrete events and activities with plans, objectives, courses of action, endstates	Focused on ongoing processes without expectation of an “endstate”
Infrequent real-world contact with opponents or partners	Day-to-day real-world contact with partners and opponents in active
in active war fighting	diplomacy
Officer corps commands significant numbers of NCOs and enlisted personnel	Officers supervise only other officers in core (political and economic) activities
NCOs and enlisted personnel perform many core functions (war fighting)	Only officers engage in core activity (diplomacy)
Leadership: career professional military officers (with the military services and in operations)	Leadership: a mix of politicians, academics, policy wonks, and career Foreign Service professionals at headquarters and in field
All aspects of peace operations, including civilian/diplomatic, becoming more important	All aspects of peace operations, including military, becoming more important
Writing and written word less important, physical actions more important	Writing and written word very important. Used extensively in conduct of diplomacy
Teamwork and management skills are rewarded, interpersonal skills important internally	Individual achievement and innovative ideas rewarded, inter-personal skills important externally
Understand “humma-humma” and “deconflict”	Understand “demarche” and “non-paper”
Accustomed to large resources, manpower, equipment, and money	Focus meager resources on essential needs

**Figure 6. Comparing Military and Foreign Service Officers.**<sup>30</sup>

The principal problem of interagency *decisionmaking is lack of decisive authority; there is no one in charge*. As long as personalities are involved who work well together and have leadership support in the NSC, interagency efforts will prosper, but such congruence is not predictable. The world situation does not wait for the proper alignment of the planets in Washington. There is too much diffusion of policy control. It is time to implement an NSC-centric national security system, with appropriate adjustments that align budget authority with policy responsibility. It would consolidate in the NSC the functions now performed by the Policy Planning Staff at State and the strate-

gic planning done at Defense. Such reorganization recognizes the reality that the White House is where an integrated approach to national security planning must take place.

*Asymmetries in resources* are another impediment. The Department of State, which has the responsibility to conduct foreign affairs, is a veritable pauper. Its diplomats may have the best words in town, in terms of speaking and writing skills, and superb knowledge of foreign countries and foreign affairs, but it is a very small organization that has been getting smaller budget allocations from Congress. The corps of foreign service Officers equates in number to about an Army brigade. The Department of State's technology is primitive and Officer professional development of the kind that the military does is not promoted. Moreover, unlike the military, State lacks a strong domestic constituency of support. The military has more money to conduct diplomacy than does State. Secretary of State Colin Powell began to improve the Department's budget. But the inability to hire personnel, because of previous budgetary constraints, effected hundreds of positions in the middle ranks of the diplomatic service. It will take decades of adequate funding to grow the foreign service Officers to fill authorizations at the appropriate grade.

The *resource barons*, those with people, money, technical expertise, and equipment reside in DoD and the military services. Consequently, the military, especially the Army, is constantly being asked to provide resources out of hide for nation-building purposes, for example in Haiti and Panama. It is tempting to reach out to it because it is the only institution with an *expeditionary* capability, and fungible resources and expertise. It can get there quickly, show the flag, bring significant resources to bear, stabilize a situation, and create an environment secure enough for other agencies to operate. On a much smaller scale the Agency for International Development is a baron, because it has money and technical expertise to promote development and institution building. Other baronies exist, such as intelligence, Department of Justice, Commerce, and the Office of National Drug Control Policy.

Finally, the personnel systems of the various agencies of the U.S. Government *do not promote professionalization and rewards in interagency jobs*. What is needed is a systematic effort to develop civilian and military cadres that are experts in interagency policy coordination, integration, and operations. Some of this takes place. Military Officers are assigned to various departments. For example, until 2002, 35 Officers from all military services worked in the regional and functional bureaus of the Department of State. Senior diplomats (some of ambassadorial rank) are also allocated to military and civilian agencies, such as Foreign Policy Advisors at the regional unified commands, the Special Operations Command, to peacekeeping and humanitarian missions, various key positions in the Pentagon, and the war colleges. These programs must be expanded. Unfortunately, the opposite was occurring in 2003. In order to convert military personnel slots to warfighting positions, DoD recalled most of its Officers from the civilian agencies, to include the State Department, which in turn reduced to 30 the number of diplomats posted to military organizations. An important element for interagency integration and harmony was weakened.

Moreover, there ought to be incentives for national security professionalism, as there are for joint duty in the military. For civilian agencies, something akin to the Goldwater-Nichols Act is needed to encourage interagency service, to include the Department of State. Promotions should be based not only on performance at Foggy Bottom and in embassies abroad, but on mandatory interagency tours as well. Similarly, professional development incentives should apply to civil servants that work in the national security arena.<sup>31</sup>

Admittedly, mandatory interagency tours would require significant changes in personnel systems and career tracking. The Report of the National Defense Panel of 1997, *Transforming Defense: National Security in the Twenty-first Century*, recommended creating "an interagency cadre of professionals, including civilian and military Officers, whose purpose would be to staff key positions

in the national security structures.”<sup>32</sup> This would build on the jointness envisioned by the 1986 Goldwater-Nichols Act. The Report also recommended a national security curriculum for a mix of civilian, military, and foreign students. The Defense Leadership and Management Program of the DoD, a Master’s level initiative in national security studies for civilian personnel, is an important step in this direction. The Department of State, under Colin Powell’s guidance began to invest in educating its personnel in strategic planning. Accordingly, the Department published *The Department of State and Agency for International Development Strategic Plan for Fiscal Years 2004 to 2009*. The document sets forth directions and priorities and supports policy positions enunciated in the President’s *National Security Strategy*. This is potentially an intellectual breakthrough for strategic integration. Also, more State Department personnel were allowed to participate in War College courses, thereby adding to the opportunities for mutual learning and strategic integration in the professional development of civilian and military leaders. In early 2005 there was serious discussion among senior Pentagon officials about creating a national security career path. At State, diplomats were now required to have interagency tours for advancement.

## IMPLICATIONS FOR THE MILITARY PROFESSIONAL

There are critical implications for the military warrior. The nature of future warfare is likely to be more military operations other than war, requiring more mobile, flexible light forces. Future war will also require a more intellectual military Officer, one who understands the imperative of working with the panoply of civilian agencies, nongovernment organizations, the national and international media, and foreign armed forces. It is a commonplace of strategy that American forces will rarely fight alone again; they will do so in coalition. Thus, the strategic Clausewitzian trinity of the people, the armed forces, and the government now encompasses the global community. The implications are clear; the military Officer will have to develop greater diplomatic and negotiating skills, greater understanding of international affairs, capability in foreign languages, and more than a passing acquaintance with economics.

Moreover, the warrior will likely work with civilian counterparts across a spectrum of activities short of war. These include: strategic planning and budgeting, humanitarian assistance, peace operations, counternarcotics, counterterrorism, security assistance, environmental security, human rights, democratization, civil-military relations, arms control, intelligence, war planning and termination strategy, command and control of forces, continuity of government, post-conflict reconstruction, technology transfer, crisis management, overseas basing, alliances, noncombatant evacuations, and homeland defense.

Therefore, the future Officer will also need greater appreciation of the institutional diversity and complexity of government, because of the need to advise a diverse audience of civilians on the utility of military power in complex contingencies that are neither peace nor war as Americans are accustomed to think of them. He or she will have to work in tandem with civilian agencies and non-government organizations unaccustomed to command systems and deliberate planning, and that often do not understand the limits of military power.<sup>33</sup> Lastly, instruction on the interagency system and process should be mandatory for civilians and military alike. Such education must have a sound theoretical foundation in national security decisionmaking, strategic planning, and organizational behavior, expanded by sophisticated case studies of relevant historical experiences. Because the United States will be heavily engaged in the spectrum of activities entitled humanitarian intervention, stabilization and reconstruction, and the transformation of societies, the curriculum of senior service colleges must emphasize the strategic integration of the instruments of national power to a much greater degree than they have in the past.

What attributes should the military Officer bring? Above all, holistic thinking—the ability to think in terms of all the instruments of national power and respect for the functions and cultures of diverse departments and agencies. Communication skills are paramount. The effective inter-agency player writes and speaks well. He or she will be bilingual, able to function in military as well as civilian English. Bureaucratic jargon is the enemy of interagency communication. The military briefing, though an excellent vehicle for quickly transmitting a lot of information in formatted style, is not acceptable. One must be less conscious of rank because ranks will vary among the representative around a table. Someone of lower rank may be in charge of a meeting. A sense of humor, patience, endurance, and tolerance for ambiguity and indecisiveness will help. The ability to “stay in your box” and articulate the perspective of your department will be respected, though the temptation to poach on other domains will be there. The ability to anticipate issues, to consider the second and third order effects from the national level down to the country team and theater levels, will be invaluable. Finally, the interagency requires diplomatic and negotiating skills, the ability to network, and mastery of the nuances of bureaucratic politics and language.<sup>34</sup>

<b>White House</b>	<b>Department of Transportation</b>
National Security Council	Federal Aviation Administration
Office of the Special Trade Representative	
Office of National Drug Control Policy	Department of Energy
National Economic Council	Asst Secy for Defense Programs
<b>Department of State</b>	<b>Department of State</b>
U.S. Foreign Service	Dep Under Sec for Intl Affairs
Agency for International Development	
Overseas Private Investment Corporation	Department of Education
<b>Department of Homeland Security</b>	<b>Department of Health &amp; Human Services</b>
Coast Guard	Social Security Administration
Immigration and Naturalization Service	Public Health Service
Border Patrol	Centers for Disease Control & Prevention
Secret Service	Customs Service
<b>Department of Defense</b>	<b>Department of the Interior</b>
Office of Secretary of Defense	Asst Sec for Territorial & Intl Affairs
Joint Chiefs of Staff	
Army, Navy, Air Force, Marines	Office of National Drug Control Policy

**Figure 7. U.S. Departments and Agencies Involved in Foreign Affairs.**

The most evolved democracy in the world has the most cumbersome national security decision-making process. Inefficiency is the price the Founding Fathers imposed for democratic accountability. But some of the inefficiency is the result of American strategic culture, with its multiplicity



of players, plentiful but diffused resources and the penchant to throw resources at the problem, and the propensity to segment peace and diplomacy from war and military power. Frederick the Great cautioned: "Diplomacy without arms is music without instruments." So did John F. Kennedy: "Diplomacy and defense are not substitutes for one another. Either alone would fail."<sup>35</sup> Major structural changes must be made in the interagency system in order to harness human talent and resources intelligently.

Democracy is defined as a process of mutual learning and adaptation. Accordingly all institutions of government learn, adapt, and make appropriate changes. This is even more imperative for the national security agencies and personnel, where the stakes are high. The distempers in the interagency process evidenced in 2001-04 created new opportunities for learning and for adaptation. Fortunately, in time American democracy will make those adaptations. The question will be at what price and how quickly.

## ENDNOTES - CHAPTER 4

1. The development of this chapter has been enriched by the insights of practitioners and colleagues in the interagency. Special thanks goes to Anthony Williams, David Bennett, Frank Jones, Gary Maybarduk, Dennis Skocz, and Erik Kjonnerod for helping to illuminate the labyrinthine ways of Washington. Joseph Cerami and Robin Dorff, chairmen of the Department of National Security and Strategy of the Army War College, provided the time and the support for research.

2. Chas. W. Freeman, Jr., *Arts of Power: Statecraft and Diplomacy*, Washington, DC: United States Institute of Peace Press, 1007, p. 3.

3. John P. Lovell, *The Challenge of American Foreign Policy: Purpose and Adaptation*, New York: Collier MacMillan, 1985, p. 7. For an excellent analysis of how the generation of Pearl Harbor dealt with differing goals, concerns, and interest in developing the National Security Act of 1947, see Douglas Stuart, "Constructing the Iron Cage: The 1947 National Security Act," Carlisle, PA; Dickinson College, draft, 2005.

4. A 1987 report of the National Academy of Public Administration noted: ". . . the institutional memory of the U.S. Government for important national security affairs was worse than that of any other major world power and had resulted in mistakes and embarrassments in the past which would be bound to recur." *Strengthening U.S. Government Communications: Report of the National Academy of Public Administration*, Washington, DC, 1987, p. 227, cited in Margaret Jane Wyszomirski, "Institutional Memory: Improving the National Security Advisory Process," in James Gaston, ed., *Grand Strategy and the Decisionmaking Process*, Washington, DC: National Defense University, 1991, p. 194.

5. For understanding the philosophy behind the Bush *National Security Strategy*, see Richard Haass, "Sovereignty: Existing Rights, Evolving Responsibilities," remarks made at the School of Foreign Service and the Mortara Center for International Studies at Georgetown University, Washington, DC, January 14, 2003. Haass advances the concept of conditional sovereignty. From another, direction, Stephen D. Krasner, Director of Policy Planning at the Department of State under Secretary of State Condoleezza Rice, argues for alternatives, such as shared sovereignty, to conventional Westphalian sovereignty for weak and failing states. See Krasner, "Sharing Sovereignty: New Institutions for Collapsed and Failing States," *International Security*, Fall 2004, pp. 85-120.

6. Anthony Lake, I. M. Destler, and Leslie Gelb, *Our Own Worst Enemy: The Unmaking of American Foreign Policy*, New York: Simon and Schuster, 1985.

7. The best analysis of how the Bush NSC system works is the brilliant paper by Alan G. Whitaker, Frederick. C. Smith, and Ambassador Elizabeth McKune, "The National Security Council Process: The National Security Council and the Interagency System," Washington, DC: National Defense University, September 2004. See also David J. Rothkopf, "Inside the Committee that Runs the World," *Foreign Policy*, March-April 2005, pp. 30-41; an article based on his book *Running the World: The Inside Story of the National Security Council and the Architects of American Power*, New York: Public Affairs, 2005.

8. The single best analysis of the NSC and the interagency process in the George W. Bush Administration is Alan G. Whitaker, Frederick C. Smith, and Elizabeth McKune, "The National Security Policy Process: The National Security Council and the Inter-Agency System," Washington, DC: National Defense University, September 19, 2002, draft.

9. James Harding, "Weakness in the White House: As Costs and Casualties Mount in Iraq, The Fingerpointing Begins in Washington," *London Financial Times*, September 15, 2003, p. 17.

10. On these matters, see Glenn Kessler and Peter Slevin, "Rice, Rifts and Rivalries: Cabinet Infighting Complicates the NSC Adviser's Role in Foreign Policy," *Washington Post*, National Weekly Edition, October 20-26, 2003, pp. 6-7.

11. On the challenges of establishing DHS, see *Major Management Challenges and Program Risks, Department of Homeland Security*, GAO Performance and Accountability Series (GAO-03-102), Washington, DC: U.S. General Accounting Office, January 2003. See also George W. Bush, *National Strategy for Homeland Security*, Washington, DC, White House, July 2002.

12. Anthony Lake, *Somoza Falling: The Nicaraguan Dilemma, A Portrait of Washington At Work*, Boston, MA: Houghton Mifflin, 1989, p. 32

13. Lake, p. 114.

14. Robert Pastor, *Condemned to Repetition: The United States and Nicaragua*, Princeton, NJ: Princeton University Press, 1987, p. 81.

15. Hedrick Smith, *The Power Game: How Washington Works*, New York: Random House, 1988

16. John P. Lovell, *The Challenge of American Foreign Policy: Purpose and Adaptation*, p. 26.

17. Adapted from John P. Lovell, *The Challenge of American Foreign Policy*, p. 32.

18. A good source on formal presidential policy papers is the Federation of American Scientists Intelligence Resource Program, available from [www.fas.org/irp/offdocs/direct.htm](http://www.fas.org/irp/offdocs/direct.htm).

19. Warren P. Strobel and Jessica Guynn, "Bush Policy Team at War with Itself," *Philadelphia Inquirer*, May 4, 2003, p. A21. See also Sonni Efron, "The War Within the War: Pentagon vs. State Department," *Philadelphia Inquirer*, May 11, 2003, p. A8. A former staffer in the Office of Secretary of Defense's Under Secretariat for Policy commented that the interagency problem was intensified by "functional isolation of the professional corps of civil servants and professional military," "cross-agency cliques," and "groupthink." See Karen Kwiatkowski, "Flawed Decisionmaking: Cliques, Groupthink Dominate Work of Defense Department," *Charlotte Observer*, August 1, 2003, available from *Charlotte.com*.

20. On this point, see Jonathan Landay and Warren P. Strobel, "Plan B for Post-War Iraq Didn't Exist," *Philadelphia Inquirer*, June 13, 2003, p. A1.

21. On the problems of post-conflict planning, see Thomas L. Friedman, "Bad Planning," *New York Times*, June 25, 2003, available from [www.cnn.com/2003/US/06/25/nyt.friedman/index.html](http://www.cnn.com/2003/US/06/25/nyt.friedman/index.html). Seldom have the post-conflict planning requirements and the prospect of a military occupation been so clearly debated and identified before going to war. On the imperative for preplanning, see the excellent piece by John J. Hamre and Gordon R. Sullivan, "Toward Postconflict Reconstruction," *The Washington Quarterly*, Autumn 2002, pp. 85-96. See also Karen Guttieri, "Post-Conflict Iraq: Prospects and Problems," *Strategic Insights*, Center for Contemporary Conflict, National Security Affairs Department, Naval Postgraduate School, Monterey, CA, February 20, 2003. For an excellent analysis, see George Packer, "War After War: What Washington Doesn't See in Iraq," *New Yorker*, November 24, 2003, pp. 58-85. The most sophisticated, historically grounded, and strategically sound is Conrad C. Crane and W. Andrew Terrill, *Reconstructing Iraq: Insights, Challenges, and Missions for Military Forces in a Post-Conflict Scenario*, Carlisle, PA: Strategic Studies Institute, U.S. Army War College, February 2003.

22. For more information, see Hans Binnendijk and Stuart Johnson, *Transforming for Stabilization and Reconstruction Operations*, Washington, DC: Center for Technology and National Security Policy, National Defense University, November 12, 2003.
23. Christopher Lee, "New State Dept. Office Aimed at Postwar Aid," *The Washington Post*, March 25, 2005, p. A17.
24. Institute of National Strategic Studies, "Improving the Utility of Presidential Decision Directive 56: A Plan of Action for the Joint Chiefs of Staff," Washington, DC: National Defense University, March 1999, p. 16.
25. For an excellent analysis of lessons learned and prudent policy recommendations from recent U.S. military interventions, see John T. Fishel, *Civil-Military Operations in the New World*, New York: Praeger, 1997; Fishel, *The Fog of Peace: Planning and Executing the Restoration of Panama*, Carlisle, PA: Strategic Studies Institute, U.S. Army War College, April 15, 1992. For a penetrating analysis of the operational and tactical dimensions of the interagency process, particularly as they apply to the U.S. Army at the operational and tactical levels, see Jennifer Taw Morrison, *Interagency Coordination in Military Operations Other than War: Implications for the U.S. Army*, Santa Monica, CA: RAND Arroyo Center, 1997.
26. George W. Bush, "National Security Presidential Directive/NSPD-44," White House, December 7, 2005, p. 2, available from [www.fas.org/irp/offdocs/nspd/nspd-44](http://www.fas.org/irp/offdocs/nspd/nspd-44).
27. Excellent advice on how the ambassador and the regional unified commander should work together is found in Ted Russell. "The Role of the Ambassador, the Country Team, and Their Relations with Regional Commanders," in Carlisle, PA: U.S. Army War College, *Course Directive: Regional Appraisals*, AY 97, 1997, pp. C1-C9. A Memorandum of Understanding between the Department of State and the Department of Defense covers the function of the Political Advisor. The MOU "recognizes the valuable role POLADs render to the Department of Defense and the Department of State in assessing the political implications of military planning and strategy and in serving as the principal source of counsel on international issues to their respective Commanders-in-Chief . . . the deep level of commitment and cooperation acknowledged by the Secretary of State and the Secretary of Defense in executing foreign and security policy established by the President." For how an embassy functions, see Shawn Dorman, ed., *Inside a U.S. Embassy: How the Foreign Service Works for America*, Washington, DC: American Foreign Service Association, 2003.
28. For specifics, see the telegrams June 6, 1994, from USCINCSOUTH; June 8, 1994, from Embassy La Paz; and June 9, 1994, from Embassy Bogota.
29. The classic study of the role of culture and turf in government is James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It*, New York: Harper Collins, 1989. Pertinent are the excellent studies George T. Raach and Ilana Kass, "National Power and the Interagency Process," *Joint Forces Quarterly*, Summer 1995, pp. 8-13; Douglas A. Hartwick, "The Culture at State, the Services, and Military Operations: Bridging the Communication Gap," Washington, DC: National War College, April 12, 1984; Rosemary Hansen and Rick Rife, *Defense is from Mars and State is from Venus: Improving Communications and Promoting National Security*, Palo Alto, CA: Stanford University, May 1998. Other impediments to sound decisionmaking are groupthink, information overload, insufficient information, lack of time, faulty analogy, insufficient analysis of options, and the personal predispositions of the decisionmaker. The interaction of these factors are explored in the writings of Irving L. Janis, Alexander George, and Graham Allison.
30. Adapted from Robert Johnson, Foreign Service Officer, "Teaching Notes," Department of National Security and Strategy, U.S. Army War College.
31. These are variants of proposals made to the Joint Chiefs of Staff by the study groups of the Center for Strategic and International Studies (CSIS), directed by John Hamre, Spring 2005. See Briefing, "Recommendations Under Consideration: Beyond Goldwater-Nichols: Phase 2 Report," April 25, 2005, CSIS, Washington, DC, April 5, 2005.
32. National Defense Panel, *Transforming Defense: National Security in the 21st Century*, Arlington, VA, 1997, p. 66.
33. There are indications that even the Department of State, the first among equals of the executive departments, is beginning to understand the value of strategic planning. See Secretary's Office of Resources, Plans, and Policy, U.S. Department of State, *U.S. Department of State Strategic Plan*, Washington, DC, September 1997. See also *FY 2004-2009 Department of State and USAID Strategic Plan*, August 2003. Moreover, the U.S. Army and State established an ongoing

tutorial to teach strategic planning to diplomats. At the same time, more State students will attend the U.S. Army War College course through distance learning. Excellent advice on how military culture should interact with the culture of nongovernment organizations during humanitarian relief operations, peacekeeping, and stability operations is Judith Stiehm, "The Challenge of Civil-Military Cooperation in Peacekeeping," *Airman-Scholar*, Vol. IV, No. 1, Winter 1998, pp. 26-35.

34. Military Officers contemplating assignment to the Pentagon or civilians wishing to understand how to work with counterparts there should read the advice in Perry Smith, *Assignment Pentagon: The Insider's Guide to the Potomac Puzzle Palace*, 2nd Edition, Revised, Washington, DC: Brassey's, 1992.

35. Both quotations are in Chas. W. Freeman, Jr., *The Diplomat's Dictionary*, Washington, DC: National Defense University Press, 1994, pp. 40, 100.





## CHAPTER 5

### PDD-56: A GLASS HALF-FULL

John F. Troxell<sup>1</sup>

A lot of Defense Department folks wonder where the rest of the government is in this war. There is clearly a need for greater interagency collaboration.

Secretary of Defense Robert Gates<sup>2</sup>

In October 1993 the American people awoke to the morning broadcast of horrific scenes of the bodies of American service members being dragged through the streets of the far off city of Mogadishu. A failed effort on the part of an elite unit of Army Rangers to capture Somali warlord Mohammed Farah Aidid resulted in urban carnage, leaving 18 American dead, 74 wounded, and perhaps as many as a thousand Somalis killed. The story has since been immortalized in the book and subsequent movie, *Blackhawk Down*. David Halberstam referred to this crisis as a “major league CNN-era disaster.”<sup>3</sup> This debacle led President Clinton to announce to the nation that the effort in Somalia, after an initial reinforcement, would be completely withdrawn in 5 months. Two months after the disaster, Secretary of Defense Les Aspin left the administration. It has since been learned that the Somalia debacle also fed the appetite of Osama bin Laden to drive the United States from the Middle East. One positive outcome of the U.S. experience in Somalia, however, was that it challenged the interagency to reexamine its policymaking procedures.<sup>4</sup> The eventual outcome of this effort was Presidential Decision Directive-56 (PDD-56), “The Clinton Administration’s Policy on Managing Complex Contingency Operations.”

Today, the United States once again finds itself enmeshed in a very difficult and increasingly unpopular effort to remake a nation that is awash in violence and political incompetence. A collective national groan seems to ask how did we get into this mess. Why haven’t we been able to apply our considerable resources in an efficient and effective manner to protect and further our national interests? The response to this growing frustration is similar as well, fix the interagency. There is wide recognition that stabilizing or reconstructing a nation (more about these terms later) requires the application of all of the elements of national power – diplomatic, informational, military and economic. The key to a successful policy outcome is to orchestrate all of these elements in a coordinated plan, execute the myriad tasks effectively and efficiently, and then gracefully exit leaving behind a reasonably secure and functioning country. As a nation we have been unsuccessful in pulling this all together, according to the common refrain, because the interagency is poorly organized and doesn’t know how to plan. The military element of power, on the other hand, has been fairly successful in deflecting attention from itself when it comes time to fix blame. The military complains of mission creep – “it’s not my job,” does an admittedly good job of reassessing the operation and capturing lessons learned, and then writes a new doctrinal manual addressing those lessons and declares itself ready for the next mission.

For strategic planners and thinkers two things should be clear from even a cursory review of the past 15 years. First, the strategic environment that the United States faces places a premium on our ability to succeed in a wide variety of operations that are down the intensity scale from state-onstate conflict. That does not mean that military conflict between nation-states is obsolete,

just that the probability is greatly diminished, and that real challengers to U.S. national interests will seek to avoid tangling with the overwhelming conventional military power of the United States. The second observation is that fixing the interagency along the lines proposed by PDD-56 only addresses one half of the problem. As will be reviewed in detail later, PDD-56 and a host of follow-on adjustments and initiatives has done a good job of focusing on the challenge of better planning. But better planning without the capacity or capability to execute the plan is fruitless. In fact, it might be better to have properly structured and trained capability, even in the absence of a coordinated plan, than to have a well coordinated plan in the absence of capability.

As a nation we have been reluctant to adequately resource the capabilities needed to further our interests in the 21st century security environment. This chapter will argue that the predominant focus on improving the interagency writ large has been somewhat misplaced. The key to success in the future is resourcing the capabilities needed to address the challenges of nation-building, and the shortest route to creating those capabilities is through the military, not the interagency. In many cases, the military is also the best alternative to lead these efforts. The United States has never been good at coordinating and applying all of the elements of national power in a synchronized fashion. General Albert Wedemeyer, author of the World War II Victory Plan, argued that, "Our failure to use political, economic and psychological means in coordination with military operations during the war also prolonged its duration and caused the loss of many more American lives."<sup>5</sup> Up to now we have been able to muddle through and avoid unrecoverable disasters. But we owe it to the fallen heroes of *Blackhawk Down* and to the service members and civilians on the front lines in Afghanistan and Iraq to be better prepared for the next stabilization and reconstruction mission.

## CLARIFYING TERMS

Interagency coordination is important even in intense combat operations as noted above by General Wedemeyer, but the primary concern of interagency operations is further down the spectrum of conflict scale. The terminology used to describe these operations is vast and ever changing. It has ranged from the broad categories of smaller scale contingencies, to military operations other than war, to post-conflict operations, to humanitarian interventions. More definitive definitions have included peace operations, the subject of the Army's doctrinal response to Somalia, and more recently stability operations, which subsumed peace operations as one of its 10 broad types.<sup>6</sup> PDD-56 was directed at complex contingency operations defined as peace operations. The most recent policy pronouncements from the Bush administration include DoD Directive 3000.05, "Military Support for Stability, Security, Transition, and Reconstruction (SSTR) Operations," and National Security Presidential Directive/NSPD-44, "Management of Interagency Efforts Concerning Reconstruction and Stabilization." The DoD Directive defines SSTR as operations that "lead to sustainable peace while advancing U.S. interests." But the document then goes on to almost exclusively discuss stability operations which are designed or established to "maintain order in States and regions." NSPD-44 does not include a definition for reconstruction and stabilization.<sup>7</sup>

Thankfully, others have stepped in to clarify the definitional jumble. Colonel Bryan Watson, in a recent *Carlisle Paper in Security Strategy*, has offered the following definitions. Stabilization is defined as the effort to create a secure and stable environment and to provide basic human needs of the population. It is most closely linked to the immediate conclusion of major military operations and is partially aimed at preventing the conditions that could fuel a continuing insurgency. Reconstruction, on the other hand, represents a shift toward creating self-sustaining political and economic institutions that will ultimately permit competent self-government. Colonel Watson concludes that military capabilities under military control are more suited for stabilization, whereas reconstruction is more suited for civilian agencies, IGOs, and NGOs.<sup>8</sup>

The key point is that the challenging interagency operations that have received so much study and attention are those operations and crisis situations that require the blending together of both military and traditional civilian capabilities and spheres of operations in the gap between conflict and peace. The military can win the wars, and humanitarian, relief and diplomatic entities can operate in the “neutral” or “humanitarian space” to further peaceful development and integration of nation-states into the international community. But how should the government go about winning the peace? How do we successfully transition from stabilization to reconstruction? As Hans Binnendijk and Stuart Johnson have concluded in their study on stabilization and reconstruction operations, “no military solution is possible absent a political and economic solution, and the persistent conditions of insecurity prevent enduring, positive, political and economic development.”<sup>9</sup> To be successful in the 21<sup>st</sup> century security environment, the U.S. Government must develop a framework and resource the needed capabilities to operate in this dangerous middle ground.

## PRELUDE TO PDD-56

According to Michele Flournoy, the principal author of PDD-56, “one of the most powerful lessons learned during the 1993 operation in Somalia was that the absence of rigorous and sustained interagency planning and coordination can hamper the effectiveness, jeopardize success, and court disaster.”<sup>10</sup> Somalia was not the first post-Cold War stabilization and reconstruction operation, and regime change did not begin with the Taliban or Saddam Hussein. In December 1989 the United States forcefully removed the regime of Manuel Noriega from Panama in the largely successful Operation JUST CAUSE. The follow-on stabilization phase, Operation PROMOTE LIBERTY, however, was another matter. Planning was incomplete and haphazard; there were insufficient civil affairs, engineers, and military police for the rebuilding effort; and interagency cooperation was poor because many of the agencies were excluded from the DoD planning effort.<sup>11</sup> Real scrutiny of the problems associated with operations in Panama may have been diverted by the focus on the Persian Gulf only 8 months later, or because of the absence of a Blackhawk Down-type incident. The Clinton administration was not so fortunate, but its political misfortune led to a major institutional improvement in the conduct of interagency operations.<sup>12</sup>

The after-action review (AAR) process associated with Somalia was intense and represented real bureaucratic battles in the interagency community and in DoD. The Army was largely successful in deflecting attention from its performance. The most critical lesson from the United Nations Operation in Somalia (UNOSOM) II peace enforcement mission and thus the real value-added from any corrective action, according to the Army, was the need to improve the interagency planning process. Besides, the Army was preparing to publish a new Field Manual, *Peace Operations*, that would obviously address any of its shortcomings.<sup>13</sup> The Army’s view was largely accurate, and Michelle Flournoy, as the Office of the Secretary of Defense (OSD) lead, recognized it as well. Flournoy was intent on developing an integrated interagency planning process that would both help define the strategy and highlight policy disconnects for decisionmakers.<sup>14</sup> The military was also keen on developing improved coordination procedures with the interagency and proceeded to take the lead in numerous developmental efforts. One of the most important initiatives at this time was the establishment of the U.S. Army Peacekeeping Institute. This small but highly effective body played a key role in the eventual development of the interagency planning process that became imbedded in PDD-56.

The first post-Somalia test case was Haiti. Atlantic Command (USACOM) was responsible for planning Operation UPHOLD DEMOCRACY and, along with DoD, conducted extensive interagency coordination. USACOM’s Haiti Planning Group prepared a detailed “Interagency Checklist for Restoration of Essential Services.”<sup>15</sup> The Haiti Executive Committee (ExCom) was established

and developed the first ever interagency political-military plan (POL-MIL plan), which articulated the mission, and an interagency strategy. The primary players rehearsed the POL-MIL plan prior to the launch of the U.S.-led multinational force.<sup>16</sup> Additional interagency planning efforts included Southern Command, under General Wesley Clark, who was very active in attempting to institutionalize interagency planning conferences; General Anthony Zinni, as the Commanding General, 1st Marine Expeditionary Force from 1994-96, sponsored interagency planning exercises in the Pacific; and General George Joulwan, SACEUR, sponsored the major implementation force (IFOR) rehearsal at Aachen, Germany, complete with the full range of interagency partners.

One of the noted success stories of conducting a detailed interagency planning process complete with a POL-MIL plan was the U.S.-supported United Nations Transitional Administration for Eastern Slavonia (UNTAES). UNTAES was established on January 15, 1996, with a mandate to demilitarize the Eastern Slavonia region, including the city of Vukovar, which had been overrun by Serbian forces several years earlier. Under the leadership of Jacques Klein, a senior American Foreign Service Officer, UNTAES was able to demilitarize the region, monitor the safe return of refugees, and conduct local elections. The territory was peacefully returned to Croatian control in January 1998. The planning process outlined in the soon to be published PDD-56 was instrumental in the success of this operation.<sup>17</sup>

The final post-Somalia but pre-PDD-56 interagency planning effort that had an impact on the publication of PDD-56 was only considered but never executed. In the late spring and early summer of 1996, UN Secretary General Boutros Boutros-Ghali was pushing for the UN to conduct contingency planning in preparation for a peacekeeping mission to Burundi. The Tutsi/Hutu conflict that had produced the genocide in Rwanda in 1994 was reappearing in neighboring Burundi. The Clinton administration, in contrast to its reluctance to get involved in Rwanda, was a strong supporter of this effort in the Security Council. A team of military and interagency leaders and planners was sequestered at the U.S. Army War College with the task of developing a POL-MIL plan for intervention in Burundi. The detailed planning effort revealed the extensive force package required to achieve a relatively uncertain outcome. The military balked, and the decision was made not to intervene.<sup>18</sup> It was the detailed POL-MIL interagency planning process that generated consensus behind the no-go decision.

Concurrent with the last of these military/interagency planning efforts, the Joint Staff, not to be outdone by the Army's publication of FM 100-23 and sensing a lack of guidance on the subject, published *Joint Publication (JP) 3-08, Interagency Coordination During Joint Operations*, in 1996. The document discussed interagency processes and players, outlined the principles for organizing interagency efforts, and the roles and responsibilities for JTFs. Although the publication was a welcome addition to the literature, it did not "adequately explain methods for interagency planning, coordination, and execution. Thus DoD and other agencies reiterated the need for policy guidance such as that found in PDD-56."<sup>19</sup>

## **PDD-56**

Arguably, the military was after three things in its efforts to transform the interagency process. Fundamentally, it wanted to infuse better planning in interagency operations, and thus it supported the adoption of the military planning process. Second, it clearly recognized the need for unity of effort. And finally, the military remained concerned about mission creep and wanted to delineate those tasks that should clearly be in the purview of other agencies. With the possible exception of the desire to avoid mission creep, all of these objectives made perfect sense and dovetailed with the needs of the interagency planning community.

PDD-56 was signed and published by the Clinton administration in May 1997. The stated intent of the directive was to define a specific planning process for managing complex contingency



operations and identify implementation mechanisms to be incorporated into the interagency process with the ultimate goal of achieving unity of effort among U.S. Government agencies and international organizations. The planning process and implementation mechanisms selected closely mirrored major military procedures and thus supports a claim that PDD-56 attempted to impose a military version of the planning process on the interagency. This is perfectly understandable given the fact that planning is a core competency of the military, and that few if any other government agencies have any specific operational planning experience. Consequently, the structure of the plan and the supporting activities enumerated in PDD-56 adopted the best practices of the military.

Unity of effort was to be achieved by the appointment of an Executive Committee (ExCom) appointed by the Deputies Committee. The ExCom was responsible for the day-to-day management of U.S. participation in a complex contingency. The ExCom was to use an integrated interagency plan to identify critical issues, establish priorities, evaluate agency concepts of operations, and conduct after-action reviews.<sup>20</sup>

The PDD required that a political-military implementation plan be developed. Commonly referred to as the POL-MIL plan, it was to be developed using the generic political-military scheme as a template. This template was modeled after the five paragraph military operations order and covers at a minimum: situation, assessment, national interests, mission statement, objectives, concept of operations and organization, various tasks, and participating agencies mission area plans.<sup>21</sup> Unity of effort is a desired outcome of the pol-mil planning process. This planning process clearly supported two of the military's most important principles of war. The first is objective: direct every operation towards a clearly defined, decisive, and attainable objective. The second is unity of command: for every objective, insure unity of effort under one responsible commander.<sup>22</sup>

The next two elements of PDD-56 focused on two critical practices from the reinvigorated Army training regime at the National Training Centers and the Battle Command Training Program: rehearsals and after-action reviews (AAR). PDD-56 directed the Deputies Committee to rehearse the pol-mil plan. ExCom members presented the elements for which they are responsible to include all applicable supporting agency plans. After the conclusion of the operation the ExCom is also charged with conducting the AAR. This comprehensive assessment of interagency performance would include a review of interagency planning and coordination and problems in interagency execution. Appropriate lessons learned would be captured and disseminated throughout the interagency community to ensure future operations did not repeat the same mistakes.<sup>23</sup>

The final provision directed the NSC to work with various educational institutions to develop an annual training program aimed at mid-level managers (Deputy Assistant Secretary level) to train them in the development and implementation of pol-mil plans. The intent was to create a cadre of trained professionals familiar with PDD-56's integrated planning process, and thus able to improve the government's ability to manage future operations.<sup>24</sup>

As noted above, the military played a major role in the development of various aspects of the planning process outlined in PDD-56. Combining the fact that planning is a core competency of the military with the military's focus on operational preparedness, made it only natural that best practices from the military would migrate into the interagency planning and implementation process. The military also formalized the inclusion of the POL-MIL plan in its plans and orders process. According to Joint Pub 3-08, "Interagency, Intergovernmental Organization, and Nongovernmental Organization Coordination During Joint Operations Vol. I," dated March 17, 2006, "the commander will be guided by the interagency provisions of the POL-MIL plan, when provided, and will disseminate that guidance to the joint force in Annex V, the Interagency Coordination Annex of the combatant commander's OPLAN."<sup>25</sup> Thus the Pentagon formally recognized the importance of including civilian agency requirements in the deliberate planning process.



## INTERAGENCY PLANNING POST-PDD 56

Flournoy, in a recent evaluation of PDD-56, acknowledged that the directive had never been fully implemented although in those cases in which it was applied it generated useful planning processes and tools. She went on to say that, "the process produces more than just a set of documents: it allows key players to build working relationships, hammer out differences, identify potential inconsistencies and gaps, synchronize their actions, and better understand their roles."<sup>26</sup> The innovative aspects of PDD-56 made substantial progress in building institutional planning capacity, but pockets of resistance to interagency planning remain, reflecting both an anti-planning bias on the part of some agencies and an underestimation of the effort needed to conduct a full-fledged planning effort.<sup>27</sup> The lack of a "planning culture" outside the Department of Defense (DoD) represents a significant challenge to institutionalizing a standard planning paradigm. According to the *Beyond Goldwater-Nichols* report from the Center for Strategic and International Studies (CSIS), "Whereas military Officers are taught to see planning as critical to success in operations and trained in its finer points, this notion is largely foreign to other agencies like the Departments of State and Treasury."<sup>28</sup> These civilian agencies also tend not to have dedicated planning staffs or expertise.

The Bush administration had originally decided to develop National Security Policy Directive (NSPD)-XX to replace PDD-56 and initial reports indicated that it would propose some useful enhancements to the interagency planning process. NSPD-XX was never issued, and, according to Flournoy, in the case of Afghanistan there was no person or entity in charge of interagency planning and coordination.<sup>29</sup> Douglas Feith, the Under Secretary of Defense for Policy, expressed the view that the Afghanistan reconstruction effort had been mishandled by the State Department, resulting in a dysfunctional division of authority between State and the Pentagon.<sup>30</sup>

The Bush administration's successor to PDD-56 was finally issued on December 7, 2005, as National Security Presidential Directive (NSPD)-44, "Management of Interagency Efforts Concerning Reconstruction and Stabilization." The purpose of this directive is to "promote the security of the United States through improved coordination, planning, and implementation for reconstruction and stabilization" operations.<sup>31</sup> It establishes a Policy Coordination Committee (PCC) for reconstruction and stabilization to oversee and help integrate all DoD and civilian contingency planning. It specifies that the State Office of the Coordinator for Reconstruction and Stabilization (S/CRS) should take the lead in integrating the efforts and capabilities of the interagency for reconstruction and stabilization purposes. S/CRS is also tasked with developing strategies and identifying states that may become unstable, a proactive and preventative approach not found in PDD-56. Finally, S/CRS is tasked with developing a civilian response capacity for these types of operations. Several of the "military" aspects of PDD-56 are missing: no specifics about a POL-MIL plan or associated template, no mention of a rehearsal, and no guidance for a training program. The AAR is also absent, but NSPD-44 does direct the identification and subsequent incorporation of lessons learned. PDD-56 had a strong military flavor; NSPD-44, in contrast, has a distinctly Foggy-Bottom taste.

As lessons from Iraq begin to accumulate, there is a great deal of focus on interagency planning. Contrary to popular belief, however, there was considerable interagency planning and post-conflict planning associated with Operation IRAQI FREEDOM. Numerous military and other interagency efforts were very active. The problem was not the lack of planning, but more specifically problems with integration, generally poor assumptions about conditions in Iraq, and eventually uncooperative or unfocused leaders.<sup>32</sup> As Ambassador Paul Bremer claimed, "We planned for the wrong contingency."<sup>33</sup> The planning process, although not non-existent, was certainly flawed. One of the Iraq Study Group recommendations included the need to adopt the Goldwater-Nichols model to improve the interagency planning process.<sup>34</sup> The *Beyond Goldwater-Nichols Phase 1* report is a good

place to start to review some of the many planning initiatives being proposed. Chapter 8 of this report, “Improving Interagency and Coalition Operations,” includes nine recommendations, seven of which specifically address planning.<sup>35</sup> For the most part, these proposals are not dramatically different from the framework established in PDD-56. William Nash and Ciara Knudsen, in their work for the Princeton Project for National Security, have done an excellent job in summarizing the challenge and need to harmonize the military and civilian approaches to planning:

...the word “plan” for civilians and military means two different things. The military planning process starts with an objective, is handed over to the many layers of the military planning machine adding in resources, strategy, intelligence, training, and gaming. Given the objective, the military will come up with a plan to achieve it. The civilian planning process up until now has been much more ad hoc and more conceptual in nature. The planning process tends to concentrate more on developing the objective – what it should be – and less on the exact details of how to get there. As a result, post-Iraq reform proposals attempt to meld the two approaches – informing the military planning process with the subtleties of reconstruction challenges, and operationalizing civilian planning.<sup>36</sup>

Before leaving the issue of interagency planning, there is one area that seems to warrant further consideration. PDD-56 and its immediate successor, NSPD-44, have focused on foreign interventions and reconstruction and stabilization operations abroad. In fact, PDD-56 specifically stated that it did not apply to any domestic situations. The aftermath of 9/11 and the establishment of the Department of Homeland Security (DHS) have opened up an entirely new arena in which coordinated interagency operations are critical. JP 3-08, in fact, splits its coverage between crisis response to domestic operations versus crisis response to foreign operations. The potential exists to adopt, or as a minimum consider, a new planning model, the National Response Plan (NRP) and its associated Emergency Support Function (ESF) annexes. The NRP, last updated May 25, 2006, forms the basis of how the federal government coordinates with state, local, and tribal governments and the private sector during domestic incidents. The ESF annexes are the primary means through which the federal government provides assistance to state, local, and tribal governments or to federal departments and agencies conducting missions of primary federal responsibility. They represent an effective mechanism to group capabilities and resources into the functions that are most likely needed during actual or potential incidents where coordinated federal response is required. The ESF mechanism provides a modular structure to identify the precise components that can best address the requirements of a particular incident.<sup>37</sup> The new strategy development framework being developed by S/CRS that includes the delineation of major mission elements has some similar features to the ESF approach.<sup>38</sup>

### **Failure to Resource the Plan.**

“Peacekeeping is not a job for Soldiers, but only Soldiers can do it.”

– Former UN Secretary General Dag Hammarskjöld

“There’s nothing wrong with nation-building, but not when it is done by the American military.”

– Former Secretary of State Condoleezza Rice

If there is one thing that the U.S. Army War College has been able to inculcate in its students for at least the past generation, it is the strategic framework of ends, ways, and means. The inter-

agency planning effort that began with PDD-56 and continues to evolve and strengthen, is focused on the development of the ends – the strategic objectives and the ways – how to accomplish those ends. But without the means – capabilities and capacities to execute the plan, the planning effort is superfluous. The major cause of poor performance in complex interagency operations is the lack of adequate means. Security analyst James Carafano, from the Heritage Foundation, argues that “the real shortfall in the interagency process is the lack of adequate capacity to conduct operations outside Washington.”<sup>39</sup>

There are only two sources for the capabilities and expertise needed to bring to bear all of the elements of power to help a failed state: civilian or military. Actually there is a third; we can depend on our coalition partners. In fact, this was the anticipated approach in Iraq. Operation PLAN ECLIPSE II, the stability plan developed for Iraq counted on existing Iraqi organizations and security forces. The Pentagon also believed that other nations would contribute to the stabilization and reconstruction process, to include the presence of three multinational divisions focused on bridging the gap between conventional military operations and policing functions.<sup>40</sup> The coalition angle remains very important and the U.S. Government goes to great lengths to enlist broad and effective support. The *Quadrennial Defense Review* (QDR) explicitly recognizes the need to build partner capacity. However, as Iraq demonstrates, coalition partners may not always be there nor be present in sufficient strength, so it behooves the nation to be prepared to shoulder the burden, particularly in cases where important or vital U.S. interests are at stake.

Most civilian agencies in the U.S. Government have no rapidly deployable experts and capabilities. Civilian agencies lack an operational culture and consequently, even if tasked to perform a critical mission, they do not have the personnel who are trained and ready for these missions. They also lack the authorities and resources to rapidly deploy them and to quickly establish programs in the field.<sup>41</sup> Findings from a Post Conflict Strategic Requirements Workshop conducted at the U.S. Army War College, concluded that the lack of quick response capability in the civilian agencies would ensure that the military would bear the brunt of all essential tasks in a stabilization and reconstruction operation.<sup>42</sup> The lack of civilian partners creates mission creep, as military personnel conduct tasks for which they are ill-suited or ill-prepared. It is precisely this concern with mission creep that made the military such eager partners in the PDD-56 effort. According to Mark Walsh and Michael Harwood, “Incomplete or failed integration of non-DoD agencies into the development of strategy and plans for responding to complex contingencies [could] also result in demands for the military to perform tasks outside its range of skills and competencies. Deficiencies in the interagency process could extend the military’s involvement in an intervention beyond the need for unique military personnel and assets to cope with the complex emergency.”<sup>43</sup> The military has always been a self-interested partner in this process.

The DoD has the capability and certainly the capacity to rapidly deploy that capability virtually anywhere on the globe almost overnight; however, it lacks the will. Colin Powell, while still Chairman of the Joint Chiefs of Staff, summed it up well:

Let me begin by giving a tutorial about what an armed force is all about. Notwithstanding all of the changes that have taken place in the world, notwithstanding the new emphasis on peacekeeping, peace enforcement, peace engagement, preventive diplomacy, we have a value system and a culture system within the armed forces of the United States. We have the mission: to fight and win the nation’s wars. Because we are able to fight and win the nation’s wars, because we are warriors, we are also uniquely able to do some of these other new missions that are coming along – peacekeeping, humanitarian relief, disaster relief – you name it, we can do it... But we never want to do it in such a way that we lose sight of the focus of why you have armed forces – to fight and win the nation’s wars.<sup>44</sup>

Tracking with this cultural bias against lesser contingencies, the Army has planned poorly for stabilization operations and is not properly resourced or structured to handle these increasingly relevant missions. Conrad Crane, author of the recently released manual on counterinsurgency, concluded in a study from several years ago, that “neither budgets nor forces have been designed to take into account the sober fact that during the last decade any major deployment of military force to resolve a crisis . . . has ended by creating new long-term force requirements to keep the situation stabilized. . . .”<sup>45</sup> A more recent study draws the same general conclusion that the Army mortgaged its ability to conduct stability operations and deliver the required enduring results. Even more disturbing is the claim that the Army’s modular force transformation continues to discount the importance of stabilization operations, and fails to provide the modular and scalable force pool of stabilization capabilities that are required.<sup>46</sup>

DoD seems a little schizophrenic on the issue. On the one hand, the Department has recently issued DoD Directive 3000.05, “Military Support for Stability, Security, Transition, and Reconstruction (SSTR) Operations,” which explicitly defines stability operations as a core U.S. military mission to be given priority comparable to combat operations.<sup>47</sup> At the same time, in the QDR it presents a strong case that resources should be placed against increasing interagency and coalition partner capacities. One example is the effort to create NATO stabilization and reconstruction capability and a European constabulary force.<sup>48</sup> There is certainly nothing wrong with encouraging partners to do more; burden sharing has long been an element of our alliance politics. But this is from a secretary who some have claimed supported a strategy of nation-building “lite,” involving a rapid transition to local control.<sup>49</sup> If the U.S. military is not willing to invest in stabilization and reconstruction capabilities, why should we expect our allies to pick up the slack?

Efforts to create expeditionary civilian capability have proliferated recently. One of the first was the call for a postwar Reserve Corps in legislation sponsored by Senator Richard Lugar. The intent is to deploy civilian experts in civil affairs, law enforcement, engineering, economic development, and government operations as quickly as possible after the fighting ends and allow U.S. military forces to be withdrawn sooner.<sup>50</sup> Another related proposal is the Active Response Corps, which is a State Department effort to increase the surge capacity in the department to support stabilization and reconstruction missions. The initial goal is to expand this capability to 30 personnel by the end of 2007.<sup>51</sup> These efforts should not be belittled. Capacity from any source is to be welcomed, but efforts that provide such small increments of capability may generate more difficulty deploying, integrating, and sustaining them than they are worth. The Defense Science Board seems to be on track with its conclusion that “the rest of the Executive Branch has made very little progress toward the development of operational capabilities applicable to stability operations; and the Congress has not provided Departments other than Defense with appropriate authorities and resources in order to develop these capabilities.”<sup>52</sup>

The capability to conduct stabilization and reconstruction operations predominantly resides in the military. According to noted military historian Max Boot,

The creation of greater civilian nation-building capacity would not let the armed forces off the hook. No matter how much civilian management improves, the bulk of the manpower for any nation-building assignment would still have to come from the pentagon. The armed forces need to do a much better job of preparing for such work. . . .<sup>53</sup>

The military has civil affairs, engineers, military police, medical, and the full gamut of logistical expertise. This expertise is organized and prepared to rapidly deploy and is equipped to operate in the dangerous conditions between peace and war that often characterize stabilization and reconstruction operations. Eventually the operation can transition to civilian capability, but only after a



degree of security has been established, largely as a result of the early and effective deployment of military forces organized for the stabilization and reconstruction mission. DoD Directive 3000.05 explicitly places a priority on stability operations and capabilities so the military's long-standing cultural aversion to the use of U.S. military power for nation-building should no longer be a factor. The QDR recognizes the need to rebalance the mix of joint capabilities and forces. This rebalancing effort should be in the direction of creating robust stabilization and reconstruction forces along the lines originally proposed by the NDU study on *Transforming for Stabilization and Reconstruction Operations*. The center piece of this study called for the organization of two stability and reconstruction (S&R) division equivalents that would plan, develop doctrine, train, and exercise for S&R missions.<sup>54</sup> The details of the organization are open for debate but the need for a dedicated capability within the military also corresponds with the strategic argument put forward by Thomas Barnett in the *Pentagon's New Map*. Barnett presents a convincing case that the United States needs to transform toward a bifurcated military: one that specializes in high-tech, big-violence war, and one that specializes in relatively low-tech security generation and routine crisis response.<sup>55</sup>

## CONCLUSION

Trends in the global security environment suggest that stabilization and reconstruction operations are likely to be a major component of U.S. strategy in the coming decades. Success in these operations requires what the QDR refers to as "unified statecraft: the ability of the U.S. Government to bring to bear all of the elements of national power at home and to work in close cooperation with allies and partners abroad."<sup>56</sup> Unified statecraft obviously implies interagency collaboration and thus the planning framework originally presented by PDD-56 and, since modified, will continue to be of prime importance. The military aspects of the framework will also likely endure as the military planning culture will continue to drive the planning process toward acceptable and feasible ways to accomplish the interagency derived national objectives.

The most robust planning procedure will not succeed however, unless the necessary means are available to execute the plan. Stabilization and reconstruction operations are so distinct from warfighting operations that they require special organizations and capabilities. The military will always be the predominant supplier of these capabilities, and it will require a culture change on the part of the military to fully accept the dictates of DoDD 3000.05 to view stability operations on the same level as "fighting and winning our nation's wars." DoD and the Army will need to develop programs, organizations, and plans to be more effective in the stabilization and reconstruction environment. PDD-56 represents a glass half-full concerning successful interagency operations. Its realistic planning framework needs to be coupled with adequate and dedicated means to top-off the glass and allow the United States to be successful in this new and complex security environment.

## ENDNOTES - CHAPTER 5

1. This chapter was originally prepared as a paper for a research symposium on "The Interagency Process in Stability and Support Operations," co-sponsored by the George Bush School of Government and Public Service and the U.S. Army Strategic Studies Institute held at Texas A&M University, College Station, Texas, April 5-6, 2007.

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7. Department of Defense Directive Number 3000.05, "Military Support for Stability, Security, Transition, and Reconstruction (SSTR) Operations," November 28, 2005; and National Security Presidential Directive/NSPD-44, "Management of Interagency Efforts Concerning Reconstruction and Stabilization," December 7, 2005.
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9. Hans Binnendijk and Stuart Johnson, eds., *Transforming for Stabilization and Reconstruction Operations*, Washington, DC: Center for Technology and National Security Policy, National Defense University, November 12, 2003.
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12. Halberstam claims that the Somalia fiasco compounded the problems the new Clinton administration had with the military and with the Congress in establishing their national security gravitas. Halberstam, pp. 263-267.
13. FM 100-23.
14. Flournoy, p. 1.
15. Crane, p. 20.
16. Flournoy, p. 2.
17. Captain David Sterling Jones, "UNTAES: A Success Story in the Former Yugoslavia," *Military Intelligence Professional Bulletin*, available from [www.fas.org/irp/agency/army/tradoc/usaic/mipb/1998-1/JONESfjnl.htm](http://www.fas.org/irp/agency/army/tradoc/usaic/mipb/1998-1/JONESfjnl.htm).
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20. Walsh and Harwood, p. 4.
21. Hamblet and Kline, p. 95.
22. FM 100-3, p. B-3.
23. *PDD/NSC 56 Managing Complex Contingency Operations*, May 1997, p. 4, available from [www.fas.org/irp/offdocs/pdd56.htm](http://www.fas.org/irp/offdocs/pdd56.htm).

24. *Ibid.*
25. Joint Pub 3-08, "Interagency, Intergovernmental Organization, and Nongovernmental Organization Coordination During Joint Operations Vol I," March 17, 2006, p. II-16.
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37. *National Response Plan*, Washington, DC: Department of Homeland Security, October 2004, available from [www.dhs.gov/xprepresp/committees/editorial\\_0566.shtm](http://www.dhs.gov/xprepresp/committees/editorial_0566.shtm). Another element of the NRP framework is the Joint Field Office (JFO), complete with Integrated Interagency Standard Operating Procedures. The JFO provides a central location for coordination of federal, State, local, tribal, and nongovernmental and private-sector organizations with primary responsibility for activities associated with threat response and incident support. *Joint Field Office (JFO) Activation and Operations, Interagency Integrated Standard Operating Procedure*, April 2006.
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41. Murdock, p. 62.
42. Crane, pp. 36-35.
43. Walsh and Harwood, p. 5.
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45. Crane, p. 8.
46. Watson, 4 and 12. Colonel Watson presents a detailed analysis of the Modular Force and convincingly argues that the current direction of Army transformation misses the mark.
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48. *Quadrennial Defense Review Report*, Washington, DC: Department of Defense, February 6, 2006, p. 88.
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53. Max Boot, "The Struggle to Transform the Military," *Foreign Affairs*, March/April 2005, Vol. 84, Issue 2, pp. 111-112.
54. Binnendijk and Johnson, pp. 55-70.
55. Thomas P. M. Barnett, *The Pentagon's New Map: War and Peace in the 21st Century*, New York: G. P. Putnam's Sons, 2004, p. 302. Barnett refers to the high-tech force as the Leviathan, and the force designed for security and stability operations the System Administrator force.
56. QDR, p. 83.



## CHAPTER 6

### NATIONAL SECURITY POWERS: ARE THE CHECKS IN BALANCE?

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On the distinction between policy success in domestic and foreign policy, President John F. Kennedy once noted, “The big difference is that between a bill being defeated and the country [being] wiped out.”<sup>1</sup> Much is at stake in the formulation and implementation of national security policy. Not only is the achievement of national interests on the line, the preservation of the framers’ constitutional allocation of power designed to keep liberty and security in balance is also at stake. As the United States proceeds further in its “Long War”<sup>2</sup> focused on fighting terrorism, its political elite is struggling to define the degree of collaboration that must remain between the different branches of government. Does a state of national emergency or war justify the suspension of deliberation and consultation inherent in the American political system’s design? Does Congress retain meaningful powers to resist presidential assertions of power? What role should the courts play in limiting or facilitating presidential overreach and congressional reassertion of its powers? These are key questions of concern to all who participate in and seek to understand the U.S. national security policymaking process. This chapter will review the constitutional foundations of the American political system, explore the adaptation and evolution of this original distribution of power, and assess the impact of the current state of “checks and balances” on prospects for strategic success and the preservation of American democracy.

#### CONSTITUTIONAL FOUNDATIONS

A unique aspect of the American political system is its design feature creating two co-equal principals among the President and Congress. The framers of the Constitution envisioned a national security process that would depend on a system of shared and separate powers across the democratic institutions that they created. Embedded in these constitutional foundations are the formal sources of power of the presidency and Congress, the two key democratic institutions that work together to formulate and carry out national security policy.

Some scholars argue that the Framers’ intent to give the Congress a leading role in government is evident in the fact that Article I of the Constitution grants many explicit powers to the Congress in comparison to the ambiguity and vagueness of the President’s powers outlined in Article II. Indeed, a survey of the historical record reveals that, over time, Presidents have successfully exploited the ambiguity of their formal powers to increase the power of the Presidency vis-à-vis the Congress. A brief review of the constitutional basis of each institution’s powers will be useful to strategists seeking to understand the evolution of these powers in the life of the American republic.

The Framers envisioned the Congress as the main preserve of governmental powers. The powers enumerated in Article I, Section 8 touch on the entire scope of governmental authority. Chief among these is the power to tax and spend. This power of the purse, checked by the President’s veto power, is the defining characteristic of the Framers’ intent to create an energetic central government with a vigorous legislature.<sup>3</sup> The Framers concluded the powers enumerated in Article 8 with the elastic clause, the power “to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.”<sup>4</sup> The shared vision of their republic was that of a “deliberative legislature, composed carefully to reflect both popular will and elite limits on that will.”<sup>5</sup>



The first sentence of Article II clearly designates the President as the Chief Administrator of the government, but the Constitution offers few specifics about how this executive responsibility should be carried out. The President’s role as Chief Executive stems from language in Section 2 that requires the heads of each executive department to report to the President. In the Washington administration, the federal government consisted of only three cabinet departments (State, Treasury, and War) and a few hundred people.<sup>6</sup> Of course, the vast bureaucracy of the United States has grown exponentially since then and is now comprised of 15 executive departments and 136 federal agencies and commissions,<sup>7</sup> backed up by a work force of 1.7 million federal civil service employees.<sup>8</sup> As the federal government has grown, the power of the President has also expanded as the statutory and constitutional responsibility for the policies, programs, and expenditure of funds is asserted across the Executive branch.

<b><i>Formal Powers of the President Relevant to National Security Policymaking As Stated in the Constitution</i></b>	<b><i>Formal Powers of the Congress Relevant to National Security Policymaking As Stated in the Constitution</i></b>
<p>“The executive Power shall be vested in a President of the United States of America.” Article II, Section 1.</p> <p>“...he shall take Care that the Laws be faithfully executed...” Article II, Section 3.</p>	<p>“The Congress shall have Power to ... make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, all other Powers vested by this Constitution...” Article I, Section 8</p>
<p>“Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President...If he approve he shall sign it, but if not he shall return it...If after such reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent...to the other House... and if approved by two thirds of that House, it shall become Law.” Article I, Section 7.</p>	<p>“The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the debts...” Article I, Section 8.</p> <p>“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law..” Article I, Section 9.</p>
<p>“The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.” Article II, Section 2</p>	<p>“The Congress shall have Power to... provide for the common defense and general Welfare of the United States,...declare War, ... to raise and support Armies..., To provide and maintain a Navy; To make rules for the Government and Regulation of the land and naval forces; To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States...” Article 1, Section 8.</p>
<p>“...he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices...” Article II, Section 2.</p>	

**Figure 1: Key National Security Powers as Enumerated in the Constitution.**

Authority to administer the federal bureaucracy, however, does not necessarily translate into its control. All Presidents are faced with the challenge of making the bureaucracy responsive to their leadership. Two key tools to shape the Executive branch’s outputs into a more coherent administration vision are the use of the appointment authority and the White House Staff. Article

II, Section 2 gives the President the power to appoint the department and agency heads within the federal government.

President Dwight D. Eisenhower created the Schedule C personnel classification for appointed policymaking positions throughout the Executive branch. This represented a shift from party-based patronage that rewarded the party faithful with everything from predominantly uncontroversial government jobs in the field to key policy posts in Washington.<sup>9</sup> Schedule C personnel play critical behind-the-scenes roles, such as setting the schedules and agendas of cabinet members, guiding political strategy, and giving legal opinions and policy advice. These appointees are lower in rank than noncareer Senior Executive Service (SES) officials, who fall just below presidential appointees and who must be confirmed by the Senate. At latest count, SES and Schedule C employees numbered 1,935 in the George W. Bush administration. In all, President George W. Bush has 3,000 political appointees serving in his administration. Although political appointees account for less than 2/10ths of 2 percent of the total civil service, their presence results in significant influence throughout the policymaking process.<sup>10</sup> In the modern presidency, Presidents have offered these positions to ideologically compatible people who will work to ensure that their department or agency's policies are in sync with the President's vision.

The Senate's confirmation role is its check on the President's appointment power. While the vast majority of the President's nominations are confirmed, the potential to subject nominees to intense congressional scrutiny and to ultimately reject candidates gives the Senate great influence in the appointment process and, tangentially, in the overall policy process. While the Executive sits at the top of the federal bureaucracy, the design of the various departments and agencies is specified in congressional statutes that detail their structure and duties. Though not explicitly mentioned in the Constitution, Congress' capacity for oversight can be a tremendous check on the Executive when it is employed. Oversight hearings require officials to appear and testify under oath and report what the administration is doing. Oversight programs demanding reports on executive department or agency activity can also have some bite.<sup>11</sup> Congress has the responsibility to keep a careful eye on the administration of its laws to ensure that they are properly interpreted and executed.<sup>12</sup>

Another management tool of relatively recent creation is the Executive Office of the President (EOP), better known as the White House Staff. President Franklin Roosevelt established this "mini-bureaucracy within the bureaucracy" with Congress' consent in 1939 as an attempt to centralize control over the Executive branch and to provide unity and direction to the federal government.<sup>13</sup> The EOP includes both the professional staff working in such places as the National Security Council and the Council of Economic Advisers as well as the President's most trusted advisers in the White House Office.<sup>14</sup> The two tools are closely related as presidential appointments have increasingly become subject to intense vetting in the EOP.

In national security affairs and the conduct of foreign policy that might result in the use of armed force, the President draws on the authority vested in him as Commander in Chief. However, the Framers were in agreement that significant war-related powers must also reside in the Congress. Indeed, as Figure 1 indicates, Article I, Section 8 lays out extensive and explicit war-related powers granted to the Congress. The Declaration of Independence and Bill of Rights both reflect the Framers' distrust of standing armies unaccountable to a legislature. Their design of American democratic institutions separating the power to declare war from the power to command or direct military forces in wartime was meant to ensure that the President was unable to make war alone. It is important to note that rather than giving the President the power to declare war with the "advice and consent of the Senate" as they had done with the treaty power, the Framers deliberately elected to give Congress the sole authority to declare war.<sup>15</sup> The historical record shows that, in practice, Congress has not been the initiator of all significant military actions, and that there has been a struggle for power between the two branches over war powers.

This brief survey of constitutional powers relevant to the conduct of national security policymaking highlights the Framers' intent for policymaking and implementation to be a shared process across the legislative and executive branches. The Framers' design of shared and separate powers resulted in a policymaking framework that requires both cooperation and coordination to achieve anything of real significance in national security affairs.

## **INSTITUTIONAL COMPETENCIES**

The Framers' final product reflected an understanding that the institutions they created had distinct and complementary institutional competencies. While Congress was granted important powers ensuring it a significant role in the conduct of national security policy, its institutional design also meant that it would almost never move quickly on such matters. The requirement for legislation to clear both the House and the Senate after potentially lengthy deliberations in each body subject to the influences of public opinion and the media, favored Congress's role as the branch of government that considered diverse viewpoints, deliberated among them, and remained accountable to the public.

The Executive branch, on the other hand, was designed to move with speed and dispatch. An appropriate amount of secrecy was presumed in order to conduct day to day foreign and security policy, and to act decisively in crisis situations. Congress' design, meanwhile, has afforded it significant oversight checks as well as policy influence in the power of the purse. The Framers' deliberate consideration of institutional competencies when deciding which powers should be shared, which should be held alone, and in which branch power should be placed is evident in the Framers' debate on the distribution of war powers at the constitutional convention. Early deliberations argued that Congress should be given the power to "make war." However, it was eventually agreed that this should be changed to "declare war" to clarify and ensure that the actual conduct of war remained an executive function, maximizing the institutional competencies of the Presidency during wartime.

## **PRESIDENTIAL POWER AND PERSUASION**

Formal powers contribute to and limit the influence wielded by the President and Congress in any specific policymaking scenario. Informal powers of each branch, on the other hand, if astutely employed, can significantly enhance the influence of either institution. The struggle for influence is characterized neither by all-out competition nor by perfect consensus. Congress can be both a potential adversary and key partner in the formulation and conduct of national security policy. Conversely, the President and his team cannot sustain any national security policy course without the support of Congress and the American people. Dominating the political agenda requires that the President build popular support, work effectively with Congress, control the vast federal bureaucracy, and know when and where to invest political capital. Presidential leadership and the administration's articulation of a vision underpinning its foreign and domestic policies are keys to success as well.

The President and Congress are at once so independent and so intertwined that neither can be said to govern save as both do. And even when they come together they face other claimants to a share in governing: the courts, the states, the press, the private interests, all protected by our Constitution, and the foreign governments that help to shape our policy.<sup>16</sup>

Although the President is the single actor in the American political system granted the greatest range of formal powers, the ability to make his will prevail among the competing wills of actors also vested with significant powers depends on skillful presidential leadership. President Harry

Truman once remarked that presidential power really just boils down to the power to persuade.<sup>17</sup> The renowned presidential scholar, Richard Neustadt, in his classic text, *Presidential Power and the Modern Presidents*, equates presidential power with influence and seeks to explain its sources and the contexts where presidential power is more or less dominant.

Scholars differentiate between situations where the President can essentially command and those in which he must rely on his powers of persuasion. If the issue involves presidential authority that is not shared with a competing entity, then the desired result may be achieved without resistance. Examples include the relief of a military commander, the use of an executive order to advance an unpopular policy, and the deployment of military forces to protect American interests.

President Truman's relief of General Douglas MacArthur in 1951 is probably the most well-known dismissal of a military commander in the modern presidency. Truman was careful to consult the Joint Chiefs in the matter, who unanimously agreed that MacArthur should go. Truman implemented the order in a successive delegation of authority from him through the appropriate military authorities. The President and the Chiefs viewed MacArthur's public statements critical of Truman's war policy, in the face of strict orders not to publicly comment on administration policy, as open defiance of the Commander in Chief. This insubordination consequently justified his dismissal as essential to maintaining civilian control of the military. There was no question in the MacArthur affair that the President, in his Commander in Chief role, had the authority to dismiss a commander in the field. However, congressional critics of Truman's Korean Policy and MacArthur's Republican supporters used the opportunity to conduct a full-fledged congressional investigation of the government's foreign and military policies against a domestic backdrop that featured a grand tickertape parade honoring the relieved general, MacArthur's address to a Joint Session of Congress, and an adoring public passionately opposed to the ouster of an American icon.<sup>18</sup> Truman's actions consequently were offset by the exertion of informal powers inherent in the Congress, the press, and the people, which shaped the ultimate political impact of the President's actions.

The issuance of an executive order is another strategic tool presidents can use to assert presidential authority. Eisenhower's use of federal troops to enforce the orders of a Federal Court to desegregate Little Rock schools in 1957 illustrates a President's prerogative to assert his constitutional power over the state militias, a power that is not shared with another constitutional entity. The President's decision to federalize the Arkansas National Guard troops originally called into action by Governor Orval Faubus to halt the integration of Central High School was clear, unambiguous, and highly public. The President's assertion of power featured a "sense of legitimate obligation, legitimately imposed"<sup>19</sup> As in the MacArthur case, to have not exerted the authority would have resulted in its erosion and the prevalence of less legitimate sources of power in the American political system.

Executive orders have mainly been used in three areas: to combat various forms of discrimination against citizens, to increase White House control over the executive branch, and to maintain secrets.<sup>20</sup> When Congress perceives that Executive orders are taken to bypass Congress on controversial issues, they may elicit great political controversy and be a source of conflict between the two branches. This is why the congressional reaction to President George W. Bush's series of Executive Orders authorizing the National Security Agency (NSA) to eavesdrop on the conversations of Americans without warrants as required in the Foreign Intelligence Surveillance Act (FISA) has been uncharacteristically strong. Members of Congress on both sides of the aisle saw the action as a challenge to the Congress' power vis-à-vis the Executive.

Even the prospect of an Executive Order being issued can erupt in major political controversy as was the case with President Bill Clinton's proposal to lift the ban on gays serving in the military. There was no question that the President had the legitimate authority to issue such an order as President Truman had done to integrate the Armed Forces in 1948, but the political backlash was so



strong in 1993 that President Clinton abandoned the idea in order to salvage his domestic agenda before Congress.<sup>21</sup>

While the President's formal powers are significant, presidential leadership more often depends on the President's power to persuade others that what he wants of them is also compatible with the pursuit of their own interests. The successful launching of the Marshall Plan is an example of a President with minimal political capital achieving a critical foreign policy goal through the effective use of the informal powers of his office. Truman faced the uphill battle of convincing a Republican and traditionally isolationist Congress and a Treasury department focused on controlling spending, that massive European aid deserved their support. The domestic political context in 1947 was further characterized by animosity over Truman's veto of the Republican leadership's key legislative initiatives and the assumption that Truman would be easily defeated in the upcoming 1948 presidential election.

He had a key advocate in the figure of General George C. Marshall pushing for the plan that bore his name from State and the support of the Republican Chairman of the Senate Foreign Relations Committee, Arthur Vandenberg. All the resources of the administration were unleashed to back the plan and special care was taken to meet the terms Vandenberg insisted on to maintain his support, which included frequent personal meetings with the President and Marshall and extensive liaisons between Congress and the agencies involved with implementing the plan. Truman even deferred to Vandenberg's choice of a Republican to head the new agency created to administer the program. These "bargains" subsequently resulted in key players lending their prestige and influence to make the proposed European Recovery Program a reality.<sup>22</sup>

The few cases discussed here highlight the linkages between presidential power and effective presidential leadership. The American political system's institutional design, with its unique blend of shared and separate powers, means that key actors often have divided loyalties, a result of serving multiple masters in government. Even players within the executive branch are also responsible to Congress and have allegiance as well to their staffs and departments to represent their bureaucratic interests. Fulfilling the President's policies, in addition, necessarily involves interagency cooperation and overcoming the disparate bureaucratic interests of each. Presidential power is as much a function of personal politics as it is of formal authority or position.<sup>23</sup>

## **CONGRESS: DOES AN EFFECTIVE CHECK REMAIN ON PRESIDENTIAL POWER?**

Most texts examining the extent of the presidential-congressional partnership in national security policymaking cite the constitutional scholar Edwin Corwin's musing that the Constitution "is an invitation to struggle for the privilege of directing American foreign policy."<sup>24</sup> What does the historical record suggest about the President's capacity to dominate national security policy? Is the American political tradition that Congress defers to the Executive in foreign and security policy, weighing in with countervailing powers only by exception? Can Congress regain its lost clout and limit presidential overreaching? An objective assessment of the congressional-executive struggle over the control of national security policies will reveal several findings. First, American history is replete with examples of serious congressional quarrels with the President over the conduct of foreign policy. Second, periods of deference to the executive have been limited, and even then, included at least tacit approval of the basic parameters of U.S. foreign policy. Third, as a result of congressional reforms in the 1970s, Congress gained an increased capacity to challenge presidential policies with the creation of the Congressional Budget Office, the Congressional Research Service, and the expansion of personal and committee staffs. These tools boosted the Congress' analytical ability and contributed to more enhanced oversight of foreign policy and a greater trend toward legislating specific aspects of foreign policy.<sup>25</sup> Finally, the congressional-Executive relationship



on use of force issues seeks a comfortable equilibrium. Periods of congressional acquiescence are often interrupted by perceived Executive overreach that leads to the reassertion of congressional authority. Such was the context for the passage of the War Powers Act in 1973.

However, the net result of this struggle over time has been what one report called “the executive’s slow-motion coup” made possible by Congress, itself, which has been complicit in its own diminution of power instead of guarding its institutional prerogatives.<sup>26</sup> Even though Congress periodically fought back with such measures as the War Powers Act and the enactment of FISA in 1978, enforcing the oversight provisions mandated in these initiatives has been uneven amounting in the overall concession of power to the executive. Some question whether it is even possible in the current political environment of polarized politics favoring partisan loyalties over institutional obligations to correct the imbalance between congressional and executive power.

## **ENTER THE JUDICIARY: WILL IT ACT TO RESTORE THE BALANCE?**

Beginning with George Washington, Presidents have drawn on the institutional competencies of the Executive and formal powers to play an active and assertive role in foreign affairs and national security issues. President Thomas Jefferson essentially conducted the Louisiana Purchase on his own. Abraham Lincoln, citing war powers, governed without Congress and suspended the courts. Franklin Roosevelt oversaw the establishment of a plethora of federal agencies empowered to make policy in their realms in order to lift the country out of the Depression. Justice Robert H. Jackson’s 1952 decision has been cited in the debate over President George W. Bush’s use of presidential power. Justice Jackson rejected President Harry Truman’s claim that, as Commander in Chief, he had the inherent power to seize the nation’s steel mills. This decision has been cited as precedent for future Supreme Court deliberations of the issue. Justice Jackson’s framework for judging the constitutionality of assertions of Executive power is outlined below and was at the center of the confirmation hearings of Justices John Roberts and Samuel Alito.<sup>27</sup> Many believe that many aspects of the question of presidential overreach will come before the Supreme Court, giving the Court a unique opportunity to reshape the balance between the executive and Congress.

### **Three Political Contexts.**

Justice Jackson laid out three possible political contexts characterizing congressional-presidential relations in the national security arena. First, *presidential power is maximized when the President acts pursuant to the express or implied authorization of Congress in a given area.* In such periods of concordance, presidential leadership is virtually unchallenged. Such cooperation may be attributed to agreement over the major policy decisions in play. Presidential power has also been at its height during times of national crisis and war. Lincoln largely got his way in the conduct of the Civil War. In the 20th century, Woodrow Wilson until 1919, and Franklin Roosevelt after 1941, enjoyed an advantage over the control of foreign policy. The postwar era through the mid-1960s was another period of presidential dominance rooted in broad agreement over policy. Harry Truman, Dwight Eisenhower, John Kennedy, and Lyndon Johnson all governed during major wars or at the height of the Cold War, and each had relative control over national security and foreign policy.<sup>28</sup> President George W. Bush contended that the 2001 congressional resolution authorizing the president “to use all necessary and appropriate force” to respond to the September 11, 2001 (9/11) attacks and to prevent such attacks in the future served as implied authorization for detention and surveillance programs incident to the use of force in wartime. However, it is clear that the administration and Congress shared sharp differences of opinion over the matter.

Each period of perceived presidential overreach was followed by a backlash or resurgence of congressional power. Following the Civil War, powerful Congresses dominated the Presidency in

the late 19th century, and Congress handed Wilson the devastating political and personal defeat of rejecting the Treaty of Versailles with a reassertion of congressional power that resulted in the domination of foreign policy until World War II.<sup>29</sup> The War Powers Act of 1973 was the culmination of Congress' break with the President over the conduct of the Vietnam War and its reemergence in national security affairs.

Second, *presidential independence is possible if Congress is indifferent or acquiesces in a particular policy area.* In this political context Congress falls short of playing the role of constructive partner to critique, build support for, and improve on the President's foreign and security policy. Many factors may contribute to such a scenario. There is a tendency in Congress to view foreign and security policy through domestic political lenses or from the perspective of special interests, which may both be barriers to judging foreign policy initiatives on the basis of the national interest. Presidential independence may also be possible simply because Congress is not paying attention to the administration's policies. Domestic issues often dominate the congressional agenda in peacetime. Furthermore, Congress may neglect its responsibilities in foreign affairs and devote too little time to rigorous programmatic oversight.<sup>30</sup> In both the concordant and acquiescent political contexts, the President's leadership is not essential. However, in the third context to be considered, presidential leadership is critical.

*Presidential power in security and foreign policy is at its lowest ebb when the administration's desired action is incompatible with the expressed or implied will of the Congress.* An analysis of congressional-presidential relations in the Vietnam War illustrates a dramatic conversion of Congress' perception of its role in checking presidential war-making powers. Its 1964 passage of the Gulf of Tonkin Resolution essentially ceded to President Johnson the "blank check" he sought to deal with the crisis in Southeast Asia. The near unanimous backing in Congress (there were only two dissenting votes in the Senate) gave the President authority to take all "necessary measures" to repel any armed attack against U.S. forces and "to prevent further aggression." Johnson's interpretation of his Commander in Chief powers, which President Richard Nixon took to even greater heights as his successor, was an open-ended doctrine permitting the President to order Armed Forces into combat whenever the President determined that U.S. security was threatened.<sup>31</sup>

As the administrations' prosecution of the war continued, Congress retreated from its role of presidential cheerleader and gradually began to reassert its authority. Congressmen increasingly traveled to Southeast Asia in the mid-1960s to take stock of the war, the Senate Foreign Relations Committee held televised hearings in 1966, and, by the early 1970s, Congress changed its rules for considering defense appropriations bills so that individual amendments attempting to limit or influence the policy could be considered without rejecting the entire defense appropriations package.<sup>32</sup> Continuation of presidential dominance was challenged in the face of a growing majority's disagreement with the Vietnam policy. Even broader consensus that the Nixon administration had overreached with the assertion that the Executive had unlimited discretionary authority as Commander in Chief to send American troops into action around the world, led to the passage of the War Powers Act.

The act established procedures in three main areas: presidential consultation with Congress, presidential reports to Congress, and congressional termination of military action. Congress' intent was to assert its authority via procedural constraints limiting the ability of the President to commit U.S. forces abroad. The act called for the President to consult with Congress "in every possible instance" before introducing U.S. forces into hostilities or imminent hostilities, declared that the President must report to Congress within 48 hours when such forces are introduced, and mandated that forces be withdrawn within 60 to 90 days unless Congress authorizes that they remain.<sup>33</sup>

The continuous shifting between the political contexts discussed above is indicative in the ambiguous role the War Powers Act has had since its passage. President Nixon rejected it out of

hand with his veto of the measure in 1973. Congress shot back with its overwhelming override,<sup>34</sup> asserting its intent to expand its influence in national security policymaking with measures beyond the blunt instrument of withholding funds.

In practice, Congress has not consistently asserted the authority granted in the act. Presidents, meanwhile, have been careful not to acknowledge the law's constitutionality, while avoiding direct confrontations with Congress over its provisions. In fact, Congress has managed to get the President to honor the War Powers Act only once, in an obscure 1975 Marine action to recapture a tanker off the coast of Cambodia.<sup>35</sup> Depending on lawmakers' overall view of the President's proposed intervention, they may sit on the sidelines or strive to be consulted. Presidents continue to insist on flexibility and may seek Congress's explicit authorization for an impending action, but without admitting that such action is being taken in order to comply with the Act. There is, however, an acceptance, if grudgingly, that the War Powers Act stands as a reminder of the ultimate need to get at least congressional acquiescence, and, ideally, congressional approval for the commitment of troops.<sup>36</sup> Since the introduction of the War Powers Act into congressional-presidential relations all three political contexts, enthusiastic concord, indifferent acquiescence, and expressed disagreement with the President's foreign and security policy continue to occur.

The controversy surrounding President Bush's domestic surveillance program illustrated the political context of expressed disagreement between the administration and Congress. This raised the ire of the usually acquiescent Republican Congress because it sidestepped the oversight provisions outlined in FISA. The Republican Chair of the Senate Judiciary committee, Senator Arlen Specter, conducted hearings to dispute the administration's claim that its broad powers to fight terrorism overrode specific legislation prohibiting warrantless eavesdropping. Attorney General Alberto Gonzales testified before the Judiciary Committee in February 2006 that the administration reasonably interpreted the 2001 authorization of force resolution as the legal justification for its actions. However, when two laws seem to come in conflict, the law which is more specific tends to prevail unless a law meant to supersede an earlier one specifically includes language to the contrary.<sup>37</sup> The FISA debate was unique because it brought together elements of wartime presidential powers within the context of actions contrary to "the express will of Congress". Indeed Senator Lindsey Graham warned Attorney General Gonzales that the administration's expansive interpretation of the 2001 resolution may make it "harder for the next president to get a force resolution if we take this too far."<sup>38</sup> Two years later when Gonzales' replacement, Michael Mukasey, appeared before the Judiciary Committee, its chairman expressed his frustration that lawmakers have been almost completely unsuccessful trying to hold the executive branch accountable for its actions on the issues of torture, the Central Intelligence Agency's destruction of interrogation videos, White House claims of Executive privilege, and the "terrorist surveillance program."<sup>39</sup> Senator Arlen Specter vented to Attorney General Michael Mukasey, "Congressional oversight has been so ineffective, notwithstanding Herculean efforts for the last 3 years. The courts provide a balance, a separation of powers . . . the only effective way of dealing with what is argued to be executive excesses is through the courts."<sup>40</sup> Congressional angst notwithstanding, the current balance of power between the executive and Congress is likely to stand unless the courts address the alleged executive excesses.

## **KEYS TO EFFECTIVE PRESIDENTIAL LEADERSHIP**

The Executive branch's institutional competencies make the President the most important actor in foreign and security policy. The President alone has command of the bully pulpit to give him an unrivaled voice in policy debates. The President is also the actor in the American political system best positioned to consider the national interest. Since World War II, control over foreign and security policy has increasingly been centralized in the Executive. The government's expertise for

formulating and implementing foreign and security policy is largely resident in the Department of State and DoD, with the National Security Council also assuming an increasing amount of authority and influence—all three components of the executive branch. Yet effective leadership is not a given. Perhaps the broadest and most common sense recommendation comes from presidential scholar Paul Quirk, who contributes the concept of “strategic competence.” Quirk argues that Presidents must have a well-designed strategy for achieving the competencies they need to lead effectively. In this view, the key competencies to be mastered are policy substance, policy process, and policy promotion. Policy expertise results from years of attentive engagement in the major national issues. The development of direct in-depth personal competence in policy areas is necessarily selective, but a base knowledge of the key issues is essential to the President’s recognition of the elements of responsible debate and to responsible decisionmaking.<sup>41</sup> Anything less than this, Quirk argues, is minimalist and may impede intelligent decisionmaking.

A minimalist president . . . will not fully appreciate his own limitations. By consistently neglecting the complexities of careful policy arguments, one never comes to understand the importance of thorough analysis. In politics and government, at least, people generally do not place a high value on discourse that is much more sophisticated than their own habitual mode of thought.<sup>42</sup>

To lead effectively, Presidents must also be competent in the processes of policymaking. The President sits atop a system of complex organizational and group decisionmaking processes and must ensure that the administration has put in place reliable decisionmaking processes. The major threats to effective national security policymaking processes are intelligence failures, groupthink and other malfunctions of the advisory process,<sup>43</sup> and failing to coordinate effectively within the interagency process and beyond the executive branch as appropriate.<sup>44</sup> Finally, building coalitions with congressional leaders and key interest groups, and using the bully pulpit to take the case to the public are essential ingredients for effective policy promotion once policy decisions have been made.

Lee Hamilton offers his advice for effective presidential leadership in foreign and national security policy from his perspective as the former chairman and long time ranking Democrat on the House Committee on International Relations. Presidents must make foreign policy a priority and set forth a day-to-day course that is driven by an overall strategic vision. Hamilton argues that the foreign and security policy arena uniquely depends on the President’s attention and leadership. Too often an issue receives intense attention and scrutiny for a short time, but then the administration fails to remain sufficiently focused or to expend the requisite resources to achieve success. The President is also uniquely positioned to forge the personal relations with foreign heads of state that are critical to alliance building and to articulate U.S. policies and the associated national interests with clarity to the American people.<sup>45</sup>

In a system of shared and separate powers in national security policymaking, successful policy will rarely be the result of strong-arming Congress or the American people through the overplaying of formal powers. The Supreme Court is extremely reluctant to check the President’s power while a war is in progress. Presidential leadership in national security policymaking effectively blends presidential authority with a consideration of the institutional competencies that the rival branch brings to the development and execution of strategy.

As the most accessible and representative branch of government, Congress can help mediate between the American people and the foreign policy elite. Through the hearings process, Congress can also help to educate the public on complex foreign and security policies. Testifying before the appropriate committees also forces the administration’s top officials to articulate and defend their policies. However, some observers are concerned that this check on Executive power is being



weakened by an administration reluctant to make senior officials available for sworn congressional testimony or to provide documents to relevant committees, citing the confidentiality of Executive branch communications.<sup>46</sup>

Debates over contentious and weighty matters of national security, such as whether or not to authorize the use of force, engage the public, and strengthen the policy process. Passing legislation in support of the administration's policies can also help to strengthen the President's hand before international bodies, adversaries, and allies. In the case of the Gulf War, congressional leaders insisted on being consulted and on debating the issue before authorizing the use of military force. President George H. W. Bush, however, feared that weak support or a split vote would be worse than no vote at all and might actually weaken his hand in the face of Iraqi aggression. President Bush maintained throughout the period of congressional consultation that, regardless of the outcome in Congress, he still had the constitutional right to commit U.S. forces to battle. In the end, the Congress passed the resolution with a clear victory in the House by 250 to 183, and a squeaker in the Senate by 52 to 47.<sup>47</sup> Effective presidential leadership in foreign and security policy recognizes Congress' constitutional role in the process and seeks ways to ensure that sustained consultation is a characteristic of the executive strategy for interacting with Congress.

## CONGRESSIONAL-PRESIDENTIAL COLLABORATION IN THE WAR IN IRAQ

The open-ended resolution Congress passed in October 2002 granted the President broad authority to use any means he determined necessary and appropriate—including military force—to respond to any security threat posed by Iraq.<sup>48</sup> Critics contended that in contrast to the 1991 appeal of President Bush's father to authorize force on the eve of conflict when key conditions related to its prosecution were well-known, "The president is asking Congress to delegate its constitutional power to declare war before he has decided we need to go to war, but he has not adequately explained what this war will look like."<sup>49</sup> Others argued President Bush's request was constitutionally inappropriate because it was seeking a conditional grant of power, leaving in the President's hands the decision to change the nation into a state of war. These critics contend that a nonbinding resolution declaring support for the President's efforts to make Iraq comply with UN resolutions followed by the authorization to use force if peaceful means fail may have been more appropriate. Such a two-step approach would have left Congress in the loop up until the point when the President was ready to begin military action.<sup>50</sup>

Although some Republicans had concerns about endorsing the new doctrine of preemption, they deferred to the President. With the mid-term elections only weeks away, many Democrats felt pressure to "get this question of Iraq behind us" so they could return to other issues that they thought would be successful for them in the elections. At the height of the House debate, less than 40 members could be found on the floor. On the Senate side, no more than 10 senators were in attendance. The resolution passed 296 to 133 in the House and 77 to 23 in the Senate.<sup>51</sup>

Observers noted that the debate over the Iraq war was a pale shadow of the Senate's more vigorous role in the past. Congressional scholar Norman Ornstein commented on the Senate's role on the eve of the Iraq war, "The Senate is struggling to find an appropriate role to play. I think you'd be hard-pressed to suggest the Senate is a great debating body—on anything."<sup>52</sup> The concordant-acquiescent political context that has characterized congressional-presidential relations since the 9/11 terrorist attacks may have contributed to executive overreach in ways that ultimately weakened President George W. Bush's ability to sustain support for his Iraq strategy.

The political environment in the run-up to the War in Iraq was conducive to the Executive "going it alone" vis-à-vis Congress. Although the Congress put up little resistance over the open-ended resolution to use force in Iraq, this support occurred within a climate of some angst on the



Hill over the administration's attitude toward the role of Congress in defense policy. Congressmen of both parties complained that Secretary of Defense Rumsfeld "tells lawmakers little and demands immense discretion."<sup>53</sup> Complaints continued throughout the Bush administration, with Congress accusing it of thwarting Congress's investigative authority. Some lawmakers were frustrated that their attempts to get more information about the administration's impending war plans and strategy came up empty. Administration officials were unable to answer with any specificity questions related to the cost of the war or of the reconstruction effort to follow before lawmakers cast their votes.

Some members of Congress demanded to hear the administration's plans for the postwar occupation, but were denied such consultations based on the argument that it would not be proper to plan for the aftermath of a conflict that the President had not yet decided to fight. The "ends" that the President advanced shifted among competing candidates, eventually settling on the need to disarm Saddam Hussein and dismantle the imminent threat that his weapons posed.

Scholars pointed out that the doctrine of preemptive military strikes added a "new wrinkle to the Imperial Presidency," because the trigger for the use of force is classified intelligence.<sup>54</sup> Richard Durbin, a member of the Senate intelligence committee, complained that an insufficient body of intelligence was declassified in the run-up to the vote on Iraq hindering the ability of his colleagues to make an informed vote.

The choice to maximize the powers of the presidency, while marginalizing the participation of the Congress may have put the strategy at risk. Congress shares responsibility for the policy due to its decision to support the open-ended resolution. However, the emphasis on regime change through invasion without laying out all aspects of a comprehensive strategy complete with clear strategic ends, a thorough explanation of the ways or courses of action the administration would pursue to achieve the ends, and a good faith estimate of the means or cost to the American people in terms of lives and treasure made it more likely that the administration would be on the defensive when the strategy ran into difficulty.

Indeed, in September 2003, when the Bush administration finally delivered the first major bill for the war to Congress in the form of a request for \$87 billion dollars to fund Iraqi reconstruction and the military operations in Iraq and Afghanistan for the remainder of the fiscal year, Congress pushed back mightily. Pent up frustration over the lack of collaboration with the Legislative branch was evident. Senator Diane Feinstein remarked, "We want to be good Americans. We want a bipartisan foreign policy. We know the time is tough. We want to be with you. But there's a feeling that you know it all. The administration knows it all. And nobody else knows anything. And, therefore, we're here just to say, 'Yes, sir. How high do we jump?' And at some point we refuse to jump."<sup>55</sup> More direct was Senator Robert Byrd's comment to Deputy Defense Secretary Paul Wolfowitz, "Congress is not an ATM. We have to be able to explain this huge, enormous bill to the American people."<sup>56</sup>

The administration sustained another wave of attacks in January 2004 when its Chief Weapons Inspector in Iraq, David Kay, concluded that there were no large stocks of weapons of mass destruction in Iraq before the war. "Based on what I've seen is that we are very unlikely to find stockpiles, large stockpiles of weapons. I don't think they exist." "It turns out we were all wrong."<sup>57</sup> Democrats charged this was further proof the war was based on false premises. Lawmakers on both sides of the aisle took issue with the certainty of the language that administration officials used with regard to the pre-war intelligence, and some questioned whether administration officials misled them.

Members of Congress complained that the Director of Central Intelligence, George Tenet, gave his personal assurance in closed-door hearings that weapons of mass destruction (WMD) stocks

would be found in Iraq. "He was telling the senior people in the Administration . . . that the weapons were absolutely there, that they were certain the stuff was there."<sup>58</sup> Ohio Senator Mike DeWine, a Republican on the Intelligence Committee, told the *Columbus Dispatch*, that he was not sure he would vote to authorize war with Iraq if he had to do it all over again.<sup>59</sup> Meanwhile, on the 2004 campaign trail, Democratic presidential candidates took aim at the administration. "We were misled not only in the intelligence but misled in the way that the President took U.S. to war," the Democratic front-runner, Senator John F. Kerry (MA), said when asked about Kay's conclusions."<sup>60</sup>

The administration's critics faulted the lack of consensus building and derided its unwillingness to collaborate with either international allies or its domestic partners in the national security policymaking process. As the popularity of the Iraq War wanes in the face of its \$500 billion price tag by early 2008 and deaths of American servicemen creep upward of 4000,<sup>61</sup> the Bush administration stands undeterred in its approach to Executive power. The sweeping assertion of the powers of the presidency is grounded in a belief that the full power of the Executive must be restored in order to prevail in the War on Terrorism.<sup>62</sup> Leaving the Congress and the Courts in its wake, however, is at least politically flawed and may provoke a reaction from these bodies that ultimately cuts back on presidential powers.

Supporters of the administration, on the other hand, laud the resurgence of presidential power and maintain that the administration's approach is merely a corrective action necessary to reverse the erosion of presidential prerogatives in recent decades. According to this view, the administration's approach is to be admired as a model in presidential leadership,

To achieve all this, Bush staged one of the most impressive exercises of presidential power in modern times. He used all the tools at hand: the bully pulpit, TV, personal persuasion in the Oval Office, and the skillful deployment of top officials in his administration. And, not to be underestimated, there was sheer presidential bullheadedness. When a president takes a firm and defensible position and doesn't flinch, he normally prevails. . . . One telling result of Bush's full-throttle use of his presidency was a far greater percentage of Democratic support for his congressional war resolution than the elder President Bush won in 1991 after Iraq had invaded Kuwait.<sup>63</sup>

Is President Bush' leadership vis-à-vis Iraq firm, resolute leadership appropriate to the national security challenges inherent in fighting the security threats facing the United States in the 21st century or imperial presidential overreach, that if continued, will ultimately lead to a failed strategy for fighting the War on Terrorism? The historical record indicates that policy is strengthened when each branch understands its proper role, powers, and limitations in foreign policy. An analysis of the case of the war in Iraq suggests that both branches have fallen short of this ideal.

## CONCLUSION

The American republic's very essence lies in its allocation of power across the political system. The Founders envisioned a struggle for power between actors enabled with competing powers to keep each other in check. That such struggles continue is a testament to the continued viability of the founding blueprint. In the current political environment, the backdrop of national security seems to present an obstacle to the balanced interplay of the President, Congress, and the Courts. But the Founders' institutional design was undertaken with a realistic expectation that national security matters could be at the heart of power plays among the government elite placed in each of three empowered branches. Liberty could not be forfeited, the Founders assumed, unless key actors chose not to employ their countervailing power to preserve it. Security, meanwhile, would depend on the adoption of an effective strategy for victory. At the early stages of the "Long War," balancing the quest for security with the preservation of liberty requires a collaborative employment of the national security powers that the President, Congress, and the Courts share.

Effective conduct of national security policy depends on understanding one's power, its limits, and the recognition that other actors' actions also shape the policy battlefield. Successful national security policy exploits the institutional competencies that the Framers designed into the American political system. Coordinated efforts that link the President's national security policy initiatives with the unique capacity of Congress to vet the policy, educate the public, and ultimately lend its support are more likely to lead to successful strategy. Such policy must also withstand the scrutiny of the Courts empowered to rein in the President or Congress when either entity oversteps its allocation of power. Successful policy implementation, furthermore, is reliant on competent executive decisionmaking, efficient bureaucratic processes and the keen oversight of lawmakers, the media, and the American people.

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## CHAPTER 7

### NATIONAL MILITARY STRATEGIES: 1990 TO 2009

**Richard M. Meinhart**

The six Chairmen of the Joint Chiefs of Staff since 1990—Generals Colin Powell (1989-93), John Shalikashvili (1993-97), Hugh Shelton (1997-2001), Richard Myers (2001-05), Peter Pace (2005-07), and Admiral Michael Mullen (2007-current)—used an unclassified national military strategy to provide strategic direction to the Armed Forces from guidance in the President and Secretary of Defense’s strategic documents and communicated that direction to Congress and the American people. The Chairman’s responsibilities as the nation’s senior military advisor to provide this strategic direction, along with many other planning, preparedness, and requirements responsibilities, are specified in Title 10 U.S. Code. These increased responsibilities were a result of the 1986 Goldwater-Nichols Act (GNA), considered to be the most significant piece of defense legislation since the National Security Defense Act of 1947 that established the Department of Defense (DoD).<sup>1</sup> The GNA was the result of almost 4 years of somewhat contentious dialogue and debate among Congress, military leaders, the defense intellectual community, and the Reagan administration.<sup>2</sup> Congress intended in passing this act to better organize the DoD to strengthen civilian authority, improve military advice to civilian leaders, provide for more efficient use of resources, develop better strategy and plans, and improve mission execution by combatant commanders.<sup>3</sup>

While this chapter will discuss the strategic environment each Chairman faced in more detail as it examines each of the four national military strategies, the first three Chairmen were challenged by an environment that began with the Gulf War and continued with an increasing number of regional military operations across the spectrum of conflict as the decade progressed. They had to meet these challenges while accommodating slowing declining financial resources and a Cold War-equipped force reduced by about one-third. Since 2000, and particularly after September 2001, the last three Chairmen faced different security challenges dominated by the focus on terrorism, most evidenced by wars in Afghanistan and in Iraq, while needing to transform in stride by developing future capabilities to achieve the vision of full spectrum dominance. They had to meet these challenges with greater financial resources, better technology, more reliance on activating reserve forces, and a slow growth in Army and Marine Corps force structure as the decade ended.<sup>4</sup> These challenges were fundamentally very different during this 2-decade period and are summarized in Figure 1. The four national military strategies were the key formal way each Chairman advised the nation’s civilian and military leaders on how best to meet these challenges.

This chapter will focus on the Chairmen’s leadership challenges and how they developed and used four different national military strategies in 1992, 1995, 1997, and 2004 to respond to those challenges. This article describes in broad terms the strategic environment facing each Chairman, as it formed the basis for his subsequent military strategy. Then each of the strategies’ key components, which were organized around an *ends, ways* and *means* construct, will be examined. The formal direction provided by these strategies was an important aspect of each Chairman’s leadership legacy. Since each military strategy was part of and perhaps the key integrating component of an overall strategic planning system used by the Chairman to help execute his many formal responsibilities, this chapter begins by briefly examining from a military strategy perspective this planning system’s overall evolution and integrating nature.

1990s Regional competition and threats Gulf War Diverse military operations Declining financial resources Reduced personnel by one-third Need to integrate technology Robust overseas bases and deployed forces Well maintained Cold War equipment	2000s Global War on Terrorism Wars in Iraq and Afghanistan Increased operations tempo Increasing financial resources Greater Reserve use & small personnel increase Need to transform to capabilities Less global infrastructure Sustain, update & develop new equipment
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**Figure 1. Chairmen’s Strategic Environment Challenges.**

**JOINT STRATEGIC PLANNING SYSTEM**

The Chairman’s strategic planning system integrates the processes and documents of the people and organizations above him – the President, Secretary of Defense, and National and Homeland Security Councils (until the elimination of the HSC by the Obama administration) and the people and organizations with which he directly coordinates (Services, agencies, and combatant commanders). The Chairman has no control over any significant defense resources (Secretary of Defense, Services, and agencies control resources) or direct control of operational military forces (combatant commanders control operational forces); however, orders to those forces flow through the Chairman. The Chairman formally influences his civilian leaders, and those with whom he coordinates, through the processes and documents developed from this strategic planning system. In addition to influencing leaders, this planning system provides insights and specific direction for the many staffs that support these leaders. As such, the Chairman’s Joint Strategic Planning System formally evolved five times during this 19-year period in 1990, 1993, 1997, 1999, and 2008. It is the key planning system that integrates the nation’s strategy, plans, and resources from a joint military perspective that consist by FY 2010 of approximately 2.3 million active, guard, and reserve forces and total defense outlays of \$664B.<sup>5</sup>

**1989 Status.**

Prior to 1990 there were 10 rather large and primarily classified strategic planning products that were described as voluminous, somewhat stove-piped, and highly bureaucratic, but this was indicative of strategic planning products produced in the late 1980s.<sup>6</sup> The Senate Armed Services Committee called this style of strategic planning ineffective, and the former Chief of Naval Operations, in remarking on a strategic planning document, stated it was “. . . almost as valueless to read as it was fatiguing to write . . . a synthesis of mutually contradictory positions that the guidance they gave was minimal.”<sup>7</sup> Chairman Powell recognized these deficiencies and greatly streamlined the system when he published Memorandum of Policy No. 7 on January 30, 1990.<sup>8</sup>

### 1990 Change.

The 1990 change added a front-end leader's guidance while eliminating or combining many other documents, as 10 planning products were reduced to four. The front-end guidance was designed to be documented through a formal joint strategy review for ". . . gathering information, raising issues, and facilitating the integration of strategy, operational planning, and program assessments," that culminated with publishing *Chairman's Guidance*.<sup>9</sup> This concise document (6 to 10 pages) was structured to provide the principal initial direction to develop the planning system's next three documents: the *National Military Strategy Document*, *Joint Strategic Capabilities Plan* (JSCP), and the *Chairman's Program Assessment*. The classified *National Military Strategy Document* (NMSD) was to be developed under a rigid 2-year cycle with several parts, one of which was a *National Military Strategy*. In addition, there were seven functional annexes added to this document, such as intelligence and research and development that in total comprised hundreds of more pages. The part of the NSMD called the *National Military Strategy* (also classified) would be sent to the Secretary of Defense for review and forwarded to the President for approval before returning to influence defense resource guidance.

### 1993 Change.

Chairman Powell again revised this planning system in March 1993 by publishing the first change to his earlier Memorandum of Policy No. 7.<sup>10</sup> This change essentially codified what was executed in previous years rather than designing a new system as had been done in 1990. This revised system included the following guidance: place more focus on long-range planning by requiring formal environmental scanning to determine what challenges the strategy needed to consider; issue the *National Military Strategy* as an unclassified document to communicate with the American people rather than just providing internal military direction; establish a *Joint Planning Document* to sharpen the Chairman's advice to the Secretary of Defense on how to resource the strategy; and keep the JSCP, which directs plans to implement that strategy in the field, the same.

### 1997 Change.

Chairman Shalikashvili made the next revision to the strategic planning system in September 1997 when he published Chairman Joint Chiefs of Staff Instruction 3100.01.<sup>11</sup> This instruction again reflected changes he instituted in prior years rather than formally changing the system before execution. He kept the national military strategy as an unclassified document produced in a flexible manner that looked out about 5 years, but he added the 1996 *Joint Vision 2010* to provide longer range direction not covered by his strategy. He also added the *Chairman's Program Recommendation*, the second Chairman's resource document, to provide leader-focused resource advice to better implement both the strategy and vision. Again, the JSCP's focus was left unchanged.

### 1999 Change.

Chairman Shelton made the final formal change to the strategic planning system during this decade in September 1999.<sup>12</sup> He did not change any major processes or products. Instead, he placed more focus on Theater Engagement Plans to broadly integrate the strategy's shape component and on implementing the 1996 *Joint Vision* to better support the strategy's prepare component. The vision implementation process involved identifying specific 21st century security challenges and the desired operational capabilities to meet those challenges, all of which provided joint direction to conduct operational experiments and influence resource decisions.<sup>13</sup> Overall, this decade's strategic planning system changes resulted in improvements to better execute the national military



strategy. These four changes in the strategic planning system from 1989 to 1999 are portrayed in Figure 2.<sup>14</sup>

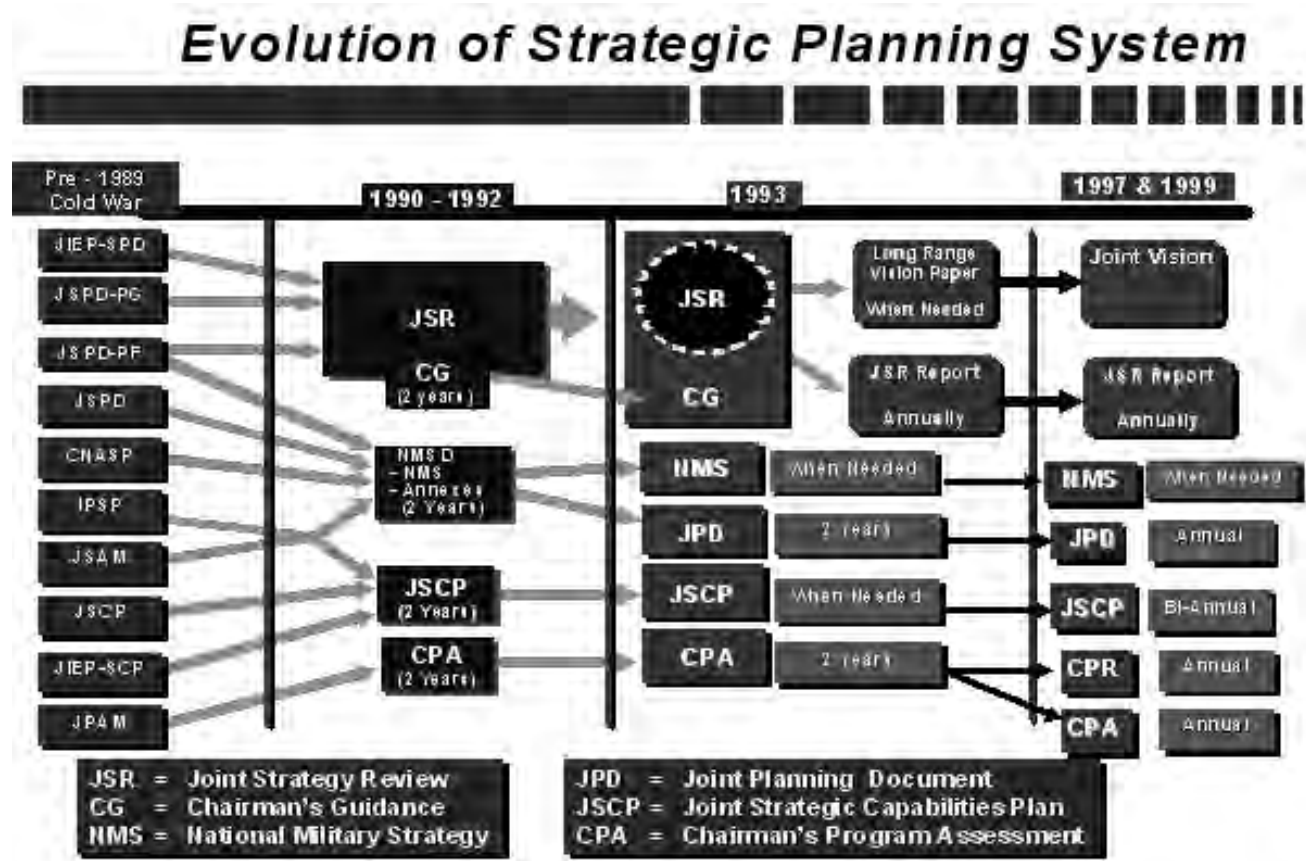


Figure 2: Evolution of Strategic Planning System, 1989 to 1999

**2000-08 Time Period.**

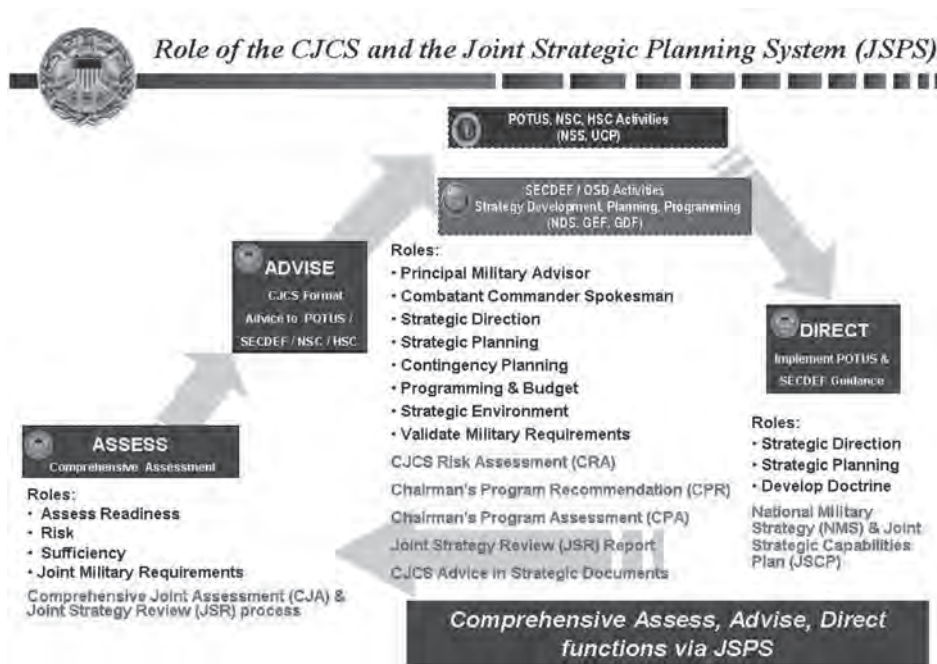
During Chairman Myers' tenure as Chairman from 2001-05, no official changes were made to the 1999 operating instruction that describes the strategic planning system, although the formal system was not followed exactly since the early 2000s. In execution, General Myers published three new strategy-related documents, kept four existing planning products to include the unclassified national military strategy, and no longer produced the separate vision and staff-resource advice products. The three new strategy-related products he added in coordination with the Secretary of Defense were: a classified 2002 *National Military Strategic Plan for the War on Terrorism* to provide more guidance to the military's effort to execute the nation's strategies associated with terrorism; a classified *Chairman's Risk Assessment* that identified to Congress the strategic and military risk to execute the national military strategy; and *Joint Operating Concepts* in 2003 that was revised to the *Capstone Concept for Joint Operations* in 2005.<sup>15</sup> These last two documents focused on future concepts and capabilities associated with implementing the vision of full spectrum dominance, now included in the military strategy's last section.

During General Pace's tenure as Chairman from 2005 to 2007, no formal changes were made to the joint strategic planning system although coordination of a draft instruction was initiated to

formally integrate the many changes made in execution.<sup>16</sup> From a strategy perspective, General Pace did not change the 2004 *National Military Strategy* inherited from his predecessor although a biannual review and risk assessment were conducted as specified in the U.S. Code. However, he published three military strategies on specific subjects that were subordinate to the 2004 *National Military Strategy*. These strategies, the subject readily determined by their titles, were as follows: *National Military Strategic Plan for the War on Terrorism*, *National Military Strategy to Combat Weapons of Mass Destruction* and the *National Military Strategy for Cyberspace Operations*.

## 2008 Change.

In December 2008 a major update was made to the strategic planning system to integrate complex processes and products to provide more holistic assessments and unified strategic direction while reducing the number of formal products. This change, published as a 65-page Chairman’s instruction, in many respects is analogous to the 1990 change described earlier for its comprehensive and more focused nature. This new planning system is organized around three key Chairman’s roles of assess, advise, and direct with formal components as follows: Assess – *Comprehensive Joint Assessment* and *Joint Strategic Review* process; Advise – *Chairman’s Risk Assessment*, *Chairman’s Program Recommendation*, *Chairman’s Program Assessment*, *Joint Strategy Review Report*, and Chairman’s advice in strategic documents; and Direct – *National Military Strategy* and *Joint Strategic Capabilities Plan*.<sup>17</sup> Figure 3 is a way to envision this change and the Chairman’s roles.<sup>18</sup>



**Figure 3: Strategic Planning System 2008**

The “assess” aspect of the new system is a comprehensive change with two key components that integrate both deliberate and continuous assessments to provide a common strategic perspective of the environment. The first component is the *Comprehensive Joint Assessment* (CJA) that consists of a shared database and primarily qualitative assessments from other continuous and deliberate environmental scanning and mission analysis conducted by Services, Defense Agencies, Joint Staff, and combatant commanders across missions, domains, functions, and time. The

*Joint Strategy Review* (JSR) process is the second main assess component that synthesizes data and insights gained from the CJA into staff evaluations that enrich or refine existing Chairman’s products. Overall, this access process will then influence the next military strategy as well as the annual risk assessment of the existing strategy.

The “advise” aspect is reflected in four main documents and numerous opportunities the Chairman has to provide input to many other strategic documents to execute his advice responsibilities, which are related in some way to the *National Military Strategy*. The *Chairman’s Risk Assessment* (CRA), specified by Congress as a result of the 2004 National Defense Authorization Act, is his assessment, routed through the Secretary of Defense, of the nature and magnitude of risk to execute the missions in the current *National Military Strategy*.<sup>19</sup> The *Chairman’s Program Recommendation* (CPR) is his personal advice in early spring to the Secretary of Defense before the Secretary provides final resource guidance to the Services and Defense Agencies. The *Chairman’s Program Assessment* (CPA) is his personal advice in early fall to the Secretary of Defense of the Services and certain Defense Agencies’ Program Objective Memorandum to influence the Pentagon’s program and budget review decisions. Both of these leader resource-focused documents will reflect in some way on military strategy’s means. The *Joint Strategy Review* Report, focused on the strategic and military implications of the security environment and completed in odd numbered years or as required, will broadly influence the next military strategy’s ends and ways and in a lesser manner its means.<sup>20</sup>

The “direct” aspect remains relatively unchanged with developing and publishing the *National Military Strategy* (NMS) and the *Joint Strategic Capabilities Plan* (JSCP). The JSCP provides detailed guidance to enable combatant commanders, Service Chiefs, Defense agencies, and select others to develop the wide variety of plans to accomplish tasks and missions or the strategy’s broad “ways. It implements campaign, campaign support, contingency, and other planning in the Defense Secretary’s Guidance for Employment of the Force.<sup>21</sup> The *National Military Strategy* gets inputs from many sources, is organized around a military ends (now called objectives in the current instruction), ways, and means framework, directs the Joint Force, and informs many others. A way to envision this overall strategic direction is illustrated in Figure 4.<sup>22</sup>



**Figure 4: National Military Strategy**



All of these Chairmen's changes incrementally resulted in the strategic planning system evolving from being rigid and Cold War focused in 1990 to being more flexible, vision oriented, and resource focused at the decade's end. After 2000, the strategic planning system, although changes were not documented until 2008, in execution was more focused on the many diverse facets associated with the War on Terrorism through its multiple strategy documents and identifying joint force capabilities and concepts. Throughout this 19-year period with its changing national security challenges, the unclassified *National Military Strategy* remains the Chairman's strategic planning system keystone document, and its guidance will now be examined.

## **NATIONAL MILITARY STRATEGIES (1989, 1992, 1995, 1999, AND 2004)**

### **1989 National Military Strategy Document.**

At the beginning of 1990, the formal manner by which the Chairman advised the President and the Secretary of Defense on the strategic direction of the Armed Forces was via a classified and rather voluminous *National Military Strategy Document* (NMSD) and a shorter classified *National Military Strategy* that was part of the NSMD. Admiral William Crowe published these in 1989 to provide guidance for the resource time frame of FY 92 to 97. The process to produce this strategy was also formally linked to the Defense Planning, Programming, and Budgeting System. Hence, this was the strategy and planning processes that General Powell inherited.<sup>23</sup>

The classified 1989 *National Military Strategy Document* included chapters dedicated to subjects such as: national military objectives, national military strategy, appraisal of U.S. defense policy, intelligence appraisal, fiscally constrained force levels, net assessment options and risk evaluation.<sup>24</sup> In addition to this basic document, there were seven separate classified annexes on functional subjects that supported the strategy in subjects such as intelligence; research and development; and command, control and communications. The size of some of these annexes exceeded the basic document itself as one annex alone had 11 chapters, 13 tables, and 15 tabs. The 1989 strategy focused on the Cold War and the Soviet Union and articulated the military element in many of the worldwide alliances, such as the North Atlantic Treaty Organization (NATO). This strategy, which was underpinned with a robust nuclear deterrent, included a forward defense with many forces deployed forward, particularly in Europe and Korea, which were then backed up by rapid reinforcement to dispersed operating bases in many nations.<sup>25</sup>

### **1992 National Military Strategy.**

The demise of the Soviet Union, a broad retreat from ideological support of communism, and an inclusive international coalition that reversed Iraqi aggression in Kuwait characterized the strategic environment that influenced the 1992 strategy.<sup>26</sup> On the positive side, democracy was growing in many parts of the world. On the negative side, regional conflicts, animosities, and weapons proliferation that the bi-polar world and Cold War had previously constrained now had the potential to intensify. In essence this was the new world order, which was a concept articulated by the President Bush in his September 11, 1990, speech to a joint session of Congress and repeated many times later.<sup>27</sup>

The 1992 strategy, which was unclassified and only 27 pages long, was a complete change from the previous one in clarity, conciseness, and strategic direction. While this strategy was published

in January 1992, its roots can be traced to the President's *National Security Strategy*, the Secretary of Defense's policies in his *Defense Planning Guidance* and *Annual Report to the President and the Congress*, and General Powell's development of the Base Force. This strategy represented a ". . . shift from containing the spread of communism and deterring Soviet aggression to a more diverse, flexible strategy that is regionally oriented and capable of responding to the challenges of this decade."<sup>28</sup> In essence, this was the most fundamental change in the U.S. military strategy since the global containment strategy and Cold War that began in the 1950s. The military's primary objective was now focused on deterring and fighting regional wars rather than containing a super-power rival.

This strategy was based on the United States providing leadership to promote global peace and security. It was built on the following four foundations: Strategic Deterrence and Defense, which consisted of a credible nuclear deterrent composed of offensive and defensive capabilities; Forward Presence, which consisted of forces continually stationed or deployed worldwide; Crisis Response, which was the ability to respond quickly to more than one regional crisis; and Reconstitution, which involved the ability to mobilize personnel, equipment, and the industrial base to rebuild military strength. The strategy also specified eight strategic principles that reinforced those four foundations. They were: readiness, collective security, arms control, maritime and aerospace superiority, strategic agility, power projection, technological superiority, and decisive force. In concluding, the strategy described how to employ forces and specified the broad military force structure, called the "Base Force," to implement the strategy.

This Base Force, which was determined earlier, was broadly composed of strategic nuclear forces, Army divisions, Navy ships, Marine expeditionary forces, and Air Force fighter wing equivalents. When compared to the 1991 force structure, the Base Force was significantly smaller by the following representative systems or organizations: 460 missiles and 16 nuclear submarines from the strategic forces; 4 active and 2 U.S. Army Guard Divisions; 80 naval ships and 3 Carrier Battle Groups; and 7 Active and 1 Reserve Air Force Fighter Wing Equivalents.<sup>29</sup> The strategy clearly conveyed to the American people, one of the main target audiences if not the most important, why they needed a military and in what size. At this time, the American people and Congress were clamoring for a peace dividend as the end of the Cold War sank in, and the euphoria of the 1991 Operation DESERT STORM victory ended.

This strategy's coordination was different than the bureaucratic coordination of other strategic planning documents on the Joint Staff, which illustrated the flexibility in strategic planning General Powell achieved. The strategy, which had undergone a few variations and was interrupted by operational necessity (Gulf War and Soviet internal turmoil) from its conceptual beginnings in 1990 to the end of 1991, was finally published in January 1992. It did not go through a disciplined two-year cycle with its associated annexes and formal assessments as specified by the planning system's instructions, but more quickly reacted to the strategic environment and Chairman's leadership needs. A Joint Staff Officer, Harry Rothman, who was part of the process, gave credit to General Powell's personal relationships and strategic vision of the world that broke down the impediments resident in formal planning processes. He stated that ". . . people and not the process were more important in the forging of the new strategy."<sup>30</sup> General Powell spent considerable energy convincing other senior leaders and converting them to his broad views rather than conducting the detailed coordination at junior or middle levels that usually influenced joint staff planning document's content.

One other significant aspect about this strategy was the foreword to the document, which illustrated General Powell's leadership style that combined boldness and humility. The foreword boldly stated that the strategy was his advice, in consultation with other members of the Joint Chiefs of Staff and Commanders of unified and specified commands, and that he presented it to



fulfill his responsibility under the GNA to provide such advice. Humbly and emphasizing civilian control of the military, the Foreword also stated that in determining this strategy, he listened to his civilian leadership, as the strategy clearly implemented the President's and Secretary of Defense's policies. Clearly, as the first Chairman totally under the GNA, General Powell created a leadership legacy in this strategy's style and substance, as it was the first unclassified strategy signed by a Chairman. Lorna Jaffe in her detailed examination of the Base Force's development, a key part of the strategy, concluded that Powell fully used the enhanced authority of the GNA and stated:

While he hoped to win the Services to his point of view, he did not aim for either bureaucratic consensus through staff work or corporate consensus through JCS meetings. He never asked the Service Chiefs to vote on either the Base Force or recommending to the Secretary and the President adoption of a new strategy [NMS]. Rather, he thought it was more important to win the Secretary's approval.<sup>31</sup>

### **1995 National Military Strategy.**

The strategic environment at this time was centered on an unsettled world that exhibited both opportunities and threats.<sup>32</sup> The following characterized this world: regional instability as evidenced by conflict in the Balkans, Somalia, and Rwanda; concern about the possible proliferation of weapons of mass destruction (WMD) to hostile regional groups or terrorists from the Soviet Union's breakup; transnational dangers associated with fleeing refugees, diseases, and crime syndicates; and dangers to nations undergoing transition to democratic reform, particularly those in the former Soviet Union. The strategy developed to respond to these challenges was one of two produced by General Shalikashvili. These strategies looked very similar to General Powell's in style, but in direction were very different in a few key areas.

The 1995 strategy took guidance from the President's *National Security Strategy of Engagement and Enlargement* and defined the military's two simple main objectives—promote stability and thwart aggression. While the thwart aggression was embedded in the 1992 strategy, the promote stability objective was fundamentally different than the 1992 strategy. The 1995 strategy described a more active use of the military globally to promote stability rather than to react to instances of instability. To achieve these two objectives the 1995 strategy defined three components: (1) peacetime engagement, which was the broad range of noncombat activities to promote democracy, relieve suffering and enhance overall regional stability; (2) deterrence and conflict prevention, which ranged from conflict's high end represented by nuclear deterrence to conflict's low end represented by peace enforcement to restore stability, security, and international law; and (3) fight and win, which the strategy described as the military's foremost responsibility and defined as the ability to fight and win two major regional contingencies. In essence, the military was expected to become more engaged in conflict prevention to include missions such as peacekeeping, peace enforcement, and nation assistance; missions not mentioned in the 1992 strategy.

The *National Military Strategy* also identified the military forces necessary to execute the strategy, but earlier work by the Secretary of Defense's Bottom-Up Review had actually determined the force structure outside the formal strategy development process. While the military missions were growing in noncombat areas, the force structure was decreasing from the 1992 Base Force. For example, active Army divisions declined by two, the Air Force lost six fighter wings, and Navy combatant ships went from 450 to 346.<sup>33</sup> In addition, reconstitution, described in the 1992 strategy as forming, training, and fielding new fighting units along with activating the industrial base, dropped out of the 1995 strategy altogether. Hence, maintaining readiness became ever more important as the force became smaller and was used more frequently. This readiness focus was

greatly emphasized by Chairman Shalikashvili, as he used words related to readiness in his annual Posture Statements to Congress with significantly greater frequency than Chairman Powell.<sup>34</sup>

This strategy's development was significantly different than the 1992 strategy, as it followed the more flexible processes and overall structure outlined in the 1993 instructions that changed the strategic planning system. The strategy included information summarized from another strategic planning product, the *Joint Strategy Review*, and reflected the conceptual outline as defined in the 1993 memorandum.<sup>35</sup> This illustrated that formal processes, as well as people, drove this strategy's development. This also reflected General Shalikashvili's leadership style, which could be characterized as using interpersonal skills to develop and value consensus and using strategic planning processes to help achieve and implement that consensus.<sup>36</sup> In addition, since this strategy was similar in style to the previous one, an existing strategic planning process could more easily produce an evolutionary vice revolutionary product.

### 1997 National Military Strategy.

Opportunities and threats again characterized the strategic environment in 1997.<sup>37</sup> The opportunities were the lower threshold of global war and the potential for a more peaceful world. The four principal threats this strategy identified were: (1) regional dangers as primarily represented by Iran, Iraq, and North Korea; (2) asymmetric challenges as represented by state or nonstate actors to include terrorists that might possess WMD; (3) transnational dangers such as extremism, ethnic or religious disputes, crime, and refugee flows; and (4) wild cards that could arise from unexpected world or technology events as yet undefined or by a synergistic combination of the other three threats.

To respond to these challenges, the strategy centered on concepts described by the three simple words of *shape*, *respond*, and *prepare*. These words and concepts were more broadly articulated for all elements of a nation's power in the President's May 1997 *National Security Strategy* and also used in the Secretary of Defense's May 1997 *Quadrennial Defense Review* (QDR). In integrating advice from the President and Secretary of Defense these words took the following meaning in the military strategy: "US Armed Forces advance national security by applying military power to **Shape** the international environment and **Respond** to the full spectrum of crisis, while we **Prepare Now** for an uncertain future."<sup>38</sup>

The 1997 NMS built on the work of the previous strategy, but was different in four main areas. First, it more specifically identified the asymmetric and wild card threats, which in hindsight could conceptually reflect the characteristics of the al Qaeda organization and the subsequent September 11, 2001 (9/11) attacks 4 years later. Second, it strongly made the case for why the military needed to be involved with shaping the international environment. While doing so, it clearly emphasized the warfighting aspect when it stated: "Our Armed Forces' foremost task is to fight and win our Nation's wars."<sup>39</sup> Third, it identified the force structure to execute the strategy in greater detail than previously done, which may have been a way for the Chairman to more definitively specify needed force structure. For example, the strategy now identified the required numbers of: Army Corps, cavalry regiments, and National Guard enhanced brigades; naval attack submarines and amphibious groups; and defense department civilians, Coast Guard personnel and special operations forces. Fourth, in preparing for the future, the strategy established an early foundation for the current joint force and defense transformation when it identified the characteristics for a multi-mission, joint, and interoperable force. This was clearly the greatest joint focus of any military strategy to date.

This strategy was also developed within the strategic planning process. It relied on two other 1996 strategic planning documents. The *Joint Strategy Review* influenced the strategy's strategic

environment assessment, and the section that covered preparing for the future leveraged the concepts identified in the 1996 *Joint Vision 2010*. Since the strategy came out in September, a short time after the President's May *National Security Strategy* and the Secretary of Defense's first QDR, it illustrated the interconnectivity and strong collaboration that existed among the military and civilian leadership in the National Security Council, Secretary of Defense, and Joint Chiefs of Staff. While General Shalikashvili signed this strategy in his last month as Chairman, it was fully coordinated with General Shelton, the announced incoming Chairman.<sup>40</sup>

## 2004 National Military Strategy.

Prior to the publication of the National Military Strategy in 2004, the nation experienced a dramatic change in the strategic environment that started with the terrorist attacks of September 11, 2001 and included the strategic response of *Operation Enduring Freedom* (Afghanistan) in October 2001 and *Operation Iraqi Freedom* (Iraq) in March 2003. In essence the military was fully engaged in the War on Terrorism in these two countries as well as in others. A defense strategy being written in concert with this military strategy placed the persistent and emerging security challenges the United States faced into four categories of traditional, irregular, catastrophic, and disruptive.<sup>41</sup> A traditional challenge was more associated with states employing well-formed militaries and systems that typified the massive state-on-state warfare characteristic of World War II. Irregular challenges reflected unconventional methods used by both state and nonstate entities against a stronger state, or somewhat akin to what occurred during parts of the Vietnam War. Catastrophic challenges focused on terrorist or rogue use of WMD or methods producing WMD-like effects, which reflected concerns identified in the 1997 strategy. The last category was disruptive, which described competitors making a breakthrough by technological means to overcome the U.S. advantage in a particular operational domain. This last category reflected aspects of the 21st century environment that previous strategies had not articulated.

This military strategy amplified these four broad defense challenges when it specified three key aspects of the environment that had unique military implications. These three aspects were under the headings: a wider range of adversaries; a more complex and distributed battlespace; and technology diffusion and access. The wider range of adversaries aspect ran the gamut from established or rogue states to nonstate organizations, such as crime syndicates or terrorists networks and finally to individuals. The complex battlespace aspect included: the entire globe, whether in urban or desolated areas; defined physical space or cyber space; or in foreign states or the U.S. homeland. Emphasis on the U.S. homeland was unique to this strategy. The technology diffusion aspect reflected the global availability and easy access to civilian dual-use technologies that determined adversaries could adapt for military use. The last aspect was again very different than seen in previous military strategies.

To meet these challenges the military strategy again built directly on defense objectives, as it defined three key supporting military objectives. These three military objectives were organized around three simple words of: *protect*, *prevent* and *prevail*. They were simply defined as: "protect the United States against external attacks and aggression; prevent conflict and surprise attack; and prevail against adversaries."<sup>42</sup>

To achieve these objectives, this strategy made no reference to specific force structure as had previous military strategies. Instead, it emphasized the desired attributes, functions, and capabilities for a joint force. However, it also supported what came to be called a 1-4-2-1 force sizing construct that appeared in the defense strategy. The 1-4-2-1 construct postulated that the U.S. military needed to accomplish the following: defend the homeland (1), deter forward in and from four regions (4); conduct two overlapping defeat campaigns (2); and win decisively in one campaign

(1).<sup>43</sup> Overall, this force structure approach provided greater flexibility for future force structure changes in concert with a capability vice threat-based approach, and it clearly had the greatest joint focus to date of any military strategy.

The process to produce this strategy was very different from the other three strategies in many ways. A draft of the strategy was produced in 2002 to integrate the advice of the post 9/11 2001 QDR and the 2002 *National Security Strategy*. However there was some question whether an unclassified *National Military Strategy* was needed. For example, a defense strategy was published as part of the QDR, the Chairman provided military specific advice by the 2002 classified *National Military Strategic Plan for the War on Terrorism*, and he provided unclassified operational military advice in 2003 through the *Joint Operations Concepts*. However, Congress cleared up any ambiguity that existed when it passed the 2004 National Defense Authorization Act. This Act required the Chairman to produce a detailed report that is a biennial review of the *National Military Strategy* in eight specific areas to include the strategic and military risks inherent in executing the strategy.<sup>44</sup> This amendment to existing U.S. Code involving the Chairman's responsibilities is an example of Congress performing its oversight role. If Congress is not satisfied with the information it receives, it will pass legislation that is then more specific on "what" the Chairman needs to provide.

The actual writing of the 2004 military strategy followed a very integrated and parallel path as the Vice Director of Strategy, Plans and Policy on the Joint Staff stated: "So we've worked hand in glove with the Secretary of Defense's staff in developing both of these documents."<sup>45</sup> The Defense Staff focused on writing a national defense strategy, the first time this was done as a separate unclassified document, and the Joint Staff focused on writing a national military strategy. As such, one sees the military strategy directly referencing a national defense strategy in many of its sections, which reflects this close collaboration to ensure synchronization and alignment. While the military strategy was completed in 2004 and copies could be located on the internet, it was officially released at a March 18, 2005, press conference when the Under Secretary Defense for Policy and Joint Staff Vice Director of Strategy, Plans and Policy discussed the 2005 *National Defense Strategy* and 2004 *National Military Strategy* together.<sup>46</sup>

## CONCLUSION

The *National Military Strategy* is the keystone document of an overarching strategic planning system that enabled the Chairman as the nation's senior military advisor to execute his formal leadership responsibilities specified by Congress in Title 10 U.S. Code. Since 1990, each of these four strategies identified the military's ends, ways, and means that were needed to meet the nation's security challenges broadly identified by the President in his *National Security Strategy* and implemented guidance by the Secretary of Defense from other strategic documents, which now includes a *National Defense Strategy*. The unclassified nature of the military strategy and its completion by the Chairman to integrate this civilian advice, provide strategic direction to the Armed Forces and communicate to external audiences was a leadership legacy started by Chairman Powell that continues today. Most importantly, this strategy directly communicates to the American people the need for a military, what that military will do, and how it will do it to provide for our nation's security. It essentially creates a compact between the military and the American people that is so important in today's complex and interconnected global security environment.



## ENDNOTES - CHAPTER 7

1. Robert H. Cole *et al.*, *The Chairmanship of the Joint Chiefs of Staff*, Washington DC: Joint History Office, 1995, p. 30.
2. Richard M. Meinhart, *Chairman Joint Chiefs of Staff's Leadership using the Joint Strategic Planning System in the 1990s: Recommendations for Strategic Leaders*, Carlisle, PA: Strategic Studies Institute, U.S. Army War College, 2003, pp. 2-7.
3. U.S. Congress House of Representatives, *Goldwater-Nichols Department of Defense Reorganization Act of 1986, Conference Report (99-824)*, 99th Cong., 2nd Sess., September 12, 1986, Section 3.
4. Challenge discussion is author's assessment from reading national military strategies and attending lectures when teaching at the Army War College. Reserve forces have changed from a strategic reserve to an operational reserve with increased use. There were slight increases in active duty ground forces starting in 2005 to 2010 time frame as end strength ceilings of Army and Marine Corps were increased by about 65,000 and 29,000 while Navy and Air Force were reduced by 29,000 and 24,000. Data on force structure comes from *The Army Budget, Fiscal Year 2010*, Association of the United States Army Office, 2009, p. 34.
5. *The Army Budget, Fiscal Year 2010*, Association of the United States Army Office, 2009, pp. 25, 33.
6. Douglas C. Lovelace, Jr., and Thomas-Durell Young, *U.S. Department of Defense Strategic Planning: The Missing Nexus*, Carlisle, PA: Strategic Studies Institute, U.S. Army War College, 1995, pp. 10-15.
7. *Ibid.*, pp. 35-36; and endnote 43, referencing U.S. Congress, Senate Committee on Armed Services, *Defense Organization and the Need for Change*, pp. 495-496.
8. Meinhart, 2003, pp. 14-16.
9. Chairman of the Joint Chiefs of Staff, *Memorandum of Policy No.7 (CJCS MOP 7), Joint Strategic Planning System*, Washington DC, 1990, p. 20. Information in this paragraph is from this memorandum.
10. Chairman of the Joint Chiefs of Staff, *CJCS Memorandum of Policy No. 7 (CJCS MOP 7), Joint Strategic Planning System*, Washington DC, 1st Revision, March 17, 1993, pp. 1-2; and Meinhart, 2003, pp. 16-17.
11. *Chairman Joint Chiefs of Staff Instruction 3100.01 (CJCSI 3100.01), Joint Strategic Planning System*, Washington DC: Joint Chiefs of Staff, September 1, 1997. Note: Chairman's instructions replaced memorandum of policies during this time period.
12. *Ibid.*
13. *Chairman of the Joint Chiefs of Staff Instruction 3010.02A, Joint Vision Implementation Master Plan*, Washington DC: Joint Chiefs of Staff, August 29, 2000.
14. "Joint Strategic Planning System," briefing slides for Joint Processes and Landpower Course 3, Lesson AY 05, Carlisle, PA: U.S. Army War College, October 28, 2004, slide 5.
15. The Joint Staff J-7 was the Office of Primary Responsibility (OPR) for 2003 *Joint Operations Concepts*, but its front cover had the Secretary of Defense seal and the Secretary of Defense signed the Foreword. The 2005 *Capstone Concept for Joint Operations* also had the J-7 as OPR and Secretary of Defense seal on the front cover, but the CJCS now signed the Foreword.
16. Chairman Joint Chiefs of Instruction 3100.01B, *Joint Strategic Planning System* [Working Draft v26 Oct 07].
17. *Chairman of the Joint Chiefs of Staff Instruction, (CJCSI) 3100.01B, Joint Strategic Planning System*, Washington DC: Chairman of the Joint Chiefs of Staff, December 12, 2008. All of the materiel in the next few paragraphs that describe the current system comes from this document.



18. *Ibid.*, p. A 3-4. This figure “depicts critical relationships between formal CJCS activities along with the statutory role they fulfill within the larger National and Department level processes . . . [it] does not depict all interactions and process within the JSPS nor is it meant to imply a firm sequence of actions.”

19. Title 10 U.S. Code Chapter 5 Section 153 (b), available from [www4.law.cornell.edu/uscode/](http://www4.law.cornell.edu/uscode/).

20. *CJCSI 3100.01B*, Enclosures B and C.

21. *Ibid.*, Enclosure D.

22. *Ibid.*, p. D-3.

23. Meinhart, 2003, pp. 20-21.

24. *CJCS MOP 7*, pp. 30-39.

25. Harry E. Rothman, *Forging a New National Military Strategy in a Post Cold War World: A Perspective from The Joint Staff*, Carlisle, PA: Strategic Studies Institute, U.S. Army War College, 1992, p. 4.

26. Colin L Powell, *National Military Strategy of The United States*, Washington DC: January 1992, Discussion that follows on this strategy taken from this source.

27. George H. W. Bush, September 11, 1990, available from [www.millercenter.virginia.edu/scripps/digitalarchive/speeches/spe\\_1990\\_0911\\_bush](http://www.millercenter.virginia.edu/scripps/digitalarchive/speeches/spe_1990_0911_bush).

28. Powell, p. 1.

29. *Ibid.*, p. 19. Data comes from comparing the FY 91 and Base Force differences from the Force Composition table in the National Military Strategy.

30. Rothman, p. 1.

31. Lorna S. Jaffe, *The Development of the Base Force 1989-1992*, Washington, DC: Joint History Office, 1993, p. 50.

32. John M. Shalikashvili, *National Military Strategy of The United States*, Washington, DC, 1995. Discussion that follows on the 1995 strategy taken from this source.

33. Les Aspin, *Report on the BOTTOM-UP REVIEW*, October 1993, available from [www.fas.org/man/docs/bur/part04.htm](http://www.fas.org/man/docs/bur/part04.htm). Comparison in force structure between the 1992 Strategy and the force defined in the Bottom-Up Review.

34. Richard M. Meinhart, *Strategic Planning Through an Organizational Lens*, ProQuest UMI Dissertation Services, 2004, pp. 104-107. Chairman Shalikashvili mentioned readiness an average of 28 times versus Powell’s average of 3.

35. Author’s assessment from comparing the six sections in MOP 7 1993 with sections in the 1995 NMS.

36. Meinhart, 2003, pp. 39-41.

37. John M. Shalikashvili, *National Military Strategy of The United States*, Washington, DC, 1997. Discussion that follows in this and later paragraphs taken from this source.

38. *Ibid.*, p. 11.

39. *Ibid.*, p. 5.

40. Meinhart, 2003, pp 24-26.

41. Richard B. Myers, *National Military Strategy of the United States of America*, Washington, DC, 2004. Discussion that follows on the military strategy taken from this source.

42. *Ibid.*, p. 8.

43. *Ibid.*, p. 21; and Donald H. Rumsfeld, *The National Defense Strategy of The United States of America*, Washington DC, 2005, pp. 16-17.

44. House Report 108-354, "National Defense Authorization Act for Fiscal Year 2004, Section 905 Biennial Review of the National Military Strategy by Chairman Joint Chiefs of Staff," available from [thomas.loc.gov/cgi-bin](http://thomas.loc.gov/cgi-bin).

45. Douglas Feith and Bill Sullivan, News Transcript "Special Defense Department Briefing," March 18, 2005, available from [www.defenselink.mil/transcripts/2005/tr20050318-2282.html](http://www.defenselink.mil/transcripts/2005/tr20050318-2282.html).

46. *Ibid.*



## CHAPTER 8

### PRESENT AT THE COUNTERREVOLUTION: AN ESSAY ON THE 2005 NATIONAL DEFENSE STRATEGY AND ITS IMPACT ON POLICY<sup>1</sup>

Nathan P. Freier

In the wake of September 11, 2001 (9/11), the war against Afghanistan's Taliban "government," the start of a worldwide conflict against extremists, and the fall of Baghdad, Secretary of Defense Donald Rumsfeld chartered a comprehensive reappraisal of the "transformational" strategy he outlined in the 2001 *Quadrennial Defense Review* (QDR 01).<sup>2</sup> The shock of 9/11, the wars occurring in its wake, and a growing insurgency in Iraq had profound impacts on the course of the strategy review. The Department of Defense's (DoD) quick relook at QDR 01 occurred in late 2003 and early 2004. It ended with publication of *The National Defense Strategy of the United States of America* (NDS 05) in March 2005.<sup>3</sup> NDS 05 overturned much of QDR 01's worldview. Indeed, that worldview officially lasted a little over 2 years – even shorter if one considers that DoD finished the formal 4-year defense review just prior to 9/11 and published it while the Pentagon still smoldered.

#### THE COUNTERREVOLUTION TO THE REVOLUTION IN MILITARY AFFAIRS

By 2003-04, it was clear the assumptions and strategy underpinning QDR 01 were out of synch with strategic conditions. QDR 01 was largely an aspirational document, a 100-level survey course on how we might dominate the Revolution in Military Affairs (RMA). It focused on the capabilities defense leaders wanted in response to threats that might emerge from the RMA versus those they needed now to confront threats that had recently emerged and would persist. The course of history between 9/11 and late 2003 provided a tragic but perversely necessary call to action for the defense establishment in this regard. NDS 05 laid a foundation for a long-overdue defense adjustment to strategic conditions that had emerged since the end of the Cold War and the sudden jolt of 9/11. These conditions were radically different from those DoD was originally chartered and designed to confront.

In the end, NDS 05 was not simply a reaction to 9/11, the War on Terror (WoT), or unconventional conflicts in Iraq and Afghanistan. To those of U.S. involved in what became DoD's first post-9/11 strategy development exercise, these all were emblematic of more fundamental changes in the character of future defense demands. As a consequence, we concluded very quickly that the secretary's transformation agenda was in part misdirected. Given new defense demands, we were concerned that DoD was transforming itself, at best, toward limited utility and, at worst, toward strategic irrelevance.

NDS 05 proceeded from the hypothesis that consequential competition and resistance themselves were in the midst of revolutionary transformation, a kind of accidental counter-revolution to the RMA. While there may have been an RMA underway, we concluded that much of it rested squarely in the realm of traditional military competition, an area still dominated by the United States. Therefore, we argued that traditional – albeit "transformed" – military competition emerging from it was neither the likeliest nor the most important for DoD.<sup>4</sup>

In the end, NDS 05 made a simple and compelling argument. The character of the nation's most meaningful security challenges shifted dramatically with the collapse of the Soviet Union, but the national security establishment (including DoD) had failed until now to fully account for the significance of the shift. We concluded that the most important defense challenges would be more

unconventional than those common to the Cold War. And, as a result, DoD would have to accept and affect dramatic change in its orientation, missions, and culture to adjust; a much different form of “change” than that argued for in QDR 01.

## **BOTTOM LINE: NDS 05 REFRAMED DOD’S STRATEGIC PRIORITIES**

The strategic ground shifted in Washington between September 2001 and October 2003. The 2 years after 9/11 marked a bellwether period for defense and national security strategists. The new millennium opened with the new U.S. administration focusing on military competition with a rising “asymmetric” China. By 2003, that same administration and its Defense Department radically changed course, focusing—perhaps to a fault—on a new set of challenges emanating from a troubled Muslim world. The limits of American military power vis-à-vis these newly recognized forms of resistance were increasingly apparent. As a consequence, the most influential defense and security policymakers had to revisit and change prevailing assumptions about the relative importance of a range of new threats.<sup>5</sup>

There were a number of important defense-relevant questions left open in the immediate post-9/11 period. Answers to them would have dramatic effects on the future of DoD. Among them: Were changes in the strategic environment additive—new challenges added to old—or instead qualitative—new challenges replacing old? Had a revolution occurred in the character of competition and hazard for the United States? And if so, were unconventional threats and their associated costs more significant to DoD than all possible traditional challenges on the planning horizon? Finally, would DoD’s continued fixation on traditional conflict ultimately equate to dangerous under-preparedness for other forms of resistance and friction?

Those of U.S. chartered to craft the new defense strategy believed that answers to these questions were sufficiently clear to merit a new focus for DoD. The strategic environment within which the U.S. would defend its people, interests, and position was changing qualitatively. Strategically significant competition with state and nonstate rivals was migrating away from the traditional military domain. Thus, violent conflict—the *sine qua non* of DoD—would increasingly assume what came to be labeled irregular, catastrophic, disruptive, and hybrid forms. Finally, continued employment of 20th century military convention to protect, exercise, and extend U.S. influence may actually undermine our position and interests. In short, new challenges demanded fundamentally new responses. The nature and form of defense-relevant competition with and resistance to the United States had changed—likely long before 9/11. However, DoD and the wider U.S. Government (USG) were just now catching up.

NDS 05 was the first attempt to make up ground and adapt the defense enterprise in this regard. It was also the first unclassified, stand-alone articulation of defense strategy in DoD’s history. Among its most prominent contributions, NDS 05 gave birth to a novel and controversial description of the strategic environment and its “four mature and emerging challenges”—traditional, irregular, catastrophic, and disruptive (see Figure 1).<sup>6</sup> The controversy surrounding the four challenges stemmed in large measure from their imperfect representation in the once ubiquitous DoD “quad chart.” And, furthermore, overuse of that depiction in defense deliberations.

Important nuance and meaning associated with the four challenges were lost in policy debates that preceded and followed NDS 05’s publication. In short, the “quad chart” never really offered a complete description of the emerging strategic environment to those responsible for producing it. We had a more sophisticated concept of competition, resistance, and hazard in mind when we came up with the four challenges, a concept that is inherently difficult to communicate effectively with a single (now familiar) PowerPoint design. We failed to fully explain it and, in true Washington fashion, its consumers and users across DoD rushed to interpret it in terms that were most





# Security Challenges



Figure 1. The Four Mature and Emerging Challenges.<sup>7</sup>

favorable to their institutional perspective and budget/acquisition priorities. We intended for the quad chart to start conversations. Others were keen to use it to end them.

In spite of the criticism, NDS 05’s abstract characterization of the environment’s principal challenges and their associated hazards remained largely uncontested inside the Pentagon for the next 4 years. In fact, I can reasonably argue here that the “four challenges” and NDS 05’s general description of defense responses to them had profound impacts on defense policy and culture for the remainder of the decade. From a policy perspective, NDS 05 can also be credited with initiating a chain of evolutionary steps across DoD that reoriented the enterprise away from its traditional warfighting bias and toward a more complex, less conventional defense future. History and the weight of events were clearly pushing DoD in this direction. But, NDS 05 served to capture and shape the character of new defense trends in this regard. That evolution away from a traditional warfighting focus continues today.

## NOTHING HAPPENS FAST IN WASHINGTON, BUT THIS DID

Substantive work began on NDS 05 in mid-October 2003 and was largely over by February 2004. Work on NDS 05 was initiated in response to the impending release to Congress of the Chairman of the Joint Chiefs of Staff’s (CJCS) 2004 National Military Strategy (NMS). By law, the NMS had to be transmitted to Congress no later than February 15, 2004, according to the FY 2004 National Defense Authorization Act (NDAA).<sup>8</sup> When the draft NMS was sent to Secretary Rumsfeld for comment and endorsement, he is purported to have asked why the definitive public statement of defense strategy from inside DoD came from the CJCS and not – consistent the tradition of civilian control – from the Secretary of Defense (SecDef).<sup>9</sup> A fair point. A short, high-level debate ensued.

This seemingly pedantic policy debate was catalytic for DoD. Civilian defense policy officials saw it as an opportunity for DoD to: 1) reassert civilian primacy over defense strategy; 2) adjust DoD’s trajectory given the events of the past 2-plus years; and, finally, 3) preempt and finish

debates about defense strategy in advance of the 2005-06 QDR. The vehicle for all of this would be a national defense strategy (NDS). This left the already completed NMS as the CJCS's instrument for operationalizing the defense secretary's vision inside the military.

Initially, two staff Officers (one military, one civilian) in the Office of the Undersecretary of Defense for Policy (OUSDP) were tasked to review and revise QDR 01's strategy to more fully account for the conditions that had changed since 9/11. Thus, NDS 05 was originally intended to be an update, not a rewrite. The author and Mr. D. Burgess Laird were the two individuals assigned to the mission. The deadline for completion of the work was the end of January 2004. That deadline coincided with the next major conclave of defense senior executives (the SecDef, Dep-SecDef, all defense undersecretaries, the JCS, and all combatant commanders). In the secretary's view, delivering a new draft strategy at that level would limit parochial debate and get the strategy "in the field" much faster. As a draft NMS existed already, policymakers decided to synchronize language in the two documents by iterating the drafts between OSD Strategy and J5 Strategy.

There was very little time between mid-October 2003 and the end of January 2004. Standard practice and processes for an initiative like this were therefore impractical. Thus, direct participation in the work was limited by design to the two working-level OSD strategists, their supervisors, key senior civilian leaders above them, and their uniformed counterparts on the Joint Staff. The author has characterized this approach as a "modified black box."

Those outlined above were officially "in the box." The "modification" was informal but direct contact and consultations between the principal OSD strategists and their counterparts in the service staffs, in other relevant OSD offices, and in key intelligence positions. These consultations occurred as required and enabled the OSD team to test key concepts throughout the process. This "modified black box" approach is anathema to routine Pentagon processes that generally involve "a cast of thousands" from initiation. Participation in this process—to the extent one can call it a process—was purposefully much more limited. This approach proved to be providential, as even the earliest drafts of NDS 05 were more internally consistent than past strategy documents and, thus, more likely to survive formal staffing intact.

In retrospect, noticeably absent from the black box "modification" were working-level representatives of the combatant commands (CoComs) and the interagency.<sup>10</sup> Time and prevailing culture in OSD at the time were responsible for this. Some among the former (CoComs) were let into the box when convenient. With respect to the latter, comprehensive whole-of-government participation in the process clearly would have been an advantage. However, as students of defense and national security affairs well know, that has long been an unrealized aspiration. And, it will not likely change soon.

What began as revision of an existing strategy, ended as a near-complete rewrite, after the strategy team recommended a "back to the drawing board" approach early in its initial review of QDR 01. Given both political considerations and limited time, there was naturally some reluctance for a complete rewrite at higher levels. However, again the author understands that the SecDef himself endorsed the idea of wholesale revision when the option was briefed to him.<sup>11</sup>

In the end, there was only one non-negotiable point in this regard. The labels *Assure*, *Dissuade*, *Deter*, and *Defeat* would remain central to the document.<sup>12</sup> However, even these were subject to significant redefinition in order to conform to a new, post-9/11 worldview. They were also demoted from their position of primacy as defense *ends* ("goals" in QDR 01 parlance) and instead, identified in the NDS 05 as *ways* (i.e., "How We Accomplish Our Objectives").<sup>13</sup> A new set of "strategic objectives" supplanted them as *ends* in the new strategy.<sup>14</sup>

NDS 05 was largely complete, distributed for comment, and accepted in concept by key stakeholders prior to the January 2004 deadline. In the end, however, formal coordination and socialization across DoD proved to be more laborious endeavors than perhaps the secretary anticipated by

his jumping the formal staffing chain. Fourteen months of official staffing passed between effective completion of NDS 05 in January 2004 and official publication in March 2005.<sup>15</sup> The strategy was officially rolled out long after the two original working-level strategists departed for other duties.<sup>16</sup> However, by design, a number of NDS 05's key concepts had already entered the public debate.<sup>17</sup> This amounted to a kind of rolling "socialization," where key ideas were infiltrated into the wider defense discussion, as they were accepted by senior defense leadership and the charter members of the "black box."

The corporate reevaluation of QDR 01 that resulted in NDS 05 necessitated asking and answering some impertinent questions given powerful predilections inside DoD for high-tech military transformation. Doing otherwise though—ignoring what some considered at the time to be real gaps in QDR 01's analysis and scope—might have impeded essential change. Broadly speaking, success in NDS 05 relied on a quick elemental investigation into the primary defense-relevant challenges facing the U.S. and DoD's role in confronting and managing them. Ultimately, this foundational investigation resulted in three new big defense ideas.

### **NDS 05'S THREE BIG IDEAS**

The idea that QDR 01's foundational strategy needed rewriting hinged on careful consideration of the original strategy's focus and a comparison of that focus to the realities confronting U.S. forces in the field. We felt from the start that those who crafted QDR 01 over-militarized the landscape and its challenges, weighting their recommended strategic design heavily toward a transformed idea of traditional military superiority.

In QDR 01's logic, the most significant challenges would continue to be nails and the solutions to them increasingly more capable, complex, and technically advanced hammers. In short, nothing would be novel about the sources of consequential competition—only the quality of that competition and the physical address of the competitors. Aggressive states would remain the dominant sources of strategic hazard, and they would largely continue competing with the U.S. in ways that were novel technically and operationally but by no means unrecognizable from past periods of military rivalry.

QDR 01 was replete with references to anticipated "asymmetric" competition.<sup>18</sup> However, the most important asymmetric threats by its definition would continue to manifest themselves in well-recognized forms of military rivalry—principally, rising great powers and rogue states employing ballistic missiles and weapons of mass destruction (WMD) to limit American regional influence and, at times, hold the U.S. homeland at risk directly.<sup>19</sup> Further still, though ostensibly founded on the principal of "uncertainty" and, thus, trumpeting a "capabilities-" versus "threat-" based approach to strategy, QDR 01 focused implicitly on the certainty of future military competition with China.<sup>20</sup> It was classical realism redux.

In QDR 01's vision, the grand strategic dynamics of the nation's military future would look very much like its Cold War past. This view came from influential defense intellectuals who had declared meaningful military competition with the United States a decade or more off in the future. Those holding this view sought to hinge future American military success on careful exploitation of what they thought was a "strategic pause" in meaningful competition. They believed that the United States should seize the opportunity afforded by the pause to undertake a transformational "leap ahead" in military capability.<sup>21</sup>

In drafting NDS 05, we rejected this view and thus, also by implication questioned the validity of DoD's on-going transformation. Candidate Bush argued in 1999, "The best way to keep the peace is to define war on our terms."<sup>22</sup> We concluded that the defense establishment had redefined



war in QDR 01 (and likely since the end of the Cold War) as it would prefer to see it versus as it was or as it most likely would become.<sup>23</sup>

From our perspective, QDR 01 failed to acknowledge that real power and its effective employment no longer adhered to 20th century realist convention alone. Continued American primacy relied only in part on retention of dominant traditional military capacity – transformed or not. We concluded that traditional military superiority neither guaranteed broad spectrum primacy nor accounted for new forms of unconventional competition and resistance effectively. We also felt that the playing field DoD would have to fight through was itself both more complex and more level than QDR 01 acknowledged. The “leveling,” however, was less a function of our state-based opponents’ military advances (although that was important) and more a function of an expanded challenge set and the wide diversity of its individual threats.

Until DoD initiated work on NDS 05, it corporately continued to bind its relevance on the narrow maintenance of traditional military dominance alone. This was true in spite of the fact that meaningful competition and resistance against the United States were straying further and further away from the traditional domain. It was clear that, despite recent experience, DoD continued to assess strategic risk only in the context of traditional conflict with great or lesser powers. In fact, it did so in ways not dissimilar to the net and risk assessments that dominated the Cold War. Therefore, though most concluded that years of demonstrated U.S. military superiority would continue to drive opponents toward new areas of competition, defense risk was nonetheless still pegged against DoD’s ability to conduct large-scale traditional campaigns. This view of risk assessment seemed to rely on the U.S. facing both the unlikeliest and the most favorable strategic circumstances at the same time – purposeful traditional conflict focused squarely at the jaws of U.S. advantage.

NDS 05 deliberately worked to deconstruct this perspective. The result was three new big defense ideas.

### **The First “Big Idea”: The New Normal – Persistent Conflict.**

We concluded that the new strategic and operational state of nature would see the United States buffeted by persistent conflict, resistance, and friction.<sup>24</sup> Those of U.S. responsible for drafting NDS 05 saw competition with and resistance to the United States as endemic. The reality was that the United States had entered an era where conflict on some level was the norm and peace by most definitions the exception. In hindsight, NDS 05 served to artificially focus this “big idea” of “persistent conflict” on the WoT. It was, however, meant to be more comprehensive than that. In our view, widespread, defense-relevant resistance to the United States was a natural by-product of primacy. By virtue of its power, the United States both drew more purposeful opposition and had a greater duty to act globally against threats to stability.

We concluded that defense-relevant competition with and resistance to the United States was neither exclusively confined to the conflict with extreme Islam (our immediate real world challenge) nor was it driven solely by a future showdown with a rising near-peer like China (the implicit focus of QDR 01). We felt strategic circumstances were more complex and irreducible than either of these suggested. And, thus, by implication, a wider range of threats and challenges would be important to DoD over time.

Some discrete challenges to the United States would arise from purposeful resistance – predictable antibodies to singular superpower. Others would originate in environmental discontinuities triggered by globalization and the dissolution of key aspects of effective sovereign control. Regardless of origin or purpose, however, most would be decidedly less traditional in their prevailing character, and all were certain to test U.S. primacy in unique ways.

In this construct, some opponents acted alone against the United States and its interests according to discrete designs. Some acted purposefully against U.S. in concert with others, sharing

active limitation of U.S. influence as a common goal. Few, however, enjoyed a common vision for strategic outcomes. In other instances, the environment itself – un- and under-governance, weak or failing political order, and even natural or human disaster – would inhibit successful pursuit of U.S. objectives and require defense intervention. Though uncoordinated and often competing, the strategic effects of all of these competitors and competitive forces would likely combine.

Implicit in this recognition of persistent conflict was the need to reorient much of the department’s intellectual energy away from conceptual preparation for speculative future challenges and instead direct it against the near- to mid-term threats about which we were more certain. After almost 9 years of constant war, the recent QDR (QDR 10) is credited with being the first to truly put the current wars at the forefront of defense strategy and planning. NDS 05, however, can take some credit for reorienting defense planning away from what amounted in QDR 01 to a more theoretical focus on future challenges and toward a much more practical near-, mid- and long-term look based both on recent experience and known trends. Frankly, from NDS 05 forward strategy and policy by necessity would have to be far less “capabilities-based” than many would prefer, as the United States fought real wars with real enemies in two-plus active theaters.

### **The Second “Big Idea”: The Rise Of Irregular, Catastrophic, Hybrid, and in the Future, Disruptive Challenges.<sup>25</sup>**

Consistent with the above description, we concluded that the United States now operated inside a band of constant, unrelenting resistance and friction where a range of discrete competitors tried to limit U.S. influence through a variety of unconventional, cost-imposing strategies. Our view was that, at present and well into the future, unconventional threats would challenge U.S. interests more consequentially than any probable combination of traditional military challenges (legacy or transformational). The prominence and virulence of new unconventional threats was exacerbated by visible erosion of the authority and reach of some sovereign governments as well.

The range of consequential actors had expanded exponentially. While the United States consistently demonstrated its capacity to defeat traditional military competitors, it had not proven as successful against determined unconventional resistance. In light of this, we assumed that America’s most consequential competitors had already consciously ceded much of the traditional domain to the United States, opting instead to compete in alternative domains.<sup>26</sup> They likely saw traditional military competition with the United States as pointless, unnecessary, and self-defeating. It engendered enormous – even existential – hazards. In short, the downsides far outpaced any possible advantages. Thus, going forward, while the United States could not ignore the traditional capabilities of hostile states, it also could not succeed without increasing its capacity to compete effectively against a broader range of less traditional threat capabilities and methods. We, therefore, concluded that irregular, catastrophic, and hybrid challenges should rise to primacy in defense strategy and planning.

### **The Third and Final “Big Idea”: Defense “Transformation” Had To Be Remade and Retargeted.**

As discussed above, mounting evidence suggested that traditional U.S. military superiority was necessary but not sufficient for success. The idea of the “lesser included case” – where the United States armed exclusively for high-intensity traditional warfare and handled everything by exception through ad hoc adjustment – was now dead. Indeed, we concluded that it was increasingly likely that the United States and its Armed Forces would confront an array of capable non-state and state competitors under conditions of considerable strategic and operational ambiguity where success and failure are often very difficult to define. Therefore, reorientation of defense



transformation away from a near-exclusive focus on high-end, traditional military capacity was an essential adjustment to 21st century demands. Failure to do this would result in the United States accruing enormous risk precisely in those areas where recent history had proven it to be most vulnerable, leaving a great deal of the defense establishment irrelevant to combating what were becoming the likeliest and most important near- to mid-term threats.

Further still, we concluded that the environment would never universally conform to the pre-conflict, war, and post-conflict model against which DoD had long pegged its relevance and readiness. DoD's pre-9/11 worldview envisioned deliberately ramping up military capabilities to fight high-intensity combat engagements, fighting those engagements, and then ceding primary responsibility for final conflict resolution to other USG agencies. Now, however, DoD was elemental to (and often responsible for leading) a constant whole-of-government effort to manage consequential competition and resistance perpetually. Thus, defense transformation – to the extent it occurred – would have to occur “in stride” as the United States actively defended its interests in perpetuity. “In stride” transformation too would have near-, mid-, and long-term components.

## CONCLUSION

Starting with NDS 05, DoD began to assess and appreciate on-going environmental changes more realistically and judge the relative significance of those changes for future defense policy. Unlike QDR 01, NDS 05's strategy was not just a vehicle for articulating transformational policy and capability aspirations. Instead, it was a mechanism for adapting DoD's culture to more effectively manage the defense-specific response to persistent and largely unconventional resistance to U.S. influence. To be sure, there is a great deal of truth to the argument advanced by some critics that – like most public policy pronouncements in the national security field – NDS 05 was heavy on concept and light on detail. However, there is very little question that the strategy did have a pronounced effect on the prevailing defense culture, particularly with respect to the aperture used to examine the environment and the lexicon employed to describe the environment's principal challenges. While it was replaced by a new strategy in the summer of 2008, it did leave an indelible mark on DoD.

## ENDNOTES - CHAPTER 8

1. This chapter was adapted from the author's 2007 monograph, *Strategic Competition and Resistance in the 21st Century: The Traditional, Irregular, Catastrophic, and Hybrid Challenges in Context*, Carlisle, PA: Strategic Studies Institute, U.S. Army War College. The author was one of two working-level strategists responsible for early development of the 2005 *National Defense Strategy* while assigned to the Office of the Deputy Assistant Secretary of Defense for Strategy from AY 2003 to July 2004. The other working-level strategist was Mr. D. Burgess Laird, who at the time was a civilian employee of the Department of Defense.

2. See *Quadrennial Defense Review Report*, Washington, DC: Department of Defense, September 30, 2001 , pp. 11-16, available from [www.defense.gov/pubs/pdfs/QDR2001.pdf](http://www.defense.gov/pubs/pdfs/QDR2001.pdf). (Hereafter QDR 01.)

3. See *The National Defense Strategy of the United States of America*, Washington, DC: Department of Defense, March 2005, available from [www.dami.army.pentagon.mil/offices/dami-zxg/National%20Defense%20Strategy%20Mar05-U.pdf](http://www.dami.army.pentagon.mil/offices/dami-zxg/National%20Defense%20Strategy%20Mar05-U.pdf). (Hereafter NDS 05.)

4. While reviewing the content of the monograph on which this work was based with Mr. D. Burgess Laird on January 17, 2007, the author was reminded of working-level conclusions about the four challenges, their interrelationship, and their place in the context of past defense reviews. In those conversations in 2003-04, Laird and the author concluded that disruptive challenges would often arise through the evolution of traditional capabilities. Thus, just as

irregular and catastrophic challenges likely represented a single continuum, so too did the traditional and disruptive. Employing the language of NDS 05, QDR 01's heavy emphasis on the RMA and defense transformation revolved around the United States, maintaining its competitive edge along the traditional-disruptive axis while hedging against catastrophic challenges.

5. For a view of the Bush administration's pre-9/11 assumptions and defense priorities, see George W. Bush, "A Period of Consequences," Speech at The Citadel, South Carolina, September 23, 1999, available from [www.citadel.edu/pao/addresses/pres\\_bush.html](http://www.citadel.edu/pao/addresses/pres_bush.html); Donald H. Rumsfeld, "Guidance and Terms of Reference for the 2001 Quadrennial Defense Review," Washington, DC: Department of Defense, June 22, 2001, available from [www.comw.org/qdr/qdrguidance.pdf](http://www.comw.org/qdr/qdrguidance.pdf); and DoD, QDR 01. The most definitive and consistent expressions of the Bush administration's defense priorities prior to 9/11 came from Candidate Bush's Citadel address in September 1999, the 2001 QDR terms of reference, and the 2001 QDR report itself. These all focused defense priorities on preparing to confront rising great powers and rogue states who might challenge the United States through niche asymmetric military capabilities—including ballistic missiles, WMD, etc. Some attention was paid to terrorism in each of these. However, the thrust of the terrorist discussion in all three focuses on terrorist acquisition and employment of WMD.

6. See NDS 05, pp. 2-4.

7. Ryan Henry, "Deterrence and Dissuasion for the 21st Century," Briefing to the IFPA-Fletcher Conference, December 14, 2005, p. 3, available from [www.merln.ndu.edu/archive/NSS/DoD/Ryan\\_Henry.ppt](http://www.merln.ndu.edu/archive/NSS/DoD/Ryan_Henry.ppt).

8. See 108th Cong., Public Law 103-186, "National Defense Authorization Act for Fiscal Year 2004," November 24, 2003, available from [www.DoD.mil/DoDgc/olc/docs/2004NDAA.pdf](http://www.DoD.mil/DoDgc/olc/docs/2004NDAA.pdf).

9. This observation comes from the author's observation of events as a member of the Office of the Deputy Assistant Secretary of Defense for Strategy. While not present when the Secretary asked this, the author understands from conversations with supervisors at the time that the Secretary did ask this question in some form.

10. These informal consultations resulted in the Army's early adoption of the concept of "persistent conflict," as early versions of the strategy began with words like "the United States has entered a period of persistent conflict and resistance." Later language in the defense strategy was changed to "America is a nation at war," while the Army retained and perpetuated the concept of "persistent conflict."

11. *Ibid.*

12. QDR 01, pp. 11-12.

13. NDS 05, pp. 7-8.

14. *Ibid.*, pp. 6-7.

15. Naturally, some editing occurred during official staffing. Nonetheless, the core elements of NDS 05 remained intact throughout. The strategy was released publicly on March 18, 2005.

16. The author would like to acknowledge the follow-on contributions of new strategy team members that picked up work on NDS 05, both Mr. Laird and he left for new duties. They included: Ms. Amy Chao; Ms. Leslie Hunter, and then-Lieutenant Colonel Tom Cosentino. Mr. Laird left OSD in the spring of 2004 for the private sector, and the author left for an assignment at the U.S. Army War College.

17. See, for example, the discussion of the four challenges in Department of Defense, Report Required by Section 2912 of the Defense Base Closure and Realignment Act of 1990, as amended through the National Defense Authorization Act for Fiscal Year 2003, March 2004, pp. 19-22, available from [www.defense.gov/brac/docs/04\\_0\\_body\\_032403.pdf](http://www.defense.gov/brac/docs/04_0_body_032403.pdf).

18. See QDR 01, p. 3. For example, QDR 01 observes, "(T)he United States is likely to be challenged by adversaries who possess a wide range of capabilities, including asymmetric approaches to warfare, particularly weapons of mass destruction."

19. See *Ibid.*; and Bush, 1999. QDR 01 observes, “As the September 2001 events have horrifically demonstrated, the geographic position of the United States no longer guarantees immunity from attack. . . . (I)t is clear that over time an increasing number of states will acquire ballistic missiles with steadily increasing effective ranges.” Later, the report observes, “The pervasiveness of proliferation . . . has increased the availability of technologies and expertise needed to create military means to challenge directly the United States and its allies and friends. This includes the spread of CBRNE weapons and their means of delivery, as well as advanced conventional weapons.” In this regard, the authors of QDR 01 implied that strategically significant competition would still principally originate from state actors employing advanced military technologies in innovative ways. Toward that end, they focused primarily on state-based adversaries’ operational military capabilities, particularly ballistic and cruise missile technology and weapons of mass destruction. This is consistent with the vision of Candidate Bush who observed,

(W)ith the spread of technology, distance no longer means security. North Korea is proving that even a poor and backward country, in the hands of a tyrant, can reach across oceans to threaten us. It has developed missiles capable of hitting Hawaii and Alaska. Iran has made rapid strides in its missile program, and Iraq persists in a race to do the same. In 1996 . . . a Chinese general reminded America that China possesses the means to incinerate Los Angeles with nuclear missiles.

20. See QDR 01, p. 4; and Joseph S. Nye, “US Power and Strategy After Iraq,” *Foreign Affairs*, Vol. 82, Issue 4, July/August 2003, p. 2. QDR 01 has no direct references to China. However, there are strong indications of a focus on China embedded in it. For example, the report asserts, “Asia is gradually emerging as a region susceptible to large-scale military competition.” Later on the same page, it observes, “Maintaining a stable [military] balance in Asia will be a complex task. The possibility exists that a military competitor with a formidable resource base will emerge in the region. The East Asian littoral—from the Bay of Bengal to the Sea of Japan—represents a particularly challenging area.” Nye would argue that this reflected the administration’s overall view of the international system. Nye observed later in 2003, “George W. Bush entered office committed to a realist foreign policy that would focus on great powers such as China and Russia and eschew nation-building in failed states of the less developed world. China was to be ‘a strategic competitor,’ not the ‘strategic partner’ of Bill Clinton’s era.”

21. See National Defense Panel (NDP), *Transforming Defense: National Security in the 21st Century*, Report of the National Defense Panel, December 1997, p. I, available from [www.dtic.mil/ndp](http://www.dtic.mil/ndp); Steven Kosiak, Andrew Krepinevich, and Michael Vickers, *A Strategy for a Long Peace*, Washington DC: Center for Strategic and Budgetary Assessments, January 2001, p. 19; and Bush, 1999. These ideas first saw quasi-official ascendancy in the 1997 report of the National Defense Panel (NDP). The NDP observed, “Today we are in a secure interlude following an era of intense international confrontation . . . The United States needs to launch a transformation strategy now that will enable it to meet a range of security challenges in 2010 to 2020.” Kosiak *et al.*, observe in their footnote 4, “Leap ahead, as used in a transformation context, means capabilities that are compatible with an emerging military regime. Advances within an existing warfare regime, no matter how revolutionary . . . will usually fail to meet this test.” Later, Candidate Bush implied that pause and leap ahead were cornerstones of his defense transformation agenda when, during the campaign, he observed, “My third goal is to take advantage of a tremendous opportunity—given few nations in history—to extend the current peace into the far realm of the future.”

22. Bush, Citadel Speech, 1999.

23. See NDS 05, p. iii. Ultimately, we captured this very idea in the SecDef’s forward. In it, the Secretary states, “This National Defense Strategy outlines our approach to dealing with challenges we likely will confront, not just those we are currently best prepared to meet.”

24. See, for example, Richard K. Betts, Spring 2002, p. 8; Stephen M. Walt, “American Primacy: Its Prospects and Pitfalls,” *Naval War College Review*, Vol. 55, Issue 2, Spring 2002, p. 8, available from [www.nwc.navy.mil/press/Review/2002/spring/art1-sp2.htm](http://www.nwc.navy.mil/press/Review/2002/spring/art1-sp2.htm); and Stephen G. Brooks and William C. Wohlforth, “American Primacy in Perspective,” *Foreign Affairs*, Vol. 81, Issue 4, July/August 2002, p. 5, available from [proquest.umi.com/pqdweb?did=128867981&sid=2&Fmt=3&clientId=20167&RQT=309&VName=PQD](http://proquest.umi.com/pqdweb?did=128867981&sid=2&Fmt=3&clientId=20167&RQT=309&VName=PQD). Betts observed, “Primacy has two edges—dominance and provocation.” Walt argued, “The tendency for the strongest power to provoke widespread opposition is probably the central challenge of contemporary U.S. foreign policy.” Finally, Brooks and Wohlforth observed, “The world finds it unfair, undemocratic, annoying, and sometimes downright frightening to have so much power concentrated in the hands of

one state, especially when the United States aggressively goes its own way. But given the weight and prominence of U.S. power on the world stage, some unease among other countries is inevitable no matter what Washington does.”

25. See Betts, 2002, p. 2. Betts argues similarly,

Political and cultural power makes the United States a target for those who blame it for their problems. At the same time, American economic and military power prevents them from resisting and retaliating against the United States on its own terms. To smite the only superpower requires unconventional modes of force and tactics that make the combat cost exchange ratio favorable to the attacker. This offers hope to the weak that they can work their will despite their overall deficit in power.

26. For NDS 05’s discussion of this, see NDS 05, pp. 2-3. For some expansion on these ideas, see Nathan Freier, *Strategic Competition and Resistance in the 21st Century: Irregular, Catastrophic, Traditional, and Hybrid Challenges in Context*, Carlisle, PA: Strategic Studies Institute, U.S. Army War College, May 2007. For a non-Western perspective on this, see Qiao Liang and Wang Xiangsui, *Unrestricted Warfare*, Beijing, China: PLA Literature and Arts Publishing House, February 1999, available from [www.terrorism.com/modules.php?op=modload&name=Documents&file=index](http://www.terrorism.com/modules.php?op=modload&name=Documents&file=index).





## CHAPTER 9

### SECURING AMERICA FROM ATTACK: THE DEFENSE DEPARTMENT'S EVOLVING ROLE AFTER 9/11

Frank L. Jones

At 8:46 a.m. on September 11, 2001 (9/11), a clear, sunny day on the East Coast, an American Airlines plane loaded with passengers, crew, and thousands of gallons of fuel slammed into the 110-story North Tower of World Trade Center in downtown Manhattan, exploding in a massive inferno. Seventeen minutes later, a second airplane, this time a United Airlines flight, crashed into the Center's twin South Tower, igniting another firestorm. President George W. Bush, traveling in Florida, was informed of the incidents and immediately departed for the capital. Before leaving, he made a brief statement at 9:30 a.m., confirming that the planes were part of "an apparent terrorist attack" on the United States. Less than 10 minutes after he spoke, a third airliner crashed into the U.S. Department of Defense (DoD) headquarters, more commonly known as the Pentagon, setting off an enormous fire causing hundreds of casualties; jet fuel literally ran down the corridors. The events did not end there. Shortly after 10:00 a.m., a fourth airliner plummeted to earth in a field just outside rural Shanksville, Pennsylvania, before it could reach its intended target, the result of a heroic effort by the passengers to prevent another horrific act from occurring.<sup>1</sup>

In a matter of less than 2 hours, both the World Trade Center's towers had collapsed, an unimaginable event, and nearly 3,000 people were killed. Manhattan was a storm of dust, ash and debris. After the Pentagon attack, the Federal Aviation Administration, for the first time in U.S. history, shut down the nation's airspace, ordering all airborne planes to land immediately at the nearest airport. In their place, U.S. fighter jets streaked into the sky above the nation, their pilots ordered to shoot down any aircraft that did not comply. The horrific events of the morning now surpassed the nation's most famous day of infamy: the Japanese attack on Pearl Harbor 60 years earlier.<sup>2</sup>

The terrorist attacks were stunning not only in the tragedy they produced, but also as demonstrations of the creative lengths to which enemies of the United States could go to use everyday technology as weapons of mass destruction (WMD) against us. The capacity to wreck havoc of this magnitude was not unexpected, for the signs of such an attempt had been foretold through a series of earlier events, both at home and overseas, including the 1993 World Trade Center bombing and an attack on the U.S. Navy destroyer *Cole* in Yemen, in which dozens of crew members were killed or injured. What was startling to many Americans was the inability of the U.S. Government agencies to discern and prevent such a clever use of civilian aircraft. It was, as one of the commissions established to investigate the incident ominously warned, "a failure of imagination" on the part of the government.<sup>3</sup> These words also signaled that protecting the United States from further attack would be neither simple nor immediate, despite the best intentions of U.S. Government leaders.

Years before the catastrophic events of 9/11, various commissions established by the U.S. Congress urged the President and other officials to place substantial emphasis on improving U.S. security against terrorist attack through increased resources, organizational redesign, and enhanced coordination among federal, state, and local governments.<sup>4</sup> Unfortunately, 9/11 would not only represent a distressing event in American history, it would take this tragedy to catalyze the governments and the private sector in the United States to undertake such a massive concerted effort to prevent such an attack from recurring. However, there was always the nagging realization that such an event could happen again, and if so, then the public and private sector needed to be prepared to respond to the consequences. Such an expectation had been noted decades before when

President Calvin Coolidge gave voice to those fears in an address delivered before the American Legion convention in Omaha, Nebraska, on October 6, 1925. “In spite of all the arguments in favor of great military forces, no nation ever had an army large enough to guarantee it against attack in time of peace or to ensure victory in time of war.”<sup>5</sup> Nonetheless, as the preamble to the U.S. Constitution underscores, it is the duty of the U.S. Government to “insure the domestic tranquility” and “provide for the common defence.” Mindful of this obligation, U.S. Government leaders initiated a number of actions to respond to this exceedingly complex mission.

The attacks on the United States forced President George W. Bush and other administration officials to concentrate intently on the possibility of threats to the U.S. homeland. For DoD officials, there was recognition that the country had become, to use military parlance, a “battlespace.” There was an immediate refocusing from programs spending millions of dollars to develop a high-tech missile shield to prevent a ballistic missile attack by another state to fundamental concerns about a growing nonstate threat. Thus, DoD would be given domestic duties to fight terrorism at home because as then Deputy Secretary of Defense Paul Wolfowitz explained, “The government is just not organized to deal with catastrophes on that scale, and when we do have catastrophes on that scale we inevitably end up turning to the military.” There were skeptics nonetheless who contended that the military would embrace this mission as it would justify force structure and increase the defense budget, while Republican politicians would view it as an ironclad rationale for promoting national missile defense as a component of overall homeland defense.<sup>6</sup> More reflective thinkers recognized that defending the U.S. homeland against terrorism required a new paradigm—a new structure for meeting a more ambiguous challenge. The Pentagon no longer had to sell the idea of homeland defense politically. The issue now was how to make it work.<sup>7</sup>

The first response to this challenge was conventional with the President ordering a retaliatory strike on Afghanistan, which was harboring the al-Qaeda terrorist leaders who had planned the suicide attack on Manhattan and Washington, and where this terrorist group had training camps. Nonetheless, there was no major overhaul of U.S. military forces nor was there a significant reallocation of funds to homeland defense missions, which had not even been defined. The 2001 *Quadrennial Defense Review* (QDR), presented to Congress in early October, largely upheld traditional thinking although it claimed that homeland defense was the Pentagon’s highest priority. This document continued to stress U.S. advantages in space, information, and power projection, as well as the future of its nuclear arsenal. The underlying warfighting concept remained focused on combat with nation-states, emphasizing regime change in one war and repelling an aggressor in another.<sup>8</sup> One critic said the thinking remains “full speed ahead with the status quo,” while Andrew Krepinevich, the executive director of the Center for Strategic and Budgetary Assessments, a Washington, DC, think tank complained that the QDR was a “thematic” document that called for transformation but provided no specifics on how this is to be accomplished. He was perplexed as to the Secretary of Defense’s public statements that while the priority is on homeland defense, intelligence and other features for the changed strategic environment, new fighter jet programs remained the major acquisition programs.<sup>9</sup> Krepinevich’s observation was astute. Although Secretary of Defense Donald Rumsfeld heralded ambitious program for transforming the military, the changes were marginal. The Department had already begun to deflect any serious responsibility for this new mission by declaring in the QDR that the 9/11 attacks made clear that “the Department of Defense does not and cannot have the sole responsibility for homeland security.” The only concession mentioned expressly was to consider establishing a new combatant commander for homeland defense.<sup>10</sup> In the White House, other actions were occurring at a more rapid pace. On October 8, 2001, the President signed Executive Order 13228, that established the post of Assistant to the President for Homeland Security in the Executive Office of the President as well as a Homeland Security Council, modeled on the National Security Council, which had existed since 1947.

The creation of this post and the council required Secretary of Defense Rumsfeld to name Secretary of the Army Thomas E. White as DoD's first homeland security coordinator with responsibility for representing the department in council deliberations, as well as interacting with the new homeland security advisor, a former Pennsylvania governor and member of the U.S. House of Representatives, Thomas J. Ridge. Pundits suggested that by naming White to the coordinator mission, the Army would have a pivotal role in whatever responsibility is given to the military for homeland defense. White added to that perception by stating: "Since the early days of our nation, the Army, both active and reserve, has engaged in homeland security. The Army brings enormous experience, talent, and capabilities to this effort."<sup>11</sup> The rhetoric was comforting to a nation still reeling from the attacks, but the exact role that White would have remained unclear. Nonetheless, Rumsfeld soon delivered on his promise to examine whether a separate combatant command should be established for the purpose of securing the U.S. homeland.

By mid-October 2001, a review of the Unified Command Plan was in progress. Rumsfeld was convinced that the current manner in which the armed forces were organized along regional lines was inappropriate to execute a global campaign against terrorism. There was considerable concern that transnational threats such as weapons proliferation and terrorism had not received sufficient attention from senior commanders and that the capability to coordinate with law enforcement concerning these threats from region to region was nonexistent. To fasten the military's attention on homeland defense, there was also extensive discussion about the creation of an Americas Command that would be responsible for the Western Hemisphere. In addition to this effort, the Pentagon leadership released the defense planning guidance for the war on terrorism that consisted of three goals: assail state support for terrorism, weaken its nonstate support, and defend the U.S. homeland from additional terrorist attacks. Pentagon officials recognized that the current Unified Command Plan addressed the first two aims, but not the third.<sup>12</sup>

By the end of 2001, Ridge and his staff were largely in place, but there were continued concerns by lawmakers and anti-terrorism experts that Congress needed to create a permanent homeland security post with a large staff and consolidate government agencies as part of it. The White House disagreed, arguing that Ridge could accomplish more as an adviser with the President's mandate and a staff detailed from other U.S. agencies than as head of a separate bureaucracy. DoD cautiously adopted its new homeland defense mission. By late January 2002, Defense officials sought to pull National Guard troops from security duties at the nation's airports, turning that responsibility over to the new Transportation Security Administration, which Congress established by law a month earlier. Approximately 6,000 troops were on duty at 400 airports across the United States to deter terrorists and reassure the public about the safety of air travel. The disengagement of the National Guard as a security force bespoke the DoD view that other federal agencies as well as state and local governments should handle the majority of the nation's homeland security duties. Ridge shared this view and declared that federal funding would be made available for this purpose. Secretary White endorsed Ridge's priorities, stating publicly that the military should have a limited role in guarding the borders and policing airports and other potential terrorist targets in the United States. Instead, it should concentrate on Afghanistan and other areas of the world. Additionally, National Guard troops assisting in border security in some states should be relieved of this duty also. Meanwhile, DoD was considering scaling back the air patrols the Air Force had been conducting over major U.S. cities and critical infrastructure locations since 9/11.<sup>13</sup>

White's remarks and the slow pace at which bureaucratic reorganization was occurring suggested to one observer, former U.S. ambassador and retired U.S. Army lieutenant general Edward Rowny, that there was a lack of urgency on the part of the Bush White House. Rumsfeld, however, in early February announced a proposal to establish a new regional command, Northern Command, to deal with the military component of homeland security. Rowny applauded Rumsfeld's

initiative but contended that more needed to be done. He recommended that the Bush administration should push for a similar consolidation and reorganization of the intelligence, border security, and emergency response agencies of the federal government. He also criticized Ridge's organization as ineffective because it lacked the needed tools and resources to handle a large-scale terrorist attack. Ridge, in Rowny's opinion, also had insufficient authority: he could not order federal agencies to act. Rowny's viewpoint was not a solitary one. Even the Bush administration recognized this deficiency, and in a speech at the National Press Club in Washington, DC, Ridge remarked that the President was considering reorganizing some federal departments and agencies, which would require congressional authorization.<sup>14</sup>

Meanwhile, Rumsfeld, sensing the mood of the country and particularly the Congress, announced in April 2002, a military reorganization designed to give higher priority to homeland defense against terrorist attacks by the establishment of Northern Command. The new command, with headquarters in Colorado Springs, Colorado, and commanded by an Air Force general, was tasked to oversee the defense of U.S. territory except for Hawaii and the U.S. possessions in the Pacific Ocean. Responsibility for these areas would belong to the existing U.S. Pacific Command. Northern Command would not only be responsible for the homeland defense mission, but would also coordinate with other federal agencies in preparing and responding to the consequences of a terrorist attack as well as natural and manmade disasters. Canada and Mexico would be included as part of the command's regional responsibilities.

Rumsfeld's decision had its critics, particularly civil libertarians who were concerned about the use of the U.S. military for domestic security, particularly the erosion of constraints placed on the military by the Posse Comitatus Act, a federal law enacted after the Reconstruction in 1878, that prohibits the regular military from performing domestic law enforcement functions. Other critics expressed concern that the use of the military for domestic security and response diverted limited resources and weakened the military's effectiveness to fight wars overseas.<sup>15</sup> Almost simultaneously with the creation of the command, the Bush administration proposed the creation of a new Executive branch department, the Department of Homeland Security (DHS).

Rumsfeld remained determined, however, to limit the scope of the DoD homeland defense mission. On May 7, 2002, testifying before the Senate Appropriations Committee, he continued to stress the importance of forward deterrence, that is, the prosecution of the war on terrorism abroad. Eventually, he turned to the subject of homeland defense and in doing so, articulated clearly and for the first time, the circumstances under which DoD would be involved in operations in the United States. First, there were extraordinary circumstances that required DoD to execute its traditional military missions and therefore, DoD would take the lead with support from other federal agencies. Examples of these missions were combat air patrols and maritime defense operations. Also included in this category are cases in which the President, exercising his constitutional authority as commander in chief and chief executive, authorizes military action. This inherent authority, Rumsfeld pointed out, may only be used in instances such as terrorist attacks, where normal measures were insufficient to execute federal functions. The second category was more traditional: in emergency circumstances of a catastrophic nature. Rumsfeld offered the example of responding to an attack or assisting other federal agencies with natural disasters. In these cases, the department would be providing capabilities that other agencies did not possess. The third category he described as missions-limited in scope, where other agencies have the lead from the outset, giving the example of security at a special event such as the Olympics.<sup>16</sup>

Rumsfeld stressed that of the three categories, the first one was homeland defense since the department was carrying out its primary mission of defending the people and territory of the United States. The other two categories were homeland security whereby other federal agencies have the



lead, and DoD-lent support. He continued by justifying the need for a \$14 billion supplemental funding request for fiscal year 2002, and an increase in fiscal year 2003 funding of \$48 billion. He added that both were essential for the war on terrorism but made no claim that any of the funding would be used for homeland defense. This was understandable given his limited definition of the department's role.<sup>17</sup>

He also announced that the President had approved a major revision of the Unified Command Plan and that one feature was the establishment of a combatant command for homeland defense, U.S. Northern Command at Peterson Air Force Base, Colorado. The primary missions of the new command were to defend the United States against external threats, coordinating military support to civil authorities, as well as responsibility for security cooperation with Canada and Mexico.<sup>18</sup>

He followed this announcement with another, stating that he had established his own interim Office of Homeland Defense and his intention to establish, by summer, a permanent office in the Office of the Secretary of Defense. The office would ensure internal coordination of DoD policy, provide guidance to Northern Command regarding homeland defense and support of civil authorities, and coordinate with the White House's Office of Homeland Security and other government agencies.<sup>19</sup>

Lastly, he assured the committee members that the department was conducting the study on the DoD role in homeland defense directed by the 2002 National Defense Authorization Act. Specifically, the comprehensive plan on how best to structure the Office of the Secretary of Defense to combat terrorism, defend the homeland, and enhance intelligence capabilities was expected to be completed during the summer.<sup>20</sup> The plan was completed as promised.

Acting on the recommendations in that plan, in July 2002, Rumsfeld decided to reorganize the Office of the Secretary of Defense by adding the position of Assistant Secretary of Defense for Homeland Defense based on the plan required by Congress. He selected Paul McHale, a former Democratic member of Congress from Pennsylvania, as the first to hold this position, pending Senate confirmation. One of the new assistant secretary's responsibilities would be to serve as a liaison between DoD and the proposed new homeland security department.<sup>21</sup>

Weeks later, Rumsfeld found himself, along with the Secretaries of State and Treasury, and the Attorney General, in the midst of the Bush administration's controversial plan to establish a new homeland security department using all or parts of 22 existing agencies, a proposal that the President laid out in June. Rumsfeld and the other cabinet officials testified in support of the President's plan before the House Select Committee on Homeland Security. The plan faced substantial opposition because the 12 committees in the House of Representatives that oversaw these agencies wanted to preserve their oversight responsibilities. Some standing committees of the House had already voted against provisions of the proposed legislation to create the department. The presence of the four cabinet heads before the select committee underscored not only the seriousness of the issue, but also the interdepartmental nature of the homeland security function and the domestic and international dimensions of the mission, ranging from border patrol and law enforcement to immigration and the issuance of visas.<sup>22</sup> As Attorney General John Ashcroft noted, "America's security requires a new approach, one nurtured by cooperation, collaboration, coordination, not compartmentalization, one focused on a single, overarching goal—the prevention of terrorist attacks."<sup>23</sup>

The emphasis on homeland defense remained more rhetoric than reality in DoD at least in terms of funds, procurement programs, and force structure changes. The Defense Planning Guidance, a document providing budgeting and planning guidance to DoD components, that Secretary Rumsfeld issued in May 2002, placed greater emphasis on the new strategic concept, "forward deterrence," that is, a commitment to attacking potential threats overseas. While the projection of



U.S. forces over long distances to fight new adversaries made sense, the Defense Planning Guidance paid no attention to the support missions that DoD might have to provide federal, state, and local responders should a WMD, such as a nuclear, chemical, radiological, or biological device, be detonated in the United States. Instead, the emphasis was primarily on a global strike capability with added emphasis on overseas intelligence collection, covert special operations, unmanned air vehicles, cyber-warfare, hypersonic missiles, and the capacity to prevent an adversary from disrupting U.S. communications and intelligence assets in space and to strike underground targets.<sup>24</sup> This was a position Rumsfeld articulated publicly in a *Foreign Affairs* article that appeared that spring.<sup>25</sup>

This narrow perspective was expected to change because of two events. The first was that Northern Command became initially operational as an organization on October 1, 2002. The second event promised equally dramatic change, based on a provision in the 2003 Defense Authorization Act, which Congress passed in October 2002. The act authorized the establishment of the position of the Assistant Secretary of Defense for Homeland Defense. Four months later, in February 2003, Paul McHale was confirmed as the first person to hold this position. Additionally, Congress established the new Department of Homeland Security by the Homeland Security Act of 2002, enacted in November. Its first secretary would be Tom Ridge and the only major provision of the law that affected DoD was the Homeland Security Council was established statutorily, consisting of the President, Vice President, Attorney General, the Secretary of Defense and the newly created Secretary of Homeland Security.

In February 2003, the new department and the two new DoD organizations would face the first test of their abilities to respond to a domestic event and coordinate with other U.S. Government organizations when the space shuttle Columbia broke up over Texas during reentry to earth. Within an hour after the disaster, Ridge conferred with intelligence and White House officials as well as Northern Command, and determined that the incident had not resulted from terrorism. Ridge put the Federal Emergency Management Agency (FEMA), now part of DHS, in charge of recovering debris from the shuttle, while Secretary Rumsfeld assigned Northern Command to assist with this effort; a variety of aircraft and ships responded.<sup>26</sup>

This experience also helped prompt a new Presidential directive, Homeland Security Presidential Directive-5, "Management of Domestic Incidents," in which DoD would ultimately have a substantial role in implementation. In this document, the President designated the Secretary of Homeland Security as the principal federal Officer for domestic incident management. The Secretary of Defense was tasked to provide military support to civil authorities for domestic incidents under the President's direction or when consistent with military readiness, the appropriate circumstances, and law. The directive indicated that even during these events, military forces would remain under the command and control of the Secretary of Defense. The Secretary of Defense and the Secretary of Homeland Security were to develop mechanisms to promote cooperation and coordination between the two departments. Lastly, the directive called for the formulation of a National Response Plan (NRP) that would integrate the federal government's domestic prevention, preparedness, response, and recovery plans into a single all-hazards plan. An initial version of the NRP was due to the assistant to the President for homeland security by April 1, 2003, along with a recommendation for the time needed to develop and implement a final version of this plan.<sup>27</sup>

By the beginning of April 2003, with U.S. military forces having invaded Iraq a month earlier, and now within 50 miles of Baghdad, Rumsfeld's view about homeland defense was apparent: the best way to secure the United States was to pursue terrorists in their havens.<sup>28</sup> Meanwhile, Paul McHale was busily putting his office in place with all the attendant bureaucratic headaches associated with such a venture. He also had his first appearance before Congress in April, when

he testified before the Senate Armed Services Committee regarding defense of the U.S. homeland. McHale reiterated Rumsfeld's three conditions under which DoD would be involved in activities within the United States. However, these conditions were already being eroded. As McHale indicated, since 9/11, DoD had flown more than 28,000 sorties over U.S. cities and responded to more than 1,000 requests from the Federal Aviation Administration to intercept potential air threats. Air patrols over the U.S. domestic airspace were no longer extraordinary but routine.<sup>29</sup>

During the summer of 2003, McHale's office would devote substantial time to a major department-wide, Secretary of Defense-directed classified study of the homeland defense mission and the force structure required to execute that mission. Later that year, the office would shape the next Strategic Planning Guidance, which required his office to formulate with assistance from other DoD components a homeland defense strategy within a year.

On December 17, 2003, President Bush approved two new homeland security directives that affected DoD. The first document, Homeland Security Presidential Directive-7, "Critical Infrastructure Identification, Prioritization and Protection," established national policy for federal departments and agencies to identify and prioritize U.S. critical infrastructure and key resources and to protect them from attack. The directive recognized that there were several critical infrastructure sectors, each with its own characteristics and operating processes. Although the DHS would have principal responsibility for implementing this directive, specific departments were designated responsible for collaborating with business and industry, conducting or facilitating vulnerability assessments, and encouraging risk management activities to protect against terrorist attacks or mitigate their effects. DoD assumed responsibility for the defense industrial base, thereby gaining another homeland security mission.<sup>30</sup>

The President also issued Homeland Security Presidential Directive-8, "National Preparedness," that established policies to bolster U.S. preparedness to prevent or respond to threatened or actual terrorist attacks, major disasters, and other emergencies. This measure called for the establishment of a national all-hazards preparedness goal, mechanisms for improving the delivery of federal preparedness assistance to state and local governments, and defining actions to improve preparedness at all levels of government. The DoD role, though not as major as other federal departments and agencies, was to provide the DHS with information concerning organizations and functions that could be utilized to support civil authorities during a domestic crisis.<sup>31</sup>

Despite the attention to these strategic issues, the tyranny of daily operational demands was also present. During the Christmas holiday season, intelligence indicators stressed that al-Qaeda's intent to carry out multiple catastrophic attacks in the United States was greater than at any point since 9/11. The indicators suggested that the terrorist group was testing the vulnerabilities of the air transportation system, both passenger and cargo. In response, Secretary Ridge announced an upgrade in the threat level from elevated risk to high risk or orange alert, the second highest level in the color-coded system, after President Bush approved the recommendation by Ridge along with senior officials of the Federal Bureau of Investigation, the Central Intelligence Agency, DoD, the Justice Department, and White House staff. Raising the threat level increased security measures across the country to protect government buildings, critical infrastructure, shopping malls, and other places where large numbers of people congregate. This decision was not made lightly. A few months earlier, in response to al-Qaeda suicide bombings in Saudi Arabia and Morocco, and after several orange alerts within a few months, Ridge and Rumsfeld opposed raising alert levels. Ridge argued that frequent changes only caused considerable psychological unease in Americans, as well as making the public cynical. Rumsfeld stated that raising the alert diverted military resources from Iraq and Afghanistan.<sup>32</sup> The holiday season ended uneventfully, but operational concerns continued to intrude because of the need to refine security procedures.

Slowly and subtly, the three conditions for DoD involved in domestic activities that Rumsfeld articulated 2 years earlier were jettisoned. In March 2004, McHale appeared before the Senate Armed Services Committee to update the members on DoD ongoing homeland defense initiatives. At that time he did not mention the three conditions. Instead, McHale laid out a concept of layered defense, which he called the lines of defense. The first line of defense was combating terrorism far from U.S. territory. The second line of defense was the air and maritime approaches to the United States and interdicting terrorists before they reached U.S. borders, which was largely the responsibility of two combatant commands—Northern Command and Pacific Command. Within the United States, the domestic law enforcement community was responsible for countering terrorist attacks, in a sense a third line of defense, with DoD ready to provide its capabilities to civil authorities, consistent with U.S. law. However, McHale also stated that DoD had established and maintained a small number of reaction forces in the United States. These forces consisted of U.S. Army and Marine Corps personnel who were postured to respond to a full range of threats if ordered by the President, and when deployed, under NORTHCOM's command and control.<sup>33</sup>

Additionally, throughout 2004, as had been the case in 2003, DoD actively continued to enhance its homeland defense and civil support missions. It maintained the readiness of its own forces by hosting exercises and participating in those sponsored by other government entities. Further, it was implementing its responsibilities under HSPD-7 regarding critical infrastructure by consolidating funding for this effort under a single program and managing it by a program office. It also undertook a number of supporting missions including establishing a DoD presence in the DHS Operations Center, detailing personnel to DHS to fill critical specialties primarily in intelligence analysis and communication, creating various liaison mechanisms, and identifying and transferring technology items and equipment that DoD had or was developing that might be of assistance to federal, state and local governments in their homeland security roles. Simultaneously, the department was responding to requests for assistance from several civilian agencies—for example, providing emergency support in natural disasters such as Hurricane Isabel and California wildfires. It also responded to the ricin incident on Capitol Hill in January 2005. That incident saw the first operational use of NORTHCOM's Joint Force Headquarters-National Capital Region, which provided the command and control of the U.S. Marine Corps Chemical-Biological Response Force's assistance to the U.S. Capitol Police.<sup>34</sup>

DoD support to the interagency was broadened in August 2004, when President Bush established by executive order, the National Counterterrorism Center under the direction and control of the Director of Central Intelligence. The primary function of the center was to serve as the hub for analyzing and integrating all intelligence pertaining to terrorism, except purely domestic intelligence information. Additionally, it was to conduct strategic operational planning for counterterrorism activities by integrating all the national instruments of power.<sup>35</sup> To that end, DoD, as well as other partner organizations, provided personnel to assist the center with its mission.

DoD also assumed a major role in the development of the *National Response Plan* (NRP) required by HSPD-5. The development of the initial NRP met with resistance from state, local and tribal governments as well as non-governmental organizations, since they were not consulted by DHS during its formulation. Consequently, DHS and a small group of its federal partners, including DoD personnel, began anew—mindful of outreach to other stakeholders—in an intense writing process of monumental proportions that addressed planning assumptions and considerations, roles and responsibilities of the variety of organizations involved in responding to an emergency, and a concept of operations. The NRP identified 14 emergency support functions, of which DoD (U.S. Army Corps of Engineers) would have the lead for public works and engineering, but would be a supporting agency in the remaining 13. The document also included special support annexes



dealing with myriad topics such as tribal relations and private sector coordination and incident annexes for specifically troublesome situations such as a terrorism event involving a biological agent or hazardous materials pollution.<sup>36</sup>

The document, consisting of more than 300 pages, was approved in December 2004 by Secretary Ridge along with 27 federal departments and agencies, the U.S. Postal Service, the American Red Cross, the Corporation for National and Community Service, and the National Voluntary Organizations Active in Disaster. Within days of the NRP's approval, President Bush issued a combined National and Homeland security directive on maritime security, an initiative of his new homeland security adviser, Frances Fragos Townsend. This directive not only established U.S. policy regarding protection of the nation's maritime interests, but directed the development of a national strategy for maritime security and eight national plans addressing such critical subjects as the USG capability to respond to a maritime threat, the nation's capacity to recover from an attack or disaster affecting the maritime infrastructure, and security of both the maritime transportation system and the related supply chain. The President tasked DoD and DHS to lead an inter-agency task force to formulate the national strategy for maritime security for his approval within 6 months. The eight plans were to be delivered nearly simultaneously.<sup>37</sup> This approach was fraught with problems since the plans relied on the guidance framed in the strategy as well as coordination with various state and local governments, transportation and port authorities, and maritime industry trade associations.

It turned out that maritime security was not the only domain that required additional attention. In May 2005, a privately owned Cessna 150 airplane inadvertently penetrated the 16-mile-radius no fly zone around Washington, DC, established after the events of 9/11, and designed to prevent air attacks on the White House and the Capitol. Federal Aviation Administration and DHS officials could not communicate with the pilot, so Secretary Rumsfeld gave military officials the authority to shoot the plane down, if necessary. Aircraft from DHS Customs and Border Protection and military fighters moved to intercept the plane, and after 11 tense minutes, the pilot heeded instructions to turn away from the city. The incident required DoD and civilian officials to review the effectiveness of the air defense system for the nation's capital. Once again, DoD and its civilian counterparts were confronting sensitive issues involving internal governmental decisionmaking, communications, and federal interagency relations as well as authorities.<sup>38</sup> With respect to the latter, the DHS, under the new leadership of Secretary Michael Chertoff, a former federal judge, argued that his agency should have the shoot down authority. President Bush rejected this request. Nonetheless, the incident led to increased congressional scrutiny of the procedures and agency responsiveness. The event was also a warning signal that although air transportation security had been upgraded, the focus had been limited to scrutiny of passengers and cargo security. However, the Homeland Security Council staff contended that this issue would have to be deferred since other areas such as domestic nuclear attention had priority.

A month earlier, President Bush issued another combined NSPD/HSPD, designed to enhance protection against an attack in the United States using a nuclear or radiological device, and to advance the technology and integration of detection capabilities among across federal, state, local and tribal governments. To achieve these policy goals, the chief executive directed the Secretary of Homeland Security to create a national level Domestic Nuclear Detection Office within DHS. The Secretaries of State, Defense, and Energy as well as the Attorney General were ordered to assign personnel to staff this new organization and to lend expertise to strength the development and deployment of a detection system, coordinate detection effort with the other government entities in the United States, and to develop a global nuclear detection architecture consisting of domestic and international portions. The Departments of Defense, State, and Energy would design and implement the international segment.<sup>39</sup>

June 2005 marked a critical milestone in reshaping the DoD approach to its homeland defense and support to civil authorities' missions through the development and approval of the DoD *Strategy for Homeland Defense and Civil Support*. Although Secretary Rumsfeld directed the formulation of the strategy in the Strategic Planning Guidance of March 2004, internal delays and bureaucratic resistance associated with organizational change hampered progress. Nonetheless, these impediments were ultimately overcome, and the strategy represented the department's vision for transforming homeland defense and civil support capabilities.

The strategy specifically concentrated on the DoD paramount goal: securing the United States from direct attack. Recognizing the sensitivity associated with the role of the military in domestic affairs, the strategy made clear that it was rooted in a respect for America's constitutional principles. The strategy also sought to capitalize on Secretary Rumsfeld's commitment to transformation of U.S. military capabilities. Thus, it examined a 10-year period and gave equal recognition of terrorist and state-based threats to the United States.<sup>40</sup>

The strategy's foundation was the concept of an active, layered defense outlined in the *National Defense Strategy*. Specifically, this active, layered defense is understood to be global, seamlessly integrating U.S. capabilities in the foreign regions of the world, the global commons of space and cyberspace, in the geographic approaches to U.S. territory, and within the United States. In short, it is defense in depth predicated on viewing the strategic environment as an open system in which people, trade, and information move continuously and for which the entire USG contributes to its defense through a variety of capabilities in a synchronized manner. For an active, layered defense to be effective, it "requires superior intelligence collection, fusion, and analysis, calculated deterrence of enemies, a layered system of mutually supporting defensive measures that are neither ad hoc nor passive, and the capability to mass and focus sufficient warfighting assets to defeat any attack."<sup>41</sup>

Although the concept of an active, layered defense had a global context, the strategy focused primarily on the U.S. homeland and the approaches to U.S. territory. DoD recognized its responsibility for a number of activities in these geographic layers, but as an organizing construct, there were three principal categories: "Lead, Support and Enable." "Lead" meant that DoD, at the direction of the President or the Secretary of Defense, executed military missions to dissuade, deter, or defeat attacks on the United States. "Support" considered the DoD traditional role of providing support to civil authorities at the direction of the President or Secretary of Defense. This support was to be part of a comprehensive national response to prevent or protect against terrorist incidents or to recover from an attack or disaster. Finally, "Enable" sought to enhance the homeland security and homeland defense capabilities of domestic and international partners and, in turn, improve DoD capabilities by sharing technology and expertise across military and civilian boundaries. The strategy also addressed key objectives of this three pronged framework as well as specific operational capabilities that were needed to achieve these objectives and the strategic risks of not doing so.<sup>42</sup> In addressing capabilities the authors of the strategy sought to influence other departmental processes, namely, funding, force structure, and technology development, in order to implement the strategic tenets of the document. The next opportunity to have an influence on these processes would be the QDR. However, before that review occurred, an incident of national significance<sup>43</sup> would also have an effect.

On August 29, the most destructive hurricane in U.S. history hammered the Gulf of Mexico, killing more than a thousand people and causing substantial devastation to the states of Louisiana, Mississippi, and Alabama. New Orleans bore the brunt of the damaging effects when the powerful storm breached the levee system and flooded 80 percent of the city.<sup>44</sup> Public order disintegrated because of inadequate planning by municipal and state officials and a lack of foresight regarding



potential scenarios when a category 5 hurricane hits. The federal response proved unequal to the task as well, and poor communication and coordination between federal and state authorities only exacerbated the deficient response effort. FEMA was overwhelmed by the magnitude of the destruction and the requests for assistance. It soon became apparent that even with the support of other civilian agencies, DoD and National Guard units from across the country would need to be deployed.<sup>45</sup>

Ultimately, more than 72,000 active duty military and National Guard personnel deployed to provide assistance to ravaged areas between August 29 and September 10. The figure was twice the record deployment of military assets in response to a natural disaster since Hurricane Andrew in 1992. The department acted on more than 90 requests for assistance from civil authorities, many of which were approved orally by the Secretary of Defense, including one that had an estimated value of one billion dollars. There were deficiencies in the department's response such as lack of pre-planned response capabilities for possible disaster scenarios, the need for closer coordination between DHS and Northern Command, and the requirement for more accurate and rapid initial damage reconnaissance and assessment. Nonetheless, the DoD evaluation was that U.S. military forces were ready and capable to execute the largest, most comprehensive, and most responsive civil support mission ever.<sup>46</sup>

Overall, the media, the American public and federal authorities rated DoD's response a success. When departmental advocates pointed out, however, that an even more robust DoD response might be required in the event of a catastrophic terrorist event where the loss of life and destruction of property would exceed Katrina's devastation, the argument was dismissed because of the department's successful response.<sup>47</sup> The DoD leadership overseeing the ongoing QDR, which examined U.S. defense strategy in late 2005 and resulted in a report to Congress in February 2006, paid scant attention to homeland defense and civil support issues. In short, the touting of DoD's rapid and dependable response before congressional committees and in the media made these issues victims of their own success.

Publication of the QDR report is certainly not the end of the DoD involvement in homeland defense or support to civil authorities. While publication of the DoD *Strategy for Homeland Defense and Civil Support* represents the zenith of attention to these missions, the QDR review represented a plateau. The QDR report itself signaled that the department's leadership felt confident that in the more than 4 years since the tragic events of 9/11, DoD had made substantial progress in improving its capability to protect the U.S. homeland from attack and to respond effectively to a catastrophic event. The latter was a capability that required further attention, as the QDR report noted, but it was not the priority. Iraq and Afghanistan were consuming the leaders' attention and the department's resources. As the QDR report noted, DoD believed that the civilian agencies that had these missions as their primary responsibility needed to attend to them. It was a position with which the Secretary of Homeland Security and the Congress agreed. The former stated that an enhanced FEMA was needed, and the Congress obliged him by passing the FEMA Reorganization Act in 2006. For many, DoD had amply proved its ability to fulfill its three roles specified in its own strategy: lead, support and enable. For its part, the department was confident in its strategy and its ability to accomplish the homeland defense mission.

## ENDNOTES - CHAPTER 9

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## CHAPTER 10

### THE APPROPRIATE ROLE OF INTELLIGENCE IN THE MAKING OF NATIONAL SECURITY POLICY<sup>1</sup>

Anthony R. Williams

The purpose of intelligence analysis is to elevate the quality of discussion in this town.

—Sherman Kent

What is the appropriate role of intelligence in the making of national security policy? Most members of the national security community bring to their roles a preconceived and mostly subconscious view on this issue, which view seems so obvious to its holders, that they rarely see reason to raise the question. Even within the U.S. Intelligence Community, where the subject is more frequently discussed, it is usually approached as part of an academic discussion, and only rarely as part of the planning and execution of normal support to the national security policy process.<sup>2</sup> In effect, all the players in the process hold opinions on this issue, but those opinions function in the background, much as the operating software for a personal computer runs invisible to the user unless it malfunctions.

Generally speaking members of the national security community will fall loosely into one of two groups as regards their attitude toward the appropriate role of intelligence in the policy process. These can best be described as the “unconstrained support to policy” view and the “policy neutral” view. While few will hold either attitude without qualification, it is instructive to imagine these attitudes as opposite poles on a spectrum, along which national security players will tend to coalesce. This difference is more than of academic interest, because it dictates how the players use intelligence and the intelligence apparatus in the development, communication and execution of national security policy. And that in turn has significant implications for the nature of American democracy.

The 1947 National Security Act can be cited in support of the “unconstrained view,” in that it specifically charges the DCI (and by extension the CIA as his executive agent) to act as the principle advisor to the President on intelligence matters relating to the national security.<sup>3</sup> And most would agree that the *State of the Union Address* is very much a matter of national security. Furthermore, the 1947 Act also charges the DCI with the responsibility “for providing national intelligence—

- to the President;
- to the heads of the departments and agencies of the executive branch;
- to the Chairman of the Joint Chiefs of Staff and senior military commanders;
- and where appropriate, to the Senate and House of Representatives and the committees thereof.”<sup>4</sup>

But because the 1947 National Security Act leaves so many things undefined, it allows for the widest interpretation and in that context can be cited to buttress any position on this spectrum of attitudes. For example:



- What form or forms exactly is the DCI's advice and "national intelligence" to take? Does it include only formal reports, either verbally or in writing? Or does it include the review of Presidential and Secretarial speeches, statements, etc.? Does it include only passive review of those instruments or active involvement in their creation?
- Who is to initiate advice? Is it at the initiative of the DCI, or only at the invitation of the President, the National Security Advisor or other members of the NSC, executive departments, agencies and military commands?
- Is there a difference between advice given by the principle advisor and "national intelligence?"

How one answers these questions determines where one falls with regard to the appropriate role of intelligence in the policy process.

Although most of these questions have never been formerly answered through Executive Order, legislation or judicial interpretation, the government has managed to function more or less well over the past 60 years as if it had answers to them in hand. These questions are customarily resolved on a dynamic basis through a variety of procedures established and modified by each presidential administration, by each Congress, and through the political process. Generally speaking, as each administration establishes its procedures for dealing with the overall issue of intelligence advice to the policymaking process, the players accept those procedures without challenge. Even in cases where both sides hold differing views as to the answer to one or more of the above questions, the players will frequently find a way to "peacefully coexist" on a given issue.<sup>5</sup> Where they do clash, they customarily do so through the political process, which, regardless of specific outcome, always allows successors the opportunity to challenge again with potentially different outcomes.

The recent furor surrounding the *casus belli* for the Iraqi War provides U.S. a case in point. Both the President's critics and supporters have addressed the veracity of the evidence presented by the President and Cabinet Secretaries justifying the initiation of hostilities against Saddam's government in Iraq, and the appropriateness of the President's reference in the *State of the Union Address* to the British report on Iraqi efforts to obtain uranium from Africa.

In virtually every case, however, both supporters and critics have operated from a preconceived and unstated view of the appropriate role of intelligence in the policy process. For example, the *Statement* by the Director of Central Intelligence (DCI) accepting responsibility for the questionable "intelligence" included in President Bush's 2003 *State of the Union* speech, and a critical article by a former senior CIA Officer titled "Intelligence Shouldn't Exist Just To Serve Policy,"<sup>6</sup> present starkly contrasting views on the role of intelligence in policymaking. Yet neither actually addresses that issue directly.

The DCI's *Statement* makes clear that he believes the responsibility of the DCI (and his executive arm, the CIA) goes beyond providing intelligence in a policy neutral format, and includes making sure to the extent possible that the President does not make a mistake in developing or communicating policy, whether the President is relying directly or indirectly on intelligence. It should be noted that the current DCI also apparently accepts that "intelligence" plays an appropriate informational role in all aspects of policymaking, both public and private.

The George McGovern article, by its very title, makes the case that intelligence analysis should be policy neutral. While the author does not explicitly make that statement, and his polemical tone helps to obscure the bottom line in the piece, the clear implications of the article are that intelligence analysis should be neutral as regards policy. Note, for example, the parenthetical reference

to the way the author believes intelligence assessments were done in his day, “without fear or favor.”<sup>7</sup> It would also appear that the author shares with DCI Tenet the view that “intelligence” should play an informational role in policymaking without regard to the public or private nature of that policymaking.

By the terms of the “unconstrained” view, because the CIA and much of the Intelligence Community had serious reservations regarding the substance of the British reports on Iraq’s nuclear program, the DCI had a responsibility to make certain that the President was advised by the CIA to remove reference to those British reports from the *State of the Union Address*. And from the nature of the response to the DCI’s *Statement*, it is obvious that a wide range of policymakers, legislators, academics and journalists agree that the DCI has this responsibility.<sup>8</sup>

By extension, the holders of this position also generally hold a wider definition of what constitutes the national security policy process, than is commonly appreciated. Note, for example, that the “policy” document under discussion was a speech by the President, albeit a very important speech. And in October 2002 the DCI intervened in another presidential speech of much less moment than the *State of the Union Address*, for which intervention he has been praised but not criticized by those policymakers who have chosen to address this issue in public.<sup>9</sup> Apparently those who share DCI Tenet’s view of his responsibility clearly see any presidential statement (and by extension that of his closest advisors and cabinet members) as part of the policy process that the Intelligence Community is obligated to support. This view at its broadest holds that it is incumbent on the DCI to take strenuous measures to assure the veracity of all policy statements, both public and private, as they may deal with matters on which the Intelligence Community has some information.

One can conclude from the DCI’s *Statement*, and the statements from the White House noting that the CIA reviewed the President’s address, that the current administration accepts the “unconstrained” view of intelligence support to policy. Furthermore, based on statements by National Security Advisor Condoleezza Rice and efforts by members of the NSC and White House staffs to coordinate various parts of the President’s State of the Union Address, it is clear that this administration views the DCI’s intelligence advisory role to include active involvement in both the development and communication of national security policy. Ms. Rice stated on July 11, 2003, that the wording used in President Bush’s speech had been reviewed and changed by the CIA, and that some “specifics about amount and place” had been changed, and that after the changes “the CIA cleared the speech in its entirety.” According to press reporting, detailed discussions were held between a nuclear proliferation expert at the NSC and a proliferation expert at the CIA over the content of the speech relating to the putative Iraqi nuclear program.<sup>10</sup>

If we conclude that the DCI and “intelligence” are to play an active role in developing and communicating national security policy, at whose initiative are they to play this role? To wit, on July 11, Ms. Rice said that “if the CIA, the director of central intelligence (sic), had said, ‘Take this out of the speech,’ it would have been gone, without question.” And Senator Pat Roberts, Chairman of the Senate Select Committee on Intelligence stated “it was incumbent on the director of intelligence to correct the record and bring it to the immediate attention of the president.” And an unnamed Democratic member of the SSCI was quoted by the *Washington Post* as saying that DCI Tenet was repeatedly asked in closed hearings on July 16 why the CIA had “permitted” the unfounded Iraqi uranium allegation in the address.<sup>11</sup> Clearly, there would seem to be wide agreement that the initiative lies, at least in part, with the DCI, and is not solely dependent on the initiative of the President or his cabinet members and advisors.

As noted above, the countervailing view of the role of intelligence in the policy process, holds that to the extent possible, the DCI should ensure that the Intelligence Community strives to pro-

vide intelligence advice to the President and his advisors in a policy neutral format. While very few would argue that this goal can be attained 100 percent of the time, many see it as a necessary constraining force. The primary argument for this is that anything less undermines the credibility of the Intelligence Community, and particularly the Office of the DCI and the CIA. In general, there appears to be an acceptance of the fact that departmental intelligence agencies<sup>12</sup> are intended to support policymakers within their respective departments or military services, and thus their product will be in many cases “policy supportive.” There is, however, a strong expectation on the part of many in the national security community that the national agencies should avoid even the appearance of policy bias in their products.

A good example of a policy neutral approach to intelligence can be found in the famous “missile gap” case in the run-up to the 1960 presidential election. Despite the fact that the Kennedy Campaign had used much of the material provided to the press by the Gaither Committee to substantiate its charge that the Union of Soviet Socialist Republics (USSR) held a commanding lead over the United States in the deployment of intercontinental ballistic missiles (ICBMs), President Eisenhower refused to allow CIA intelligence on the subject to be released. It has been argued that this decision was a factor in the loss of the election by Richard Nixon, since the available national intelligence made clear that there was no missile gap, and there was not likely to be one for the foreseeable future. In this case, President Eisenhower chose not to allow intelligence to become embroiled publicly in the political process. One can argue the merits of Eisenhower’s decision, but it is taken by many analysts in CIA and the other national agencies as the proper way to handle national intelligence.

This view has a long tradition within the CIA, and it has often been criticized by members of the national security community as a bar to effective CIA intelligence support to policymakers. For example, as part of the continuing educational effort for analysts at CIA, the Sherman Kent School for Intelligence Analysis at the CIA University has published a series of occasional papers addressing among other subjects the proper relationship between the analyst and the policymaker. The author of these papers is at some pains to assure analysts that lowering the wall between intelligence analysis and the policymaking process will not damage intelligence credibility (if proper tradecraft is used) and will make intelligence more relevant to the policymaker.<sup>13</sup>

Criticisms of the “policy neutral” view have a long tradition among policymakers. The current Deputy Secretary of Defense Paul Wolfowitz was selected as a member of the so-called Team B, “which challenged the expertise, methods, and judgments of Intelligence Community analysts working on Soviet strategic military objectives (specifically, National Intelligence Estimate 11-3-8 for 1977).” The underlying issue in this case was the perceived failure of the NIE to directly address the implications for Soviet intentions of the USSR’s ongoing strategic buildup. While serving as the Dean of the Paul H. Nitze School of Advanced International Studies, Ambassador Wolfowitz was appointed to the Commission on the Roles and Capabilities of the U.S. Intelligence Community. Throughout this period, he continued to argue for a more “policy actionable” approach to national intelligence. According to press reports, Ambassador Wolfowitz, as Deputy Secretary of Defense in the current administration, has been associated with a large group of policymakers who have argued strenuously that the Intelligence Community, and specifically the CIA, has not produced intelligence on current policy issues that has been helpful in the development, articulation and execution of policy.<sup>14</sup>

From the policy neutral perspective, the primary concern, as noted above, is that the close involvement of intelligence in the making, communication and execution of specific national security policies will undermine the credibility of the intelligence itself, and the intelligence organizations involved. Often, critics attack the intelligence organization, such as the CIA, as “shilling” for a policymaker if the intelligence product is seen as too supportive, or is used openly in the political

process. In this case the intelligence agency itself, or the DCI, becomes sucked up in the maelstrom of political conflict over the policy under debate. The net effect of this, to quote Senator John Kerry, D-MA, does “. . . nothing to make this country safer and will simply further erode the confidence of the American public and our allies around the world.”<sup>15</sup>

The caution to the intelligence provider, and to the policymaker who uses that intelligence, may well be Aristotle’s axiom, “moderation in all things.” If the intelligence player or product is too supportive of policy, or appears to be too supportive, then both will be subject to criticism and a loss of credibility. If, on the other hand, intelligence is too “neutral” and too high a wall is kept between intelligence and policy, then the intelligence will be subject to criticism and a loss of relevance. Complicating this picture for the intelligence player is the fact that critics will also often make the case that they want “objective” analysis, that can be used by all the participants in the policy debate.<sup>16</sup> When that is translated into reality, however, it most often means that the critic’s side in the debate is not faring as well as the critic believes it should because the intelligence input favors the other side. Finally, as noted above, even the legislation creating the current intelligence structure does more to complicate than to answer the question as to the appropriate role of intelligence in the policy process.

## ENDNOTES - CHAPTER 10

1. The CIA Publications Review Board has reviewed the manuscript for this article to assist the author in eliminating classified information and poses no security objection to its publication. This review, however, should not be construed as an official release of information, conformation of its accuracy, or an endorsement of the author’s views.

2. I use the word “intelligence” here to describe two entities: (1) Intelligence in its generic sense of information that has been collected, processed, exploited and analyzed, and which contains information from both clandestine and open sources; and (2) The U.S. intelligence apparatus, and specifically the Director of Central Intelligence and the Central Intelligence Agency, which collect and convert the aforementioned information into intelligence product. I will use the term “national security community” in its most generic sense, to include not only elected, appointed and career officials currently serving in the government, but also those legislators, press commentators, academics and journalists who specialize in the study of national security policy. These latter individuals are often former government Officers, and many will return to government upon the vagaries of the next round of elections. In addition, those journalists and academics who never serve in government still play a significant role in the formulation and execution of policy by virtue of their influence on public opinion. The Intelligence Community is composed of four “national” intelligence agencies—CIA, NSA, the National Imagery and Mapping Agency (NIMA), and the National Reconnaissance Office (NRO)—and 10 “departmental” agencies—DIA, State/INR, the military service intelligence agencies, Coast Guard intelligence, and the intelligence offices in the Departments of Justice, Treasury, and Energy. See for example of academic approach, Jack Davis, “Improving CIA Analytic Performance: Analysts and the Policymaking Process,” *Kent Center Occasional Papers*, Vol. 1, No. 2, Warwick RI: Kent Center for Human and Organizational Development, September 2002; and Jack Davis, “Tensions in Analyst-Policymaker Relations,” *Kent Center Occasional Papers*, Vol. 2, No. 2, Warwick RI: Kent Center for Human and Organizational Development, January 2003.

3. The 1947 National Security Act as amended is the fundamental founding legislation for the modern U.S. Intelligence Community. See Sec. 101-105 [50 USC]. See Sec. 101 [50 USC 402] “Title I—Coordination for National Security: National Security Council.”

4. See Sec. 103 [50 USC 403-3] “Title I—Coordination for National Security: Responsibilities of the Director of Central Intelligence.”

5. For example, “During the prolonged tug-of-war between the branches of government over Iran-Contra, the Reagan White House held fast to its position that the Constitution permitted the President to defer covert action notification to the Congress indefinitely if he felt circumstances so warranted. Congress did not concur with this assertion but was in no position to do anything about it. In the end, the executive and legislative branches agreed to disagree on the matter.” See Marvin, C. Ott, “Partisanship and the Decline of Intelligence Oversight,” *International Journal of Intelligence and Counterintelligence*, Vol. 16, No. 1, Spring 2003, p. 79.



6. Ray McGovern, "Intelligence Shouldn't Exist Just To Serve Policy," *Miami Herald*, August 5, 2003. Also see "Statement By George J. Tenet, Director of Central Intelligence," July 11, 2003, available from [www.odci/cia/public\\_affairs/press\\_release/2003/pr07112003.html](http://www.odci/cia/public_affairs/press_release/2003/pr07112003.html).

7. *Ibid.*, "It does not speak well for a director (sic) of Central Intelligence to shy away from serving up the intelligence community (sic) best estimate anyway ("without fear or favor," the way we used to operate)."

8. See for example SSCI Chairman Senator Pat Roberts' criticism of Tenet for "sloppy handling" of the questionable intelligence on Niger, cited in John Diamond, "CIA Director Nudged Toward The Plank," *USA Today*, July 14, 2003; or questions such as "Why Did CIA Permit the Allegation in the Address" cited in Walter Pincus, "Tenet Says He Didn't Know About Claim," *Washington Post*, July 17, 2003.

9. *Ibid.*; Diamond.

10. See for example Tom Raum, "Bush: CIA Approved State of Union Speech," AP 07/11/03 22:58 EDT; David Sanger and James Risen, "CIA Chief Takes Blame in Assertion on Iraqi Uranium," *The New York Times*, July 12, 2003.

11. *Ibid.*; Raum; Pincus.

12. See note 4 above.

13. The "policy neutral mission" view is most closely associated with Sherman Kent, the first Deputy Director and Vice Chairman (and subsequently Director and Chairman) of the CIA's Office of National Estimates and the Board of National Estimates, both created in 1950 by then DCI General Walter B. Smith. See for example, Jack Davis.

14. See Jack Davis, "Paul Wolfowitz on Intelligence Policy-Relations," *Studies In Intelligence*, Vol. 39, No. 5, 1996, pp. 36-37; Ironically, Ambassador Wolfowitz's stated position on this issue was based on his concept that CIA intelligence was not objective because it did not offer alternative hypotheses to explain the observable facts, and therefore such CIA analysis was too policy supportive; See for example, Warren P. Strobel and Jonathan Landay, "Pentagon, CIA In Bitter Dispute On Iraq," *Philadelphia Inquirer*, October 28, 2002; Seymour Hersh, "Selective Intelligence," *The New Yorker*, May 12, 2003; and Julian Borger, "The spies who pushed for war," *The Guardian*, July 17, 2003. These are simply examples of numerous press reports on this issue over the past year.

15. See for example McGovern; Richard Cohen, "Sword-Passing," *Washington Post*, July 24, 2003, p. 21; and Jay Taylor, "When Intelligence Reports Become Political Tools . . .," *Washington Post*, June 29, 2003, p. B02; see the comment by former Senator Bob Kerry, who noted that the administration had decided "OK, we'll make George Tenet walk the plank"; Raum.

16. See note 13 above.



**PART II**

**THE INTERNATIONAL SYSTEM AND ENVIRONMENT**



## CHAPTER 11

### THE INTERNATIONAL SYSTEM IN THE 21ST CENTURY

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For strategic leaders of the 21st century primarily concerned with the issues of foreign policy and national security, the international system with which they will be dealing is likely to only partially reflect the traditional international system. While the nation-state, first codified by the Treaty of Westphalia in 1648, remains the dominant political body in international politics, its ability to influence events and people is being challenged by an assortment of nonstate actors, failed or failing states, and ungoverned regions. This is occurring in combination with the transnational threats posed by terror, the proliferation of weapons of mass destruction (WMD), crime, drugs, pandemics, and environmental degradation, as well as by elements of the system that also have potentially positive impacts such as globalization and the information revolution.

The international system refers to the structure of relationships that exist at the international level. These include the roles and interaction of both state and nonstate actors, along with international organizations (IOs), multinational corporations (MNC), and nongovernmental organizations (NGOs).<sup>1</sup> States make foreign and national security policy against this external environment. Opportunities for both conflict and cooperation arise within this framework. The international community has tried for years to maintain order and prevent conflict using international institutions like the United Nations (UN) and international legal regimes like the Geneva Conventions.<sup>2</sup>

The international system frames the forces and trends in the global environment; it also frames the workspace of national security policy and strategy makers. As they work through the formulation process, with an understanding for the interests and objectives of any actors in a given situation, those involved in the business of policy and strategy making must be able to account for the associated state and nonstate actors present in the international system. In addition, it has become particularly important that they be able to assess the competing values associated with the global actors, both state and nonstate, especially in relation to the Global War on Terror (GWOT). Also, given the criticality of being able to call upon other nation-states and international or multinational organizations for support, the strategist or policymaker must know which alliances and coalitions are stakeholders in the issue in question. Another related element of the international system is the economic condition, as influenced by both the positive and negative components of globalization that helps determine the amount of power actors can wield in the system. It is also important to be able to identify the international legal tenets and regimes that bear on the situation. Finally, the 21st century policy and strategy maker must be able to understand the threats to order in the international system represented by both conventional and transnational entities. If the policymaker or strategist can accurately assess all these factors, he might be able to determine friends and enemies, threats and opportunities, and capabilities and constraints inherent in the contemporary world.

Threats, challenges, and opportunities can come in many shapes and sizes. A traditional threat might take the shape of a nation-state in possession of WMD and a hostile attitude. This is also true for a nonstate actor, potentially going down to the individual level if he is willing to fly an airplane into a building. Less direct but also significant in the 21st century world are the threats that can be made to the successful execution of a nation-state's policies, if other nation-states are unwilling to provide support in a given situation. This lack of support can manifest itself in an opposing vote in an international organization like the UN) a multinational organization like the North Atlantic Treaty Organization (NATO), or an international regime such as the International Atomic Energy

Agency (IAEA). It can equally be demonstrated by the refusal of a state to grant transit or over flight rights to the forces of another state.

The international system also affords the strategy or policymaker numerous opportunities for advantage. If a nation-state can come to the assistance of another nation-state or region in time of need like a natural disaster or failing economy, the opportunity exists to demonstrate concern and ultimately gain some level of influence with the entity in need. The same may be true when cooperating with other states as they transition toward democratic forms of government or market economies, or when accepting an international regime like an arms control treaty. In all cases, these are opportunities to gain acceptance and influence through and with other actors in the international system.

## WHO ARE THE ACTORS?

Nations and states are not the same. Nations represent groupings of a people that claim certain common bonds, such as descent, language, history or culture. Collectively such an aggregation would constitute a national entity.<sup>3</sup> States, also known as nation-states, have a legal character and possess certain rights and duties under the tenets of international law. The 1933 Montevideo Convention on Rights and Duties of States, considered the classic legal definition for states, indicates that states possess the following characteristics: permanent population, defined territory, and a government capable of maintaining effective control over its territory and conducting international relations with other states.<sup>4</sup> In addition, the government must possess a monopoly on the legitimate use of force in the state, and other states in the international system must recognize the sovereignty of that government.<sup>5</sup>

The concept of sovereignty came into existence with the 1648 Treaty of Westphalia ending the Thirty Years War in Europe, when, for the first time, the authority of state governments became officially recognized as greater than the authority of organized religion in formal state affairs. In contemporary international law, sovereign states are treated as equals, every recognized state can participate in the international system on the same plane. This sovereign equality possesses the following elements:

1. States are legally equal.
2. Every state enjoys the rights inherent in full sovereignty.
3. Every state is obligated to respect the fact of the legal entity of other states.
4. The territorial integrity and political independence of a state are inviolable.
5. Each state has the right to freely choose and develop its own political, social, economic, and cultural systems.
6. Each state is obligated to carry out its international obligations fully and conscientiously and to live in peace with other states.<sup>6</sup>

Since the 17th century, the nation-state has been the dominant entity in the international system, in part, because of the power the concept of sovereignty gave the recognized states – both in terms of absolute domestic control and independence on the international level.

But nation-states have never been alone in the international system. A variety of nonstate actors has always challenged their influence. The term nonstate actor typically refers to any participant in the international system that is not a government. It is an entity or group that may have an impact

on the internationally related decisions or policies of one or more states. Examples of nonstate actors would be IOs, NGOs, MNCs, the international media, armed elements attempting to free their territory from external rule, or terrorist groups. An individual may also be a nonstate actor.<sup>7</sup>

An IO is a formal institutional structure that transcends national boundaries. States create them by multilateral agreement or treaty. IOs normally function as an association of states that wields state-like power through governmental-like organs. The founding treaty defines the limits of the IO's legal competence. This is the primary difference between a state and an IO. The IO only possesses the powers granted to it in its originating document by the states that created it, and cannot legally act beyond those powers. A state possesses the rights and duties recognized by international law, subject to the provisions of that law, and can involve itself in almost any activity of its choosing. IOs are completely dependent on member states for support and resources, both political and practical (like money and personnel). The result is that every IO depends on a sufficient number of member states believing that it is in their national interest to support the IO and its activities. Without member state support, the IO will not be able to function. Examples of IOs include the UN, NATO, and the European Union (EU).<sup>8</sup>

Different from IO's that are state based, NGOs are voluntary organizations of private individuals, both paid and unpaid, who are committed to a wide range of issues not on the behalf of any specific state government. Owing to increased interconnectedness, partly associated with improvements in communications technology and transportation, specialized NGO organizations, agencies, and groups have risen around the globe, and have an unprecedented level of influence in the modern international system. NGOs typically fall in one of two categories: those that have a universal noncommercial (nonprofit), and nonpartisan focus, and those that are primarily motivated by self-interest. The former are likely to involve humanitarian aid organizations, human rights groups, environmentalists, or new social movements. Representative organizations of this first type are Amnesty International, Greenpeace, the Red Cross, and Save the Children.<sup>9</sup>

The second NGO grouping, those that are directed by self-interest, is usually best represented by multinational corporations (MNC). MNCs, sometimes called transnational corporations, are global actors that execute commercial activities for profit in more than one country. Estimates are that the largest 500 MNCs control more than two-thirds of world trade. While not a new concept given that predecessors like the Hudson Bay Company and the British East India Company were operational over 300 years ago, contemporary MNCs such as General Motors or IBM have been able to take advantage of advances in technology and communication to become truly global in nature, with only a corporate headquarters in a single given country. Production no longer has to be located at the headquarters. With their enormous wealth, the impact of MNCs on the global economy is immense. Much of this influence comes in the arena of international commerce. In addition to being credited as a modernizing force in the international system through the establishment of hospitals, schools, and other valuable infrastructure in the Third World, MNCs are also charged with exploiting underdeveloped states in their conduct of free trade.<sup>10</sup>

To combat violations of the world order, the international community has created a number of regimes to ensure that widely accepted principles, procedures, norms, and rules are in place to govern particular issues in the international system. The intent is to create opportunity for states to use these regimes as fora to cooperate to achieve beneficial outcomes. Membership in these special purpose organizations is generally open to all relevant state actors. The success or failure of regimes is based on the level of coordination and cooperation of policies among the member states.<sup>11</sup>

International regimes can take the form of legal conventions, international agreements, treaties, or international institutions. Special issue areas that they occupy include economics, the environment, human rights, policing, and arms control. Contemporary regimes like the World Trade Organization (WTO), General Agreement on Tariffs and Trade (GATT), World Bank, International



Monetary Fund (IMF), Kyoto Protocol on the Environment, Geneva Conventions, International Criminal Court (ICC), United Nations Convention on the Law of the Sea, and the Strategic Arms Reduction Treaties (START) I and II are all intended to specify general standards of behavior and identify the rights and obligations of signatory states.<sup>12</sup>

The checks and balances created for the international system by the primary state actors and regimes have still been unable to assure global stability and good governance. This has been particularly manifest in the increase in the number of failed states and ungoverned spaces as well as the appearance of rogue states in the later part of the 20th century.

The problem of failed states has emerged since the end of the Cold War. It indicates that a breakdown of law, order, and basic services, such as education and health for the population, has occurred. This situation arises when a state is no longer able to maintain itself as a workable political and economic entity. A failed state is ungovernable and has lost its legitimacy from the perspective of the international community. In some cases, power lies in the hands of criminals, warlords, armed gangs, or religious fanatics. Other failed states have been enmeshed in civil war for many years. In essence, the government of the state has ceased to function (if it exists) inside the territorial borders of the original sovereign state. The end of the Cold War catalyzed the state failure process because the rival powers no longer provided economic and military assistance to former client regimes in the underdeveloped world. The governments of the failed states in countries like Haiti, Somalia, Liberia, Cambodia, and Rwanda were unable to survive without that assistance.<sup>13</sup>

While not necessarily a component of a failed state, ungoverned spaces feature rugged, remote, maritime, or littoral areas not effectively governed by a sovereign state. The state that theoretically should control the territory either lacks the willingness or ability to exercise authority over part or all of a country. Ungoverned spaces are areas where nonstate actors that threaten domestic or international order can exploit the lack of legal norms and processes. Examples include northern parts of sub-Saharan Africa and the Northwest Territories in Pakistan.<sup>14</sup>

An additional failure to maintain complete order in the international system is associated with the development of the rogue state. A rogue state is a state that frequently violates international standards of acceptable behavior. This is a sovereign entity that is openly aggressive, highly repressive, and intolerant with little or no regard for the norms of the international system. As such, it is a threat to international peace. The rogue state may attempt to exert influence over other states by several means. It might threaten to or actually develop, test, and field WMD or ballistic missile systems. It might traffic in drugs, break international treaties, or sponsor terrorism. It is likely to be aggressive toward other states. Current example rogue states are North Korea and Iran.<sup>15</sup>

Transnational threats are threats to the international system that cross state borders. Such threats emerged or increased dramatically in the latter part of the last century. While the term transnational relates to any activity that cross state boundaries, transnational threats is a technical term that usually refers to activities with minimal or no governmental control. Three types of movement can be associated with transnational behavior: movement of physical objects, to include human beings, movement of information and ideas, and movement of money and credit.<sup>16</sup>

The combination of the cross border movement with illicit or dangerous activities has resulted in the identification of an emerging set of threats to human security, the ability of states to govern themselves, and ultimately the stability of the international system at large. These transnational threats fall into two broad categories:

1. Direct threats from human beings (terrorism, organized crime, drug trafficking, illegal alien smuggling, small arms transfers, and smuggling of WMD)

2. Threats from impersonal forces (disease and international pandemics, population growth and migration, resource shortages, global environmental degradation, climate change, and natural disaster like earthquakes, volcano eruptions, hurricanes, or tidal waves).<sup>17</sup>

Transnational threats have been expanding since the end of the Cold War for a number of reasons. These include the premise that many emerging democracies are the vestiges of former authoritarian states where there has been a long tradition of coercion, violence, and corruption. Such states relied more on roles and relations than on rules and regulations. Thus, many governments have been constrained by political norms that place factional loyalties above commitment to public policies. Also, as was the case with failing states and ungoverned spaces, diminished assistance from the developed world helped reduce the ability of governments to police their borders.<sup>18</sup>

Clearly, transnational threats along with other traditional state-to-state threats, have created a number of significant challenges for the maintenance of stability in the international system. These threats and the problems associated with failed and rogue states, ungoverned spaces, and potential competition and conflict among the state and nonstate actors, also present some opportunities. Some states and nonstate actors can advance their individual causes in support of their national, organizational, or group interests by exploiting instability in the system. This interaction among the actors represents the international system at work.

## HOW DOES THE INTERNATIONAL SYSTEM FUNCTION?

As players on the international stage, both state and nonstate actors either work alone or attempt to work with other elements of the system. Such relationships might be with other states or nonstate actors on a bilateral basis; formal groupings of states, IOs, NGOs, or other nonstate actors; or informal, even unacknowledged cooperation with other system members. States can opt to form or join existing alliances or coalitions. An alliance is a formal security agreement between two or more states. Typically states enter into alliances to protect themselves against a common threat. By consolidating resources and acting in unison members of an alliance believe they can improve their overall position in the international system and their security relative to states that are not members of their alliance. Additional benefits to alliance membership might include the ability to offset the cost of defense. Unless an alliance partner is an actual liability, membership in an alliance allows states to supplement their military capability with those of their alliance partners. The alliance is thus, at least theoretically, less expensive than a unilateral approach to security. Also, economically related alliances can provide expanded economic benefits through increased trade, assistance, and loans between allies.<sup>19</sup> Alliance examples include NATO and the Warsaw Pact.

Coalitions are normally less formal than alliances. Normally they represent a broad grouping of often very diverse states temporarily united for a specific purpose, typically military action.<sup>20</sup> States often agree to participate in a coalition strictly as a matter of convenience. Coalitions are likely to be temporary, while alliances can frequently endure for lengthy periods. Examples would be the American-led coalitions during the first Persian Gulf War (Operations DESERT SHIELD/STORM) and the second conflict (Operation IRAQI FREEDOM).

Two ways states might use alliances or coalitions are to balance or to bandwagon. Both refer to decisions, conscious or subconscious, about relations with other system members. A state is balancing when it joins a weaker alliance or coalition to counter the influence or power of a stronger state or group of states. Balancing occurs when a weaker state decides the dominance and influence of a stronger state is not acceptable and the cost of allowing the stronger state to continue its policies unchecked is more than the cost of action against the stronger state. Balancing can be either external or internal in origin. In the external case, weaker states form a coalition against a stronger state, shifting the balance of power in their favor. A weaker state can also balance internally by deciding

to undertake a military build up to increase its power with respect to the stronger state.<sup>21</sup> Balancing in the international system can also be either a hard or soft action. It would be hard when it is intended to increase or threaten the use of military power of one state relative to another. A soft usage would be when a weaker state or states want to balance a stronger opponent but believe use of military power is infeasible. In that situation, states employ non-military elements of power to help neutralize the stronger states.

Bandwagoning is different from balancing because it will always refer to the act of a weaker state or states joining a stronger state, alliance, or coalition. Bandwagoning occurs when weaker states determine that the cost of opposing a stronger state exceeds the benefits to be gained from supporting it. The stronger power may offer incentives like territorial gain or trade agreements to entice the weaker actor to join with it.<sup>22</sup>

Actors on the global stage, both state and nonstate, decide to participate in alliances and coalitions and to conduct policies in support of balancing and bandwagoning based on their assessment of their relative power in the international system. This reflects one of the pervasive concepts about the system – that it represents or responds to a balance of power. It is important to distinguish between balance of power as a policy (a deliberate attempt to prevent predominance on the part of another actor in the international system) and balance of power as a description of how the international system works (where the interaction between actors tends to limit or restrict any attempt at hegemony and results in a general status of stability). The most widely accepted usage of the balance of power term is related to the later concept: the process that prevents or opposes the emergence of a single dominant actor. Theoretically, the international system works to prevent any actor from dictating to any other actor – that is, it actually works to maintain the anarchy of equal, independent, and sovereign states. Balance of power does that for the system.<sup>23</sup> In effect, balance of power describes the distribution of power in the international system in both equal and unequal portions. Given an assumption that unbalanced power is dangerous for the maintenance of stability, actors attempt to conduct policy that produces equilibrium of power in the system. This helps form the rationale for actors to bandwagon or balance as they form alliances or coalitions against potentially dominant competitors.<sup>24</sup>

Belief that equilibrium protects the sovereignty of the states, perceived inequality of power, and the threat of violence combine to give both dominant and subordinate actors a shared (if unequal) interest in maintaining order in the international system. Balance of power becomes a type of compromise among actors that find stability preferable to anarchy, although it results in a system that favors the strong and wealthy over the weak and poor. More powerful actors, like the great power states, play leading roles in a balance of power international system because they have superior military force and the ability to wield key technology.<sup>25</sup>

Ultimately, the balance of power concept fulfills three functions in the international system:

1. It prevents the system from being transformed by conquest into a universal empire.
2. Localized balances of power serve to protect actors from absorption by a dominant regional actor.
3. Most important, the balance of power has helped create the conditions in which other elements or characteristics of the international system can develop (i.e., diplomacy, stability, anarchy, war).<sup>26</sup>

Above all, this third function ensures the importance of the balance of power concept to the international system for the foreseeable future.

For those actors in the international system less comfortable with operating in alliances and coalitions, collective security provides an alternative. In formal terms, collective security is a framework or institution designed to prevent or neutralize aggression by a state against any member state. All state members are jointly responsible for the physical security of every other member. Membership in such an institution permits states to renounce the unilateral use of force because the institution guarantees to come to the assistance of the aggrieved state and sanction the aggressor. The overall intent of collective security is the maintenance of peace among members of the framework or institution (i.e., the UN, League of Nations), not between the system and external elements, as in the case of an alliance.<sup>27</sup>

The search for security is the most significant concern in some manner, shape, or form for the vast majority of actors in the international system. Security implies the absence of threats to one's interests. In absolute terms, complete security would mean freedom from all threats. Historically, the term security equated to the military dimension of security. Thus, security meant security from war or violent conflict. But the 20th century witnessed an expansion of the concept to include other security issues such as those relating to the economy or environment. Economic security is the need to ensure that a hostile actor cannot control the supply of goods and services, or the prices for those goods and services.<sup>28</sup> Examples are access to water, oil, or natural gas. Environmental security implies protection from environmental dangers caused by natural or human processes due to ignorance, accident, mismanagement, or design and originating within or across national borders.<sup>29</sup> Example issues are air and water quality, global warming, famine, or health pandemics.

How an actor in the international system chooses to interpret the concept of security helps determine participation in alliances or coalitions, involvement in collective security frameworks or institutions, and balancing or bandwagoning behaviors. In all cases, these actors consider their ability to wield all the elements of power they have available, whether or not to use force, and—most significantly—what interests their ultimate policies will support.

Power in the international system is the ability of an actor or actors to influence the behavior of other actors—usually to influence them to take act in accordance with the interests of the power-wielding state. Power does not have to be used to be effective. It is enough that the other actors acknowledge it either implicitly or explicitly. The reason for this is that the potential exercise of acknowledged power can be as intimidating as its actual use. Historically, some international actors have sought power for power's sake; however, states normally use power to achieve or defend goals that could include prestige, territory, or security.<sup>30</sup>

There are two general components of power: hard and soft. Hard power refers to the influence that comes from direct military and economic means. This is in contrast to soft power, which refers to power that originates with the more indirect means of diplomacy, culture and history. Hard power describes an actor's ability to induce another actor to perform or stop performing an action. This can be done using military power through threats or force. It can also be achieved using economic power—relying on assistance, bribes, or economic sanctions.<sup>31</sup>

In contrast with the primary tools of hard power—the ability to threaten with sticks or pay with carrots—soft power attracts others or co-opts them so that they want what you want. Soft power is a term used to describe the ability of an actor to indirectly influence the behavior of other actors through cultural or ideological means. If a state can attract another state to want what it wants, it can conserve its carrots and sticks. The sources of soft power are culture (when it is attractive to others), values (when there is no hypocrisy in their application), and foreign policies (when they are seen as legitimate in the eyes of others). Soft power uses an attraction to shared values and the perceived justness and duty of contributing to the achievement of those values.<sup>32</sup> It is much more difficult to systematically or consciously develop, manage, control, or apply than hard power.



A third depiction of power has recently been addressed by scholars: smart power. Smart power is described as “complementing (a state’s) military and economic might with greater investments in soft power.” There is recognition that the “hard” components of military and economic power have an important role to play, but are not sufficient in the 21st century world. The result is a stated need to combine the hard elements with “soft” elements that would reflect a state’s active participation in critical areas like “alliances, partnerships, and institutions, global development, public diplomacy, economic integration, and support for climate change and energy security-related technology and innovation.”<sup>33</sup>

Whether it hard, soft, or smart, an actor’s power is measured in terms of the ability to wield the instruments of power that it actually possesses. Such measurement is always done in relation to another actor or actors and in the context of the specific situation in which the power might be wielded. Are the available instruments of power appropriate given the potential foe or the nature of the conflict?<sup>34</sup> American security professionals have traditionally categorized the instruments of power in terms of the acronym DIME for the diplomatic, informational, military, and economic elements, and remains the current DoD doctrinal definition.<sup>35</sup> This concept was expanded in some of the national level strategies during the Bush 43 administration to DIMEFIL: diplomacy, information, military, economic, finance, intelligence, and law enforcement.<sup>36</sup>

Regardless of which specific instruments of power are available for potential use, the most important consideration for an actor’s ability to transform potential power into operational power is political will. Effectiveness of the actor’s government and depth of domestic support (or leadership effectiveness and stakeholder support for nonstate actors) are crucial for developing and sustaining political will.<sup>37</sup> Without either of those components, the likelihood for successful use of power is significantly reduced.

One of the most visible uses of power is in the use of force. There are a number of reasons given for its employment. In 1966, the classic analyst of the use of force and influence, Thomas Schelling, described the use or threat of force as a kind of “vicious diplomacy.” He described four different ways in which force might be used: deterrence, compellence, coercion, and brute force. Deterrence seeks to prevent another actor from doing something that it might otherwise have done. This is implemented over an indefinite period of time by convincing the deteree that he cannot successfully achieve the aim he seeks, sometimes by demonstrating sufficient force to prevent achievement and sometimes by promising a punishing response should the target engage in the action. An actor chooses to use compellence when it desires to make an enemy do something by a specific time deadline. It might have the positive effect of persuading an adversary to cease unacceptable behavior, or it might cause him to retreat from seized positions or surrender assets illicitly taken. Compellence is usually used after deterrence has failed, although that condition is not a prerequisite. It can carry the promise of inflicting an escalating level of damage to a foe until it meets demands. It might also provide some type of reward for meeting the demands. For both deterrence and compellence to be successful, both the threatened penalty and promised reward (if applicable) must be credible.<sup>38</sup>

Coercion is the intent to inflict pain if an opponent does not do what you want. It is normally most successful when held in reserve as a credible threat. Signaling the credibility and intensity of the threat are keys to success. Different from compellence, coercion only offers a threat for non-compliance without a reward for compliance. Brute force is directly taking what the actor wants. It is not dependent on signaling intent to the opponent and succeeds when used based simply on the success of the application of force. Brute force is ultimately not about asking, but taking whatever the actor wants through the direct use of force.<sup>39</sup>

Virtually any action taken by an actor in the international system, whether it be peaceful or forceful, will likely be done for the purpose of supporting the interests of the executing actor. The



national interest is intended to identify what is most important to the actor. Until the 17th century, the national interest was usually viewed as secondary to that of religion or morality. To engage in war rulers typically needed to justify their action in these contexts. This changed with the coming of the Treaty of Westphalia in 1648. For a state, the national interest is likely to be multifaceted and can be oriented on political, economic, military, or cultural objectives. The most significant interest is state survival and security. The terms “survival” and “vital” is frequently applied to this interest, with the “implication being that the stake is so fundamental to the well being of the state that it cannot be compromised” and may require the use of military force to sustain it. Other types of interests considered to be important are the pursuit of wealth and economic growth, the promotion of ideological principles, and the establishment of a favorable world order. In addition, many states believe the preservation of the national culture in the state to be of great significance.<sup>40</sup> Ultimately, it is the state’s assessment of the importance of its national interests that will determine much or all of what it will do or not do within the international system.

## **WHY DOES THE INTERNATIONAL SYSTEM BEHAVE THE WAY IT DOES?**

Given a belief that the international system is composed of a structure and associated interacting units, political scientists in the late 1950s developed the concept known as levels of analysis to help analyze all the dynamics of interaction in the system. They believed examining problems in international relations from different perspectives on the actors would help determine why different units and structures in the international system behave as they do. These perspective points became known as levels. Levels represent locations where both outcomes and sources of explanation can be identified. The five most frequently used levels of analysis are:

1. International systems – largest grouping of interacting or interdependent units with no system above them. Encompasses entire planet.
2. International subsystems – groups or units within the international system that can be distinguished from the entire system by the nature or intensity of their interactions with or interdependence on each other. (Examples: Association of Southeast Asian Nations [ASEAN], Organization of African Unity [OAU], and the Organization of Petroleum Exporting Countries [OPEC])
3. Units – actors consisting of various subgroups, organizations, communities, and many individuals, all with standing at higher levels. (Examples: states, nations, multinational corporations [MNC])
4. Subunits – organized groups of individuals within units that are able or try to affect the behavior of the unit as a whole. (Examples: bureaucracies, lobbies)
5. Individuals.<sup>41</sup>

Making use of the levels of analysis, international relations theory attempts to provide a conceptual model with which to analyze the international system. Each theory relies on different sets of assumptions and often a different level of analysis. The respective theories act as lenses, allowing the wearer to only view the key events relevant to a particular theory. An adherent of one theory may completely disregard an event that another could view as crucial, and vice versa.<sup>42</sup>

International relations (IR) theories can be divided into theories that focus primarily on a state-level analysis and those that orient on an overall systemic approach. Many, often conflicting, ways of thinking exist in international relations theory. The two most prevalent schools of thought are:

Realism and Liberalism; though increasingly, Idealism, also known as Constructivism is becoming a competing concept.<sup>43</sup>

Realism has been a major, if not the dominant, theory of international relations since the end of World War II. From the realist perspective, struggle, conflict, and competition are inevitable in the international system. Mankind is not benevolent and kind but self-centered and competitive. Realism assumes that the international system is anarchic because there is no authority above states capable of regulating their interactions; states must arrive at relations with other states on their own, rather than by obeying the dictates of some higher entity. States and not international institutions, NGOs, or MNCs are the primary actors in the international system. For states to thrive and survive, they must orient on security as their most fundamental national interest. Without security, no other goals are possible. States must struggle for power in that system; this produces the constant competition and conflict.<sup>44</sup> Military force is the ultimate arbiter in the struggle for power. Each state is a rational actor that always acts in accordance with its own self-interest. The primary goal is always ensuring its own security. Strong leaders are key to success in this environment and will be required to exhibit realistic vice morally idealistic based positions.

Realism asserts that states are inherently aggressive, and territorial expansion is only constrained by opposing state(s). This aggressive orientation, however, leads to a security dilemma because increasing one's own security produces greater instability as opponents build up their forces to balance. Thus, with realism, security is a zero-sum game where states make only relative gains.<sup>45</sup>

A variation of realism is called neorealism. Rather than the realist view of the influence of human nature, neorealists believe that the structure of the international system controls and impacts all actors. In effect, it is the system itself that is in charge. States, with their orientation on survival, have a primary if not sole focus on war and peace. For a neorealist, state interests shape behavior. In neorealism the success of regimes is totally dependent on the support of strong powers.<sup>46</sup>

The international system constrains states. The system comprises both the states and the structure within which they exist and interact. From a neorealist point of view, cooperation is more likely than a pure realist claims because states are more interested in relative than absolute gains. States are often willing to bargain to give something up.<sup>47</sup>

Several principal notions, especially since Immanuel Kant drafted "Perpetual Peace" in 1795, have characterized liberalism as another fundamental theoretical basis for international relations:

Peace can best be secured through the spread of democratic institutions on a worldwide basis. Governments, not people cause wars. . . . Free Markets and human nature's perfectibility would encourage interdependence and demonstrate conclusively that war does not pay. . . . Disputes would be settled by established judicial procedures. . . . Security would be a collective, communal responsibility rather than an individual one.<sup>48</sup>

Liberalism, which in this context differs from liberalism as used in the liberal-conservative political paradigm, maintains that interaction between states goes beyond the political to the economic components of the international system—to include commercial firms, organizations and individuals. Thus, instead of the realist anarchic international system, liberals see much opportunity for cooperation and broader notions of power like cultural capital. Liberals also assume that states can make absolute gains through cooperation and interdependence—thus peace and stability are possible in the system.<sup>49</sup>

One primary hope of liberals for stability is the democratic peace concept. The main propositions of this concept are: peace through the expansion of democratic institutions; populations of states focus naturally on their economic and social welfare as opposed to imperialistic militarism;

the subordination of states to an international legal system; and commitment to collective security enhances stability. Perhaps the most important element of the democratic peace concept is the belief that liberal democratic states are likely to remain at peace with one another. The international judicial system, combined with the perceived economic and social success of liberal states, normally dictates avoidance of external conflict, especially with another liberal democratic state.<sup>50</sup>

As with classic realism, liberalism has a related alternative called neoliberalism. This postulates that the system is not in charge of everything; states make their own decisions. States are not only interested in survival, but also in cooperation. International institutions can promote cooperation; there are options beyond war and peace. Rules, principles, ideas, social norms, and conventions must be considered. With neoliberalism there is a much greater degree of cooperation in the international system than neorealism is willing to acknowledge. To a great degree this is as a result of the success of international regimes.<sup>51</sup>

Regimes as a framework of rules, expectations, and prescriptions between actors can change state behavior, particularly in the arena of cooperation.<sup>52</sup> Regimes often develop their own interests and become actors in the system.<sup>53</sup> Regimes come about for many reasons. They can benefit all actors in the system and do not require a hegemonic state for support. The more times states cooperate in a regime, the more opportunity exists to change the behavior of a particular state. In effect, regimes can change state behavior. There is a shared interest that can ultimately benefit both parties. Institutional incentives can motivate states to cooperate peacefully even in situations when force might be considered. A regime's intervention in state behavior can lead to cooperation. The result is that the existence of regimes makes cooperation more likely – which, in turn, could help drive change.<sup>54</sup>

Idealism, also known as constructivism, rejects standard realist and liberal views of the international system, arguing that states derive interests from ideas and norms. Idealists believe that the effects of anarchy in the system are not all defining, but rather dependent upon the different social identities that actors in the international system possess. These identities can be either cooperative or conflictual and directly related to the social structures established between actors. It is both the social structure between actors and the perceived identity of the separate actors that dictate how the system actually functions.<sup>55</sup> For an idealist, the state's identity shapes its interests. To understand change, an idealist must assess a state's identity. States are social beings and much of their identity is a social construct. If a state identifies itself as a hegemonic global policeman, it will shape its interests accordingly. States that self-identify as peace-loving economic powers emphasize different interests. Who a state is – primarily in the form of culture – will shape that state's identity. States understand other states through their actions. Key for an idealist, one state's reaction will affect the way another state behaves.<sup>56</sup>

## SUMMARY

In the end, there is no single answer for why any actor in the 21st century international system behaves the way that it does. There is also no single description for all the actors in the system, as well as no predictable method that any of them will use to interact. In effect, even considering the complexities of the 20th century, the 21st century international system is highly likely to be more complex than ever. Clearly the nation-state will continue to be the primary actor, but it will have increasing competition from the nonstate actors that have emerged in the later part of the last century. Advances in communication and transportation, along with the information revolution's contribution to globalization have provided both emerging states and nonstate actors a degree of international influence never previously imagined. From the perspective of a 21st century strategic leader, these emerging state and nonstate actors and emerging transnational threats will create

numerous challenges and opportunities. These challenges and opportunities will force leaders to address issues like determining the exact threat, assessing the intensity of national interests at stake, deciding whether to employ hard or soft power, and opting to work with alliances or coalitions or to go it alone. Ultimately, understanding these issues and many others dependent on the situation, will be critical for the success of any actor in the 21st century international system.

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## CHAPTER 12

### INTERNATIONAL RELATIONS THEORY AND AMERICAN GRAND STRATEGY

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Theory cannot equip the mind with formulas for solving problems, nor can it mark the narrow path on which the sole solution is supposed to lie by planting a hedge of principles on either side. But it can give the mind insight into the great mass of phenomena and of their relationships, then leave it free to rise into the higher realms of action.

– Carl von Clausewitz, *On War*<sup>1</sup>

This chapter takes as its starting point Clausewitz' view concerning the pedagogic role of theory for practitioners illustrated by the opening quote. Like Clausewitz' theory of war, scholarship from the field of international relations theory offers insights that would benefit policymakers working in the realm of American grand strategy. Bridging the gap between theory and practice in this case can be difficult because much of the specialized academic literature can seem so arcane and "impractical" since it offers no clear-cut blueprint or "hedge of principles" for conducting the optimal grand strategy. Moreover, since there are several schools of thought whose conclusions often seem to be contradictory, strategic thinkers can become bogged down trying to ascertain which theory is the "correct" one. In fact, international relations theory should not be conceived as either true or false, but as providing a way for organizing ideas about the underlying dynamics in international politics. And in this task, each school of international relations theory is equally useful.

This chapter outlines the basic tenets of three different schools in international relations that go by the labels realist, liberal institutionalist, and constructivist<sup>2</sup> to show the practical significance of the field's theoretical ideas. The discussion that follows will attempt to show the linkages and commonalities among the schools and avoid a characterization that paints them as rival interpretations. The discussion also aims to avoid simplistic caricatures of the three approaches under consideration. In this way, we hope to discourage the reader from becoming committed partisans to any single approach. As a starting point, each theory shares the common task of trying to answer the key questions that bedevil policymakers formulating grand strategy: How can we best shape events to serve our national interests? How will other states respond to our actions? For the United States, that began the 21st century commanding a position of hegemony that some critics labeled "hyper-power," international relations theory has the potential to suggest which courses of action are most likely to yield stability and which are most likely to corrode it.

#### REALISM AND THE CONSTRUCTION OF A THEORY OF INTERNATIONAL RELATIONS

We begin our discussion with the realist school because realist scholars assert their approach has an ancient lineage that can be traced back to ancient Greece. In addition, the realists were the first scholars of international politics to explicitly attempt to move beyond mere description of international politics by creating a theory for their discipline.

The basic precepts of realism are easy to summarize. The emergence of many independent, sovereign states in Europe in the 17th century, none of which acknowledged any superior authority, created an anarchical international system. Within such a system there could not be a genu-

ine international society but only a conflict of interest and struggle for survival so that interstate relations were ultimately regulated by warfare. For realists, conditions in the international state system are captured in the metaphor developed by 17th century political philosophers of a “state of nature.” Further, drawing on models of game theory, realists demonstrate that although states might recognize that cooperation would yield benefits, the very structure of their situation precludes them from cooperation because other states might cheat on agreements and thus jeopardize their security. Expressed in the jargon of game theory, the underlying dynamic of international politics is one where independent decisionmaking leads to suboptimal outcomes.<sup>3</sup> Realists claim the validity of their analysis is demonstrated by the fact that its precepts have been identified by classic thinkers even before the emergence of the state system.

An accurate portrayal of the origins of realism must first demolish the cliché myth that realism’s explanatory power is strengthened by the fact that classic thinkers from Thucydides to Machiavelli identified its underlying principles. Proponents of the realist perspective point to the famous passage in the Peloponnesian War where the Athenians tell the Melians:

...since you know as well as we do that, when these matters are discussed by practical people, the standard of justice depends on the equality of power to compel and that in fact the strong do what they have the power to do and the weak accept what they have to accept.<sup>4</sup>

After the speech, the Athenians go on to kill all Melian men of military age and sell the women and children into slavery. Realists cite this passage and the events that follow to support their claim to represent an understanding of the underlying dynamics of international politics that is universal across time and space and that can hardly be altered by human choice or action. Yet, scholars citing the passage omit the fact that the events Thucydides described took place in the 16th year of the war. Consequently, one cannot assert that Thucydides was stating a basic law of international politics, when he might well be drawing a lesson about the impact of prolonged war on a society. This decidedly “unrealist” reading of Thucydides can also be supported by the fact that the Athenians took quite different actions when they voted to spare the Mytilenians earlier in the same war. Further, one can even interpret Thucydides choice to recount the Athenian decision taken immediately after the Melian affair to sail to Sicily where they met with military catastrophe, as suggesting a lesson about the consequences of imperial ambition.<sup>5</sup>

The second classic thinker often called a founding member of realism is, of course, Niccolo Machiavelli. In one sense, Machiavelli’s reputation as a realist is deserved and stems from his rejection of the medieval approach to political philosophy that focused on how men should live, rather than describe how they do live. Further, his book, *The Prince* provides the classic expression of realpolitik that has led to the negative connotation of the term “Machiavellian.” However, Machiavelli’s biography suggests that the book was less an effort to ascertain universal principles of political behavior than an effort to salvage his own position. As a Florentine diplomat that served in the republic, Machiavelli lost his position when the Medicis returned to power in 1512. Moreover, Machiavelli was implicated in an anti-Medici plot, imprisoned, and tortured. He wrote *The Prince* in 1513 in an effort to ingratiate himself to the Medici family – most likely in the hopes of recovering his position. The circumstances under which Machiavelli wrote *The Prince* shaped its content in a way that detracts from it as an authentic expression of realism.

One can gain a better appreciation of Machiavelli’s genuine political orientation by reading his longer work, *Discourses: On the First Ten Books of Titus Livius*. This book was written over a 5-year period (1512-17) and provides a celebration of the virtues of a republican form of government that is absent in *The Prince*. His political preferences are most apparent when comparing a republican form of government with a monarchy. In one chapter he says:

But as regards prudence and stability, I say that the people are more prudent and stable, and have better judgment than a prince; and it is not without good reason that it is said, "The voice of the people is the voice of God."

He goes on to add:

For a licentious and mutinous people may easily be brought back to good conduct by the influence and persuasion of a good man, but an evil minded prince is not amenable to such influences, and therefore there is no remedy against him but cold steel.<sup>6</sup>

Although Machiavelli is not the founder of realism often claimed, the ambiguity in his work is sufficient that one can trace some contributions to both a realist and institutionalist tradition of international relations theory to him.<sup>7</sup>

To show as we have that realists cannot claim to be the heirs of a long-standing tradition with ancient roots is not intended to discredit that school of thought. Yet realists claim that one great virtue of their approach to understanding international politics lies in its ability to explain continuity in state behavior that is evident from the long history of realist views found in the classic works discussed above. In fact, the realism located in both Thucydides and Machiavelli is at best over-exaggerated and at worst a complete distortion of their ideas. The one classic thinker that realists can claim as a progenitor for their ideas is Thomas Hobbes, who was one of the 17th century writers to develop the concept of "state of nature". In this case, however, we must note that his tract on behalf of absolute monarchy, *The Leviathan*, containing as it did his pessimistic assessment of human nature, was written against the experience of the English Civil War in which all the characteristics we associate with failed states were in evidence. Therefore, the validity of drawing universal inferences about behavior from such circumstances must certainly be questioned.

Given the tenuous links with classic writers, the best place to begin an elaboration of realism lies in the work of Hans Morgenthau. Aspects of Morgenthau's biography help explain the content of his ideas, while circumstances of his era help explain why his ideas would resonate with his contemporaries. Hans Morgenthau was born in Germany in 1904. He witnessed the major 20th century traumas of his country: defeat in the first world war, the collapse of the Weimar Republic, and the rise of Adolf Hitler. Morgenthau left Germany for the United States in 1937. Given what he saw as the irrationality of German fascism with its rabid anti-Semitism that shaped its foreign policy, it is not surprising that Morgenthau would contrive to place foreign policy on a more rational foundation. He described that foundation in his classic book *Politics Among Nations*, first published in 1948. Needless to say, a book whose purpose was to provide a "rational theory" of international politics found fertile soil in the environment after World War II. That era was marked by a profound disillusionment with inter-war diplomacy whose crusading idealism, symbolized by the League of Nations and the Kellogg-Briand Pact to outlaw war, failed to stop the conflagration that began in 1939. Morgenthau's ideas proved sufficiently compelling that his book continued to be published long after his death with the latest edition appearing in 2005.

Morgenthau began his analysis with a claim to found a science of international politics based on objective laws of human nature. From this origin he developed his core concept and one of his six principles of realism as "interest defined in terms of power".<sup>8</sup> This core concept served both practical and scholarly functions. For the statesman, the concept provided a yard stick for measuring policy by enabling him to ask: How does this policy affect the power of the nation? For academics, Morgenthau's stress on the rational element had the virtue of aiding theoretical understanding and could therefore account for:

...that astounding continuity in foreign policy which makes American, British, or Russian foreign policy appear as an intelligible, rational continuum, by and large consistent within itself, regardless of the different motives, preferences and intellectual and moral qualities of successive statesmen.<sup>9</sup>

By reducing the basic motive for states to “interest defined in terms of power,” Morgenthau simplified the task of understanding the actions of states for both practitioners and scholars alike. For Morgenthau, his realist view guarded against the fallacy that understanding or anticipating a state’s behavior required knowledge of either its motives or its ideological preferences. The realism of Morgenthau can be summarized as favoring an understanding of state behavior based on calculations of interest and power without reference to morality. As such, Morgenthau’s work became vulnerable to a charge that it was amoral, although that charge cannot really be substantiated. For Morgenthau, prudence is the supreme virtue of politics, and prudence is the necessary pre-condition for any kind of morality. Almost by definition only a rational, realist foreign policy could be moral to the extent it ensures a moderation that saves states from “moral excess and political folly.”<sup>10</sup> One can appreciate why a refugee from Hitler’s Germany would come to define and value prudence and moderation as the only sound basis for a moral foreign policy.

Morgenthau’s realism is, to be sure, highly pragmatic, and he is critical of statesmen like John Foster Dulles who introduced a crusading moralism as a guiding principle of American foreign policy. Morgenthau was an early critic of the American war in Vietnam and not on legal or moral grounds, but because he believed the war did not serve American interests.<sup>11</sup> Morgenthau’s principles of realism also have the virtue of guarding against the hubris of imperial power – particularly relevant to post-Cold War America – and he noted that the moral aspirations of any particular nation are not synonymous with the moral laws that govern the universe. On this score the profound moral vision that informs his realism was apparent when he said:

The lighthearted equation between a particular nationalism and the counsels of Providence is morally indefensible, for it is that very sin of pride against which the Greek tragedians and the Biblical prophets have warned rulers and ruled. That equation is also politically pernicious, for it is liable to engender the distortion in judgment which, in the blindness of crusading frenzy, destroys nations and civilizations – in the name of moral principle, ideal or God himself.<sup>12</sup>

Before leaving our discussion of Morgenthau, it is appropriate to point out that for all of his emphasis on the struggle for power as the underlying dynamic force in international politics, and the fact that subsequent realists view him as their intellectual godfather, Morgenthau foreshadowed approaches used by the two other schools of international relations theory. In his discussion of British predominance in the 19th century, he noted that Britain was able to overcome all serious challenges to its superiority because its *self-restraint* enabled it to gain allies and minimize the incentive of other powers to challenge it. Such a view suggests that the domestic character and nature of a regime shapes its behavior as much as external circumstances.<sup>13</sup> The view that domestic politics deserves equal causal weight as external conditions – a view rejected by other realists – would be expanded upon subsequently by liberal institutionalists, as we will see below.

Morgenthau also foreshadowed constructivist analysis in both his discussion of the balance of power and of the impact of nationalism. Morgenthau did not conceive of the balance of power as some automatic process or universal behavior, but rather as a process that rested on the moral and political unity of Europe. Translating Morgenthau’s insight into constructivist terminology, we would say that the balance of power is socially constructed by states and therefore has no independent permanent existence external to them. Similarly, Morgenthau noted that states viewed themselves and their very identity quite differently as a result of nationalism, and he denounced



the pernicious impact of nationalism on state behavior because it undermines the restraint necessary for moral conduct. He said:

Compromise, the virtue of the old diplomacy, becomes the treason of the new; for the mutual accommodation of conflicting claims, possible or legitimate with a common framework of moral standards, amounts to surrender when the moral standards themselves are the stakes of the conflict.<sup>14</sup>

Morgenthau's view here is consistent with constructivist claims that socially constructed identities shape behavior of states. We will return to constructivist analysis later in this chapter.

Other realist scholars followed in Morgenthau's footsteps. Perhaps most notable among them is Kenneth Waltz, whose influential *Theory of International Politics* was published in 1979, the year that Hans Morgenthau died. Waltz came to the study of international politics from economics and drew on the logic of that discipline for his analysis of international politics.<sup>15</sup> Given the logic of micro-economic theory, it is not surprising that Waltz viewed all states as similarly motivated and rational, value-maximizing actors. In fact, the assumption that states apply an economic mode of reasoning pervades the work of other realists as well as the work of liberal institutionalist scholars.

Waltz moved away from Morgenthau's version of realism in some important ways that earned his work the label of neo-realism. First, Waltz' theory is more abstract than Morgenthau's, and he strives to create a theory that is both parsimonious and elegant. The greater level of abstraction is justified by his definition of the function of theory and its distinction from the related concept, "laws." For Waltz, laws identify invariant or probable associations that can be ascertained as true. Theories on the other hand explain why laws are true. He concludes from this distinction that "A theory though related to the world about which explanations are wanted, always remains distinct from the world."<sup>16</sup>

Second, unlike Morgenthau, Waltz sees power as a means and not as an end that states pursue. Power provides the means by which states achieve their core interest or objective, which is survival. Third, Waltz emphasizes more strongly than Morgenthau the extent to which state behavior is shaped by external conditions. Waltz asserts that his theory is a "systems" theory because it shows how the organization of units (states) affects their interaction and behavior. Waltz' focus on systems-level causes means that, for him, impersonal forces shape behavior rather than objective laws of human nature. Thus, Waltz rejects Morgenthau's pessimistic view of human nature that traced state behavior back to man's inherent lust for power.<sup>17</sup> The crucial component of the system lies in its structure, anarchy, and the distribution of power in the system. For all practical purposes, determining the distribution of power means counting the number of great powers to determine if the system has a multipolar or a bipolar structure. Waltz' emphasis on system structure is why the approach is sometimes labeled "structural realism."

For Waltz, the structure of the international system and power as the means by which states seek to ensure their survival are linked to shaping behavior and outcomes. Unlike Morgenthau who saw the operation of the European balance of power as dependent on a common moral framework, Waltz conceives of the balance of power as an automatic process akin to the law of gravity in the physical sciences. Because all states have the same core interest to survive, they will balance against a greater power because *any* concentration of power has the potential to threaten their survival. Waltz logically expects then, that balancing behavior means states will tend to join the weaker of two coalitions to check the power of the stronger one. Because the structure of the international system influences the means available to balance power, different structures have different implications for peace and war. Thus, a multipolar system with many comparable power centers necessarily relies on alliances as the balancing mechanism. Reliance on alliances creates great

uncertainty among states as to who actually threatens whom. Uncertainty is also compounded by the fact that a defection from one alliance will completely alter the capability of that alliance and hence jeopardize the survival of its members. Diplomacy within a multipolar system is fraught with such uncertainty that states easily miscalculate. Pervasive miscalculation in turn, will make multipolar systems warlike. Indeed, some historians suggest that during the multipolar system from 1688 to 1939, there were not just two but nine world wars.<sup>18</sup>

In contrast to his expectations concerning a multipolar system, Waltz expects a bipolar system to be less warlike because the two great powers that dominated the system after 1945 relied on internal mechanisms to balance each other rather than alliances. For Waltz, such internal balancing is more reliable and precise and does not generate the uncertainty that makes states prone to miscalculation. To be sure, Waltz recognizes that each of the superpowers in the bipolar system created alliances, but these did not serve to balance power between the two alliance leaders. Rather, the alliances provided the weaker members a guarantee of protection. Furthermore, because the discrepancy in power between the superpowers and the states within their respective alliances was so great, any realignment through defection of one state to the other side would not be destabilizing. Thus, Waltz notes that both the United States and the Soviet Union experienced the loss of China to the other side, yet the loss was easily tolerated and did not prompt war because it did not fundamentally alter the balance between the two superpowers.<sup>19</sup>

Several observations about Waltz' analysis should be noted at this point. First, in *Theory of International Politics*, Waltz categorically puts the causal force shaping state behavior and therefore foreign policy on external factors. One does not need to know about the domestic political system or culture of a state or the character of its national leaders to infer general expectations about its behavior. Quite different states can be expected to respond in the same way to the same external structural conditions. Couched in social science terminology, the structure of the international system acts as an intervening variable between an actor's purpose and the outcome he achieves. The way the international system shapes or disciplines the behavior of states is illustrated by the famous example of Leon Trotsky. Appointed as the first Soviet Commissar for foreign relations, Trotsky believed the new Bolshevik government would be able to pursue a new revolutionary foreign policy without reference to the international system. He expected that as foreign minister he would "issue some revolutionary proclamations to the peoples and then close up the joint."<sup>20</sup> Of course, Trotsky was mistaken about his ability to ignore the realities of the international system. As further supporting evidence for the influence of structure on behavior, Waltz notes that for the two world wars of the 20th century, the same principle countries lined up against each other despite the domestic political upheavals and the changes in leadership that occurred during the interwar period.<sup>21</sup>

Yet if Waltz' claim that the underlying dynamic of international politics is unchanging and state level factors cannot transform the system, then one must conclude logically that if the Axis powers had won World War II and a bipolar structure organized around the leadership of Germany and Japan had emerged, conditions in international politics would not have evolved much differently. Similarly, a Soviet victory in the Cold War would not be expected to have transformed the system in any meaningful way. These counterfactual examples are suggestive of the limits to an understanding of international politics that places the greatest causal weight on the external environment. Waltz himself moved away from that extreme view and admitted in a later article that "The causes of war lie not simply in states or in the state system; they are found in both."<sup>22</sup>

A second observation needs to be made concerning Waltz' claim about the greater peacefulness of the bipolar system that emerged in 1945. He asserts that the peacefulness was the result of the internal balancing mechanism that made the superpowers less prone to miscalculate. Yet nuclear weapons came into existence at the same time as the bipolar structure. Consequently, one

cannot ascertain for sure whether the absence of war between the superpowers was the result of the change in military technology or the bipolar structure. Finally, from the standpoint of practical policymaking, Waltz' theory has the drawback of working at such a level of generality – and one he readily admits – that statesmen are unlikely to be able to use it to evaluate courses of action.<sup>23</sup> However, Waltz does provide a very practical warning about the hazard of over-extension that is inherent in the excessive concentration of power found in a unipolar structure. Waltz believes such a structure is not likely to be durable because a country leading a unipolar structure will be tempted to misuse the concentration of power it enjoys, so that “. . . even if a dominant power behaves with moderation, restraint, and forbearance, weaker states will worry about its future behavior.”<sup>24</sup>

## THE LIBERAL INSTITUTIONALIST RESPONSE

Although realist scholars assert the persistence and dominance of their approach to understanding international politics, an alternative view that questions the basic tenets of realism has wide appeal. The alternative view starts with a different sense of the “state of nature” metaphor – one that is derived from John Locke rather than Hobbes. Locke, who was a contemporary of Hobbes, believed that the absence of government authority created a state of nature that was a state of liberty, but was not a state of license leading to conflict and war. Consequently, cooperation and order are feasible even in the absence of preponderant power, and the liberal institutionalist school focuses on the many factors that contribute to expanding opportunities for collaboration among states. For liberal scholars the era of total war begun by Napoleon and continuing with the two world wars of the 20th century demonstrated the growing dysfunction of the costs of great power rivalry that undermine the very ability of great powers to secure their interests. Thus, liberal scholars assert that a transformation in international politics occurred that created regions where war is virtually obsolete. These zones of peace, exemplified by the creation of the European Union, is testament to the fact that the anarchy induced competition can be overcome.

The coexistence of realist and liberal theory is illustrated by the ebb and flow of diplomatic practice that draws on the assumptions of one or the other school of thought. The notion that acceptable diplomatic practice must be based on self-interest embodied in *raison d'état* was unquestioned by leaders until the end of World War I. That war had a sobering effect on statesmen who realized that total war among the advanced industrial states was catastrophic. This led to a wholesale rejection of realist statecraft and acceptance of a new liberal practice. The liberal practice sought to replace balance of power considerations with collective security and to regulate interstate relations on the basis of open diplomacy and law. The failure of such liberal statecraft to avert World War II seemed at the time to invalidate liberal principles and practice and reestablish the eternal verities of realism. E. H. Carr was a predominant spokesman who sought to critique the legalist-moralistic diplomacy of the interwar period in his book, *The Twenty-Year's Crisis*. In the end, Carr recognized that the pursuit of power by itself could not provide a firm foundation for international order and that any political order must rest on the twin pillars of power and legitimacy. He wrote:

If, however, it is utopian to ignore the element of power, it is an unreal kind of realism which ignores the element of morality in any world order. Just as within the state every government though it needs power as a basis of its authority, also needs the moral basis of the consent of the governed, so an international order cannot be based on power alone, for the simple reason that mankind will in the long run always revolt against naked power.<sup>25</sup>

Beginning in the 1970s a new generation of scholars sought to pick up where E. H. Carr's conclusion ended to suggest that the liberal statecraft of the interwar period had not been wrong but

merely premature. This new response to realism was launched by Robert O. Keohane and Joseph S. Nye's edited volume, *Transnational Relations and World Politics* in 1970. Other works followed including Edward L. Morse, *Modernization and the Transformation of International Relations*, which appeared in 1976. What these and other works shared in common was a recognition that profound changes had occurred during the past 200 years so that state behavior could not be expected to resemble that of the European states in the 18th century. In some sense these early works reflecting liberal institutionalist views foreshadow analysis of the impact of globalization. Although states still pursue survival as an objective, that survival is more broadly defined to include satisfying the demands of the people and ensuring prosperity. Given the fact that states have broadened their goals, they need to move away from reliance on military force and power with its drive for competitive unilateral advantage toward greater cooperation. Furthermore, the search for security increasingly takes place in an environment where borders have been made more porous by changes in technology and growing interdependence. Interdependence in turn makes a strategy that relies on unilateral drives for advantage self-defeating. It is important to underscore the point that liberal theorists do not believe that states have somehow acquired new ethics that values cooperation, but that the changes wrought by technology make it impossible for them to achieve their selfish objectives without cooperation.

Liberal institutionalists share the realist assumption that states are rational actors engaged in a continuing cost-benefit analysis, so they carry over the realist notion that states apply an economic mode of reasoning. Hence, liberal institutionalists reconfirm the realist assumption that state behavior is not significantly affected by cultural variation. However, as part of that actor rationality, liberal scholars believe states to be willing to forgo competition on behalf of greater gain, as long as they can eliminate the fear that other states might cheat on their agreements. International institutions are the means for minimizing fear and hence the reason that the school carries the label "institutionalist." In addition, this liberal strand of theory shifts the causal weight for behavior away from the external conditions or structure toward the importance of domestic political institutions. Thus, liberalist scholars assert that the gradual spread of democratic governance provides states with added incentive to pursue objectives beyond a narrowly defined physical security. An additional theoretical corollary that grows from the observation of the impact that democracy has for international relations is the so-called democratic peace theory that asserts that democracies are less inclined to go to war against other democracies than they are against authoritarian states.<sup>26</sup>

Realists often accuse scholars writing in the liberal institutionalist tradition of paying insufficient attention to the role of power in international politics. This charge cannot really be substantiated, and we can illustrate this by looking at how liberalist scholars address the quintessentially realist phenomenon of war. In the discussion that follows we will look at liberal analysis of both the initiation of war and the nature of peace settlements that follow major wars. In each instance, liberal institutionalists draw implicitly on Morgenthau's insight concerning the British restraint in the exercise of power in the 19th century that we noted earlier.

Power transition theory provides a conceptual framework for understanding the factors that contribute to the start of war. The book, *The War Ledger* by A. F. K. Organski and Jacek Kugler, outlines a model of power transition and explains its implications.<sup>27</sup> As its name suggests, changes in the distribution of power play an important causal role in the initiation of war. Changes in power are driven by internal growth, and here power transition theory relies heavily on changes in gross domestic product (GDP) as a measurement. Changes in growth lead to a dynamic process of rise and decline in the power of states. From a strictly realist perspective, one would expect a dominant country to try to inhibit the growth of another state's power. Similarly, one would expect the rising country to challenge the interests of the dominant country until the tension between the two



countries becomes so great that war ensues. But changes in power are only one factor that accounts for the outbreak of war, and power transition theory is not purely realist.

The second factor that power transition theory identifies as contributing to the onset of war relates to the evaluation of the status quo. That status quo is composed of institutions, laws, and practices that govern state interactions and allocate rewards and punishments. As such, the specifics of the status quo arrangements reflect the preferences and interests of the dominant country. But it is how others, especially rising challengers, view the status quo that determines whether or not war breaks out between a challenger and the dominant country. In other words, as E. H. Carr recognized, both power and legitimacy matter in terms of maintaining or breaking the peace.

Applying both variables to the Soviet-American rivalry during the Cold War illustrates the impact that power transition theory attributes to the interaction of power parity with satisfaction/dissatisfaction of the status quo. The Soviet Union was very dissatisfied with the status quo established by the United States at the end of World War II, which included among other things the Bretton Woods system designed to foster economic openness. Yet, the Soviet Union came nowhere near matching the United States from the standpoint of power—particularly as measured by GDP. Consequently, no war occurred between the rising Soviet challenger and the dominant United States. One might speculate concerning the likelihood of war between the United States and China as being similarly dependent on whether or not China will reach power parity with the United States and become dissatisfied with the status quo.

The book that is most useful for understanding the nature of an acceptable status quo is G. John Ikenberry's *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order After Major Wars*. This work focuses on the origin of the status quo found in the peace settlements that conclude major wars. Like power transition theory, Ikenberry recognizes the indispensable role that power plays in establishing a status quo, for it is the victor in a major war that shapes the postwar world. From this position of power a state can choose to exercise its raw power and dominate others, or use its position to create a durable order. Realists and institutionalists differ in what they see as the likely choice of a dominant power. Ikenberry captures the two views when he notes:

The debate about the sources of international order is typically waged between those who stress the importance of power and those who stress the importance of institutions and ideas. This is a false dichotomy. State power and its disparities determine the basic dilemmas that states face in the creation and maintenance of order, but variations in the "solutions" that states have found to these dilemmas require additional theorizing. The character and stability of postwar order hinge on the capacities of states to develop institutional mechanisms to restrain power and establish binding commitments—capacities that stem from the political character of states and prevailing strategic thinking about the sources of international order.<sup>28</sup>

The cases Ikenberry examines show how, beginning in 1815, the leading state resorted to an institutional strategy and how subsequent peace settlements varied from the first one. In part, the variation in the institutional arrangements created by the peace settlement shows that the greater the power disparity after the war, the greater the capacity of the leading state to adopt an institutional strategy.

Unlike other liberal institutionalist theorists who see the value of institutions in the extent to which they provide a mechanism that guards against cheating, Ikenberry sees institutions as transforming the very condition of anarchy to the point where it bears some resemblance to a "constitutional order." He defines a constitutional order as one organized around agreed upon legal and political institutions that because they allocate rights and limit the exercise of power, make that



concentrated power less consequential.<sup>29</sup> Ikenberry's view of anarchy then, is quite the opposite of the realists who see anarchy as an absolute. For Ikenberry, institutions can lead international politics to resemble domestic politics more closely. Institutions can do this because both the dominant state and weaker ones have a stake in the arrangement. Institutions give weaker states a voice and ensure against their exploitation by the strong. The dominant state has an incentive to conserve its power by committing to an arrangement that explicitly limits its own exercise of power. By so doing, the dominant state acquires acceptance by the weaker states, which lowers the enforcement costs to the dominant state for maintaining the order. By limiting the expense of maintaining international order, the dominant state minimizes the corrosive effect that imperial costs might otherwise impose. Ikenberry describes the dynamic behind the bargain this way:

...the leading state gets a predictable and legitimate order based on agreed-upon rules and institutions. It obtains the acquiescence in this order by weaker states, which in turn allows it to conserve its power. In return, the leading state agrees to limits on its own actions and to open itself up to a political process in which the weaker states can actively press their interests upon the more powerful state...Institutions play a two-sided role: they must bind the leading state when it is initially stronger and the subordinate states later when they are stronger.<sup>30</sup>

Ikenberry recognizes that nations will not under all circumstances select the solution to order that relies on institutions, and that democracies are better suited to use this strategy than non-democracies. Several reasons account for the relative ease that democracies have in establishing an institutional order. First, democracies have a higher level of political transparency and openness. Such transparency means that other states will be fully aware of their actions and the motives behind them. Part of the transparency involves political competition inherent in democratic processes that makes leaders accountable to an electorate. Related to transparency and political competition is the fact that decisionmaking is decentralized, which offers the opportunity for many actors (including other states) to influence policy. Finally, Ikenberry notes that democracies can be characterized by "policy viscosity," which means there are institutional checks on abrupt policy shifts that reduce destabilizing surprises.<sup>31</sup> In essence, Ikenberry moves beyond the thesis of a democratic peace to suggest that democracies—especially great powers in a position to establish world order—have foreign policy options that are not as available to nondemocracies. Thus, using our counterfactual scenario about what would have happened if the Axis powers had won World War II, Ikenberry's answer is quite a departure from what the realists like Waltz might say. The logic of Ikenberry's analysis suggests that the Axis powers would have been less able to select an institutional strategy to lock in their power position and would have faced persistent, simmering resistance from other states.

## **CONSTRUCTIVISTS AND THE SOCIAL-PSYCHOLOGY OF INTERNATIONAL POLITICS**

Of all the approaches to international relations theory, perhaps the most difficult to summarize briefly is constructivism. Constructivism is the most recent school and its relative newness means that its precepts have not yet seeped into diplomatic practice, nor has its terminology entered public debate. Further, constructivism departs significantly from the other two schools, particularly in its rejection of the assumption that states use an economic mode of reasoning. In addition, of the three approaches constructivism is most easily misrepresented because it rejects the crudely materialist view that the physical reality of the environment governs state behavior. Consequently, constructivists are often labeled idealists. In one sense, this is an unfortunate label because idealism conjures up notions of impractical, naïve and unrealistic views of the world. However, in another

more philosophic sense, the label idealist is appropriate because constructivists focus on more intangible factors like the impact of ideas on state behavior. Thus the starting point for constructivist analysis is to consider facets of culture like norms and ideas as well as processes of social interaction as the best avenue for understanding state behavior. One way constructivists illustrate the weakness of a purely material explanation for state behavior is to consider U.S. relations with two neighbors, Cuba and Canada. From the standpoint of power, the two stand in comparable positions in relation to the U.S. Yet power is an insufficient explanation of U.S. behavior toward each.<sup>32</sup>

Alexander Wendt is one leading scholar that draws on a constructivist approach, which he outlines in his book, *Social Theory of International Politics*. Indeed, his work is sufficiently notable that a journal devoted to international security found it worthy as a subject of a major review essay. As a starting point, Wendt notes that:

A fundamental principle of constructivist social theory is that people act toward objects, including other actors, on the basis of the meanings that the objects have for them. States act differently toward enemies than they do toward friends because enemies are threatening and friends are not.<sup>33</sup>

Given such a principle, constructivists would never accept the fact that any given condition in international politics like anarchy (or balance of power) has an effect on state behavior that is universal across time and space. There is in other words, no inherent logic to anarchy, it is, as one author phrased it, an “empty vessel.”<sup>34</sup> That empty vessel may be filled in various ways, depending on social interaction of the states and the knowledge they gain concerning anarchy from this interaction. For example, Wendt describes three possible meanings for anarchy that he labels: competitive, individualistic, and cooperative. The first two forms of anarchy fit the classic realist conception of international politics in that they are self-help systems where states do not positively identify their security with that of others. For Wendt, there is a possible third meaning for anarchy that is cooperative because states see their security as linked to the security of others.<sup>35</sup> Realists would claim that the competitive meaning for anarchy is the *only* possible one, while Wendt would suggest that although it happens that our system of international politics accepts the competitive meaning for anarchy, there is nothing inevitable about this acceptance. Rather, as Wendt would have it, the meaning of anarchy was socially constructed and emerged as a result of past practice—so changes in practice can be expected to yield changes in the understanding of anarchy that will lead to changes in behavior. Indeed some scholars suggest that changes may already be taking place, and here changes in inter-subjective knowledge is viewed as prompting adoption of institutional strategies:

To a large extent the sovereigns have tamed themselves through the construction of international institutions. They have done so only imperfectly but the trajectories are in the direction of increased peaceful coexistence between political communities. For most states most of the time, sovereignty and peace are compatible. Hobbes and Rousseau predicted permanent insecurity and war as the predominant consequence of sovereignty. Institutional development since they wrote has proved them wrong.<sup>36</sup>

The impact that social construction has on state behavior suggested above can be likened to the formulation of customary international law. Customary international law establishes legal norms and obligations through state practices. States are expected to carry out their obligations consistent with past accepted conduct so that customary international law is as binding on states as treaty law. The notion that world politics is socially constructed in a manner similar to customary international law is not intended to suggest that world politics is so malleable that human choice and free will have unlimited options because any social construction and the intersubjective meanings that

emerge from them will take on a self-perpetuating quality creating path dependencies difficult for new ideas or social interactions to transcend.<sup>37</sup> The fact that social construction of new meanings may take time and be difficult does not mean the process does not occur. For example, the meaning that people of the West give to war today is quite different from the view in 1914 when under the impact of Social Darwinist ideas, people viewed war as a means to reinvigorate society.<sup>38</sup>

Two more aspects of the constructivist approach are important for understanding the underlying dynamics of international politics: identity and interests. The constructivist view of these two elements is a stark contrast to that held by the other two schools. Neither realists or liberals examine the origins of state identities or interests. Realists in particular see interests and identities as “unvarying and a-contextual.”<sup>39</sup> Liberal institutionalist scholars are closer to constructivists on the issue of the impact of ideas and norms on international politics; however, they focus on the consequences of ideas and are less concerned about their origin. For constructivists, state identities are inherently relational and thus dependent on social construction, for how can one state view another as a friend or foe a priori, without some previous interaction? Constructivists adopt the term identity from social psychology where it refers to “images of individuality and distinctiveness” held and projected by an actor and formed through relations with others. As conventionally used, therefore, the term refers to mutually constructed and evolving images of self and others.<sup>40</sup>

For constructivists, identities serve as a crucial link between the external world and interests. Therefore, interests are not predetermined, nor are they permanent, Lord Palmerston’s assertion about British interests notwithstanding. Rather, interests emerge from social practice and depend on the state’s sense of identity. One scholar stated the point this way: “Actors often cannot decide what their interests are until they know what they are representing—‘who they are’—which in turn depends on their social relationships.”<sup>41</sup> Constructivists do not take national interests for granted, but seek instead to locate their source.

Germany and Japan provide excellent cases for illustrating the way constructivists see identity as affecting national interest.<sup>42</sup> Both countries exhibited a xenophobic nationalism that culminated in their policies of conquest during World War II. The devastation they suffered during the war and their unconditional surrender goes a long way toward explaining their anti-militarist policies after 1945. Certainly the adoption of anti-militarist policies is consistent with a realist understanding of state behavior. However well realist may account for the origin of anti-militarism in Japan and Germany, they are not able to account for the persistence of the trend at the end of the Cold War, which enlarged German and Japanese power and opened up greater latitude for maneuver. Moreover, although a liberalist view might attribute the continued anti-militarism to the spread of democracy or growing interdependence, liberalists are less able to explain why feelings of anti-militarism run deeper in Japan and Germany—as was evident by their policies during the first Gulf War—than in Britain or France.

Thomas Berger believes that a constructivist understanding about the way identity shapes interests is useful for understanding the persistence of anti-militarism in Japan and Germany. One indicator of that anti-militarism is the extent to which each country has sought to assert civilian control of the military, albeit using different methods. Berger draws on survey data to show the increasing consensus for anti-militarist policies after the 1950s. Commitment to such policies as the means for pursuing national interests can only be understood by the changing sense of national identity in each country. For Japan, that identity was defined in terms of economic expansion as a trading state. For Germany that sense of identity was defined as part of a larger European community bound together by common values and interests. So deep was the German redefinition of its identity—what one journalist described as a “deeply internalized ethics of repentance for World War II”<sup>43</sup>—that once reunification was achieved, Germany further reduced its sovereignty by ac-

celerating European integration through the Maastricht Treaty. Acceptance of Maastricht required Germany to make economic concessions that amounted to an abandonment of major sources of power and influence in a way that neither realism nor liberalism explain. To be sure, changes in German and Japanese identity is part of a broader trend concerning notions about governance that are part of a post-modern politics focusing greater emphasis on welfare than traditional conceptions of national security. Berger goes on to conclude:

. . . Germany's decision to integrate itself into the West, and Japan's determination to stay aloof from regional security affairs were logical responses to the particular external pressures that the two countries experienced. Once made, however, these decisions were tied to the new national identities by the German and Japanese governments, which had to justify their policies to their highly critical public. In this way policies were invested with a symbolic value that linked them to the core values. . . <sup>44</sup>

## CONCLUSION: TOWARD A GRAND STRATEGY OF HEGEMONY

If international relations theory really does offer a framework for organizing ideas about world politics as asserted at the start of this chapter, where does our review of the three approaches leave U.S. as we contemplate American grand strategy? Interestingly, despite the differences among the schools, they tend to point in similar directions for a grand strategy for "the sole remaining superpower". All three schools see the excessive concentration of power achieved by the United States after the Cold War as problematic or at least potentially so. What follows is an attempt to apply the logic of each strand of theory to the reality of American hegemony in order to avoid the pitfall of wishful thinking that has been so damaging to policy in the past.

Realists, with their assertion of the centrality of power – whether as a means or an end – for understanding the dynamics of international politics view American hegemony with apprehension. Although on this point there is some divergence between the views of Morgenthau and Waltz, Morgenthau's belief that all states seek power as their primary goal would seemingly be more pleased with the power accumulated by the United States. Nevertheless, Morgenthau would likely question the equation of American values with universal ones articulated in the latest *National Security Strategy* published in March, 2006. That document, which declares the American objective to be "ending tyranny in our world," would likely be viewed by Morgenthau as the kind of excessive crusading that comes when a nation abandons the pursuit of "interest defined in terms of power" for absolutist goals.<sup>45</sup> Such messianic zeal necessarily abandons the prudence that Morgenthau believed crucial for a realist foreign policy. Morgenthau would see in the latest national security document the same kind of moralism he found such an anathema in John Foster Dulles' Cold War diplomacy.

Waltz, writing after the Cold War and in response to conditions created in its aftermath, sees the United States as responding to structural imperatives and behaving "as unchecked powers have usually done."<sup>46</sup> Moreover, Waltz predicted that the extension of NATO was likely to make Russia feel surrounded and isolated, which would propel them into closer alignment with China. Indeed, there is some evidence that this alignment is occurring. Russia and China held their most ambitious joint military exercise in 2005, which is quite the departure from the shooting across their common border that occurred in 1967. In addition, Vladimir Putin has made several recent remarks about the danger to world order emanating from concentrated U.S. power that offer further evidence of the automatic balancing process identified by Waltz.<sup>47</sup>

While realist views tend to suggest a certain inevitability to the emergence of an anti-American coalition, liberal institutionalists and constructivists are not so fatalistic in their assessment. Whether from the perspective of power transition theory or Ikenberry's view of peace settlements,



liberal scholars see the United States as able to shape the response of other states to the status quo. One key for shaping that response that might preclude the formation of a Sino-Russian condominium would be for the United States to exercise some self-imposed restraints on its power. There are several specific institutional mechanisms that would enable the U.S. to demonstrate self-restraint. The United States could bind itself by joining the International Criminal Court or taking the lead on the Kyoto Protocol. The United States might also renounce the unilateralism implied by the doctrine of preemptive war promulgated in the *National Security Strategy* of 2002 and recommit to reliance on the United Nations to sanction the use of force. All of these actions would lend legitimacy to the status quo by showing other states that the strongest among them agreed to be bound by the same rule of law. In the absence of pursuing an institutional strategy as Ikenberry notes, “. . . the more that power peeks out from behind these institutions, the more that power will provoke reaction.”<sup>48</sup> Once that reaction is provoked, the United States stands to lose more than it does by exercising self-restraint.

Finally, because the constructivists locate the source of national interests in a nation’s identity, the way the United States views itself may well determine its ability to pursue the kind of institutional strategy recommended by Ikenberry. There is some evidence that the United States is moving increasingly in the direction of an imperial definition of its identity. That emerging identity can be gleaned in the statement of former Secretary of State Madeleine Albright when she declared: “If we have to use force, it is because we are the indispensable nation. We stand tall. We see further into the future.” The elaboration of that imperial destiny is fully articulated in the latest national security strategy. American identity framed in imperial terms will lead to its definition of interests that shape how other states will respond to it, for as Wendt observes, how power affects state calculations “depends on the inter-subjective understandings and expectations, on the ‘distribution of knowledge,’ that constitutes their conception of self and others.”<sup>49</sup>

In the end all three schools of theory converge on conclusions concerning hegemony. American leaders would do well to heed the observation of Edmund Burke in 1793 when Great Britain stood at the brink of its power:

Among precautions against ambition, it may not be amiss to take one precaution against our own. I must fairly say, I dread our own power and our own ambition; I dread our being too much dreaded. . .we may say that we shall not abuse this astonishing and hitherto unheard-of power. But every other nation will think we shall abuse it. It is impossible but that, sooner or later, this state of things must produce a combination against U.S. which may end in our ruin.<sup>50</sup>

## ENDNOTES - CHAPTER 12

1. Carl von Clausewitz, *On War*, Michael Howard and Peter Paret, eds. and trans., Princeton, NJ: Princeton University Press, 1984, p. 578.

2. This chapter follows the classification used in American scholarship. For an alternative classification more typical of European scholarship see: Martin Wight, *International Theory: The Three Traditions*, London, UK: Leicester University Press, 1994. The primary difference between European and American scholarship is that the former draws heavily on classical political philosophy as its foundation while the latter draws on social science. Consequently, European scholarship tends to emphasize the normative implications of various theories while American scholarship tends implicitly to focus on the policy implications of international relations theory. Within each strand of American theory, there are various subgroupings, some of which use other labels to describe their work. For sake of clarity we will confine our discussion to the three main groups and retain one set of labels for each. I have selected particular scholars to represent each school because I believe their work provides the best example of each.



3. Robert J. Lieber, *No Common Power: Understanding International Relations*, New York: Harper Collins College Publishers, 1995, pp. 256-260.
4. Thucydides, *History of the Peloponnesian War*, Rex Warner, trans., London, UK: Penguin Books, pp. 1954, 402.
5. For further analysis that disassociates Thucydides from the realist tradition, see David A. Welch, "Why International Relations Theorists Should Stop Reading Thucydides," *Review of International Studies*, Vol. 29, 2003, pp. 301-319.
6. Niccolo Machiavelli, *The Prince and Discourses*, New York: the Modern Library, 1940, pp. 263, 265.
7. For a comprehensive discussion of the tensions and ambiguity in Machiavelli's work, see Sheldon S. Wolin, *Politics and Vision: Continuity and Innovation in Western Political Thought*, Boston: Little, Brown and Company, 1960, pp. 195-238.
8. Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, 3rd Ed., New York: Alfred A. Knopf, 1961, p. 5. In fact, Morgenthau excludes state actions (legal, economic, and humanitarian) from the discipline of international politics because he does not believe they affect the power of a state and are not political. See particularly pp. 27-28.
9. *Ibid.*, p. 6.
10. *Ibid.*, pp. 11.
11. Hans Morgenthau, "We Are Deluding Ourselves in Vietnam," *The New York Times Magazine*, April 18, 1965. The logic of Morgenthau's analysis is very suggestive for the current U.S. policy in Iraq.
12. Morgenthau, *Politics Among Nations*, p. 11.
13. *Ibid.*, pp. 163, 221.
14. *Ibid.*, p. 256. Henry Kissinger, a scholar and practitioner of a realist persuasion, echoes Morgenthau's views and broadens it to apply to a foreign policy motivated by any ideology. Thus, he was critical of American containment policy as expressed in NSC-68 because it equated vital interests with moral principles. See Henry Kissinger, *Diplomacy*, New York: Simon and Schuster, 1994, p. 462.
15. Kenneth N. Waltz, *Theory of International Politics*, Reading, MA: Addison-Wesley Publishing Company, 1979. For just two of the many explicit statements that illustrate Waltz' application of economic theory to international politics, see pp. 118, 173.
16. *Ibid.*, pp. 5-6.
17. The fact that Waltz rejects human nature as a causal force may well be one reason that American scholars found his version of realism preferable to Morgenthau's whose pessimistic view of human nature runs counter to the pervasive liberalism in American scholarship. See Keith L. Shimko, "Realism, Neorealism, and American Liberalism," *The Review of Politics*, Vol. 54, Spring 1992, pp. 281-301.
18. Thomas A. Bailey, *A Diplomatic History of the American People*, New York: Appleton-Century Crofts, 1964.
19. Waltz, *Theory of International Politics*, p. 169.
20. *Ibid.*, p. 128.
21. *Ibid.*, p. 66.
22. Kenneth N. Waltz, "Structural Realism After the Cold War," *International Security*, Vol. 25, Summer 2000, p. 13.

23. Waltz, *Theory of International Politics*, p. 118. Waltz emphasizes that the requirements of a theory of international politics are different from the requirements for a theory of foreign policy. Therefore, the criticism that balance of power theory fails to explain particular policies is no more valid than to expect the theory of universal gravitation to explain the wayward path of a falling leaf, p. 121. Waltz would also challenge liberal and constructivist analysis on the grounds that what they really seek is a theory of foreign policy, not a theory of international politics. Morgenthau makes a similar point when he notes that realism's presentation of a theoretical construct of rational foreign policy will never be achieved completely in practice. Morgenthau, *Politics Among Nations*, 8.

24. Waltz, "Structural Realism After the Cold War," p. 28.

25. E. H. Carr, *The Twenty Year's Crisis, 1919-1939: An Introduction to the Study of International Relations*, New York: Harper & Row Publishers, 1939, pp. 235-236.

26. See: Jack S. Levy, "Domestic Politics and War," Robert I. Rotberg and Theodore K. Rabb, eds., *The Origin and Prevention of Major Wars*, Cambridge, MA: Cambridge University Press, 1989, pp. 79-99.

27. A. F. K. Organski and Jack Kugler, *The War Ledger*, Chicago, IL: University of Chicago Press, 1980. The description of power transition theory contained in this book more heavily focuses on the one variable of power to account for war. Therefore, our discussion of power transition theory relies on the analysis provided by Douglas Lemke, "The Continuation of History: Power Transition Theory and the End of the Cold War," *Journal of Peace Research*, Vol. 34, February 1997, pp. 23-26.

28. G. John Ikenberry, *After Victory: Institutions Strategic Restraint, and the Rebuilding of Order After Major Wars*, Princeton, NJ: Princeton University Press, 2001, p. 10.

29. *Ibid.*, p. 29.

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## CHAPTER 13

### MULTILATERALISM AND UNILATERALISM

James A. Helis

Our best hope for safety in such times, as in difficult times past, is in American strength and will—the strength and will to lead a unipolar world, unashamedly laying down the rules of world order and being prepared to enforce them.<sup>1</sup>

—Charles Krauthammer

The paradox of American power at the end of this millennium is that it is too great to be challenged by any other state, yet not great enough to solve problems such as global terrorism and nuclear proliferation. America needs the help and respect of other nations.<sup>2</sup>

—Sebastian Mallaby

At the beginning of the 21st century, the United States enjoys a historically unprecedented accumulation of national power. The American economy is the largest in the world and even in a slowdown far outstrips that of any other nation.<sup>3</sup> The prowess of America's armed forces has been demonstrated again and again, from Kosovo to Afghanistan to Iraq. In 2002, the United States accounted for 43 percent of the world's military spending, more than the total of the next 14 together.<sup>4</sup> Projected increases in American military spending will likely lead to the United States spending more on defense than the rest of the world combined, and the training and technological superiority of America's armed forces provide a quantum advantage that no nation is likely to even approach in the near to medium term. The combination of overwhelming economic and military power gives the United States enormous political influence throughout the world. There are few, if any, global issues that can be addressed or resolved without U.S. support and cooperation.

One central debate in U.S. foreign policy has been the degree to which the United States should be involved in the affairs of the world. World War II and the Cold War seemed to settle the question of isolationism or engagement in favor of the latter. After the Cold War, the issue of isolationism rose again, but only briefly. The real post-Cold War debate was and remains over the degree to which the United States should pursue its foreign policy alone or in partnership with other states. The debate has been framed in terms of multilateralism versus unilateralism and is heavily influenced by competing views on what the United States should do with its position of preeminent international power and influence. In one sense, "the differences [between the two views] are a matter of degree, and there are few pure unilateralists or multilateralists."<sup>5</sup> However, there are clear differences between the two schools of thought on when and to what extent the United States should work with others. We should keep in mind that unilateralism and multilateralism are not strategies. Strategy is about matching ends, means and ways. Unilateralism and multilateralism are competing ways to approach problems. This chapter will examine the advantages and disadvantages offered by each approach. The goal is to identify those conditions under which it is better to work with others through coalitions and alliances and when it is might be best go it alone.



## UNILATERALISM

People who advocate unilateralism tend to believe that the post-Cold War world is unpredictable and dangerous. They believe America must use its power to protect, and in many cases propagate, its interests and values. America no longer need constrain itself in the assertion and expansion of its influence out of fear of provoking a confrontation with the Soviet Union. The end of the Cold War stand-off with its threat of nuclear war created an opportunity for the United States to apply its overwhelming military, economic and political power to build an international order that will perpetuate America's preeminent position in the world.

Unilateralists contend that an assertive approach to foreign policy is justified on both pragmatic and ideological grounds. Charles Krauthammer concisely summarizes the unilateralist philosophy: "The essence of unilateralism is that we do not allow others, no matter how well-meaning, to deter U.S. from pursuing the fundamental security interests of the United States and the free world."<sup>6</sup> In other words, as a practical matter, the United States should not compromise when pursuing national security interests. The terrorist attacks of September 11, 2001 (9/11) and America's subsequent pursuit of a global war on terrorism strengthened the belief that the United States was vulnerable to threats and needed to act aggressively to defeat those threats, irrespective of how the strategy played on the global stage. Ideologically, unilateralists argue that American values and ideals are essentially universal. Policies and actions intended to advance them are in the interest of not only the United States, but people throughout the world. The 2002 *National Security Strategy* states that "the United States must defend liberty and justice because these principles are right and true for all people everywhere. . . . America must stand firmly for the non-negotiable demands of human dignity."<sup>7</sup> The non-negotiability of interests and values calls for their uncompromising pursuit, preferably with the support of others, but alone if necessary. The United States, with its overwhelming aggregation of national power, can be a decisive player anywhere in the world on virtually any issue it desires. "It is hard for the world to ignore or work around the United States regardless of the issue—trade, finance, security, proliferation, or the environment."<sup>8</sup> The United States should not squander its position and capabilities by compromising and diluting its objectives in order to attract allies and partners. If the cause is right and just, the United States should pursue it without compromise. Other states can either accept America's arguments and follow her lead or be left behind as the United States does what it should and must do to advance its interests and values.

One of the main advantages of unilateral approaches to problems is that they provide maximum freedom of action. While allies and partners can bring extra capabilities to the table, they often bring constraints on how their tools can be used. Those who contribute to an enterprise normally expect to have a say in how it will operate. A common problem in United Nations (UN) military operations in the 1990s was the "phone home syndrome," under which commanders of forces assigned to UN operations had to seek approval from authorities in their home capital before accepting orders from the coalition commander. Unilateralists also point to the limitations that the North Atlantic Treaty Organization (NATO) allies placed on air operations during the Kosovo campaign as an example of how multilateral approaches can be inefficient and reduce the effectiveness of American capabilities by restricting how they will be used. Because foreign militaries cannot approximate American capabilities, their military contributions are seldom worth the inevitable constraints they add.

## MULTILATERALISM

Multilateralists acknowledge that there are circumstances in which the United States should not rule out acting unilaterally, particularly when "vital survival interests" are at stake.<sup>9</sup> On the

other hand, multilateralists argue that most important issues facing the United States in the 21st century are not amenable to unilateral solutions. Transnational issues requiring multilateral approaches include terrorism, the proliferation of nuclear, chemical and biological weapons, illegal drugs, and organized crime. Globalization has made management of international trade and finance even more important, as economic crises are susceptible to contagion that can have global impact, as was seen in the Asian financial crisis of 1997. Environmental and health problems, to include the spread of infectious diseases, can only be dealt with on a global basis.<sup>10</sup>

The reality is that American power, while overwhelmingly superior to that of any other state or present coalition of states, is not unlimited. Allies and coalition partners allow the consolidation and pooling of capabilities. A group of nations can almost always bring more tools of power to bear against a problem than one state can alone. While the NATO allies did place constraints on air operations over Yugoslavia, they provided the majority of the peacekeeping forces deployed to Kosovo following the air campaign. The price of their participation in post-conflict operations was a say over how the war was fought. While air planners may have chafed under the politically imposed limitations on their freedom of action, those limits were seen as an acceptable price to pay for cooperation in the peacekeeping effort. The United States certainly had the capacity to conduct the air campaign itself (in fact, the overwhelming majority of missions were flown by American aircraft). However, it was not in the interests of the United States to be the sole or main provider of ground troops for what was bound to be a protracted peacekeeping mission that would follow the air campaign. Going it alone may offer short-term efficiency, but sometimes long-term interests call for multilateral approaches and making concessions in order to have committed partners. And measuring allies' worth only in terms of their military capabilities ignores the importance of their political and diplomatic contributions.

Multilateralists agree that the United States should seek to protect and extend its status as the soul superpower. However, they believe that exercising power unilaterally could actually be counterproductive. Historically, dominant powers have faced efforts by other states to counterbalance their accumulation of power. "Balance of power theory makes a clear prediction: weaker states will resist and balance against the predominant state."<sup>11</sup> For the United States to maintain its position in the international system, it should endeavor to secure the cooperation of other states in addressing global problems. Such a cooperative approach might negate or lessen any perceived need to counterbalance U.S. power. Multilateralists reflect a liberal institutionalist point of view in arguing that it is easier to gain the support and cooperation of others by working within a system of norms, rules, and institutions that assure others of America's intention to act in good faith as a partner, not a hegemon. While unilateralists contend that the United States should use its power to impose an international order favorable to maintaining America's long-term supremacy, multilateralists counter that eventually that approach will generate resistance and backlash. A system developed through cooperation is more likely to stand the test of time. Given America's predominance of power, it would take a remarkable effort and investment of resources for any state or group of states to challenge America's position. If America behaves as a cooperative member of the international community and does not create the impression that it threatens international stability, there is no reason for other states to seek to balance against American power. No one doubts American capabilities. What America does with its capabilities will determine how others will react and if America's position will be accepted or challenged.

## **ALONE OR WITH OTHERS?**

The rhetoric in the dispute between multilateralist and unilateralist approaches obscures that there are few foreign policy decisions that are purely one or the other. Advocates for both positions agree that it is better to have allies in support of a cause than to go it alone. They disagree

over what the United States should be willing to give up to recruit partners. Unilateralists favor staking out one's position and moving forward with whomever is willing to go along. Multilateralists favor rallying other nations to our cause and are more willing to accept trade-offs in building coalitions. Unilateralists and multilateralists agree that there is little room for compromise on such fundamental issues as survival interests. Time constraints may also limit the U.S. ability to drum up allies. Threats that are immediate and pose a serious threat to survival or vital interests may force the hand of the United States.

Finally, both unilateralists and multilateralists agree that the United States should seek to build an international order that will favor the expansion of American values and help preserve America's dominant position in the world. The United States has a unique opportunity to establish international rules and standards that protect American interests. They differ on how the United States should attempt to build that order. Unilateralists tend to favor more assertive, even coercive approaches. They fall more into the realist school of international relations theory and argue that ultimately power is what matters and reliance on agreements or treaties in lieu of real power is dangerous. On the other hand, multilateralists favor moving ahead in a framework of international institutions and treaties that will bind all states, America included, to rules and commitments. They feel that restrictions on the United States will assuage concerns "about a global order dominated by American power — power unprecedented, unrestrained, and unpredictable."<sup>12</sup> And even within the constraints of a rules-based system, America will continue to enjoy a preponderance of power.

## **THE CASE OF IRAQ**

The U.S.-Iraq War of 2003 was a showcase for the different approaches to foreign policy. The American position was clear: Iraq would comply with UN Security Council resolutions requiring it to divest itself of all nuclear, chemical, and biological weapons and medium-range missiles; or the United States, with whomever was willing to assist, would enforce the resolutions by force. Advocates for unilateral American action argued that the UN had been ineffective in enforcing its own resolutions. Iraq posed an imminent threat to the United States, and the United States could no longer tolerate the international community's unwillingness to force Iraq to comply and disarm. While the United States welcomed other states that were willing to support the forcible disarmament of Iraq, the positions of other states, including key allies and the Security Council, would not influence the course of American foreign policy. The United States saw a need to act and was going to do so. And by acting alone, the United States could actually enhance stability in the Middle East and the globe. An America willing to use its power without the support of the international community would have greater credibility in dealing with other threats. No longer could potential adversaries hope the UN or America's allies could dissuade it from major military action. When the United States said it would act, that would be a credible threat. Knowing the consequences of defying America would deter states from doing so in the future, which could only contribute to stability and to American security.

Multilateralists approached the issue differently. While acknowledging Iraq's failure to comply with UN resolutions and the likelihood that Iraq was in possession of significant quantities of banned weapons, they questioned whether it was in America's best interest to take military action without broad support within the international community. While it would be faster and militarily more expedient for the United States to forge ahead with a unilateralist Iraq policy, the costs of such a policy were likely to be prohibitive in the long run. By acting largely alone and without broad international support, the United States risked weakening the international norm against unilateral use of military power to resolve political disputes. A war with Iraq had potentially

global consequences, both political and economic. By undertaking such a war and assuming these risks for the international community without its approval, the United States would reinforce fears of unconstrained American power and increase the potential for a future backlash. Finally, the United States risked finding itself burdened with a lengthy and expensive occupation of post-war Iraq. There would be no guarantee of significant international support for post-conflict efforts following a war the United States started and waged largely on its own. Leaving the United States saddled with post-war Iraq would serve as something of a balancing tool. An America committed to a major military presence in Iraq would not find it as easy to exercise military operations in other parts of the world without support from allies. Also, a lengthy and costly overseas commitment could undermine domestic support for future actions.

In the summer of 2003 it is still too early to assess how the Iraq war will affect America's position in the world or how the world will react to American power. However, the unilateralist and multilateralist camps used the lead up to the war to make their cases for acting more or less unilaterally or within broader international coalitions. While the war and early phases of the occupation of Iraq have not settled the debate, both have established some measures by which to determine if in this case a generally unilateral approach to foreign policy and war helped or hurt America's long-term standing in the world. The end of the war may have opened the door for progress in the Israel-Palestine conflict, but there has been relatively little international support for post-war occupation, which may leave a substantial portion of America's ground forces committed to Iraq for some time to come.

## **CONCLUSION: RECENT TRENDS IN U.S. FOREIGN POLICY**

There is a growing view that American foreign policy has tended to be more assertively unilateral in recent years. America's refusal to join the international ban on antipersonnel land mines, its rejections of the Kyoto treaty on global warming and an inspection and verification protocol for the Biological Weapons Convention, its withdrawal from the International Criminal Court and the Anti-Ballistic Missile Treaty are offered as evidence of a policy of avoiding international commitments that might constrain America's freedom of action. Critics argue that the United States pursues its own international agenda without regard for the interests, views, or concerns of the rest of the world. The response is that the United States is acting, as all states should and must, in its own self-interests.

In spite of its overwhelming power, in the spring of 2003 the United States found itself embarking on a war with Iraq. While Saddam Hussein was undoubtedly one of the world's great villains, the United States found itself diplomatically at odds with important traditional allies, politically outmaneuvered and stymied at the UN, and opposed by public majorities in virtually every nation in the world. How did the United States, with all its advantages, become so politically isolated? One answer lies in the perception that the United States is using its national power more unilaterally than in the past. International opposition did not prevent the United States from going to war. However, the absence of allies has caused the United States to bear the overwhelming burden of post-conflict operations in Iraq. In contrast, in Bosnia and Kosovo NATO allies and other partners provided the bulk of peacekeeping troops following U.S.-led campaigns.

The perceptions and reality of the extent to which the United States pursues unilateralist policies will undoubtedly affect America's strategic choices in the future. There are clear trade-offs between sacrificing freedom of action and lowering costs and adding the capabilities of other nations. Considering these trade-offs should be part of the U.S. strategic decisionmaking process as it wages a global war on terrorism and confronts a range of critical global interests and issues.



The United States cannot limit its options by clinging to notions about whether it should act unilaterally or multilaterally. There are times and circumstances for both approaches. The art is to recognize them and select the proper tool.

## ENDNOTES - CHAPTER 13

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## CHAPTER 14

### REGIONAL STUDIES IN A GLOBAL AGE

R. Craig Nation

#### THE NEW REGIONALISM

Global conflict dominated 20th century strategy. World Wars I and II were implacable struggles waged on the world stage, and they were followed by the Cold War, a militarized contest between superpower rivals described by Colin Gray as “a virtual World War III.”<sup>1</sup> Not surprisingly, interstate rivalry propelled by Fritz Fischer’s *Griff nach der Weltmacht* (Strike for World Power) gave rise to theoretical perspectives concerning the dynamic of international relations dominated by globalist perspectives.<sup>2</sup> From the founding of the first university department devoted to the formal study of International Relations at the University of Aberystwyth (Wales) in 1919 to the present, globalist and universalizing theoretical models have been at the core of the profession.

Such models have also defined the practice of American foreign and security policy. The venerable traditions of American isolationism and exceptionalism, integral to the founding of the republic, and through most of the 19th century the inspiration for a cautious and discrete U.S. world role, were gradually pushed aside against the background of the Great War (World War I) by the liberal tradition of benign engagement under the aegis of international law, international organization, and collective security. Though Woodrow Wilson’s project for a U.S.-led League of Nations was frustrated by congressional opposition, in the larger picture there would be no return from “over there.” America was a dominant world power from at least 1916 (when the United States became a creditor for the major European powers), and the range of its interests no longer permitted the luxury of an exclusively national or even hemispheric policy focus.

Already on the eve of World War II, E. H. Carr argued in his seminal work *The Twenty Years’ Crisis*, that a relative neglect of the role of power and coercion in international affairs had paved the way for the rise of fascism.<sup>3</sup> Carr’s “realist” perspective, lent theoretical substance in the United States by transplanted Europeans such as Hans Morgenthau, Arnold Wolfers, and Stanley Hoffman, who viewed themselves as tutors for powerful but naive American elites, became the dominant conceptual framework for postwar U.S. policy.<sup>4</sup> The classical realism of postwar theorists was never a vulgar philosophy of might makes right, though it is sometimes interpreted in that way. Its most prominent promulgators, often European Jews like Morgenthau who had fled the Holocaust and were lucidly aware of what unchecked power set to evil ends could affect, were preoccupied with ethical concerns and the need to constrain the inherent violence of anarchic interstate competition.<sup>5</sup> But the realist tradition made no bones about the need to place power, the global balance of power, and strategic rivalry between competing sovereignties at the center of a globalist worldview. During World War II, State Department planners carefully prepared for policy of engagement based upon the purposeful use of U.S. power to shape a congenial international environment.<sup>6</sup> George Kennan’s containment doctrine, the backbone of U.S. security policy through most of the Cold War decades, was little more than an astute application of realist premises to the management of U.S.-Soviet relations.<sup>7</sup>

Regional conflict was a significant part of Cold War competition, but it too was usually interpreted in a global perspective, as a projection of superpower rivalry into peripheral regions. Architects of U.S. Cold War strategy like Henry Kissinger could publicly opine about the marginality of third world regions, and assert a great power orientation that perceived the essence of foreign

policy as an elegant game of balance between power centers in Washington, London, Paris, Bonn, Moscow, and Beijing.<sup>8</sup> Nuclear competition between the superpowers, and the theory of strategic deterrence that was crafted to direct it, encouraged ever more abstract modeling of interstate rivalry. These trends culminated in the 1980s with the emergence of “neo” versions of traditional theoretical paradigms that consciously sought to void international theory of its historicist and humanistic foundations. Kenneth Waltz’s neo-realist argument used austere logic in interpreting interstate competition as an abstract calculus of power.<sup>9</sup> The related schools of game and rational choice theory sought to use mathematical modeling to reproduce the dynamics of foreign policy decisionmaking. Neo-liberal institutionalist models built alternatives to realism upon the universalizing trends of interdependence and globalization, sometimes built upon a simplistic Benthamite utilitarianism.<sup>10</sup> By the end of the Cold War, much of the rationale for U.S. foreign and security policy rested upon assumptions integral to these approaches—the centrality of great power rivalry, the balance of power as the axis of interstate competition, the changing nature of power in an age of globalization where economic strength and various soft power options have accrued in importance, and the need for a competitive strategy to maintain and extend U.S. advantage.

Part of the reigning confusion surrounding the nature of post-Cold War world order derives from the fact that it is no longer defined by an all-consuming rivalry between peer competitors. With a Gross Domestic Product (GDP) far outdistancing the nearest competitor, levels of defense spending superior to any imaginable combination of rivals, a clear-cut technological advantage, and a strong and stable domestic order, the United States stands head and shoulders above any real or potential rival. The current distribution of world power is objectively hegemonic, and American leadership is less a goal than a fact. In the absence, now and for the foreseeable future, of an authentic peer competitor capable of posing a serious challenge to U.S. dominance, balancing strategies such as that promulgated by Russia’s former Prime Minister Evgenii Primakov, seeking to regenerate a “multipolar” world order in which America would be limited to the status of first among equals, must remain essentially rhetorical.<sup>11</sup> Maintaining U.S. status and using the advantages of preeminence to good ends have become primary responsibilities for U.S. security planners.<sup>12</sup> These are tasks that demand different kinds of perceptions and priorities than those motivating policy during the Cold War.

Analyses of new directions in global security policy tend to similar conclusions concerning the kinds of threats that the United States will be required to respond to. In contrast with the focused strategic environment of the Cold War years, these threats will be dispersed rather than concentrated, unpredictable and often unexpected, and significantly derived from regional and state-centered contingencies. The threat of global terrorism, in particular, driven forward by widely dispersed terror networks, is rooted in failed states and marginalized regions denied the benefits of balanced modernization and development. These conclusions rest upon shared assumptions about the emerging 21st century world order, the changing contours of global security, and the evolving U.S. world role. The new configuration of global power, which combines U.S. preeminence with considerable regional fragmentation and turbulence, ensures that major world regions will be an ever more important target for U.S. engagement—as sources of critical strategic resources, as platforms for geostrategic leverage, as breeding grounds for terrorism, as integral parts of an increasingly interdependent global economy, and as testing grounds for great power will and determination to impose rules of the game. Preeminence does not imply total control. Influence in key world regions will be a significant apple of discord between the hegemonic leader, great power rivals, and influential local powers. Regions and subregions will remain the primary forums for armed conflict and instability, with a variety of small wars and protracted stabilization operations posing the greatest demands upon a U.S. military committed to engagement and shaping strate-

gies. Aspiring regional hegemons, sometimes tempted by hopes of gaining access to weapons of mass destruction (WMD), will continue to promote disorder and pose direct threats to important U.S. interests. To navigate effectively under these circumstances, U.S. strategists will have to base international engagement upon a sophisticated understanding of major world regions, viewed not only in regard to their place within an overarching structure of world power, but as entities in their own right, including the underlying social, political, and cultural processes that make the national and regional context unique.

For all of these reasons, regional studies will remain a necessary foundation for an integrated curriculum in national security policy and planning. If the 20th century has been the century of global conflagration, the 21st century seems poised to become the century of regional disaggregation. New directions in international relations theory, cast around concepts such as turbulence and chaos theory, have been honed to highlight these trends.<sup>13</sup> For U.S. policymakers, the challenge will be to integrate regional perspectives, and sensitivities to national and regional dynamics, into a realistic and balanced approach to the pursuit of global security; not to question the relevance of regional perspectives (which should be self-evident), but to better understand the ways in which they need to be joined to a comprehensive strategy for the pursuit of national interest.

## WHAT IS A REGION?

Regions may be defined and distinguished according to an approximate combination of geographic, social, cultural, and political variables. Unambiguous distinctions, however, will always be elusive. As an analytical category in international relations, the "region" is fated to remain contingent and contentious. Geographical contiguity is clearly a prerequisite for regional identity, but drawing uncontested boundaries is usually an impossible task.<sup>14</sup> The concept of "eastern Europe" once had a fairly high degree of integrity, but since 1989 it has virtually disappeared from the political lexicon. The phrase "Middle East," which was originally the product of colonialist and Eurocentric world views, continues to be used (often rendered as a "Greater Middle East") to describe an extremely diverse area stretching from the Maghreb into distant Central Asia. Meanwhile, the designation of an eastern Mediterranean Levant has fallen out of fashion. The Balkans has been regarded as a distinctive European sub-region for well over a century, but almost any Balkan state with elsewhere to turn rejects the designation unambiguously.<sup>15</sup> "All regions," writes Andrew Hurrell with some justification, "are socially constructed and hence politically contested."<sup>16</sup>

One of the more influential recent attempts to delineate regions according to cultural criteria has been Samuel Huntington's clash of civilizations thesis. Huntington identifies nine world civilization zones based significantly, though not entirely, upon confessional affiliation.<sup>17</sup> The argument that geostrategy will be increasingly dominated by civilization conflict waged along the "fault-lines" dividing these zones has been widely used to explain the apparent upsurge in ethnic conflict of the recent past. Huntington's argument, however, is neither entirely novel nor altogether convincing. Geopolitical analysis has long used the idea of the "shatterbelt," defined as a politically fragmented and ethnically divided zone that serves as a field of competition between continental and maritime powers.<sup>18</sup> Great civilizations cannot be precisely bounded spatially, and they are rarely either entirely homogenous or mutually exclusive. Huntington's attempt to designate geographically bounded civilization zones, and to use these zones as the foundation for a theory of geostrategy, rests on suspect premises.

Barry Buzan has developed the concept of the "regional security complex" in an effort "to offset the tendency of power theorists to underplay the importance of the regional level in international security affairs."<sup>19</sup> He makes the assertion that in security terms, "'region' means that a distinct and significant subsystem of security relations exists among a set of states whose fate is that they

have been locked into geographical proximity with each other.”<sup>20</sup> The existence of a “subsystem” of security relations presumes high levels of interdependence, multiple interactions, and shared sensitivities and vulnerabilities. Any attempt to identify such complexes empirically, however, poses obvious problems.<sup>21</sup> Regional security complexes are rarely if ever defined exclusively by geographical proximity, they are often dominated by external powers, and they are sometimes held hostage by national-cultural variables or systemic dynamics. The United States is the focus of functioning security complexes in both Europe and Asia. Turkey and Israel lie within different security complexes according to most of Buzan’s criteria, but they have developed a close bilateral relationship that impacts significantly upon their relations with contiguous states. Transnational threats such as terrorism, international crime, drug trafficking, illegal migration, or environmental disintegration also overlap regions and create dynamics of association that prevent security complexes from becoming significantly self-contained.

The United States makes an approximate distinction between geographic regions in the Unified Command Plan that lies at the basis of its warfighting strategy, by fixing the contours of unified command areas assigned to combatant commanders. This approach originally evolved from the division of responsibilities adapted by the United States to fight World War II, and was formalized by the National Security Act of 1947. Over the years, the geographic division of responsibility has been adapted repeatedly on the basis of changes in the international security structure, technological advances, and strategic calculation, but also bureaucratic infighting over areas of responsibility and access to resources. Combatant commanders have recently been required to draw up an annual Theater Engagement Plan defining regional shaping priorities, but they are primarily warfighters, and the division of responsibility which the current unified command plan structure embodies is geared to position the United States to prevail in armed confrontations. Contemporary U.S. national security strategy, mandating readiness to fight two nearly simultaneous major theater wars, has concentrated the attention of the combatant commanders on the areas where such conflicts are presumed to be most likely – in the Middle East/Southwest Asian and Western Pacific/Northeast Asian theaters. The regional distinctions built into the Unified Command Plan are arbitrary, but they are geared to the performance of the functional tasks of warriors and do not always rest upon careful conceptual distinctions.

David Lake and Patrick Morgan define region minimally, as “a set of countries linked by geography and one or more common trends, such as level of development, culture or political institutions.”<sup>22</sup> Their definition has the advantages of simplicity, but it is potentially too broad to be really useful, and also possibly misleading. The nation-state is sometimes an inadequate building bloc for regional complexes. Any viable definition of the post-Soviet Central Asian region would have to include China’s Xinjiang province, whose population is composed of 60 percent Turkic Muslims. Russia’s far eastern provinces are an integral part of the Asia-Pacific region, while the core of historic Russia is an extension, both geographically and culturally, of a greater Europe. Ukraine’s population is divided politically along the line of the Dnipro River, with the western provinces affiliating with an enlarged central Europe and the eastern provinces oriented toward the Russian Federation and Eurasia. Northern Mexico and southern California have become intimately associated as a result of high levels of economic interaction and cross-border movement of peoples.<sup>23</sup> The European Union has even sought to institutionalize transnational communities, by creating multi-state districts designated as “Euro-regions.”<sup>24</sup> The commonalities used to distinguish regions cannot be terminated artificially at national boundaries, and “one or more common trends” is too weak a foundation for association to give regional designations analytical substance.

In its regional studies curriculum, the U.S. Army War College designates six major world regions on the basis of broad geographical criteria—Europe, the Middle East, Africa, Russia and Eurasia, the Asia-Pacific region, and the Americas. These are designations of convenience



intended primarily for pedagogical purposes. Our working definition of what constitutes a region is of necessity broad and multidimensional. Geographical propinquity; a sense of identity and self-awareness based upon shared experience, ascribed traits, or language; a degree of autonomy within the international state system; relatively high levels of transactions; economic interdependencies; and political and cultural affinity may all be cited as relevant criteria. It is presumed that there will be gray areas and significant overlap between regions however they are defined. The Turkish Republic, for example, is simultaneously part of a wider Europe, a greater Middle East, and post-Soviet Eurasia. No single set of associations is essential, and in the best of cases fixing the contours of major world regions and sub-regions will remain a problematic exercise.

## **WORLD REGIONS AND WORLD ORDER**

However regions are defined and differentiated, the impact of local, national, and regional dynamics upon world politics is substantial and destined to grow larger. For the foreseeable future, effective strategy will require sensitivity to the various ways in which regional affairs condition the global security agenda, channel and constrain U.S. priorities, and affect a changing world order.

### **Regional Instability, Regional Conflict, and Embedded Terrorism.**

Regional instability poses diverse kinds of challenges to U.S. interests. Iraq's occupation of Kuwait in 1990 placed a critical mass of Middle Eastern oil reserves in the hands of an ambitious and hostile regional power, thus posing a clear threat to vital interests. Such dramatic scenarios will not occur very often, but the potential consequences are so great as to demand high degrees of readiness. "Rogue states," which aspire to regional hegemony and whose leaders are often defiant of international norms, are now acknowledged as a distinct threat in their own right. The most persistent challenges of recent years have been the chronic instability born of flawed regional orders marked by severe impoverishment, unequal development, frustrated nationalism, ethnic rivalry, and the "failed state" phenomenon where weak polities lose the capacity to carry out the basic tasks of governance. Embedded terrorism, exploiting failed regional systems as sanctuaries for the pursuit of global agendas, has been a dramatic consequence.

In the post-Cold War period, the U.S. Armed Forces have been called upon to participate in an unprecedented number of complex contingency operations ranging from simple noncombatant evacuations to extensive, protracted, and dangerous peace enforcement and peacekeeping duties. The logic of U.S. engagement is usually impeccable. Unchecked regional or civil conflicts risk escalation with broadening consequences; threaten the credibility of the United States, its allies, and major international instances as guarantors of world order; and confront decisionmakers with horrendous and morally intolerable humanitarian abuses. But the United States should not feel obligated, nor can it afford, to take on the role of global policeman. Protracted and open-ended peacekeeping deployments risk to undermine combat readiness by disrupting training routines, erode the morale of the volunteer force, and pose the constant possibility of deeper and higher-risk engagement. *Shaping* regional complexes to head off resorts to coercive conflict behavior, and *responding* to regional challenges, if possible preemptively and under the aegis of international organizations or multinational coalitions, have as a result become pillars of U.S. security policy.

The challenges of civil war and low-intensity regional conflict will not go away or diminish. In a larger historical perspective it seems clear that the total wars of the 20th century have been exceptional events rather than typical ones. Prior to our century, technological limitations made the concept of "world" war unthinkable—warfare, of necessity, was waged within physically constrained theaters on the regional level. Ironically, the technological possibilities unveiled with the creation of massive nuclear arsenals during the Cold War have once again made the outbreak of



hegemonic warfare between great power rivals highly unlikely, as well an eminently undesirable. The increasing lethality (and expense) of modern conventional armaments only further raises the threshold of total war. While the Kantian thesis that great power warfare has become obsolete may or may not be credible, it rests upon substantial foundations.<sup>25</sup> If for no other reasons than those imposed by the evolving technology of violence, wars and armed confrontations are today once again being contested almost exclusively as low- and medium-intensity conflicts on the local and regional level. "In the foreseeable future," write Lake and Morgan, "violent conflict will mostly arise out of regional concerns and will be viewed by political actors through a regional, rather than global, lens."<sup>26</sup>

In some ways, Cold War bipolarity worked to constrain regional conflict. Neither superpower could afford to tolerate an uncontrolled escalation of regional rivalry that risked to draw it into a direct confrontation, and regional allies were consistently pressured to limit their aspirations and bend to the will of their great power sponsors.<sup>27</sup> It is difficult to imagine that the anarchic disintegration of the Yugoslav Federation would have been allowed to proceed unchecked in 1991 had the fragile European balance of terror of the Cold War system still been at risk. The extent of such constraint may nonetheless be exaggerated. Many of the regional conflicts of the Cold War era – in southern Africa, the Horn of Africa, Afghanistan, the Middle East, or southern Asia – have perpetuated themselves into the post-Cold War period. Cumulatively, post-World War II regional conflicts have occasioned the deaths of over 25 million individuals, and the incidence and intensity of such conflicts continues to increase.

A composite portrait of post-Cold War regional conflict calls attention to the difficulties involved in programming effective responses. The large majority of contemporary "limited" wars are civil wars or wars of secession, waged with the ferocity that is typical of such contests. Combat operations often include the significant engagement of poorly controlled and disciplined irregular forces. The bulk of casualties are imposed upon innocent civilians, sometimes including genocidal massacre and forced population transfers (ethnic cleansing). While often obscure in terms of their origins, such conflicts are usually highly visible. The modern mass media, commercially driven and chronically in search of sensation, brings regional chaos "into the living room" and generates popular pressure to respond that political leaders often find difficult to ignore. Limited and often frustrated or only partly successful intervention by the international community in the role of would-be peacemaker is another shared trait that gives many contemporary regional conflicts a fairly uniform contour. Wayne Burt notes correctly that, in comparison with the structured context of Cold War bipolarity, the "post-Cold War world is a much 'messier' world where limited conflict will be fought for limited and often shifting objectives, and with strategies that are difficult to formulate, costs that are uncertain, and entrance and exit points that are not obvious."<sup>28</sup>

As undisputed world leader, and the only major power with significant global power projection capacity, the U.S. is often compelled to react to such conflicts whether or not it has truly vital interests at stake. America's ability to manage and shape the conflict process is nonetheless severely limited. A decade of struggling with regional conflict in post-communist Yugoslavia, including intensive diplomatic efforts, punitive air strikes, large and open-ended peacekeeping deployments, and a full-scale war over Kosovo, has led to what may at best be described as a mixed result.<sup>29</sup> Peace enforcement and peacekeeping responsibilities have been carried out with impressive efficiency, but the much more problematic, and politically charged task of post-conflict peace building has proven to be something close to a mission impossible.<sup>30</sup>

Since the terrorist attacks against New York and Washington on 9/11, the phenomenon of embedded terrorism has become another manifestation of how regional instability may provoke intense political violence. U.S. military actions in Afghanistan and Iraq have been designed to

strike at terror nests, but it has quickly become apparent that defeating designated enemies is only part of the challenge. Post-conflict reconstruction efforts have demanded an increasingly sophisticated awareness of local norms and values, and heightened sensitivities to the cultural context within which stability operations are being pursued. Army Provincial Reconstruction Teams in Afghanistan have striven to develop closer working relations with local populations and build a foundation of trust based upon mutual understanding that will make it more difficult for terrorist cells to relocate in the areas in the future.

The United States has made the maintenance of regional stability a pillar of its security strategy, but the forces of disintegration at work within many world regions are daunting. Effective responses will first of all require some selectivity in choosing targets for intervention. When we do elect to become involved, our efforts should be based upon a much greater awareness of regional realities than has been manifested in the recent past. We will also need to make better use of friends and allies. Regional instability is often best addressed by local actors, who usually have the largest vested interest in blocking escalation, and in some cases regionally based conflict management initiatives can become a significant stimulus to broader patterns of regional cooperation. Engaging allies and relevant multilateral forums in managing regional conflict, as the United States has sought to do with the African Crisis Response Initiative, should be a high national priority.

## **Geopolitics.**

Many currently fashionable approaches to international relations assume the decline of territoriality as a motive for state behavior. The dominant trend in world politics is persistently, albeit vaguely, described as globalization, implying a rapid increase in interactions fueled by revolutions in communications and information management, the emergence of a truly global market and world economy, the primacy of economic competition as a mode of interstate rivalry, and an unprecedented space-time compression that places unique demands upon decisionmakers.<sup>31</sup> The globalization scenario is built on overarching generalizations about world order and it rests upon universalizing premises that leave little space for sticky concern with the intricacies of regional affairs. There are alternatives to theoretical perspectives cast on so high a level of abstraction however, and they bring regional issues into the forefront of international discourse. Most important among them is the tradition of geopolitics.

The core challenge of geopolitical analysis is to link the systematic study of spatial and geographical relations with the dynamic of interstate politics. As a formal discipline, geopolitics dates from the late 19th century work of the Leipzig professor Friedrich Ratzel. His 1897 study *Politische Geographie* (Political Geography) presents states as organisms with a quasi-biological character, rooted in their native soil, embedded in a distinctive spatial context or *Lebensraum* (living space), and condemned to either grow and expand or wither away.<sup>32</sup> In the works of various contemporaries and successors, including Alfred Thayer Mahan, Rudolf Kjellén, Halford Mackinder, Alfred de Severing, Klaus Haushofer, and Nicholas John Spykman, these insights have been pushed in a number of directions. The strong influence of geopolitical categories, especially as transmitted through the work of Haushofer, upon Adolf Hitler's strategic program during the 1930s has brought enduring discredit upon the discipline, widely but unfairly regarded as a vulgar amalgam of social Darwinism and military expansionism. In fact, in its manifold and not always consistent manifestations, geopolitical analysis presents a range of alternative strategic perceptions whose common ground is a sense of the permanent and enduring relevance of spatial, cultural, and environmental factors in world politics.<sup>33</sup> These are also the factors that stand at the foundation of regional studies.

Geopolitics is rooted in the study of geography, broadly but relevantly defined by Saul Cohen as “spatial patterns and relations that reflect dynamic physical and human processes.”<sup>34</sup> Geography is a rich and complex construct that provides a context for weighing the impact of a number of significant but often neglected variables. These include ethnicity, nationalism, and the politics of identity; access to natural and strategic resources; geostrategy and the role of lines of communication and strategic choke points; relations between human communities and their natural environment; and the strategic implications of increasing environmental stress. It encompasses demographic issues such as population growth, cycles of migration and changing patterns of population distribution, and “decisionmaking milieus” including Huntingtonian civilization zones, political systems and political cultures, as well as the spatial distribution of power within the world system.

Geopolitical analysis is best known in the West as refracted by Halford Mackinder’s heartland concept, which defines control of the Eurasian landmass as the key to world power. Mackinder distinguished between a *World-Island* encompassing the joined continents of Europe, Asia, and Africa, the Eurasian *Heartland* approximately equivalent to Russia and Central Asia, and the *Rimlands* (including east-central Europe) along the Eurasian periphery. “Who rules East Europe,” he wrote in a famous passage, “controls the Heartland. Who rules the Heartland commands the World-Island. Who rules the World-Island commands the World.”<sup>35</sup> Mackinder was not a fascist militarist, but a moderate professor and civil servant, whose thinking lay at the foundation of British strategy through much of the 20th century. By calling attention to the spatial dimensions of grand strategy, his work points out the extent to which geostrategic concepts have been and continue to be at the heart of modern statecraft.

A striking contemporary illustration of the continuing impact of geopolitical perspectives is provided by the heartland power *par excellence*, the Russian Federation, where disillusionment with the gilded promises of globalization and integration with the U.S.-led world economy have led to a rapid and broadly influential revival of geopolitical theory.<sup>36</sup> The new Russian geopolitics has been dismissed in the West as a manifestation of radical extremism, a sort of Russian fascism born of the post-communist malaise.<sup>37</sup> In fact, core geopolitical perceptions (the need to maintain the integrity of the Russian Federation, the call to reassert a strong sphere of influence in the territories of the former Soviet Union, the cultural distinctiveness of the Russian Idea and its historical role as a force for integration in the expanses of Eurasia, the need for alliances to balance and contest American hegemony) have moved into the mainstream of Russian strategic thought and enjoy strong support.

Haushofer has written that “geopolitics is the science of the conditioning of political processes by the earth,” and that “the essence of regions as comprehended from the geopolitical point of view provides the framework for geopolitics.”<sup>38</sup> This is a *plaidoyer* for the concrete and substantial, for a theory of world politics built from the ground up. Effective geopolitical reasoning leads U.S. back to the earth, to the distinctive political communities nested upon it, to the patterns of association that develop between them, and to the conflicts that emerge from their interactions. It is not the only school of thought that prioritizes the relevance of geography and regional studies, but it provides a particularly good example of the relevance of the textured study of peoples and places as a foundation for effective strategy.

## THE CULTURAL DIMENSION OF WARFARE

The maxim “know thy enemy” is often counted as the acme of strategic wisdom. It is unfortunately a maxim that has not always been highly respected in the U.S. military and security communities. War has organizational and technological dimensions which make it a rigorous,

practical, and precise enterprise, but wars are also waged between calculating rivals in a domain of uncertainty, and by distinctive political communities in ways that reflect deeply rooted, culturally conditioned preferences.

During the Cold War the United States made an intense effort to understand the societal and cultural dynamics shaping the perceptions of its Soviet rival, arguably to good effect. In general, however, in depth knowledge of national and regional cultural dynamics has not been a strong point for U.S. strategy, which has tended to rest upon the sturdy pillars of relative invulnerability and the capacity to mobilize overwhelming force.<sup>39</sup> In the volatile and uncertain security environment of the years to come, however, the assumption of technological and material advantage may not be a safe one, nor will these advantages always suffice to ensure superiority in every possible contingency. The People's Republic of China (PRC) represents a potential long-term rival with considerable assets and great self-confidence, derived in part from a highly distinctive and ancient culture.<sup>40</sup> Russia's current Time of Troubles has temporarily brought her low, but eventually the inherent strengths that made the Union of Soviet Socialist Republics (USSR) so formidable, a rival during the Cold War decades will reassert themselves. We confront a long-term struggle to manage the dilemmas of modernization in the Arab and Muslim worlds, and the associated dynamic of terrorism, that will demand sophisticated cultural awareness. The United States will need to know "what makes them tick" if it wants to manage its relations with potential peer competitors and troubled world regions successfully. Effective intervention in complex contingencies will likewise demand in depth knowledge of real or potential rivals. Strategy is not uniquely the product of culture, and culture itself is not a lucid or unambiguous construct. But all strategy unfolds in a cultural context, and cannot be fully or properly understood outside it.

Colin Gray defines strategic culture as "the socially constructed and transmitted assumptions, habits of mind, traditions, and preferred methods of operation . . . that are more or less specific to a particular geographically based security community."<sup>41</sup> The foundations of strategic culture are the fundamentals of culture itself; shared experience, language, common governance, and values. The cultural orientation that derives from these commonalities, it can be argued, affects the ways in which polities conduct diplomacy, define and pursue interests, and wage war. In his controversial *History of Warfare*, John Keegan suggests that throughout history war has always been an essentially cultural phenomenon, an atavism derived from patterns of group identification and interaction rather than the purposeful activity implied in Clausewitz's famous dictum that "war is the continuation of politics by other means."<sup>42</sup> Victor Hanson argues that the ancient Greek preference for physical confrontation and quick decision has created a "Western way of war," dominated by a search for decisive battle and strategies of annihilation, a tradition that remains alive to this day.<sup>43</sup> Such conclusions are extreme, but they are useful in underlining the fact that wars are conceived, plotted, and waged by socially conditioned human agents.

As a dominant global power the United States will be called upon to wage war in a variety of contexts in the years to come. A better understanding of the strategic cultures of real or potential adversaries will place another weapon in its arsenal and strengthen prospects for success. In Bernard Brodie's classic formulation, "good strategy presumes good anthropology and sociology. Some of the greatest military blunders of all time have resulted from juvenile evaluations in this department."<sup>44</sup> Knowing the enemy goes well beyond order of battle, to the sources of strategic preference and military operational codes that are grounded in the social and cultural context of distinctive nations and regions.<sup>45</sup>

## **ESPACES DE SENS: REGIONAL ALLIANCE AND ASSOCIATION**

The Cold War was a phase of intense global competition manifested in ideological polarization, arms racing, and militarized regional rivalry. It nonetheless offered a structure of purposeful



endeavor for its leading protagonists, as well as for critics who sought alternatives to what they perceived as the dead-end of belligerent bipolarity. The USSR justified its international policy on the basis of a distinctively Soviet variant of Marxism-Leninism. The United States consciously developed its Cold War strategy as a defense of the values of freedom and democracy. Various non-aligned alternatives called for a plague upon both houses, and sought to develop a third way independent of either power bloc. Regardless of where one stood, world politics took on the contours of a moral tale infused with meaning.

The end of the Cold War was accompanied by a certain euphoria, captured by Francis Fukuyama's "End of History" thesis, according to which the demise of the communist challenge meant "the end of history as such: that is, the end point in mankind's ideological evolution and the universalization of Western liberal democracy as the final form of human government."<sup>46</sup> Fukuyama's sweepingly optimistic argument promised an era of global harmony in which interstate strategic rivalry would give way to cooperation under the impetus of democratization, development, and consumerism, promoted by a benign American hegemony. In place of a contest of values, Fukuyama's Hegelian vision looked forward to the unchallenged primacy of the culture of the West.

Needless to say, nothing of the kind has transpired. The post-Cold War period has been marked by regional turbulence, torturous, and sometimes unsuccessful post-communist transitions, violent ethnic conflict, the rise of global terrorism as a major challenge to the premises of world order, and continued, if sometimes muted, great power rivalry. Western values are contested rather than embraced, and the absence of a compelling sense of overall direction, of a larger domestic or international project, of a source of signification and meaning, has arguably become a problem in its own right. Uncertainty about direction has also contributed to strategic confusion. The suspicion or rejection of large civilization projects that has become so prominent a part of contemporary post-structuralist and social constructivist approaches to international theory, often accompanied by quasi-indifference to any kind of strategic analysis whatsoever, reflects the state of affairs with great clarity.<sup>47</sup>

The United Nations (UN), symbol of an earlier generation's aspirations for a more peaceful world order, has languished during the post-Cold War decade. In contrast, projects for regional association have flourished. Realist theory portrays the formation of alliances and regional blocs as an "outside-in" phenomenon, occurring as a response to real or perceived external challenges, whether via "balancing" efforts to correct a maldistribution of power, or "bandwagoning" whereby weak polities seek to dilute threats through association with a hegemonic leader.<sup>48</sup> Neo-mercantilist approaches follow an identical pattern in explaining regional association as a logical response to enhanced international economic competition. But regional association may also be understood as a function of "inside-out" dynamics driven by social and cultural trends. Zaki Laïdi has argued that, in the face of the universalizing tendencies of globalization, meaningful civilization projects can only be constructed on a regional basis, as *espaces de sens* (spaces of meaning) bound together by a complex of historical, social, cultural, political, and economic associations.<sup>49</sup> These are contrasting arguments, but they are not mutually exclusive. Both "outside-in" and "inside-out" approaches to regional association need to be combined in an effort to come to terms with a phenomenon that has the potential to transform world politics root and branch.<sup>50</sup>

The "new regionalism" is manifested both by the revitalization of traditional regional organizations and the creation of new forms of regional association. Large regional or subregional blocs with a history of institutionalization, such as the European Union (EU), the African Union (AU), the Organization of American States (OAS), the Association of Southeast Asian Nations (ASEAN), and the Gulf Cooperation Council (GCC), often have a strong security orientation, though today their focus is more often placed upon internal conflict management than external threats.<sup>51</sup> The



proliferation of regional projects for economic integration, including some of the organizations listed above as well as others such as the North American Free Trade Association (NAFTA), the Asia-Pacific Economic Cooperation Forum (APEC), the Southern African Development Community (SADC), the Arab Magreb Union (AMU), the Black Sea Economic Cooperation (BSEC), the Southern Cone Common Market (MERCOSUR), the Andean Pact, the Central America Common Market (CACM), the Commonwealth of Independent States (CIS), and the South Asian Association for Regional Cooperation (SAARC), has an obvious economic logic, but also a strong cultural foundation; within these broadly drawn and sometimes overlapping zones of association one may observe a powerful revival of regional and subregional awareness and identity. In other cases, functionalist logic prevails. Regional associations are sometimes appropriate forums for approaching large global problems such as environmental disintegration, occasioned on the systemic level but not always effectively addressed on that level.

Regional alliances and associations play a critical role in U.S. strategy. The most important by far is the Atlantic Alliance, uniquely successful as a formal security association over many decades, but an organization whose *raison d'être* has been called into question in the new circumstances of the post-Cold War. NATO was originally built up and maintained as an organization for collective defense against a clear and present external threat. The collapse of the USSR and the disappearance of the Warsaw Pact have made this aspect of its identity considerably less important, if not altogether irrelevant, but the Alliance has adapted by restructuring itself as a "new NATO" including commitments to enlargement, out of area peace operations, and gradual movement toward a broader collective security orientation. Former Secretary General Javier Solana describes the process extravagantly, as a "root and branch transformation" aimed to create "a new Alliance, far removed in purpose and structure from its Cold War ancestor," inspired by the premise of "cooperative security."<sup>52</sup> This "new" NATO is arguably more important than ever in the broader context of U.S. security policy, as a platform for power projection, as a forum for managing relations with key allies, as an instrument for reaching out to the emerging democracies of eastern Europe, as the foundation for a new European security order, and as a context for engaging the Russian Federation in a cooperative security effort.

The Atlantic Alliance is also a regional pact, whose stability has always been presumed to rest in part upon close historical and cultural associations between the United States and its European partners. Unfortunately, the new NATO will not have the luxury of assuming that a close cultural affinity will continue to link both sides of the Atlantic indefinitely. Changing U.S. demographic balances are reducing the proportion of citizens with European roots and heritage. Enlargement has made NATO itself a politically and culturally more diverse organization, where decision by consensus will be harder to achieve. Most of all, the project for European unification is moving slowly but steadily toward the goal of a more autonomous European subject possessed of the capacity to pursue an independent foreign and security policy. Managing regional conflict in the Balkans placed strains upon Alliance mechanisms. The Kosovo conflict generated considerable tension between the U.S. and its European allies, key allies were disappointed by the U.S. decision not to leverage the Alliance in a more significant way during its initial campaign in Afghanistan, and differences over the choice of a military option against Saddam Hussein's Iraq in 2003 brought alliance partners to the brink of an overt break. NATO continues to rest upon secure foundations, but friction in trans-Atlantic relations persists and is likely to grow stronger as the European project continues to unfold and efforts to bolster a European defense identity progress. Alliance management, based upon a careful appreciation of changing European realities and awareness of the cultural specificities of key European partners, will be an ever more important strategic task.

Other forms of regional association represent potential dangers. At least since the Iranian revolution of 1979, concern for an emerging "Islamic threat" has been prominent in U.S. policy circles.

These concerns, to some extent understandably, have become considerably more prominent since the attacks of 9/11. Somewhat less prominent, unfortunately, has been an informed understanding of what Islam is and is not, as a religion, as a philosophy of governance, and a way of life.<sup>53</sup> The possible solidification of a Russian-Chinese strategic axis, which would rest in large measure upon mutual alienation from the West, has the potential significantly to effect global power balances, and the European Union (EU) clearly aspires to challenge the U.S. economically. Contesting, co-opting, and counteracting these kinds of patterns will remain an important priority for U.S. planners.

There is an unmistakable momentum pushing in the direction of stronger local and regional identities, and more robust regional association. For some analysts, the trend is part and parcel of a “retreat from the state” occasioned by changes in the locus of power in the global political economy, whose logical endpoint will be a “new medievalism” in which alternative forms of political association, with a more pronounced regional character, will eventually come to prevail.<sup>54</sup> Whether or not such forecasts are correct, shifting patterns of association and the heightened visibility of a variety of regional forums are clear manifestations of the increased relevance of regional perspectives in global security affairs.

## CONCLUSIONS

The foundations of regional studies have changed remarkably little over time. Substantive understanding of major world regions demands a thorough mastery of the relevant specialized literature, careful and persistent monitoring of events and trends, appropriate language skills, and a period of sustained residence allowing for immersion in regional realities, accompanied by periodic visits to keep perceptions up-to-date. Regionalists need refined skills that demand a considerable investment of time and resources to create and maintain. If the argument presented in this chapter is correct, however, and regional dynamics will in fact become an increasingly important part of the international security agenda in the years to come, the investment will be well worth making.

Although the confines of major world regions and subregions are difficult to fix with a great deal of consistency and rigor, the relevance of local, national, and regional perspectives in international political analysis is more or less uncontested. For U.S. strategists in the post-Cold War period, the importance of such perspectives is particularly great. In the absence of a peer competitor, significant challenges to U.S. interests are most likely to emerge from various kinds of regional instability, including threatened access to critical strategic resources, the emergence of “rogue” states with revisionist agendas, embedded terrorism, and persistent low and medium intensity conflict. In an increasingly integrated world system, geographic, cultural, and environmental factors that are importantly or uniquely manifested in the regional context will play an increasingly important role in shaping national priorities and international realities. Strategic culture is a vital context for warfighting, as relevant to contests with peer competitors as it is to clashes with less imposing adversaries in regional contingencies. Shifting patterns of regional association, often motivated by a heightened sense of regional identity and a search for meaning and relative security in the face of the impersonal and sometimes dehumanizing forces of globalization, is an important worldwide trend. None of these dynamics can be properly incorporated into U.S. security strategy without a solid understanding of regional decisionmaking milieus and cultural proclivities.

To assert the importance of regional approaches in a balanced strategic studies curriculum is not to deny the relevance of alternative perspectives. Universalizing theory is essential and unavoidable. The formal and technical specializations necessary to make sense of political and military affairs are ineluctable. And there is the ever-present danger of regionalists falling into a

narrow preoccupation with local problems and personalities, while missing the larger, structural forces at work in the background. In context, however, and approached with appropriate modesty, regional perspectives have an essential place in strategy formulation.

The U.S. Army War College builds a regional studies component into its core curriculum, structured around the six major world regions mentioned above and focused on the effort to define and understand U.S. interests at stake on the regional level. Students are exposed to an in-depth study of a particular region, and to an overview of all six world regions, as a foundation for the school's capstone exercise, which tests their ability to manage a series of overlapping regional crises in an integrated political-military framework. Students are expected to become familiar with the general historical, cultural, political, military, and economic characteristics of the six major world regions; to evaluate U.S. national and security interests in these regions and to identify the kinds of challenges that are most likely to emerge; and to develop a regional strategic assessment that identifies alternative courses of action that can lead toward the achievement of U.S. national security objectives. The skills and expertise garnered during this bloc of instruction should make a vital contribution to the cultivation of future strategic leaders.

Regional strategic analysis is also of particular relevance to Army leaders. Though we live in the age of jointness, the Army remains the service branch primarily charged with placing boots on the ground in regional contingencies. Its operational environment is the land, where people live and societies are rooted, and it must at a minimum come to terms with the geographical realities of the places where it is constrained to operate, and the cultural characteristics of the peoples it is charged to fight or to protect. The emphasis on regional studies in the U.S. Army War College strategy curriculum stands out among our senior service schools. Experience, as well as common sense, shows that it is an emphasis well-placed.

## ENDNOTES - CHAPTER 14

1. Colin S. Gray, *Modern Strategy*, Oxford, UK: Oxford University Press, 1999, p. 9.
2. *Griff nach der Weltmacht* is the original title of Fischer's influential book asserting German responsibility for the outbreak of the First World War, translated into English as Fritz Fischer, *Germany's Aims in the First World War*, New York: W. W. Norton, 1967.
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## CHAPTER 15

### “LAWYERS, GUNS, AND MONEY”: TRANSNATIONAL THREATS AND U.S. NATIONAL SECURITY

Paul Rexton Kan

Although the singer Warren Zevon may not have been aware, the title of his song, “Lawyers, Guns and Money,” represents several facets of transnational threats, like cross-border crime, that comprise the international security environment in which the United States must operate. Transnational threats do not recognize the significance of borders, their effects are wide ranging with consequences in multiple nation-states, they transcend the capacity of a single nation-state to confront them adequately, and they are loosely structured, if structured at all. Transnational threats represent a type of nonconventional threat that are not directed by the actions or policies of the government of a nation-state. Such threats include actors like terrorists, drug traffickers, and organized criminal syndicates who are involved in activities like mass murder, extortion, bribery, kidnapping, money laundering, drug trafficking, human smuggling, illegal arms trading, sea piracy, theft of art and cultural objects, cybercrime, and the illicit trade of gemstones, timber, and oil. Such activities are estimated to generate a volume of financial flow on the order of \$600 billion annually.<sup>1</sup>

Moreover, these actors and actions are increasingly multifaceted. Several terror groups like Al Qaeda and Hezbollah are involved in drug trafficking and money laundering, while traditional drug smuggling groups in Mexico have evolved into “trafficking network organizations” since they are also involved in a range of smuggling activities like human smuggling and arms trafficking.<sup>2</sup> Such actors combine corporate and criminal cultures, “conducting criminal business not only with ruthlessness but also with a degree of business skill worthy of many CEOs” [chief executive Officers].<sup>3</sup>

An equally important, but routinely overlooked, quality of transnational threats is that they are increasingly difficult, if not impossible, to peel away from the process of globalization. In fact, the potency of transnational threats has grown as border enforcement and capital controls have loosened and as free trade agreements have expanded. As a result, responding to them with governmental action is exceptionally thorny. Attempting to tackle transnational threats in a comprehensive manner would mean greatly reducing the efficiencies of globalization like the speed of transportation and commercial transactions—to have all ports worldwide routinely check every shipping container for illicit commodities is not feasible, while any attempts to do so would reduce a government’s capacity to provide for the economic well-being of its citizenry.

There are also other transnational threats like the H1N1 or swine flu virus and climate change that are “threats without threateners” since they do not have an agent at all.<sup>4</sup> Pathogens are not “actors” on the international stage—a virus does not seek a seat in the United Nations (UN) General Assembly. Even without an actor who is responsible for these phenomena, pathogens and natural catastrophes share the qualities of transnational threats by ignoring borders, affecting multiple nation-states, transcending the capacity of a single nation-state to confront them adequately while not emanating from a structured organization. Likewise, tackling them in a comprehensive manner would significantly affect the process of globalization—screening all airline passengers for infectious disease would dramatically interfere with global transportation. And, as of this writing, no one has been able to control tsunamis, earthquakes and rising sea levels.

Facetiously labeled as “thugs, bugs, and drugs,” transnational threats are, as James Rosenau describes, “sovereignty-free” and serve to remind national security professionals that there are other issues beyond the conventional state-centered ones that can rise to high levels of national importance. The challenge is that “traditional or Westphalian states are not prepared to deal with nongovernmental dynamics operating outside the domains of state and alliance systems. Doctrine and force structures are designed around traditional concepts of overwhelming conventional force to achieve decisive victory against established state militaries.”<sup>5</sup> While these threats are unfamiliar and responses cannot solely rely on traditional approaches, transnational threats are not immune from treatment; they must be addressed in priority of their importance to U.S. national interests just like any conventional security challenge. This chapter examines the ways that transnational threats can affect the U.S. national security agenda and demonstrates how decisionmakers will need to become more comfortable in developing complex responses to them.

## TRANSNATIONAL THREATS AS DIRECT THREATS

Transnational threats are direct threats to U.S. national security. One can argue that threats like drug dealing, terrorism, organized crime, and pandemics directly challenge the authority of the U.S. Government to provide for the general welfare while protecting the U.S. homeland from events that can lead to the undermining of its territorial integrity, economic prosperity or vital institutions of government. Such a case is not difficult to make—leaders have argued that the use and abuse of hard core narcotics by U.S. citizens undermines law and order. Indeed, in 1989, President George H. W. Bush addressed the nation on prime time television, held up a bag of crack cocaine seized across from the White House days prior to the speech and proclaimed that “the gravest domestic threat facing our nation today is drugs.”<sup>6</sup> Just a few weeks after that speech, President Bush sent the U.S. military in a major joint operation to capture Panamanian President Manuel Noriega for drug trafficking crimes. In both word and deed, President Bush elevated the battle against the drug trade to the same level as combating Soviet-inspired communism.

The terrorist attacks of September 11, 2001 (9/11) demonstrated the dramatic increase in the lethality of violent nonstate actors. By utilizing the benefits of globalization—the internet, electronic banking, air travel, student visas—less than two dozen individuals were able to kill thousands of U.S. citizens and cost the U.S. economy billions of dollars. These series of attacks on a single morning revealed the catastrophic potential of terrorist groups’ acquisition and use of a weapon of mass destruction.

Transnational organized crime syndicates are also a direct threat to U.S. national security since they challenge state power from beneath—they assume the role of the state at local levels by enforcing their own code of conduct, entering into illegal contracts and using violence to guarantee their private interests.<sup>7</sup> The result is the diminishing of legitimacy and authority of core governmental institutions. Mafia violence of the Al Capone era should not be confused with the “rapid growth and global reach that appear to have given transnational organized crime an unprecedented capacity to challenge states.”<sup>8</sup>

Beyond the drug trade, terrorism, and organized crime, the outbreak of a pandemic in the United States would arguably pose a direct threat to the welfare of the American population. Although sustained and efficient human-to-human transmission of avian influenza has not yet taken place, its occurrence could result in over 140 million deaths worldwide and staggering economic losses.<sup>9</sup> The most recent near human pandemic was the SARS outbreak in Asia between 2002 and 2003. While not directly threatening the U.S. population, it did demonstrate the potential for a pandemic to undermine the authority of a government. This outbreak had a 7 to 15 percent

mortality rate and created fears in the Chinese government of a “Chinese Chernobyl” that would create the conditions for a popular outcry against the government to force greater openness.

## **TRANSNATIONAL THREATS AS INDIRECT THREATS**

There is not universal agreement that transnational threats should be labeled a direct threat and placed high on the national security agenda. Although they can certainly challenge core U.S. interests, transnational threats create indirect effects that complicate, but do not have the potency to destroy the American homeland, wipeout the economy, or exterminate the writ of the U.S. Government. As such, they can only create second order effects that, while significant, do not jeopardize America’s ability to continue to exist as a nation-state.

Arguably, the drug trade and transnational criminal groups are indirect threats to U.S. national security. Criminals and drug smugglers generally seek to evade government authority rather than to directly confront it. While certain criminal groups, like the Russian *mafia*, are exceptionally violent, they do not seek to replace the authority of the U.S. Government with their own. Corruption of public officials and law enforcement do undermine the authority of the government while drug use and associated criminality can be deleterious to public health and civil order. The extent of organized crime and illegal activities penetrates legitimate institutions of government, society, and the economy can be quite damaging. Drug trafficking alone requires the participation of members of legitimate professions – chemists, lawyers, accountants, realtors, and bankers. Such widespread involvement can jeopardize fundamental elements of the American way of life based on transparency and accountability of vital institutions.

Geo-strategically, transnational threats do have the ability to destabilize other nation-states that are key to U.S. interests. Drug violence in neighboring Mexico has risen sharply since the 1990s, includes former members of the Mexican military, and has spilled over into U.S. cities and towns along the border. Drug violence continues to plague Colombia, a country pivotal to the stability of Latin America. Russian organized crime has penetrated multiple levels of Russian society and has spread to a variety of nations. Such criminality threatens a central pillar of U.S. foreign policy – the expansion of democracy. One observer of the rise of transnational crime was forced to ask: “Can democracy be promoted in countries in which criminal networks are the most powerful political players?”<sup>10</sup>

While the United States may be able to fend off the more serious consequences of transnational threats, more fragile countries are much more susceptible to greater damage. Research on civil wars and armed conflict in the 1990s revealed that “the pursuit of criminal agendas by warring parties is often difficult to distinguish from other objectives, supposedly of a more ‘political’ nature, that are commonly assumed to be driving conflict.”<sup>11</sup> Such protraction of conflicts creates regional instability, exacerbates human rights abuses, and allows for the development of “brown areas” that are isolated from the power of legitimate governmental authority. The result may be a failed state that serves as a sanctuary for additional criminal activity and political violence. Such a state has been raised to the level of a direct threat due to its ability to harbor international terrorist groups. As President George W. Bush’s first *National Security Strategy* put it, “America is now threatened less by conquering states than we are by failing ones.”<sup>12</sup>

## **TRANSNATIONAL THREATS AS ENABLERS OF DIRECT THREATS**

Another way to conceptualize transnational threats is to view them as enablers to more direct threats to the U.S. national security interests. In other words, adversaries can take advantage of the illicit global economy to earn money for their activities that challenge U.S. actions or work in collusion with criminal groups to procure expertise and material to attack the United States and its

citizens. Participation in the international drug trade is especially empowering for many warring groups that the U.S. confronts.<sup>13</sup> The drug trade is seductive for many groups since it can be used as a weapon against the United States as well as a generator of profit. Reportedly, Hezbollah imports raw materials for heroin and cocaine production into Lebanon and sells the finished products to the United States and Western Europe as a way to continue its campaign against Israel and the West.<sup>14</sup> The Taliban has engaged in heroin trafficking as a way to promote its insurgency against North Atlantic Treaty Organization (NATO) forces. The result was that, in September 2006, it became statistically as dangerous for an American service member to serve in Afghanistan as it was in Iraq.<sup>15</sup> Al Qaeda ran a number of criminal schemes to keep their operations financially viable. One member of Al Qaeda is wanted on federal charges for trafficking methamphetamine. After the attacks of 9/11, Al Qaeda attempted to buy illegal diamonds from Liberian President Charles Taylor to shield its hard currency assets from seizure.

Rogue states can also be empowered by linking themselves to the illicit global economy. The North Korean regime is actively engaged in the production, distribution, and sale of drugs as part of government policy coordinated by Central Committee Bureau 39. In fact, North Korean military personnel have been used to smuggle drugs for nearly 30 years.<sup>16</sup> North Korean infiltration craft (manned by North Korean Special Operations Forces) have often been found in Japanese waters since the late 1990s engaged in “drug drops.”<sup>17</sup> North Korean uniformed personnel have reportedly been involved in the transfer of illegal drugs both off the coasts of Japan and Taiwan.<sup>18</sup>

## **TRANSNATIONAL THREATS AS STRATEGIC DISTRACTIONS**

Transnational threats and their effects may also be viewed as strategic distractions; they appear as exaggerations that pose nowhere near the same level of danger as conventional threats. By focusing so much attention to them, some argue policymakers overstate the threat at the expense of focusing limited time, attention, and resources on more pressing issues like rising powers, rogue states, and the competition for oil. There is also the danger of a self-fulfilling prophecy – raising transnational threats like terror groups or criminals to high levels of importance legitimizes these actors on the global stage in ways that they may not have been able to do themselves with their own resources or actions. Even “threats without threatners” becomes problematic for national security professionals. Placing pandemic on the security agenda has meant a more active role for the U.S. Department of Defense (DoD), a role that is added to an already crowded agenda for the U.S. military.

To hold the view that transnational threats are distractions is not to argue that they are unimportant, but that they should not be seen as residing in the province of national security. They are not in the realm of “high politics.” They belong where they always have, be they in the arena of law enforcement (for terrorism, drug trafficking), private business (for money laundering), or the scientific community (in the cases of pandemic and climate change). Corruption and crime are not so ingrained or widespread as to cripple U.S. vital functions; the United States routinely scores low as a country in corruption indexes and the level of drug use and rate of drug related crimes has not significantly risen in the years the Office of National Drug Control Policy has been keeping records. Money laundering has not significantly eroded public confidence in U.S. financial institutions or the economy itself. Pandemics and the effects of climate change have been effectively managed by the current configuration of the institutions of government.

## **RESPONSES TO TRANSNATIONAL THREATS**

However one chooses to prioritize transnational threats, responding to them requires a high level of interaction among a variety of actors in the United States and the international arena.



Be they viewed as direct threats, indirect threats, enablers or distractions, transnational threats require that responses be as complex as the threats to produce meaningful results. Ironically, since transnational threats seemingly undermine the sovereignty of states, confronting them will mean that the U.S. national security community must more fully integrate and harness the elements of its own national sovereignty – diplomacy, information, military, economics, financial, intelligence and law enforcement (DIMEFIL).

Since these threats are enmeshed in the process of globalization, the speed at which they move means that governments are always playing catch-up. For example, the multifaceted nature of criminal networks permits them to rapidly adapt to many of the countermeasures used by governments. Human trafficking is on the rise and uses many of the same routes and techniques as drug trafficking – one reason is that jail time for smuggling a person into the United States is less than for smuggling a load of marijuana. The legal system has not caught up to the practice, meaning that the risk is lower, but the profit is roughly the same and, therefore, the incentive is greater. Even seemingly innocuous laws that were designed to mitigate some of the damages the global economy can inflict also serve to empower transnational activities. After the signing of an agreement among several Pacific nations to place limits on tuna fishermen to avoid capturing dolphins in their nets, Chinese organized crime was able to take advantage of excess room in the holds of Taiwanese fishing vessels to smuggle people from Fujian (the Chinese province closest to Taiwan) to other vessels bound for the United States and other countries.<sup>19</sup> Migrants became the new commodity.

For leaders of America's armed services, transnational threats appear especially frustrating; for a number of reasons cited above they are resistant to one of America's strongest instruments of power – military might. For example, it is difficult to wage war on a product (for example, drugs) or phenomenon (for example, terrorism). After all, an adversary should be able to fight back. While the U.S. Government is waging a war on drugs, drugs are not fighting a war against the U.S. Government; and this is not because drugs declined to participate, but because drugs are not the sort of thing that could.<sup>20</sup> Transnational threats are also frustrating for policymakers and strategists because there does not seem to be a point at which they can be said to be vanquished. Policymakers and strategists are more comfortable defining a particular goal or end-state for U.S. action. "It would not make sense to say, 'at the moment we are fighting fascism (or poverty or drugs), but we hope at a future time we'll be on better terms with fascism (or poverty or drugs) and the reason for fighting it will have gone away.'"<sup>21</sup> Furthermore, as previously mentioned, tackling any particular transnational threat in a comprehensive way would be debilitating to the global order; "to declare war on [all] organized crime would in these conditions be more tantamount to writing a suicide note than embarking on a crusade."<sup>22</sup>

Although transnational threats are frustrating, elusive, and resilient, national security professionals are not powerless in the face of them. Such threats must be met with innovative, flexible and sustainable strategies. Depending on the specific transnational threat, the coordinated use of the elements of national power should be targeted to go after an organization, a product, a process, or a combination. Traditional approaches that focus purely at the level of the nation-state and holding a government responsible for transnational threats is of limited utility. While sovereignty implies the ability of a government to control affairs within its boundaries, some nation-states are more capable than others. As one scholar put it, "Afghanistan is not Sweden with bad roads."<sup>23</sup> While options like Foreign Internal Defense and nation-building should not be dismissed, adopting a broader perspective has greater strategic advantages. Adversaries must be viewed as "adaptive competitors" in ways that conventional adversaries are not. Adaptive competitors "address

problems, change practices, and create identities in response to knowledge and experience, sometimes improving their performance and aiding their bureaucratic survival."<sup>24</sup> As such, they are able to exploit seams and respond more flexibly than traditional nation-states.

To tackle adaptive competitors, strategists must make them face disincentives like lessening demand, lowering profit margins, and raising risks.<sup>25</sup> As such, a central feature any policy or strategy to deal with transnational threats will be cooperation in building new networks to track, monitor, and trace specific organizations, illicit markets, and global trends. Organized crime is not invincible. In fact, each time a criminal cartel has been attacked with the right resources, legal tools, and political determination, it has been defeated; the most important accomplishment has been to challenge and destroy the myth of invincibility among criminal cartels.<sup>26</sup>

When it comes to threats without threateners, cooperation is still required. Networks of multinational, multilayered and established actors need to be put in place to prepare to mitigate the effects of pandemic and climate change. National public health systems are relatively new to human social organizations—it was only during the early 20th century that cities became self-sustaining and did not have to rely on healthy bodies coming from the countryside to replenish their populations. The global public health system is even younger and inherently more fragile, yet the tools of globalization can aid in strengthening this system. In many ways, efforts to combat the H5N1 bird flu pandemics were successful in tracking and tracing suspect poultry and taking action to cull flocks. These efforts have not led to any “cure,” but containment proved to be possible given the cooperative efforts of several actors in the international arena.

Maneuvering through an international security environment that is volatile, uncertain, complex and ambiguous means working through such diverse entities as the World Bank, World Health Organization, Interpol and multinational corporations in a coordinated way will become the norm for policymakers and strategists when confronting transnational threats. The national elements of power must be used in multinational, multilayered, and sustained ways, and those charged with creating policy and strategy must develop the “kind of competitive intelligence that is now pervasive in the business world.”<sup>27</sup> Transnational threats will continue to bedevil U.S. national security, as will designing successful policies and strategies to mitigate their effects. Such are the challenges for decisionmakers, military Officers, and national security professionals in the era of globalization.

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## CHAPTER 16

### ETHICAL ISSUES IN WAR: AN OVERVIEW

**Martin L. Cook**

Violent conflict among human beings is, unfortunately, one of the great constants in our history as a species. As far back as we can see, the human species has engaged in war and other forms of organized violence. But it is equally true that, as far back as human culture and thought have left written records, humans have thought about morality and ethics. Although cultures vary widely in how they interpret death and killing from a moral and religious perspective, every human culture has recognized that taking human life is a morally grave matter; every human culture has felt the need to justify taking of life in moral and religious terms.

In the modern world, a large body of ethical and legal thought attempts to limit, constrain, and to establish criteria that sanction the use of violence in the name of the state and society. Through the mechanisms of the Hague and Geneva Conventions, the Charter of the United Nations, military manuals such as the U.S. Army's "Law of Land Warfare," and similar documents, modern governments and militaries attempt to distinguish "just war" and just conduct in war from other types of killing of human beings. Morally conscientious military personnel need to understand and frame their actions in moral terms so as to maintain moral integrity in the midst of the actions and stress of combat. They do so to explain to themselves and others how the killing of human beings they do is distinguishable from the criminal act of murder.

Attempts to conduct warfare within moral limits have met with uneven success. Many cultures and militaries fail to recognize these restraints, or do so in name only. The realities of combat, even for the best trained and disciplined military forces, place severe strains on respect for those limits and sometimes cause military leaders to grow impatient with them in the midst of their need to "get the job done." In the history of the U.S. Army, events like My Lai in Vietnam show that even forces officially committed to just conduct in war are still capable of atrocities in combat—and are slow to discipline such violations.

Despite these limitations, the idea of just war is one to which the well-led and disciplined military forces of the world remain committed. The fact that the constraints of just war are routinely overridden is no more a proof of their falsity and irrelevance than are similar points about morality: we know the standard, and we also know human beings fall short of that standard with depressing regularity. The fact of moral failure, rather than proving the falsity of morality, points instead to the source of our disappointment in such failures: our abiding knowledge of the morally right.

Because of the importance of just war thinking, the general history, key provisions, and moral underpinnings of just war are things which every military person, and especially every senior leader, must understand and be able to communicate to subordinates and the public. It is important that senior leaders understand just war more deeply and see that the positive laws of war emerge from a long moral tradition which rests on fundamental moral principles. This chapter will provide that history, background, and moral context of ethics and war.

#### **BACKGROUND OF JUST WAR THEORY**

Most cultures of antiquity attempted to place some restraints on war. All recognized that there are some causes of war which are justifiable and others that are not. All recognized that some



persons are legitimate objects of attack in war and others are not. All recognized that there were times, seasons, and religious festivals, etc., during which warfare would be morally wrong or religiously inappropriate.

The roots of modern international law come from one specific strand of thought emerging out of Antiquity: the Christian Roman Empire that took shape after the conversion to Christianity of the Emperor Constantine in the year 312 AD. Although there were important ideas of restraint in war in pre-Christian Greek and Roman thought and indeed in cultures all over the world, it is the blend of Christian and Greco-Roman thought that set the context of the development of full-blown just war thinking over a period of centuries.

Christianity before this time had been suspicious of entanglement in the affairs of the Empire. For the first several centuries of the movement, Christians interpreted the teaching of Jesus in the Sermon on the Mount and other places quite literally, and saw themselves as committed to pacifism (the refusal to use force or violence in all circumstances). Although many appreciated the relative peace, prosperity and ease of travel the Empire's military force made possible, Christians felt prayer on behalf of the Emperor was the limit of their direct support for it.

Much changed with Constantine. For many, war fought on behalf of a "Christian Empire" was a very different thing than war on behalf of a pagan one. Further, during the century following Constantine's conversion, the Empire began to experience wave after wave of invasion from the north, culminating in the fall of the city of Rome itself in 410 AD—a mere 100 years after Constantine.

It was in that context that Christian thinkers, most notably St. Augustine, a doctor of the church and bishop of Hippo in North Africa, first worked out the foundations of Christian just war thought. History, Augustine argued, is morally ambiguous. Human beings hope for pure justice and absolute righteousness. Augustine firmly believed that the faithful will experience such purity only at the end of time when God's kingdom comes. But until that happens, we will experience only justice of a sort, righteousness of a sort.

What passes for justice will require force and coercion, since there will always be people who strive to take more than their share, to harm, and steal from others. In that world, the peacemakers who are blessed are those who use force appropriately and mournfully to keep as much order and peace as possible under these conditions. The military Officer is that peacemaker when he or she accepts this sad necessity. Out of genuine care and concern with the weak and helpless, the Soldier shoulders the burden of fighting to maintain an order and system of justice which, while far short of the deepest hopes of human beings, keeps the world from sliding into complete anarchy and chaos. It is a sad necessity imposed on the Soldier by an aggressor. It inevitably is tinged with guilt and mournfulness. The conscientious Soldier longs for a world where conflict is unnecessary, but sees that the order of well-ordered states must be defended lest chaos rule.

For Augustine and the tradition that develops after him, Just War is an attempt to balance two competing moral principles. It attempts to maintain the Christian concern with nonviolence and to honor the principle that taking human life is a grave moral evil. But it attempts to balance that concern with the recognition that, the world being what it is, important moral principles, and that protection of innocent human life requires the willingness to use force and violence.

As it wends its way through history, the tradition of Just War thought grows and becomes more precise and more elaborate. In that development, it faces new challenges and makes new accommodations.

The Spanish in the New World, for example, were challenged to rethink the tradition as they encountered and warred against indigenous populations. Are such wars, too, governed by moral principles? Are all things permitted against such people? Or, it was seriously debated, are they

even people, as opposed to some new kind of animal? Through that discussion came an expansion of the scope of Just War principles to populations that did not share common cultures.

After the Protestant Reformation, as wars raged throughout Europe in the attempt to restore religious unity to "Christendom," some thinkers (most notably Hugo Grotius) argued that Just War must be severed from a distinctively Christian religious foundation. Human reason instead must provide a system for the restraint of war that will be valid despite religious difference, valid *etsi deus non daretur*, even if God did not exist! In other words, for Grotius and others, human reason is a commonality all people share, regardless of religious, ethnic, and cultural differences. That rationality, rather than revealed religion or religious authority, could suffice to ground moral thinking about war.

As a result of that "secularization" of Just War thinking in Europe, the foundation was laid for the universal international law of the present international system. As a result, the foundation was laid for that system in Natural Law (moral rules believed to be known by reason alone, apart from particular religious ideas and institutions) and in the *jus Gentium*, the "law of Peoples," those customary practices which are widely shared across cultures. In current international law these accepted practices are called "customary international law" and set the standard of practices of "civilized nations."

Since virtually all modern states have committed themselves by treaty and by membership in the UN to the principles of international law, in one sense there is no question of their universal applicability around the globe. But the fact that the tradition has roots in the West and in the Christian tradition does raise important multicultural questions about it.

How does one deal with the important fact that Muslims have their own ways of framing moral issues of war and conflict and even of the national state itself which track imperfectly at best with the Just War framework? How does one factor into one's thinking the idea of "Asian Values" which differ in their interpretation of the rights of individuals and the meaning of the society and state from this supposedly universal framework? What weight should the fact that much of the world, while nominally nation-states on the model established by the Peace of Westphalia in 1648 in Europe, are in reality better described as "tribes with flags"? How does one deal with the fact that, in much of the world, membership in a particular ethnic group within an internationally recognized border is more an indicator of one's identity than the name of the country on one's passport?

All of these questions are subject of intense scholarly debate and practical importance. All have very real-world applications when we think about the roots of conflict around the modern world and attempt to think about those conflicts in the ways many of the participants do. But for our purposes, we will need to set them aside in favor of making sure we understand the Just War criteria as they frame U.S. military policy and the existing framework of international law.

This limitation of focus is justified not only by the limitations of time, but also by legal reality. Whatever one might want to say about the important cross-cultural issues posed above, it remains true that the United States and its allies around the world are committed by treaty, policy, and moral commitment to conduct military operations within the framework of the existing Just War criteria. That fact alone makes it important that strategic leaders possess a good working knowledge of those criteria and some facility in using them to reason about war.

Ideally, however, strategic leaders will also have some grasp of the ongoing debate about cultural diversity and the understanding of war in fundamentally differing cultural contexts as well.

## THE PURPOSES OF THE JUST WAR FRAMEWORK

The framework of principles, commonly called “Just War Criteria,” provide an organized schema for determining whether a particular conflict is morally justified. As one might imagine, any such framework will inevitably fall short of providing moral certainty. When applied to the real world in all its complexity, inevitably persons of intelligence and good will, can, and do disagree whether those criteria are met in a given case.

Furthermore, some governments and leaders lie. No matter how heinous their deeds, they will strive to cast their actions in just war terms to provide at least the appearance of justification for what they do. If hypocrisy is the tribute that vice pays to virtue, it is testimony to the moral weight of the just war principles that even the most extreme lies follow the shape of just war principles. Just war language provides the shape of the lie even the greatest war criminals must tell. Rare indeed is the aggressor or tyrant willing to declare forthrightly the real causes and motives of their actions.

The twin realities of real-world complexity and the prevalence of lying about these matters suggest the importance not only of *knowing* the just war criteria as a kind of list, but also of skillful and careful reasoning using the just war framework as a strategic leader competency. Only if a leader is capable of careful and judicious application of just war thinking can he or she distinguish valid application of just war thinking from specious and self-serving attempts to cloak unjust action in its terms.

## THE JUST WAR FRAMEWORK

Moral judgments about war fall into two discrete areas: the reasons for going to war in first place, and the way the war is conducted. The first is traditionally called *jus ad bellum*, or justice of going to war, and the second *jus in bello*, or law during war. Two interesting features of this two-part division are that different agents are primarily responsible for each, and that they are to a large degree logically independent of each other.

Judgments about going to war are, in the American context, made by the National Command Authority and the Congress. Except at the highest levels where military Officers advise those decisionmakers, military leaders are not involved in those discussions and bear no moral responsibility for the decisions that result. Still, military personnel and ordinary citizens can and do judge the reasons given for entering into military conflict by those decisionmakers and make their own determinations whether the reasons given make sense or not. A morally interesting but difficult question arises concerning one’s obligations and responsibilities when one is convinced that recourse to war is not justified in a particular case.

Just conduct in war concerns the rules of engagement, choice of weapons and targets, treatment of civilian populations and prisoners of war and so forth. These concern the “nuts and bolts” of how the war is actually conducted. Here the primary responsibility shifts from the civilian policymakers to the military leadership at all levels. Of course political leaders and ordinary citizens have an interest in and make judgments about how their troops conduct themselves in war. Militaries conduct themselves in light of national values, and must be seen as behaving in war in ways citizens at home can accept morally.

Modern war, usually fought in plain sight of CNN and other media, is for good and for ill especially subject to immediate scrutiny. Political leaders and ordinary citizens react to virtually every event and require of their leaders explanations for why they do what they do and conduct war as they do. This fact, too, indicates why strategic leaders must be adept in explaining clearly and honestly the conduct of their forces within the framework of the Just War criteria.

I turn now to a discussion of the criteria of Just War in some detail. These are the “tests” one uses to determine the justification of recourse to war in particular circumstances. We begin with the criteria for judging a war just *ad bellum* (in terms of going to war in the first place). In detail lists of these criteria vary somewhat, but the following captures the essential elements:

- Just Cause
- Legitimate Authority
- Public Declaration
- Just Intent
- Proportionality
- Last Resort
- Reasonable Hope of Success

Recall that the moral impulse behind just war thinking is a strong sense of the moral evils involved in taking human life. Consequently, the *ad bellum* tests of just war are meant to set a high bar to a too-easy recourse to force and violence to resolve conflict. Each of the “tests” is meant to impose a restraint on the decision to go to war.

**Just Cause** asks for a legitimate and morally weighty reason to go to war. Once, causes like “offended honor” or religious difference were considered good reasons for war. As it has developed, just war tradition and international law have restricted greatly the kinds of reasons deemed acceptable for entering into military confrontation. The baseline standard in modern just war thinking is *aggression*. States are justified in going to war to respond to aggression received. Classically, this means borders have been crossed in force. Such direct attacks on the territorial integrity and political sovereignty of an internationally recognized state provide the clear case of just cause, recognized in just war and in international law (for example, in the UN Charter).

Of course, there are a number of justifications for war which do not fit this classic model. Humanitarian interventions, preemptive strikes, assistance to a wronged party in an internal military conflict in a state, just to name some examples, can in some circumstances also justify use of military force, even though they do not fit the classic model of response to aggression. But the farther one departs from the baseline model of response to aggression, the more difficult and confusing the arguments become.

As one moves into these justifications, the scope for states to lie and try to justify meddling in each others affairs grows. For that reason, international law and ethics gives an especially hard look at claims of just cause other than response to aggression already received. To do otherwise risks opening too permissive a door for states to interfere with each other’s territory and sovereignty.

**Legitimate authority** restricts the number of agents who may authorize use of force. In the Middle Ages, for example, there was the very real problem that local lords and their private armies would engage in warfare without consulting with, let alone receiving authorization from, the national sovereign.

In the modern context, different countries will vary in their internal political structure and assign legitimate authority for issues of war and peace of different functionaries and groups. In the American context, there is the unresolved tension between the President as Commander in Chief and the authority of Congress to declare war. The present War Powers Act (viewed by all Presidents since it was enacted as unconstitutional, but not yet subjected to judicial review) has still not clarified that issue. But while one can invent a scenario where this lack of clarity would raise very real problems, in practice so far the National Command Authority and the Congress have found pragmatic solutions in every deployment of American forces so far.



The **public declaration** requirement has both a moral purpose and (in the American context) a legal one. The legal one refers to the issue we were just discussing: the role of Congress in declaring war. As we all know, few 20th-century military conflicts in American history have been authorized by a formal congressional declaration of war. While this is an important and unresolved U.S. constitutional issue, it is not the moral point of the requirement.

The moral point is perhaps better captured as a requirement for delivery of an ultimatum before initiation of hostilities. Recall that the moral concern of just war is to make recourse to armed conflict as infrequent as possible. The requirement of a declaration or ultimatum gives a potential adversary formal notice that the issue at hand is judged serious enough to warrant the use of military force and that the nation is prepared to do so unless that issue is successfully resolved peacefully immediately.

The **just intent** requirement serves to keep the war aims limited and within the context of the just cause used to authorize the war. Every conflict is subject to “mission creep.” Once hostilities commence, there is always the temptation to forget what cause warranted the use of force and to press on to achieve other purposes – purposes that, had they been offered as justifications for the use of force prior to the conflict, would have clearly been seen as unjustifiable. The just intent requirement limits war aims by keeping the mind focused on the purpose of the war. Although there are justified exceptions, the general rule is that the purpose of war is to restore the *status quo ante bellum*, the state of affairs that existed before the violation that provided the war’s just cause.

**Proportionality** is a common sense requirement that the damage done in the war should be worth it. That is to say, even if one has a just cause, it might be so costly in lives and property damage that it is better to accept the loss rather than to pay highly disproportionately to redress the issue. In practice, of course, this is a hard criterion to apply. It is a commonplace that leaders and nations are notoriously inaccurate at predicting the costs of conflict as things snowball out of control.

But here too, the moral point of just war criteria is to restrain war. And one important implication of that requirement is the demand for a good faith and well-informed estimate of the costs and feasibility of redressing grievances through the use of military force.

The requirement that war be the *ultima ratio*, the **last resort**, stems too from a commitment to restrict the use of force to cases of sad necessity. No matter how just the cause, and no matter how well the other criteria may be met, the last resort requirement acknowledges that the actual commencement of armed conflict crosses a decisive line. Diplomatic solutions to end conflicts, even if they are less than perfect, are to be preferred to military ones in most, if not all cases. This is because the costs of armed conflict in terms of money and lives are so high and because armed conflict, once begun, is inherently unpredictable.

In practical reality, judging that this criterion has been met is particularly difficult. Obviously, it cannot require that one has done every conceivable thing short of use of force: there is *always* more one could think to do. It has to mean doing everything that seems to a reasonable person promising. But reasonable people disagree about this. In the First Gulf War, for example, many (including Colin Powell) argued that more time for sanctions and diplomacy would be preferable to initiation of armed conflict.

The last requirement *ad bellum* is **reasonable hope of success**. Because use of force inevitably entails loss of human life, civilian and military, it is a morally grave decision to use it. The reasonable hope criterion simply focuses thinking on the practical question: if you’re going to do all that damage and cause death, are you likely to get what you want as a result? If you’re not, if despite your best efforts it is unlikely that you’ll succeed in reversing the cause that brings you to war, then you are causing death and destruction to no purpose.



An interesting question does arise whether heroic but futile resistance is ever justified. Some have argued that the long-term welfare of a state or group may well require a memory of resistance and noble struggle, even in the face of overwhelming odds. Since the alternative is acquiescence to conquest and injustice, might it justifiable for a group's long-term self-understanding to be able look back and say, "at least we didn't die like sheep"?

This completes the overview of the *jus ad bellum* requirements of just war. Recall that the categories and distinctions of the theory are not simple and clear. Neither individually nor together do they provide an algorithm that can generate a clear-cut and obvious judgment about a particular war in the minds of all fair-minded people.

On the other hand, it is important not to overemphasize the difficulty here. Although the language of just war is used by virtually all states and leaders in the attempt to justify their actions, not all uses are equally valid. Often it is not that difficult to identify uses that are inaccurate, dishonest, or self-serving. While there certainly are a range of cases where individuals of good will and intelligence will disagree in their judgments, there is also a good range where the misuse is transparent.

Recall, for example, Iraq's initial (and brief) attempt to justify its invasion of Kuwait on grounds that there had been a revolution in the Kuwaiti government and the new legitimate government of Kuwait had requested Iraq's fraternal assistance in stabilizing the new government. Had this story been true, of course, Iraq would have been acting in conformity with international law and just war tradition by being in Kuwait. It is important to note that Iraq did apparently feel obliged to tell a tale like this, since that itself is a perverse testimony to the need of states to attempt to justify their actions in the court of world opinion in just war terms. Of course, the story was so obviously false that even Iraq stopped telling it in a matter of hours (how many of you even recall that they told it?).

My point in citing this example is to forestall an easy relativism. It is simple intellectual laziness to conclude that, because these judgments are hard and people disagree about them in particular cases, that the principles have no moral force or, worse, that all uses of them are mere window-dressing. In all moral matters, as Aristotle pointed out, it is a mark of an educated person not to expect more precision than the matter at hand permits. And in complex moral judgments of matters of international relations, one cannot expect more than thoughtful, well-informed, and good-faith judgments.

## JUS IN BELLO

I turn now to the *jus in bello* side of just war thinking. As I noted above, except at the highest levels of the military command structure, Officers do not make the decision to commit forces to conflict. The moral weight of those judgments lies with the political leadership and its military advisors. On the other hand, strategic military leaders, whether they are technically responsible for decisions to go to war or not, will often be placed in the position of justifying military action to the press and the people. Further, thoughtful Officers will often feel a need to justify a particular use of force in which they participate to themselves. For all these reasons, therefore, facility with just war reasoning in both its dimensions (*jus ad bellum* and *jus in bello*) is a strategic leader competency.

The practical conduct of war is, however, the primary responsibility of military Officers. They bear the responsibility for the training and discipline of military personnel. They issue the orders that determine what is attacked, with what weapons and tactics. They set the tone for how civilians are treated, how POWs are captured, confined, and cared for. They determine how Soldiers who violate order and the laws of war are disciplined, and what examples they allow to be set for acceptable conduct in their commands.

Because of this weight of responsibility, the Officer at all levels must thoroughly incorporate thought about the *jus in bello* side of just war into standard operating procedure. It is an integral part of military planning at all levels, from the tactical issues of employing small units to the highest levels of grand strategy. U.S. policy, national and universal values, and political prudence combine to require Officers at all levels to plan and execute military operations with a clear understanding of just war requirements.

The major moral requirements of just war *in bello* boil down to two: discrimination and proportionality. Together, they set limits in the conduct of war—limits on *who* can be deliberately attacked and on *how* war can legitimately be conducted.

Although we use the term “**discrimination**” almost wholly negatively (as in racial discrimination), the core meaning of the word is morally neutral. It refers to distinguishing between groups or people or things on the basis of some characteristic that distinguishes one group from another.

In the context of thought about war, the relevant characteristic upon which just war requires the United States to discriminate is **combatant status**. In any conflict, there are individuals who are combatants—actively engaged in prosecuting the war efforts—and there are noncombatants. The central moral idea of just war is that only the first, the combatants, are legitimate objects of deliberate attack. By virtue of their “choosing” to be combatants, they have made themselves objects of attack and have lost that immunity from deliberate attack all human beings have in normal life, and which civilians retain even in wartime. I put “choosing” in quotes, of course, because we all know Soldiers become Soldiers in lots of ways, many of which are highly coerced. But they are at least voluntary in this sense: they did not run away. They allow themselves to be in harm’s way as combatants.

Of course, in modern war, there are lots of borderline cases between combatant and noncombatant. The definition of the war conventions is straightforward: combatants wear a fixed distinct sign, visible at a distance, and carry arms openly. But in guerilla war, to take the extreme case, combatants go to great lengths to blend in to the civilian population. In such a war, discrimination poses very real practical and moral problems.

But the presence of contractors on a battlefield, or combat in urban environments where fighters (whether uniformed or not) are mixed in with civilian populations and property (to point to only two examples) also make discrimination between combatants and noncombatants challenging both morally and practically.

It is less critical to focus on the hard case than on the central moral point. War can only be conducted justly insofar as a sustained and good faith commitment is made to discriminate between combatants and non-combatants and to deliberately target only the combatants.

Of course civilians die in war. And sometimes those deaths are the unavoidable byproduct of even the most careful and conscientious planning and execution of military operations. Intelligence may be mistaken and identify as a military target something that turns out in the even to be occupied by civilians or dedicated only to civilian use. Weapons and guidance systems may malfunction; placing weapons in places they were not intended to go.

Just war recognizes these realities. It has long used the “principle of double effect” to sort through the morality of such events and justifies those which, no matter how terrible, do not result from *deliberate* attacks on civilians. Such accidents in the context of an overall discriminate campaign conducted with weapons that are not inherently indiscriminate are acceptable as “collateral damage.”

What is *not* acceptable in just war thinking is the deliberate targeting of civilians, their use as “human shields,” or use of indiscriminate warfare on populations. In practice this means choosing weapons, tactics, and plans which strive to the limit of the possible to protect innocent civilian populations, even if they place Soldiers at (acceptably) greater risk.

The other major requirement of *jus in bello* is **proportionality**. It, too, attempts to place limits on war by the apparently common-sense requirement that attacks be proportionate to the military value of the target. Judgments about these matters are highly contextual and depend on many dimensions of practical military reality. But a massive bombardment of a town, for example, would be disproportionate if the military object of the attack is a single sniper.

It is true, of course, that all sides violated these rules in World War II, especially in the uses of airpower. But the development of precision munitions and platforms for their delivery have, since that conflict, allowed the U.S. military to return to more careful respect for the laws of war, even in air war. Furthermore, it is a testimony to the moral need to do so that, at least in part, drove that development—along with the obvious point that munitions that hit what they're aimed at with consistency and regularity are more militarily effective as well.

## CONTEMPORARY CHALLENGES TO THE WESTPHALIAN MODEL OF JUST WAR

Recent history has put considerable pressure on the understanding of Just War described above. From World War II forward, a growing body of human rights and humanitarian law has evolved which, at least on paper, restrains the sovereignty of states in the name of protecting the rights of individual citizens. The Genocide Convention, for example, sets limits to what states may do to their own citizens and creates the right (and perhaps the obligation) of states to intervene to protect the rights of individuals when their violation rises to an unacceptable (and unfortunately, somewhat vaguely specified) degree.

The conflict in Kosovo was clearly an example of intervention by the North Atlantic Treaty Organization (NATO) into the “internal affairs” of Serbia (recall that Kosovo was an integral part of Serbia in the policy of all the states involved). Very little of the national interest of the NATO powers, narrowly conceived, was involved in Kosovo. It was a case where humanitarian causes and human rights were cited to “trump” Serbian sovereignty. Further, it was not authorized by resolution of the UN Security Council, to a large degree because the Chinese and the Russians feared the “porous sovereignty” precedent it would set.

Conversely, the failure to intervene in Rwanda was widely cited as a case where humanitarian concerns ought to have overridden sovereignty and national interest questions.

These examples point to one large and unresolved issue in contemporary international ethics and law: the harmonization of state sovereignty with issues of human rights and humanitarian intervention.

Another even deeper challenge is posed by the Global “War” against Terrorism (GWOT). The terms “war” is in quotations, of course, because in many respects the nature of the conflict with al Qaeda and similar terrorist groups of global reach departs markedly from the model of war between Westphalian sovereign states. Most obviously, terrorist groups are not state actors, so many of the conventions governing conflict between states imply imperfectly at best.

Of course, unless terrorist groups are in international waters or in space, they necessarily exist in some relationship to states. Some states deliberately and consciously sponsor and encourage them; others harbor them unknowingly and perhaps even unwillingly; still others would like nothing better than to be rid of them, but have weak or non-existent governments with the capability to dislodge them.

For states that deliberately harbor them, no great stretch is required to extend the Westphalian paradigm to cover such cases. At some point the existence of a threat within the border of such states that the government is disinclined to rein in constitutes a just cause of war between the United States and its allies and the harboring state. One way of construing the conflict in Afghani-

stan is precisely this: that the Taliban government wished to shelter and protect al Qaeda on its territory and, after sufficient warning, placed its own continued existence in jeopardy.

For states that lack the power to dislodge terrorist groups, if they can be persuaded to request assistance from the United States or other powers to dislodge them, even if that "persuasion" results from considerable pressure, the formalities of the current international system are maintained.

But other possibilities present themselves. On one interpretation of the Bush administration's National Security Strategy, the nature of the terrorist threat, combined with the possible destructive power of weapons of mass destruction (WMD), warrants abandoning the "just cause" restriction to aggression received in favor of a more aggressive "preemptive" (or, perhaps better, "preventative") use of military force. If this indeed becomes policy and customary international law, it might take one of two forms. It might be a simple assertion of U.S. military supremacy and lead to a fundamental recasting of the Westphalian assumption of the equality of sovereign states.

On the other hand, the nature of the threat might also lead to a reformulation of a common understanding of "terrorism" among the major powers that generates a multilateral agreement, implicit, or explicit, that some threats warrant interventions that might not pass the inherited "just war" tests of recent centuries. In that respect, just war would be returning to its origins: rather than seeing war as a conflict among sovereign states in response to aggression, the international community might see itself once again (as Augustine did in the 5th century) as defending a "tranquility of order" in the international system against incursions of alien systems and ideologies whose sole purpose is a disruption and displacement of that order. In other words, the globalized civilization grounded in democracy, human rights, free trade, and communication, technology and science may be defending its civilization itself against forces that seek its complete destruction.

These aspects of the contemporary scene more than any others point to the need to think about just war in deeper historical terms than simply international law, precisely because existing international law has been formed almost entirely in the European, post-Reformation and Enlightenment, Westphalian system. If the second interpretation of the GWOT has some validity, the central point is precisely that those shared assumptions of the past several centuries may have less and less relevance, and the original concerns of defending the stability of a system of civilization against fundamental attack may be the better analog to present circumstances.

## CONCLUSION

The moral tradition of just war, and its partial embodiment in the laws of war at any moment is part of on-going evolution. They represent a drive to make practical restraints on war that honor the moral claim of individuals not to be unjustly attacked while at the same time recognizing that use of military force in defense of individuals and values is sometimes a necessity.

All military Officers charged with the grave moral responsibility of commanding and controlling military units and weapons must, if they are to conduct war morally, have a good working knowledge of the just war tradition and of the moral principles it strives to enshrine.

Above all, strategic leaders who set large-scale military policy, control training and organizational culture, and supervise the preparation of operational plans for national militaries need to understand and think in ways deeply conditioned by just war principles. Because their responsibility is so great and because the weapons and personnel under their control are capable of causing such destruction, they above all bear the responsibility to ensure that those forces observe the greatest possible moral responsibility in their actions.

No amount of knowledge of the terms and concepts of just war will make morally complex decisions miraculously clear. But clear understanding of the concepts of just war theory and of

the moral principles that underlie them can provide clarity of thought and a way to sharpen one's thinking about those choices. And in the rapidly changing international scene characterized by American military supremacy and nonstate actor attack, it may be that we are entering into a rare fundamental shift in the understanding of the international system such as we have not seen in four centuries.

If our military is to conduct itself in war in ways compatible with American national values, and if individual Soldiers and Officers are to be able to see themselves and their activities as morally acceptable, they must be able to understand the moral structure of just conduct in war. Further, it is imperative that they integrate that understanding into the routines of decisionmaking in military operations.

In the Gulf War, and in major operations since then, the language and concerns of just war are integrated increasingly into planning and execution of military operations. Military lawyers are fully integrated into modern targeting and operations planning cells of the U.S. military. In light of those realities, facility in just war thinking is, indeed, a strategic leader competency. This chapter is only an introduction to the terms and grammar of that thought. True facility in just war thinking will come from careful and critical application of its categories to the complexities of real life and real military operations.





**PART III**

**STRATEGIC ISSUES AND CONSIDERATIONS**



## CHAPTER 17

### ETHICS AND WAR IN COMPARATIVE RELIGIOUS PERSPECTIVE

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This chapter highlights a wide range of ethical views on killing and war in the world's major religious traditions.<sup>1</sup> One can learn a lot about a religion or culture simply by paying attention to how it answers the question, Is it ever right to kill?<sup>2</sup> People raised within particular religious faiths are sometimes led to believe that their tradition has always held a consistent set of ethical principles. But what we find when we look closely at virtually any religious tradition are teachings that are at least paradoxical, and in some cases downright contradictory. Every major religious faith regards life (especially human life) as sacred in some sense, and affirms mercy and compassion as basic human obligations. But sacred scriptures and influential religious authorities have also taught that it is sometimes right to kill other human beings. Some have gone so far as to rationalize wars of annihilation against heretics and infidels.

Religion is clearly not the only catalyst of total war and other forms of indiscriminate violence. People seem to be able to invent all sorts of rationales for mass killing without feeling the need to cite the will of God. Some of the most appalling atrocities in history have been rooted not in religion per se but rather in racial or class hatred. (Think of the 20th century victims of Hitler, Stalin, Mao, and Pol Pot.) There may even be a genetic tendency in our species, like that of our chimpanzee relatives, to attack and kill others for no reason except that they are not "one of us."<sup>3</sup>

But religious violence can take on a particularly intense and ruthless character, if the objects of that violence are seen as blaspheming or insulting God, and thus as enemies of God who must be humbled or destroyed.<sup>4</sup> I'm confident, though, that some ethical principles can be affirmed by all of the world's major religions to limit violence, even when it cannot—or should not—be prohibited completely.

Senior military, diplomatic and intelligence officials may profit from this chapter in at least the following ways:

1) In recognizing the diversity of teachings within their own religion, especially its moments of violent intolerance of other faiths, they ought to be less likely to proclaim their country's wars as divinely ordained crusades or jihads against enemies who might thus be denied basic rights.

2) In learning to appreciate certain ethical values and precepts in other traditions as similar to those of their own, they will be better able to support diplomatic initiatives between countries and cultures to reduce the likelihood of war and lessen its severity.

3) Specifically in "the battle for hearts and minds" in places like Afghanistan and Iraq today, they may learn ways to ally with moderate Muslims against the murderous ideologies of al Qaeda etc.

### EASTERN TRADITIONS

One of the oldest living religions is **Hinduism**. The Hindu tradition reveres all of life, and affirms an ethical principle of *ahimsa* or avoiding injury to any sentient creature.<sup>5</sup> This ethic has often led Hindus to adopt vegetarianism and strict pacifism, and has been especially strong in **Buddhism** and **Jainism**, both offshoots of Hinduism. The pacifist ethic nurtured by these faiths lives today among the followers of Mahatma Gandhi and renowned Buddhist teachers like the Dalai Lama of Tibet, Thich Nhat Hanh of Vietnam, and Maha Ghosananda of Cambodia.<sup>6</sup>

Buddhism stresses the need for people to constantly be aware of how hateful and greedy emotions can arise in order to avoid being controlled by them and lashing out violently against others. Buddhism seeks to undermine social divisions like the Hindu caste system, while at the same time reinforcing its virtue of compassion and the obligation of noninjury. As a result, the duty not to kill people or other sentient animals applies to all Buddhists, though as an absolute duty it has often been restricted in practice to Buddhist monks and nuns.<sup>7</sup> Similarly, a sacred Jain text says, "One may not kill, ill-use, insult, torment, or persecute any kind of living being. . . ."<sup>8</sup> Former Burmese prime minister U Nu even renounced the use of force by the state, claiming that Buddhism "cannot sanction even such acts of violence as are necessary for the preservation of public order and society."<sup>9</sup>

How would pacifists within these faiths respond to a concern that nonviolence might have little or no persuasive effect on a violent enemy, and could result in the destruction of one's community? Some would contend that violence only seems to be effective, but usually ends up merely producing more violence. Others would admit that nonviolence sometimes does not succeed in deterring or ending violence, but claim that success is not as important as doing the right thing. (The Christian pacifist John Howard Yoder made the same point in many of his books.)

Hindus and Buddhists believe in the Law of Karma, which rigorously enforces justice through an indefinite series of rebirths. So even if evil people succeed in their present lives, Karma will ensure that they will pay for it in their next life. Trusting in the Law of Karma can help to motivate adherents of these faiths to overcome selfishness and hostility and resist succumbing to violence. (This functions similarly to the Western belief in a heavenly reward for living a devout and moral life, even if one suffers great injustice during one's earthly life at the hands of evil people.)

In practice, though, Eastern traditions often permit some exceptions to the general rule against killing. In mainstream Hinduism there is an entire caste of warriors, the *Ksatrias*, whose role in defending the community with force is considered to be just as important as that of the Brahmin or priestly caste. If a Hindu man is born into the warrior caste, he is obligated to kill enemy soldiers in defense of the community; his social role does not permit him to be a pacifist. He must kill with the proper disposition, though, without greed or anger. (Read the "pep talk" given by the god Krishna to the reluctant warrior Arjuna in the *Bhagavad Gita*.) Some Hindu gods like Indra are believed to have warlike characteristics themselves, and are praised for destroying the enemies of orthodox Hindu teachings and practices.<sup>10</sup> So holy war is not entirely foreign to Hinduism, and some contemporary Hindus cite traditional warrior values in support of India's possession of nuclear weapons.<sup>11</sup>

On the other hand, *total war* in the sense of indiscriminate killing has typically been forbidden. Hindu soldiers are not to kill unarmed prisoners or civilians, apparently due in part to a sense of chivalry: it would be considered unprofessional for a Hindu soldier to harm defenseless people.<sup>12</sup> (Similar values of chivalry in the West helped to ground the modern principle of noncombatant immunity. Chinese strategist Sun Tzu also stipulated, "The king's army does not kill the enemy's old men and boys; it does not destroy crops. . . . In carrying out punitive expeditions, it does not punish the common people."<sup>13</sup>)

Some Buddhists have argued that killing can be justified in rare cases as the lesser of evils, if the Buddhist community or other innocent people are threatened by violent attackers, and if nonviolent means of persuasion and protest have not succeeded. Interestingly, even when war might be waged with just cause and as a last resort, Buddhists still regard it as inherently sinful; so just warriors might nonetheless expect to undergo karmic punishment.<sup>14</sup> (Medieval Christians held a similar view, requiring all soldiers to perform penitential acts upon their return from war; see below.)



We should not infer, though, that Hindus and Buddhists have never engaged in total war or other indiscriminate killing. Many of their leaders have openly advocated aggressive violence against people of competing religions. Zen Buddhism was distorted in Japan to support a ruthless warrior ethic before and during World War II. Some Buddhists in Sri Lanka have promoted the “ethnic cleansing” of Hindu Tamils from the island. An influential Thai monk claimed in the 1970s that killing communists would actually produce karmic merit.<sup>15</sup> And the man who assassinated Gandhi in 1948 was a member of a radical Hindu sect that opposed any political compromise with Islam or other faiths. But, of course, it is very difficult to see how such things can be justified in light of their religions’ core values.

In the Western monotheistic religions of Judaism, Christianity, and Islam, we also encounter a mixture of moral values—some restraining war, others promoting it. I think it is fair to say, though, that the problem of total war has been more frequent in these faiths than in Eastern traditions, due to a more intense fear of unorthodox beliefs and idolatry (i.e., the worship of false gods).

### **Judaism.**

Frequently in the Hebrew Bible<sup>16</sup> (or what Christians call the Old Testament), love of one’s neighbor is said to be a fundamental duty; in fact, love is to extend beyond one’s religious or ethnic kin to include resident aliens as well (Leviticus 19:17-18, 33-34). Murder and other forms of unjust violence are forbidden (Exodus 20:13).

The primary moral arguments underlying or reflected in those commandments appear to be: 1) God is loving; so imitate God’s love; 2) God has shown mercy to you; so show gratitude to God by being merciful to others; and 3) human beings are created in God’s image; so treat them as such. (See Psalm 145:8-9, Micah 6:8, and Genesis 1:26-27, 9:6). If we considered those ideas in isolation from some other biblical values and commandments, we might derive an ethic of strict pacifism toward human beings, an absolute duty not to kill people, since killing even a murderous attacker might be regarded as a kind of sacrilege as well as contradicting love.

But that is apparently not what the ancient Hebrews believed, since murder and other serious offenses (Exodus 21-22) were subject to capital punishment, i.e., a form of intentional killing. Genesis 9:6 says, “Whoever sheds the blood of a human, by a human shall that person’s blood be shed; for in his own image God made humankind.” I would interpret that to mean, “All persons have a basic right not to be killed, rooted in their having been created in God’s image; but they can forfeit that right if they commit a serious enough offense.”

So far, this would only permit those who are guilty of certain crimes to be executed, i.e., strict retributive justice. Deuteronomy 24:16 states, “Parents are not to be put to death for their children, nor children for their parents; each one may be put to death only for his own sin.” In addition, if this ethic permitted war at all, it would seem to limit it to the defense of the innocent against unjust invaders, or in punishment of their atrocities.

But collective punishment and indiscriminate war were also commanded or approved in the Hebrew Bible, especially in cases of idolatry. The first of the Mosaic commandments prohibited the Israelites from worshipping anyone but Yahweh. God demanded purity and strict obedience; idolatry and blasphemy were punishable by death (Exodus 20:3, 5). Non-Israelites who lived within the area believed by the Hebrews to have been promised to them by God were seen to pose a great temptation to them to abandon their faith. This led them to rationalize the slaughter of entire communities, in some of the most chilling passages in the Bible. Deuteronomy 20:16-18 says, “[In] the towns of the nations whose land the LORD your God is giving you as your holding, you must not leave a soul alive. . . . [Y]ou must destroy them . . . so that they may not teach you to imitate the abominable practices they have carried on for their gods. . . .” Joshua 6:21 and 10:40

claim that “[Joshua’s army killed everyone in Jericho], both men and women, young and old, oxen, sheep, and donkeys. . . . Joshua defeated the whole land . . . he left no one remaining, but utterly destroyed all that breathed, as the LORD God of Israel commanded.”<sup>17</sup>

Israel’s external enemies were to be treated somewhat more leniently: they were first to be presented with peace terms, and, if those were accepted, then the people would be subjugated, not killed. But if they rejected the terms, the men would be slaughtered and the women and children enslaved (Deuteronomy 20:10-15). In those respects the Hebrews were little different from other ancient cultures.

The later rabbinic commentators who compiled the Talmud relegated wars of annihilation and other indiscriminate killing solely to the specific divine commands connected with the ancient conquest of the Promised Land.<sup>18</sup> But the Talmud also gave explicit permission for individuals to kill murderous pursuers, either in self-defense or in defense of others, based primarily on Genesis 9:6 (though that verse seems to apply only to a murder that has already occurred). Maimonides even thought that killing could be required, in light of his reading of Leviticus 19:16, “Don’t stand idly by the blood of your neighbor.” Defensive war was permitted on those grounds as well, and required if the survival of a Jewish state were threatened. Pacifism was only recommended as a prudential option, when using force against oppression or invasion would likely result in significantly more harm to the community.<sup>19</sup>

Even when just cause for war exists, though, Maimonides and most other rabbis urged that nonviolent efforts to achieve justice and maintain peace be pursued first. If war begins, destruction should not exceed what’s minimally necessary to achieve important military objectives. And innocent lives should be spared whenever possible.<sup>20</sup>

Drawing in part on those elements in the Jewish tradition, the contemporary Code of Ethics of the Israeli Defense Forces (IDF)<sup>21</sup> requires soldiers to use minimal force and to spare civilian lives, and also affirms the importance of respecting their dignity, property, values, and sacred sites. Clearly a war of annihilation like Joshua’s would not be permitted under the IDF Code.

But in practice the Code has not always been upheld in Palestinian areas occupied by Israel, nor during Israel’s wars with Lebanon in the 1980s and 2006. Israeli military force is not always discriminate or proportionate: whole families of individual terrorists have been punished collectively (e.g., their houses are bulldozed), and Palestinian civilians intimidated and humiliated on a daily basis. Of course, many Jewish people in Israel and elsewhere have criticized these tactics on moral grounds, drawing upon centuries of Talmudic affirmations of compassion and respect for human dignity.<sup>22</sup>

## **Christianity.**

One question that has been the subject of considerable debate in this religious tradition is whether Jesus was a pacifist, in other words, whether he prohibited violence absolutely. Some passages in the Gospels seem to clearly imply that, but others are more ambiguous.

Matthew, Chapter 5, reports Jesus as saying: “You have heard that it was said, ‘An eye for an eye and a tooth for a tooth.’ But I say to you, Do not resist an evildoer. [I]f anyone strikes [or slaps] you on the right cheek, turn [and offer him] the other also. . . . You have heard that it was said, ‘You shall love your neighbor and hate your enemy.’ But I say to you, Love your enemies and pray for those who persecute you.” These sayings seem to imply a strict rule of nonviolence.

By contrast, when Jesus spoke with Roman soldiers, he did not recommend that they abandon their profession in order to serve God (Luke 7). Now an argument from silence is logically weak, but it is puzzling how Jesus would have reconciled the military profession with nonresistance to evil and love of enemies. The Gospels further portray Jesus as using some degree of intimidation

or force to eject the merchants from the Temple in Jerusalem (John 2:13-16). There is also a story where Jesus seems explicitly to permit his disciples to carry swords, and by implication to use them in self-defense, though that passage appears only in Luke 22 and is very mysterious. The apocalyptic book of Revelation even imagines the returning Christ as a mighty warrior, “just in war” and wielding “a sharp sword to smite the nations.” But how can such passages be squared with Jesus’ pacifist precept, “Do not resist an evildoer”?

Similar puzzles emerge from the stories of Jesus’ arrest. The four Gospels agree that when Jesus was arrested by an armed group, one of his disciples drew a sword and wounded a servant of the high priest. But the Gospels differ about what was said during that incident:

In Mark’s version of the story (14:43-52), Jesus says nothing to the disciple who inflicts the wound. Mark’s gospel is thought by scholars to be the earliest of the four, and probably familiar at least to the writers of Matthew and Luke. But only Mark’s gospel suggests that Jesus was silent at this point. Perhaps Mark meant to imply that Jesus was rendered speechless at the sight of one of his disciples lashing out violently, but we cannot know for sure.

In Luke’s account (22:47-51), alone among the gospels, Jesus’ disciples first ask him, “Lord, should we strike with the sword?” But Jesus does not respond before one of them cuts the servant’s ear off. (Perhaps he was not given enough time to reply.) Then Jesus says simply, “Stop! No more of that!” In Luke’s version there is only that brief command, with no supporting reasons given. It might reflect an abhorrence of violence in general. But we might wonder why Luke’s Jesus would permit his disciples to carry swords just a few verses earlier, yet forbid their use here in his defense.

In John’s version of the arrest (18:3-11), the disciple who uses his sword is identified as Simon Peter, and the servant’s name is said to be Malchus. (In the other Gospels they are nameless.) John quotes Jesus as saying to Peter, “Put your sword back into its sheath. Am I not to drink the cup that the Father has given me?” So John’s focus is on the need to permit Jesus’ divine mission to continue (which includes his arrest and crucifixion), not a specific opposition to violence per se. The contrast with Luke’s version is remarkable.

Matthew’s version of Jesus’ statement is lengthier and more complex than the others (26:51-54): “Suddenly, one of those with Jesus put his hand on his sword, drew it, and struck the slave of the high priest, cutting off his ear. Then Jesus said to him, ‘Put your sword back into its place; for all who take the sword will perish by the sword. Do you think that I cannot appeal to my Father, and he will at once send me more than 12 legions of angels? But how then would the scriptures be fulfilled, which say it must happen in this way?’” Note that Jesus gives at least two rationales in Matthew against the disciple’s use of his sword. One sounds like a piece of prudential advice: if you do not want to be killed yourself, do not use lethal weapons. (But then, would not the disciple respond, “I am perfectly willing to die to protect you”?) But the other rationale, like John’s, might be restricted to this situation only: the disciple must not interfere with Jesus’ mission. We might also wonder, though, how the legions of angel “reserves” are consistent with pacifism!

In light of this puzzling combination of texts, how did the early Christian community answer the question of whether force could ever be morally justified? Many of them seem to have constructed a *dual* ethic, one for Christians and another for the state. I’ll use Paul, Tertullian of Carthage, and Origen of Alexandria to illustrate this.

All three of those influential Christians interpreted Jesus’ teaching and example to prohibit all uses of force by Christians, not only in personal self-defense but apparently even in defense of other innocent people. Paul wrote to Roman Christians (Ch. 12): “Do not repay anyone evil for evil, but take thought for what is noble in the sight of all. . . . Beloved, never avenge yourselves, but leave room for the wrath of God.” Over a century later, Tertullian wrote that when Jesus

rebuked the disciple who defended him at his arrest, in effect he disarmed every soldier.<sup>23</sup> Tertullian explained to Roman rulers that Christians believe it is better for them to be killed than to kill.<sup>24</sup> And he stipulated that when soldiers convert to Christianity, they must leave the military.<sup>25</sup> His contemporary, Origen, also claimed that Jesus prohibited homicide, so Christians may never kill or use violence for any reason.<sup>26</sup>

But all three of those early Christians, in spite of their apparently pacifist stances, also seemed to think that God authorized the state to use lethal force for certain purposes. Paul wrote in Romans 13:

Let every person be subject to the governing authorities; for there is no authority except from God, and those authorities that exist have been instituted by God. Therefore whoever resists authority resists what God has appointed, and those who resist will incur judgment. For rulers are not a terror to good conduct, but to bad. Do you wish to have no fear of the authority? Then do what is good, and you will receive its approval; for it is God's servant for your good. But if you do what is wrong, you should be afraid, for the authority does not bear the sword in vain! It is the servant of God to execute wrath on the wrongdoer.<sup>27</sup>

Similarly, Tertullian said, "We [Christians] pray . . . for security to the empire; for protection to the imperial house; for brave armies. . . ." <sup>28</sup> And Origen claimed that although Christians will not serve in the military, they offer "prayers to God on behalf of those who are fighting in a righteous cause . . . that whatever is opposed to those who act righteously may be destroyed."<sup>29</sup>

Note that the combination of views I have cited from Paul, Tertullian, and Origen is internally inconsistent: It is not possible to rule out killing entirely, and then permit it on the part of the state. But it is important to recognize that those authors – and possibly most early Christians – thought strict pacifism to be the only acceptable ethic for followers of Jesus. In light of that, no contemporary Christian should simply assume that Jesus clearly approved of the use of violence, even in defense of the innocent. Killing enemies to protect one's family, community or nation may be morally justified (perhaps on nonreligious grounds), but doing so may well contradict the ethic of Jesus.<sup>30</sup>

A significant shift in Christian thinking about war occurred in the 4th and 5th centuries, after Emperor Constantine began to use the Roman state to support the Church. According to an influential bishop named Eusebius, absolute nonviolence was from then on to apply solely to clergy, monks, and nuns; lay Christians could now be obligated to defend the empire with force.<sup>31</sup> Ambrose, another important bishop of that era, thought that Christian love entailed a duty to use force to defend innocent third parties.<sup>32</sup> He also shifted the focus of Christian moral concern from the act of violence to the attitude of the agent: Christian soldiers should love their enemies – *while* using deadly force against them!<sup>33</sup>

Augustine, who was influenced by Ambrose in many ways, recognized that Jesus had taught things that seemed to entail strict nonviolence; but like Ambrose he believed that they applied to dispositions rather than to actions. Christians in his view are not only permitted to use force in defense of the community, they are obligated to obey such orders from higher authorities. Augustine also came to accept the use of force against heresy, believing it to be consistent with a benevolent desire of the Church to correct its wayward children!<sup>34</sup>

However, Ambrose<sup>35</sup> and Augustine<sup>36</sup> also believed that there should be moral limits on Christian uses of violence. Even in cases where Augustine considered war to be the lesser of evils, he regarded all killing as ultimately tragic, always requiring an attitude of mourning and regret on the part of Christians. Partly due to his influence, throughout most of the medieval period, killing in war was considered a very serious sin. If a Christian soldier killed an enemy soldier, even in a war that was considered just, he would have to do penance for the killing, often by fasting and prayer for a year or more.<sup>37</sup>



We can also see Christian roots<sup>38</sup> of the modern principle of noncombatant immunity develop in the medieval period, when secular military ideals of chivalry combined with Christian decrees of protection for clergy, peasants, women, and others who usually did not take part in combat.<sup>39</sup> Thomas Aquinas added another important ethical consideration in stipulating that Christians may only use the minimal force needed to save lives from unjust attack,<sup>40</sup> an early version of the just-war principle of proportionality.

But the medieval period also witnessed the emergence of total war in the name of Christianity. First there was increasing glorification of the Christian knight, and identification of military courage and honor with Christian virtue. Consider how this German poem draws on John's story of Jesus' arrest:

Then boiled with wrath  
The swift sword wielder  
Simon Peter.  
Speechless he,  
Grieved his heart that any sought to bind his Master,  
Grim the knight faced boldly the servants,  
Shielding his Suzerain,  
Not craven his heart,  
Lightning swift unsheathed his sword,  
Strode to the first foe,  
Smote a strong stroke,  
Clave with the sharp blade  
On the right side the ear from Malchus.<sup>41</sup>

(The glorification of Peter here is rather ironic, in that Jesus rebuked him for using his sword! But the poem no doubt stirred its audience to imagine that if they had been with Jesus at his arrest, they might have hoped to have the disciple's courage and sense of moral outrage.)

Now by themselves, military courage and honor might help to reinforce *limits* on war conduct, e.g., in protecting noncombatants from gratuitous harm. But many of the traditional restraints on war advocated by the Church started to erode in the medieval period.

In the 9th century, the Vatican declared that death in battle could be spiritually beneficial for Christian soldiers: their sins could be erased if they died in defense of the Church, and they would be guaranteed entry into heaven.<sup>42</sup> (This is not unlike the assurances given to contemporary Muslim suicide bombers by recruiters from al Qaeda, Hamas etc.)

In the year 1095, Pope Urban II launched what later came to be called the First Crusade, urging European leaders to rescue the Holy Land from its Muslim occupiers. The Pope referred to Muslims as a "vile race" and an "unclean nation" that had polluted Christian holy places, and called for their destruction. Killing Muslims became in effect a way for Christians to obtain remission of their sins.<sup>43</sup> Moral rules governing the conduct of war were abandoned. No one was immune from attack by Christian crusaders; whole cities were slaughtered. Even Jews in Germany were massacred by crusaders on their way to Palestine.<sup>44</sup> Thus, ironically and tragically, a religion that began with the largely nonviolent teachings and example of Jesus evolved in its first millennium to the point where Christians were waging total, indiscriminate war against heretics and "infidels."

In the wake of a series of devastating wars in Europe between Catholics and Protestants, some Christians like Francisco de Vitoria concluded that mere difference of religion should no longer be considered just cause for war.<sup>45</sup> Most Christians today would find total war morally repugnant, of course, especially if waged in the name of God. Some even continue in the ancient path of pacifism



in obedience to Jesus' sayings on love of enemies and non-retaliation against evil.<sup>46</sup> But total holy war against infidels also remains a continuing temptation for Christians.<sup>47</sup>

## Islam.

The Qur'an, the most sacred Muslim text, repeatedly refers to God as compassionate and just. It also insists that "there is no compulsion in religion" (2:256), meaning that authentic submission to God must be freely and sincerely chosen, not forced.<sup>48</sup> (The word "Islam" means submission.) The Qur'an urges Muslims to use "beautiful preaching" to persuade people to accept Islam, and to "argue nicely" with Jews and Christians who are seen as worshipping the same God as their own (16:125, 29:46).<sup>49</sup>

Those ideas taken in isolation might tend to preclude holy war, and perhaps even ground some form of pacifism. In fact, the Prophet Muhammad was said to have practiced nonviolence during the first 12 years of his prophetic career, even in the face of serious persecution by polytheists in Mecca.<sup>50</sup> The Prophet's stance during that early Meccan period eventually served as the model for a nonviolent Islamic movement in 20th century Afghanistan led by Abdul Ghaffar Khan, a friend and admirer of Gandhi.<sup>51</sup>

But after the Prophet's emigration to Medina in 622, he came to believe that God permitted and even commanded the use of force in defense of his growing religious community. Qur'an 22:39-40 says, "Permission is given to those who fight because they have been wronged . . . unjustly expelled from their homes only because they say, 'Our Lord is Allah.'"<sup>52</sup> Like the Hebrew Bible, the Qur'an mandates capital punishment for certain offenses, though it also urges mercy and forgiveness in other cases. Muhammad often urged diplomacy rather than war to resolve disputes.<sup>53</sup>

But certain verses in the Qur'an and other sayings of the Prophet seem to go beyond defensive and retributive uses of force to permit offensive jihad to expand the territory of Islam. Qur'an 9:5 says, "[K]ill the idolaters wherever you find them, and seize them, beleaguer them, and lie in wait for them in every stratagem (of war)." Qur'an 9:73 exclaims, "O Prophet! Strive against the unbelievers and the dissenters, and be ruthless with them."

The word *jihad*, by the way, means struggle or effort. Jihad can refer to the struggle of the individual Muslim to conform his or her will to Allah's, or to a peaceful effort to persuade others to accept Islam. But jihad can also mean holy war. In fact, there's a sense in which the only completely just war in Islamic terms is a holy war, since it has to be approved by proper religious authorities and waged to defend or promote Islam or the Muslim community.<sup>54</sup>

So in spite of the Qur'anic statement against forcing religion on others, Muslim leaders have sometimes threatened to kill unbelievers if they did not accept Islam. Muhammad himself was said to condemn Muslims to death if they abandoned their faith. Some of the early Muslim raids out of Medina against trading caravans would be hard to interpret as strictly defensive. And although Islam spread to some parts of the world like Indonesia mainly by means of "beautiful preaching," much of its expansion elsewhere was due to offensive war, first by Muhammad to unify Arabia, then by his followers in conquering the Middle East, North Africa, and so on. In fact, for many years the caliphs (Muslim political leaders) were expected to wage offensive jihad at least once a year!<sup>55</sup>

However, Muhammad and his successors did establish some important moral rules for fighting holy wars: women, children and the elderly were not to be intentionally killed, though they could be enslaved. Monks, nuns, and the disabled were also to be spared from execution after a battle. Muslim military leaders were able to draw upon some pre-Islamic principles of Arab chivalry against killing defenseless people.<sup>56</sup> In other words, Islamic holy wars were never supposed

to be total wars involving indiscriminate killing and scorched-earth tactics, in spite of what the contemporary leaders of al Qaeda, Hamas, or Hezbollah might say to the contrary.<sup>57</sup>

On the other hand, Muslim leaders were explicitly permitted by Muhammad to kill all captured soldiers, and most adult male civilians if they were polytheists, or even if they were Jews or Christians but had fought instead of paying the poll tax. So Islam traditionally did not uphold a *comprehensive* principle of noncombatant immunity. Also, if civilians were likely to be killed in attacks on military areas, Muslim ethics permitted that as regrettable but necessary “collateral damage” – in fact, the moral blame rested entirely on the enemy leaders for putting their citizens in harm’s way.<sup>58</sup>

But many contemporary Muslim leaders strongly advocate noncombatant immunity, as well as a duty to minimize harms to civilians in otherwise legitimate military attacks, i.e., *in-bello* proportionality. Such leaders have also condemned terrorism committed in the name of Allah, including the September 11, 2001 (9/11) attacks against the United States. For example, Abdul-Aziz Al-Ashaykh, the chief religious leader of Saudi Arabia, declared on September 15, 2001, “[T]he recent developments in the United States, including hijacking planes, terrorizing innocent people and shedding blood, constitute a form of injustice that cannot be tolerated by Islam, which views them as gross crimes and sinful acts.” Similarly, Muhammad al-Sabil, a member of the Saudi Council of Senior Religious Scholars, stated a few months later, “Any attack on innocent people is unlawful and contrary to *shari’a* (Islamic law). . . . Muslims must safeguard the lives, honor, and property of Christians and Jews. Attacking them contradicts *shari’a*.”<sup>59</sup>

However, the contemporary challenge facing moderate Muslims to counter the misguided ethic of Muslim extremists can hardly be overestimated,<sup>60</sup> especially in regard to the bizarre distortion of Islamic martyrdom in the growing cult of “suicide bombers.”<sup>61</sup>

## CONCLUSIONS

Tragically, some advocates of aggressive religious war can still be found today in all of the world’s major religions. What they cannot legitimately claim, though, is that their position is *the* authentic expression of their faith. Indeed, each of the traditions I have discussed contains ethical principles that are incompatible with total war. Furthermore, in order for members of those faith communities to continue to believe that God is *compassionate and just*, I think they must repudiate claims and values in their own scriptures and traditions that are incompatible with those ideas. It does not blaspheme or insult God to believe that God’s actions are limited by objective moral principles. To say that God would never condone or command total war, cruelty, or the intentional killing of innocent people does not represent a significant limit on God’s power.

Moreover, I think that people of many different faiths, as well as those of no religious faith, might concur with the following ethical principles and rules, though some will not be acceptable to strict pacifists:

- 1) All people have a *prima facie* right not to be killed. This right can only be forfeited if they intentionally try to kill innocent people, or while they are combatants in war.<sup>62</sup>
- 2) Given the immense destruction and loss of life that war usually brings, all nonviolent means of realistically achieving just objectives should be tried first.
- 3) War should only be waged when necessary to protect the rights and welfare of the innocent.
- 4) Innocent civilians should not be directly targeted.
- 5) Weapons and tactics should not be used against military targets in ways that are certain to cause civilian casualties, unless that is the only way to protect one’s own soldiers or civilians. Even then, harm to enemy civilians should be minimized.
- 6) Captured soldiers should not be tortured or summarily executed but treated humanely.
- 7) Each side should be held accountable for any atrocities committed by its military forces.

Similar principles and rules arose out of the western just-war tradition, and have been incorporated into international treaties like the Hague, Geneva, and Torture conventions. But as I've tried to suggest in this chapter, such principles are not unique to the West or to Christianity in particular: every major religious tradition has developed comparable ones. It ought to be possible for people of all faiths to work in concert to implement such principles, without first having to agree on which views of God are best.

The just-war tradition rejects strict pacifism as insufficient to protect the innocent from unjust attack. But just-war rules, at least when applied in a careful and honest way, also guard against total war waged in the name of religion or any other cause. Religious communities can help to ensure that political and military leaders abide by these rules and inculcate respect for them in the training and management of soldiers. But just as importantly, faith communities can nurture firmly rooted habits and dispositions of compassion and nonviolence, reducing the likelihood and severity of war by dispelling the ignorance, fear and hatred that too often inspire and escalate it.<sup>63</sup>

## ENDNOTES - CHAPTER 17

1. John Ferguson, *War and Peace in the World's Religions*, New York: Oxford University Press, 1978, is a good overview of this topic. Roland Bainton, *Christian Attitudes toward War and Peace*, Nashville, TN: Abingdon, 1960, focuses primarily on one tradition but in considerably greater historical detail. Sohail Hashmi and Steven Lee, eds., *Ethics and Weapons of Mass Destruction: Religious and Secular Perspectives*, New York: Cambridge University Press, 2004, is an excellent contemporary anthology.

2. Although this question is foundational to the ethics of war, in that if the answer were a categorical "No" then war would be absolutely forbidden, the scope of the question clearly goes well beyond war. A comprehensive treatment of it would necessitate exploring capital punishment, euthanasia, abortion, meat-eating vs. vegetarianism, and so on.

3. Richard Wrangham and Dale Peterson, *Demonic Males: Apes and the Origins of Human Violence*, Boston, MA: Houghton Mifflin, 1996.

4. J. Glenn Gray, *The Warriors: Reflections on Men in Battle*, New York: Harcourt, Brace, 1959; Lincoln, NE: University of Nebraska Press, 1998, Chap. 5, "Images of the Enemy," offers many relevant insights.

5. Klaus Klostermaier, "Himsa and Ahimsa Traditions in Hinduism," in Harvey Dyck, ed., *The Pacifist Impulse in Historical Perspective*, Toronto, Canada: University of Toronto Press, 1996, pp. 227-239.

6. As the ethic and example of each of those men suggests, pacifism should not be equated with passivity. Ferguson, pp. 36-40, helpfully summarizes Gandhi's philosophy and practice of nonviolent civil disobedience. For a more extensive analysis, see Manfred Steger, *Gandhi's Dilemma: Nonviolent Principles and Nationalist Power*, New York: St. Martin's Press, 2000. Gandhi also had a strong influence on Martin Luther King, Jr. Many influential Buddhist leaders are described in Peter Harvey, *An Introduction to Buddhist Ethics*, New York: Cambridge University Press, 2000.

7. Harvey, Chap. 6.

8. *Ayaramgasutta*, cited in Ferguson, p. 32.

9. Cited in Ferguson, p. 58.

10. Klostermaier.

11. Katherine Young, "Hinduism and the Ethics of Weapons of Mass Destruction," in Hashmi and Lee, eds., pp. 277-307.

12. Klostermaier.; Ferguson, p. 31.

13. Sun Tzu, "Debating Military Affairs," cited in C. A. J. Coady, *Morality and Political Violence*, New York: Cambridge University Press, 2008, p. 109.

14. Harvey, pp. 135-138.

15. *Ibid.*, pp. 255-270. For further details on militant forms of Japanese Buddhism, see Brian Victoria, *Zen at War*, New York: Weatherhill, 1997.

16. Biblical quotes in this chapter are from *The New Oxford Annotated Bible: New Revised English Bible with the Apocrypha*, New York: Oxford University Press, 2001; and *The Oxford Study Bible: Revised English Bible with the Apocrypha*, New York: Oxford University Press, 1989.

17. Many historians doubt that the ancient Hebrews actually engaged in many wars of annihilation against their neighbors; the book of Judges suggests that they tended more toward peaceful coexistence.

18. Reuven Kimelman, "Judaism, War, and Weapons of Mass Destruction," in Hashmi and Lee, eds., pp. 363-364. Theological questions about the consistency between indiscriminate war and God's ethical character remained, of course: how could a loving and just God ever order the annihilation of whole communities? Even if adults were guilty of "abominable practices," why would that justify killing their children and livestock as well?

19. Michael Broyde, "Fighting the War and the Peace: Battlefield Ethics, Peace Talks, Treaties, and Pacifism in the Jewish Tradition," in J. Patout Burns, ed., *War and Its Discontents*, Washington, DC: Georgetown University Press, 1996, pp. 1-30.

20. *Ibid*; Kimelman, pp. 367-368.

21. Available from [www.jewishvirtuallibrary.org/jsourc/Society\\_&\\_Culture/IDF\\_ethics.html](http://www.jewishvirtuallibrary.org/jsourc/Society_&_Culture/IDF_ethics.html).

22. For example, see the ethical principles advocated in *Tikkun* magazine's "Core Vision" under the heading, "Peace, Justice and Reconciliation for Israel and Palestine," available from [www.tikkun.org/core\\_vision](http://www.tikkun.org/core_vision).

23. *On Idolatry*, available from [www.newadvent.org/fathers/0302.htm](http://www.newadvent.org/fathers/0302.htm).

24. *Apology*, available from [www.newadvent.org/fathers/0301.htm](http://www.newadvent.org/fathers/0301.htm).

25. *On the Crown*, available from [www.newadvent.org/fathers/0304.htm](http://www.newadvent.org/fathers/0304.htm). Compare another contemporary, Hippolytus of Rome: "A soldier in the lower ranks shall kill no one. If ordered to do so, he shall not obey. . . . A catechumen or a member of the faithful who wants to join the army should be dismissed because he has shown contempt for God." Cited in Louis Swift, *The Early Fathers on War and Military Service*, Wilmington, DE: Michael Glazer, 1983, p. 47.

26. *Against Celsus*, available from [www.newadvent.org/fathers/0416.htm](http://www.newadvent.org/fathers/0416.htm); and *Commentary on Matthew 26:47ff.*, available from [www.newadvent.org/fathers/1016.htm](http://www.newadvent.org/fathers/1016.htm). Lactantius, *Divine Institutes* VI/20, claimed that "it is always unlawful to put to death a man, whom God willed to be a sacred animal." Thus, drawing from the creation story in Genesis 1, Lactantius differed from Genesis 9:6 in opposing capital punishment.

27. It is hard to conceive of a more conservative political philosophy than the one suggested here by Paul. Indeed, since he was himself persecuted by Roman authorities and knew that Jesus was executed by them, it is difficult to imagine him sincerely believing that rulers are never "a terror to good conduct." However, later Christians like Augustine who cited Romans 13 approvingly did not ponder such questions.

28. *Apology*.



29. *Against Celsus*.
30. For more on this subject, consult C. John Cadoux, *The Early Christian Attitude toward War*, London, UK: Headly Bros., 1919; New York: Seabury, 1982; and Willard Swartly, ed., *The Love of Enemy and Nonretaliation in the New Testament*, Louisville, KY: Westminster/John Knox Press, 1992.
31. *Demonstration of the Gospel*, cited in Swift, pp. 88-89.
32. *Duties of the Clergy*, available from [www.newadvent.org/fathers/34011.htm](http://www.newadvent.org/fathers/34011.htm).
33. Swift, pp. 96-110. I doubt that the attitude expected of Christian soldiers by Ambrose, and Augustine is psychologically possible in close combat.
34. See his *Letter to Publicola*, *Against Faustus*, *Letter to Marcellinus*, and *Letter to Vincentius*, all available from [www.newadvent.org/fathers/](http://www.newadvent.org/fathers/).
35. *Duties of the Clergy*.
36. *Letter to Boniface*.
37. Bernard Verkamp, *The Moral Treatment of Returning Warriors in Early Medieval and Modern Times*, Scranton, PA: University of Scranton Press, 1993, Chs. 1-2.
38. Except for Origen of Alexandria, whom I mentioned previously, I have ignored Eastern Orthodoxy here, partly because it does not have a tradition of careful just-war analysis like the West's. Orthodox writers tend to use "necessary war" as a substitute for "just war," even though that dangerously conflates many important ethical issues in *jus ad bellum* and *jus in bello*. See Paul Robinson, "On Resistance to Evil by Force: Ivan Il'in and the Necessity of War," *Journal of Military Ethics*, Vol. 2, No. 2, 2003.
39. James Turner Johnson, *The Holy War Idea in Western and Islamic Traditions*, University Park, PA: Penn State Press, 1997, pp. 102-111; Maurice Keen, *The Laws of War in the Late Middle Ages*, Chap. 11, London, UK: Routledge and Kegan Paul, 1965; Robert Stacey, "The Age of Chivalry," in Michael Howard et al., eds., *The Laws of War: Constraints on Warfare in the Western World*, New Haven, CT: Yale University Press, 1994, pp. 27-39.
40. Thomas Aquinas, "Whether It Is Lawful to Kill a Man in Self-Defense," *Summa Theologica*, available from [newadvent.org/summa/306407.htm](http://newadvent.org/summa/306407.htm).
41. Quoted in Bainton, pp. 103-104.
42. Pope Leo IV, "Forgiveness of Sins for Those Who Die in Battle with the Heathen," and Pope John VIII, "Indulgence for Fighting the Heathen," available from [www.fordham.edu/halsall/sbook1k.html](http://www.fordham.edu/halsall/sbook1k.html).
43. James Brundage, *Medieval Canon Law and the Crusader*, Madison: University of Wisconsin Press, 1969, pp. 149-154.
44. Multiple accounts of Urban's speech and the First Crusade are available from [www.fordham.edu/halsall/sbook1k.html](http://www.fordham.edu/halsall/sbook1k.html).
45. Francisco de Vitoria, *On the Law of War*, 1539, in Anthony Pagden and Jeremy Lawrance, *Vitoria: Political Writings*, New York: Cambridge University Press, 1991, pp. 293-327.
46. See, e.g., many eloquent books and articles written by Mennonite ethicist John Howard Yoder.
47. Martin L. Cook, "Christian Apocalypticism and Weapons of Mass Destruction," in Hashmi and Lee, eds., pp. 200-210. David Kirkpatrick, "Wrath and Mercy: The Return of the Warrior Jesus," *New York Times*, April 4, 2004, notes some particularly bloodthirsty visions of the fate of non-Christians in the popular *Left Behind* series of novels by Tim LaHaye and Jerry Jenkins.



48. Abdullah Yusuf Ali, *The Meaning of the Holy Qur'an*, Beltsville, MD: Amana, 1989.
49. Reuven Firestone, *Jihad: The Origin of Holy War in Islam*, New York: Oxford University Press, 1999.
50. Sohail Hashmi, "Interpreting the Islamic Ethics of War and Peace," in Terry Nardin, ed., *The Ethics of War and Peace: Religious and Secular Perspectives*, Princeton, NJ: Princeton University Press, 1996, pp. 146-166; John Kelsay, *Islam and War*, Louisville, KY: Westminster/John Knox, 1993, 21.
51. Eknath Easwaran, *Nonviolent Soldier of Islam*, Tomales, CA: Nilgiri Press, 1999.
52. Firestone.
53. Hashmi, "Interpreting the Islamic Ethics of War and Peace."
54. Kelsay, *Islam and War*, Chap. 3.
55. Johnson, p. 91.
56. Hashmi, "Interpreting the Islamic Ethics of War and Peace."
57. Kelsay, *Islam and War*, Chaps. 4-5; Hashmi, "Islamic Ethics and Weapons of Mass Destruction: An Argument for Nonproliferation," in Hashmi and Lee, eds., pp. 321-352; Kelsay, "'Do Not Violate the Limit': Three Issues in Islamic Thinking on Weapons of Mass Destruction," in Hashmi and Lee, eds., pp. 353-362; Troy Thomas, "Jihad's Captives: Prisoners of War in Islam," an undated manuscript available from [www.au.af.mil/au/awc/awcgate/usafa/jihad\\_pows.doc](http://www.au.af.mil/au/awc/awcgate/usafa/jihad_pows.doc).
58. Ibn Rushd and Ibn Tamiya, cited in Rudolph Peters, *Jihad in Classical and Modern Islam*, Princeton, NJ: Markus Wiener, 1996, pp. 31, 33, 49-50; Kelsay, *Islam and War*, Chap. 4; Hashmi, "Interpreting the Islamic Ethics of War and Peace." Non-Muslims are not immune to such rationalizations, either: senior Pentagon officials have sometimes asserted that the responsibility for civilian deaths in Afghanistan and Iraq lies *entirely* with al Qaeda, the Taliban, Iraqi insurgents, terrorists *et al.*, FAIR (Fairness & Accuracy in Reporting), "Action Alert: How Many Dead? Major Networks Aren't Counting," December 12, 2001, available from [www.fair.org](http://www.fair.org); Marian Wilkinson, "Pentagon Pins All Deaths on Saddam," *Sydney Morning Herald*, March 28, 2003. But we cannot completely excuse our killing of civilians simply by claiming that we never intentionally targeted them. We must hold ourselves, as well as our enemies, accountable.
59. Cited in Charles Kurzman, "Islamic Statements against Terrorism in the Wake of the September 11 Mass Murders," available from [www.unc.edu/~kurzman/terror.htm](http://www.unc.edu/~kurzman/terror.htm). See also Caryle Murphy, "U.S. Muslim Scholars to Forbid Terrorism," *Washington Post*, July 28, 2005.
60. An excellent summary of the ideological roots of violent extremism in contemporary Islam, along with some recommended counter-strategies, is Dale Eikmeier, "Qutbism: An Ideology of Islamic-Fascism," *Parameters*, Vol. 37, No. 1, Spring 2007, available from [carlisle-www.army.mil/usawc/Parameters/07spring/eikmeier.htm](http://carlisle-www.army.mil/usawc/Parameters/07spring/eikmeier.htm). See also Neil MacFarquhar, "Muslim Scholars Increasingly Debate Unholy War," *New York Times*, December 10, 2004; and John Broder, "For Muslim Who Says Violence Destroys Islam, Violent Threats," *New York Times*, March 11, 2006.
61. See Robert Pape, *Dying to Win: The Strategic Logic of Suicide Terrorism*, New York: Random House, 2006, Farhad Khosrokhavar and David Macey, *Suicide Bombers: Allah's New Martyrs*, London, UK: Pluto Press, 2005; and Mark Juergensmeyer, *Terror in the Mind of God: The Global Rise of Religious Violence*, 3rd Ed., Berkeley, CA: University of California Press, 2003.
62. W. D. Ross, *The Right and the Good*, 1930; New York: Oxford University Press, 2003, argued that there is a cluster of *prima facie* moral duties, none of which is absolute, but all of which are binding on rational persons across cultures. James Childress, "Just War Criteria," in Thomas Shannon, ed., *War or Peace? The Search for New Answers*, Maryknoll, NY: Orbis, 1980, pp. 40-58, applied Ross's theory to the just-war tradition.
63. Rabbi Marc Gopin, an imaginative and skilled cultural diplomat, offers rich ideas and advice on nurturing peace in various articles available from [www.gmu.edu/departments/crdc/resources.html#articles](http://www.gmu.edu/departments/crdc/resources.html#articles).



## CHAPTER 18

### INTERNATIONAL LAW AND THE NEW WORLD ORDER: REDEFINING SOVEREIGNTY

Thomas W. McShane

*We have before U.S. the opportunity to forge for ourselves and for future generations a new world order, a world where the rule of law, not the law of the jungle, governs the conduct of nations.*

— President George H. Bush

World events since 1648 have reflected the political, social, economic, and military aspirations of people organized into sovereign states. Increasingly, they reflect the influence and authority, both real and perceived, of international law, a development which has become evident since the end of the Cold War, but whose roots go back much further. Recent international interventions in places as diverse as Kuwait, Somalia, East Timor, Haiti, and Kosovo, conducted under the auspices of the United Nations (UN), regional organizations such as the North Atlantic Treaty Organization (NATO), or by ad hoc coalitions, are shaped by a large and growing body of treaties, practice, and custom, collectively referred to as international law.

Americans traditionally respect and support international law and have in fact been instrumental in its development for more than a century.<sup>1</sup> At the same time, they become frustrated when international law restrains or limits the pursuit of national interests. This was vividly illustrated in the debates and reactions surrounding American-led efforts to compel disarmament or regime change in Iraq throughout 2002 and 2003. Regardless, it is essential that strategic leaders understand the global environment as it exists today. International law constitutes an important element of the geopolitical environment, one we ignore at our peril.

This article traces the development and evolution of international law, its principal components and characteristics, and its relative influence on international politics and events over time. It proposes that international law has evolved to a level where it competes with sovereignty as an organizing principal of international relations. Although sovereignty is likely to remain a critical component of the international system, it faces a growing threat from international organizations and institutions that pursue international order and individual rights at the expense of traditional rights enjoyed by sovereign states.

Conventional wisdom would hold that this phenomenon sprung to life after the collapse of the Soviet Union and the end of the Cold War in 1990. To the contrary, as this article will demonstrate, the “recent” ascendancy of international law represents major developments in religion, philosophy and law over centuries, and is shaped by the cataclysmic wars and associated excesses of the 20th century. Critical components of today’s international system matured in relative obscurity during the Cold War as groups and nations sought self-determination, peace, democracy, and individual freedoms. While it is easy for scholars and statesmen alike to overlook historical trends, we must examine how developments in international law have subtly but certainly redefined sovereignty and how states have adapted, or not adapted, to this reality.

## FOUNDATIONS OF INTERNATIONAL LAW

### The Search for Order.

Humans seek order in life. Religion traditionally reflects our search for meaning and purpose, but social institutions also reflect this desire. In ancient times, families organized themselves into tribes, then cities, states, and empires. Social order implies security and a sense of predictability. Order promotes prosperity and growth—both individual and collective. At the same time, order discourages destructive social behavior and competition for scarce resources.<sup>2</sup> Order requires a degree of cooperation and sacrifice, and by definition some inherent limitation on individual freedom. The political process is the means usually used to create order and determine social rules and mores. Laws are crafted to facilitate and support this process.

Order may be imposed within groups or nations or states. On occasion, international order may be imposed by hegemonic powers, for example the Roman Empire, the British Empire at its height in the 19th century, and by American power since 1945. But scholars typically describe the international system as unstructured, or anarchic, in nature. States strive for supremacy, or hegemony, over other states. International politics is a “ruthless and dangerous business . . . [t]his situation, which no one consciously designed or intended, is genuinely tragic.”<sup>3</sup> Others analyze the international system in different terms: the dynamic of how states establish international order e.g., balance of power, bipolar, or hegemonic systems; the nature of state actors as determining state behavior, e.g. democracies act one way, revolutionary states another, etc.; and the influence of individual decisionmakers, e.g., great men drive events—Churchill, Hitler, etc.<sup>4</sup>

Rule of law is widely regarded as an independent basis of international order. The *National Security Strategy* of the United States tells us that the “nonnegotiable demands of human dignity” include “the rule of law; limits on the absolute power of the state; free speech; freedom of worship; equal justice; respect for women, religious tolerance; and respect for private property.”<sup>5</sup> Establishing the rule of law was a stated objective of international efforts in Bosnia, Kosovo, and Afghanistan, among others. Efforts to establish rule of law in places such as Kosovo, and more recently Iraq, illustrate the tensions between international law and sovereignty which we will examine in detail later.

### Defining International Law.

Law prescribes norms of proper behavior, or as Blackstone says in his *Commentaries*, “a rule of civil conduct, commanding what is right, and prohibiting what is wrong.”<sup>6</sup> These rules may be prescribed by the sovereign, but they are usually based on religious, cultural and moral values. As such, the law often depends upon voluntary compliance, or more precisely on social pressure to conform. Sanctions may be imposed in cases where individuals will not or cannot comply.

Others feel that laws by definition require sanctions:

It is essential to the idea of a law that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience. If there be no penalty annexed to disobedience, the resolutions or commands, which pretend to be laws will, in fact, amount to nothing more than advice. . . .<sup>7</sup>

Regardless, law provides a foundation for order, stability, predictability, and enjoys general acceptance by the population at large. Laws not generally accepted, perhaps because they do not reflect widely-held beliefs or morals, or serve no constructive purpose, are often ignored and prove particularly difficult to enforce.<sup>8</sup> Lastly, law evolves; it is not static. Laws change regularly, and

considerably over long periods of time. While all this is true with respect to municipal, or domestic, law, does it apply equally to international law?

International law has been defined as “the body of rules and principles of action which are binding upon civilized states in their relations with one another.”<sup>9</sup> Critics question, and we will examine later, whether international law can be “binding,” and the efficacy of its application outside its Western European incubator – the so-called “civilized” states. Yet a closer look reveals that international law plays an essential role in global trade and commerce, regulating disputes, compensation, banking, and laws applying to a given transaction. It is indispensable to international transportation, regulating sea and air routes, privileges and immunities, and claims for loss or damage.<sup>10</sup> International treaties establish standards for the sciences, health, and the environment.<sup>11</sup>

The law of war is most familiar as that branch of public international law regulating armed conflict between states, and increasingly within states suffering from civil war, or intrastate conflict. This body of law provided the foundation for the war crimes tribunals at Nuremberg, Germany, and Tokyo, Japan, following World War II, and later for the international tribunals organized to adjudicate war crimes and crimes against humanity in former Yugoslavia and Rwanda. Even more recently, the Rome Statute established the International Criminal Court (ICC), a standing, rather than ad hoc, tribunal which recently became operational and whose jurisdiction may be unlimited.<sup>12</sup>

In most aspects, international law serves the same purposes as and shares common attributes with municipal law: it provides a foundation for order, is founded on religious, cultural, and moral values, serves to provide stability and predictability, and enjoys general acceptance among the international community. International law protects rights of states and individuals alike. In one important particular, however, the international legal system differs from municipal systems – there is no sanction for noncompliance, if by sanction is meant imposition of penalty by a higher authority. This theme recurs in any discussion of international law, although its relevance is often overstated.<sup>13</sup>

## SOURCES OF INTERNATIONAL LAW

### Classical Antecedents.

Historians refer to the “laws” of ancient Greece and Rome and their influence on modern western institutions. Although recognizing that a sophisticated system of laws provided a foundation for order and stability, as well as for a wide-ranging commercial system that stretched from Britain to Asia Minor and ringed the Mediterranean, neither civilization understood the concept of international law as we apply the term today.<sup>14</sup> Ancient Greeks, Romans, and Chinese did not customarily treat outsiders as their equals in an international system of equals. Greeks regarded non-Greeks as uncivilized; The Roman Empire did not negotiate acquisitions, it simply took them. The Chinese considered any group of peoples outside the “Middle Kingdom” as barbarians not worthy of their full attention.<sup>15</sup>

### Natural Law, Feudalism, and Westphalia.

Elements of modern international law existed before creation of the Westphalian system in 1648. Ancient philosophers, the Romans, and their heirs believed in “natural law,” a higher law of nature that controlled all human endeavors, and to which all are bound, even kings and rulers. An expression of this concept is found in the term *ius gentium*, meaning a principle of universal application that all follow because it has been independently discovered by application of reason, a “natural law.” Our contemporary use of the phrase “human rights,” examined in this context,



becomes for us a form of natural law or *ius gentium*, and a fundamental principle of international order.<sup>16</sup>

Other elements of international order evolved during the Middle Ages, particularly concepts of property rights and loyalty to the sovereign, key elements of modern nation-states. Under feudalism, property rights of the ruler shaped feudal society, and dictated a network of complicated, but well-understood, relationships that provided stability and order. Feudalism depended upon loyalty up and loyalty down the social hierarchy. All were bound by reciprocal responsibilities. While the Catholic Church provided legitimacy and support of feudal institutions, these principles survived the Reformation. The idea that states enjoy sovereignty and the right to control territory is a feudal legacy.<sup>17</sup>

Finally, following the self-destructive upheaval of the religious wars of the 16th and 17th centuries, the Treaty of Westphalia in 1648 provided needed order, stabilizing borders and relationships. Kings could dictate any religion they wished within their borders, but foreswore any rights to interfere in the religious affairs of other sovereign states. This principle was frequently violated for political, if not religious, reasons, but the Treaty achieved its purpose.

Once states became sovereign, a way had to be found for them to interact on a nominal basis of equality. Guiding principles of relations between sovereign states rested on five basic assumptions. States had the right to: make laws; act independently in international affairs; control their territory and people; issue currency; and utilize the resources of the state. Sovereignty thus became the organizing element of modern history.

### **International Law Hierarchy.**

The sources of international law are divided into four categories, arranged in a hierarchy.<sup>18</sup> At the top are conventions, treaties and agreements, such as the UN Charter, or the Law of the Sea Treaty. These represent contractual relationships between sovereign states, and states are bound by their obligations freely undertaken.<sup>19</sup>

The second source of international law is the practice of states, referred to as customary international law. No hard and fast rule governs customary international law. It reflects the behavior of states over time, acting in accordance with what they believe to be the dominant rules of international order. Customary law exists independently of treaty law, although treaty law may help to shape customary law.<sup>20</sup>

The third source is principles of law recognized by the leading, or so-called "civilized" nations. International politics help to define these principles, which are also shaped by the municipal law of states.<sup>21</sup>

The fourth and final source of international law represents judicial decisions and the writings of jurists and scholars. These include the opinions issued by the International Court of Justice, its predecessor the Permanent Court of International Justice, the European Court of Human Rights, and the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR). Writings of scholars supplement these decisions, illustrating and explaining the state of the law based on their experience and study. Changes in the law are often preceded by debate among jurists and scholars over what the law should be. Their authority is persuasive and influential, not substantive.<sup>22</sup>

## **INTERNATIONAL LAW AND SOVEREIGNTY – AN EVOLUTIONARY RELATIONSHIP**

### **A Marriage of Convenience.**

International law has never existed in a vacuum. It reflects existing norms and mores, and illustrates the difficulty of constructing international order in a disordered world. The Westphalian

system has provided the fundamental framework for order for over 3 centuries and has greatly influenced the development of international law. Over time sovereignty has ebbed and flowed, as prevailing practices and international politics shaped the behavior of the leading states. To the extent these practices and politics establish binding precedent, they help to define international law.

This portion of the chapter examines how recognized principles of international law and sovereignty developed simultaneously over time. Although sovereignty has provided the dominant basis for international order, it has consistently adapted to accommodate evolving concepts of government, freedom, human rights, and the quest for predictability and stability,<sup>23</sup> the historical attributes of international law.

### **Sovereignty and the Divine Rights of Kings.**

Early models of sovereignty were based on the prevailing form of government in 17th century Europe – monarchies ruled by hereditary dynasties of kings or emperors. Consistent with historical political and religious practice, individuals were subordinate to the state, represented by the King. Other precedents existed, going back to classical Greece and its democratic ideals,<sup>24</sup> but prevailing norms made Kings absolute rulers of their states, and they exercised their authority with little regard for the sensibilities of their subjects.

Contemporary writers described the nature of this relationship. Jean Bodin wrote in 1576 that law comes from the King, who although not bound by his own laws, was not above the law of nature, an important exception bearing on future developments.<sup>25</sup> Thomas Hobbes wrote in *Leviathan*: “It appeareth plainly that the sovereign power . . . is as great as possibly men can be imagined to make it.”<sup>26</sup> Louis XIV of France, the “Sun King” epitomized the classical sovereign – not merely the head of the state, but its very embodiment, anointed by God to rule. Subjects owed unquestioningly loyalty to the King, who might or might not act in their best interests. More precisely, the King’s interests were the state’s interests. Hence the dynastic wars of Louis XIV, waged to expand the glory of France and of Louis XIV, were the business of the King and his advisors, not the people of France. As characterized in popular culture: “It’s good to be the King!”<sup>27</sup>

Not everyone regarded sovereignty this way. Hugo de Groot, also known as Grotius, is referred to as the father of international law for his treatises on international law and the law of war. He was also a proponent of the law of nature and reason. He saw excesses in unbridled sovereignty:

I saw prevailing throughout the Christian world a license in making war of which even barbarous nations should be ashamed; men resorting to arms for trivial or for no reasons at all, and . . . no reverence left for divine or human law, exactly as if a single edict had released a madness driving men to all kinds of crime.<sup>28</sup>

As the culminating act of the English Civil War and the Thirty Years’ War, the British throne of Charles I fell to the reformist Protestant armies of Oliver Cromwell. In 1649, 1 year after Westphalia, Cromwell had King Charles beheaded. Sovereignty was no longer coexistent with monarchy.<sup>29</sup>

### **The Enlightenment and Age of Reason.**

During the 18th century, philosophers, scholars, and popular writers rediscovered the writings of the ancient Greeks, combining them with Christian philosophy and natural law into a doctrine of Enlightenment. Locke, Rousseau, and Jefferson, among others, emphasized individual rights and the obligations of sovereigns toward their citizens.<sup>30</sup> Their beliefs were incorporated into the Declaration of Independence and the American and French Revolutions.

The established order elsewhere did not change, but regime change in America and France, replacing monarchies with democratically-based governments, was a harbinger of things to come. It advanced the idea that sovereignty vested in the people, rather than in the government or the ruler, and demonstrated the efficacy of a higher law, themes that would resurface periodically in the 19th century and erupt in the latter half of the 20th century. International agreements and treaties began to recognize that individuals as well as states have rights.<sup>31</sup>

### **The Concert of Europe, Industrialism, and Colonialism.**

Following the 25-year struggle to suppress Revolutionary France and Napoleon Bonaparte, the major powers of Europe in 1815 sought to reestablish order, stability, and a balance of power. In response to Napoleon's imperial ambitions, the political leaders who met in Vienna created a system firmly grounded in sovereignty and balanced so as to preclude a return to revolution. Under the leadership of Prince Metternich of Austria and Lord Castlereigh of Great Britain, they succeeded in establishing a framework for peace that would survive essentially intact for 100 years.<sup>32</sup>

Other influences shaped the 19th century. Charles Darwin's scientific work on evolution stimulated development of a social philosophy known as social Darwinism, extrapolating Darwin's theories of natural selection and survival of the fittest species into international relations and politics. Those nations which were strongest were most likely and best suited to survive. Social Darwinism heavily influenced political leaders such as Bismarck and Theodore Roosevelt.<sup>33</sup> Sovereign states exerted a sort of muscular self-interest in their international relations, demonstrating their superiority by economic growth and territorial acquisition. The last great era of Colonialism was the result, as France, Great Britain, and Germany competed to acquire overseas colonies. The United States too, succumbed to temptation at the end of the century, acquiring overseas interests in the Hawaii, the Philippines, Cuba, and Panama, among others.<sup>34</sup> The sovereign rights of underdeveloped, militarily weak states counted for little in this environment.

Facilitating economic expansion in an era of relative peace were the modern technologies of steamships, railroads, and telegraphs. The speed of communication and transportation caused the world to "shrink," as trade, commerce, and banking connected the continents, creating the first era of "globalization." The modern unified industrial state came into its own as the United States, Germany, and Italy consolidated their territorial boundaries and joined the ranks of the great powers.<sup>35</sup> In many regards, it was the apogee of sovereignty.

At the same time other, largely unseen, developments reflected the dark side of unbridled sovereignty and hinted at issues that would rise to prominence in the 20th century. The industrial revolution prompted upward mobility and increased the size of the middle class in most Western nations, yet it also created a new urban underclass, with associated problems of disease, family breakup, and child labor. Visible disparity in wealth and power in developed states caused socialism to flourish, creating revolutionary pressures that threatened the established order. Karl Marx promulgated his economic theories preaching class warfare. Modest political reform helped to defuse tensions and postpone the final accounting for at least another generation.

Public international law played an important role in international affairs, particularly through treaties regulating trade, communication and finance. Henri Dunant founded the International Red Cross in Geneva, Switzerland, in 1863 to mitigate the destructive effect of modern war.<sup>36</sup> The first Geneva Convention covering treatment of sick and wounded on the battlefield was signed in 1864.<sup>37</sup> Based largely on the Lieber Code of 1863,<sup>38</sup> promulgating laws of war for Union armies in the American Civil War, the Hague Conventions of 1899 and 1907<sup>39</sup> attempted to prescribe means and methods of warfare consistent with existing humanitarian principles. Concerns over certain acts in the recent war with Iraq—use of civilian hostages, fighting from protected places such as

hospitals or mosques, combatants not wearing military uniforms—can be traced directly to the Hague Conventions.<sup>40</sup>

### **The 20th Century – Age of Conflict and Ideology.**

The 20th century was marked by tremendous highs and abysmal lows. The best and the worst of human nature were on public display, often at the same time. The era was marked by three major world wars, two hot and one cold, and the clash of powerful ideologies. Socialism, communism, nazism, and fascism emerged fully-grown on the world stage, competing with democracy for primacy in the hearts and minds of nations. Tentative steps to form world government were taken. Natural law resurfaced in the guise of anti-colonialism, self-determination of peoples, the human rights movement, and demands for equality by the non-Western world. Change accelerated development, redefining political and cultural priorities. The second great era of globalization and progress brought the world closer, yet left others even farther behind. The similarities between 1903 and 2003 are striking, as are the differences. The maturation of international law and sovereignty's accommodation to change is one major highlight of the century that we will examine more closely.

### **The Great War – Changing of the Guard.**

The period immediately following World War I is essential to understanding the rest of the 20th century. The issues facing the Allied powers in Versailles, France, and the choices made then and over the next decade dictated the course of events for the remainder of the century. International law emerged as a critical component of international order and would play a major role in international politics.

World War I, The Great War, caused tremendous upheaval in the established order. The victorious Allies attempted to address these problems at Versailles in 1919. First was the unexpected scope of violence and destruction, prompting calls for vengeance—war reparations to be paid by the losers and trials of those responsible for the conflict. Second was the collapse of major empires—the German, Austrian-Hungarian, and Ottoman Empires on the losing side, and the Russian Empire in 1917 on the Allied side—and the emergence of the United States as the predominant military and economic power.<sup>41</sup> The third problem was the creation of new nation-states out of the former empires. Lastly, lack of consensus concerning the goals of the war and what the allies had won plagued the peace and designs for international order.

Revolutionary efforts to create a world government fell short—the League of Nations was a start, but not a sufficient one. President Wilson's visions for the postwar order clashed with the national interests of the allies and frustrated effective, unified action. The Versailles Treaty became a compromise. Complicating matters, Wilson failed to persuade the American public or the U.S. Senate to ratify the treaty creating the League of Nations, and without American participation the League proved too weak to enforce Wilson's vision of collective security—peace through the rule of law supported by military force when necessary.<sup>42</sup> Wilson's vision would be revived in 1945 and again in 1990 with relatively greater success.

Attempts to try the Kaiser and others for War Crimes encountered similar problems. The Allies could not agree, and the Germans would not cooperate. Ambitious plans drawn up at the Paris Peace Conference in 1920 called for some 900 war criminals to be tried, but Allied disunity and German recalcitrance prevailed. As a compromise, 12 German soldiers ranging in rank from private to lieutenant general were tried in German courts; six were convicted, with the most severe sentence being 4 years.<sup>43</sup>



One encouraging development at Versailles was public debate over rule of law and ethics superseding national interests and international politics. The conflict between these poles of international order would continue throughout the 20th century and still exists. As Kissinger characterizes it:

At the end of the First World War, the age-old debate about the relative roles of morality and interest in international affairs seemed to have been resolved in favor of the dominance of law and ethics. Under the shock of the cataclysm, many hoped for a better world as free as possible from the kind of *Realpolitik* which, in their view, had decimated the youth of a generation.<sup>44</sup>

Efforts to enforce peace through rule of law continued for over a decade following Versailles. Arms control agreements took the place of serious collective security enforcement. Examples include the Naval Conferences at Washington in 1922 and London in 1930, regulating the number and size of battleships, cruisers, destroyers, and submarines, then considered the major strategic weapons of the great powers.<sup>45</sup> In the Kellogg-Briand Pact of 1928, the signatory parties agreed to renounce war as an instrument of national policy.<sup>46</sup>

In the end, sovereignty and national interests proved too strong for the Wilsonians. International law became just another diplomatic tool as the great states rearmed themselves for World War II. Former President Theodore Roosevelt, still a keen observer of world events, captured the essence of power politics when he said: "As yet there is no likelihood of establishing any kind of international power . . . which can effectively check wrong-doing . . . I regard . . . trusting to fantastic peace treaties, to impossible promises, to all kinds of scraps of paper without any backing in efficient force, as abhorrent."<sup>47</sup>

## SOVEREIGNTY IN THE NUCLEAR AGE

### World War II and the Search for International Order.

The world got a second chance in 1945 to recreate international order. The unprecedented destruction of the second major war in a generation dwarfed that of 1914-18 and brought modern war to the home front with a vengeance. Millions of noncombatants became casualties of war. The discovery of nuclear fission at the end of the war threatened even greater destruction in any future conflict. Sovereignty had to be checked, and international law was applied to the task. The problem was neatly defined by one study:

A sovereign state at the present time claims the power to judge its own controversies, to enforce its own conception of its rights, to increase its armaments without limit, to treat its own nationals as it sees fit, and to regulate its economic life without regard to the effect of such regulations upon its neighbors. These attributes of sovereignty must be limited.<sup>48</sup>

The creation of the United Nations in 1945 and the proceedings of the Nuremberg Tribunal immediately following were watershed events that permanently altered the nature of the debate regarding a state's right to wage war and its treatment of its citizens. Together they announced to the world that aggressive war would no longer be tolerated and that individuals who commit aggression and crimes against humanity will be held criminally responsible for their acts. It was a sincere effort and a good start, enjoying almost universal support.

One of the early UN proclamations, the Universal Declaration of Human Rights,<sup>49</sup> outlined fundamental human rights in terms reminiscent of the Declaration of Independence and the Bill



of Rights. It was intended as common standard for “all peoples and all nations.”<sup>50</sup> Although aspirational in tone and lacking an enforcement mechanism, it has served for more than 50 years as a beacon for people in search of freedom and justice. Over the following decades, International agreements outlawing genocide, recognizing the rights of minorities, and emphasizing humanitarian concerns consistently advanced individual rights at the expense of state sovereignty.<sup>51</sup>

Collective security acquired new life after World War II with the creation of the UN, NATO, the Organization of American States (OAS), and other international and regional organizations. Although the Cold War provided the initial impetus for NATO, it survives as a viable, productive organization. With expanded membership and new missions, NATO today provides collective security while extending democracy and prosperity to the nations of Eastern Europe, a development unimagined a generation ago.

### **The Rule of Law and Human Rights Center Stage.**

The rule of law in international affairs is manifest in many ways: by actions of the United Nations Security Council (UNSC) and other UN organizations;<sup>52</sup> by nongovernmental organizations’ (NGOs) advancing collective Western values and international humanitarian law; by treaties regulating strategic nuclear weapons, conventional weapons, and chemical/biological weapons;<sup>53</sup> by international agreement on global warming; by creation of an international criminal court (ICC);<sup>54</sup> and by the number of “coalitions of the willing” contributing forces to intervene in intrastate conflicts.

A common misperception is that these developments emerged all at once in 1990 with the collapse of the Soviet Union and the end of the Cold War.<sup>55</sup> The incorporation of international law and human rights into international relations since 1945 stems from historical trends and events. It reflects timeless values, classical and modern philosophy, and the common experiences of mankind over centuries. Although it is true that the bipolar system and threat of great power veto limited the ability of the UNSC to take effective action throughout the Cold War, the quest for international order based on rule of law consistently influenced political developments and discourse.

The struggle to end colonialism and promote self-determination of peoples following World War II is illustrative. The UN Charter, firmly rooted in sovereignty, contemplated the end of Western colonialism.<sup>56</sup> The United States advocated renunciation of overseas imperial holdings and supported self-determination.<sup>57</sup> During World War II, in fact, our stance on this issue periodically created rifts within the Anglo-French-U.S. partnership.<sup>58</sup> After the war, at the same time we were developing a Containment Policy against Communism, we were calling for an end to British and French rule in Africa and Asia. When newly independent colonial states lapsed into communism, as happened in Vietnam, we suddenly found ourselves with a new problem on our hands, one as much political as military in nature.<sup>59</sup> The search for order, justice, and democracy stumbled on the rock of great power politics. International law alone could not preserve the peace.

Cold War arms control agreements<sup>60</sup> reflected not so much American and Soviet optimism as they did global public opinion, uneasy over the prospect of annihilation at the hands of the two superpowers. With the advent of intercontinental ballistic missiles, mutual assured destruction became a fact. With satellite technology, the United States and the Union of Soviet Socialist Republics (USSR) acquired the capacity to place nuclear weapons in earth orbit.<sup>61</sup> Many states became fervent practitioners of international law for purely parochial reasons, but the success of the international community, particularly nonaligned states, in framing global debate demonstrated the force of western values and the rule of law. These trends emerged in the 1950s, and acquired prominence in the 1960s and 1970s. Neither the UN nor the international community could force the great powers to take specific actions against their interests, but this does not mean that the great powers,

including the United States and the USSR, were free to do as they pleased. Pressures to comply with world opinion were subtle and often invisible, but real nonetheless.

Contributing to the force of international law was the proliferation of nongovernmental organizations, or NGOs, in the decades following World War II. NGOs pursued their own special interests, but most had an underlying humanitarian agenda, advancing the cause of human rights and promoting "International Humanitarian Law."<sup>62</sup> The International Committee of the Red Cross is the oldest and best-known of the NGOs.<sup>63</sup> Human Rights Watch, Doctors without Border, CARE, and thousands of others effectively precipitated international intervention in what had been considered previously the internal affairs of sovereign states.<sup>64</sup>

Two examples illustrate the power and influence NGO's have acquired. The first is the UN intervention in Somalia in 1992, under American leadership, to ensure delivery of relief supplies and avert a humanitarian disaster forecast by NGOs and highlighted on television screens around the world. UN intervention alleviated the immediate problem, but failed to address the underlying problem of stability. When it did, too little and too late, it led to the battle of Mogadishu and eventual withdrawal of U.S. forces.

The second example of NGO influence is the Ottawa Treaty banning landmines.<sup>65</sup> The preamble to the Treaty states in part:

*Stressing* the role of public conscience in furthering the principles of humanity as evidenced by the call for a total ban of anti-personnel mines and recognizing the efforts to that end undertaken by the International Red Cross and Red Crescent Movement, the International Campaign to Ban landmines, and numerous other non-governmental organizations around the world, *Basing* themselves on the principle of international humanitarian law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited . . .<sup>66</sup>

NGOs and international celebrities like Princess Diana of Britain actively participated in the Conference process, dismissing security concerns raised by the United States. Humanitarian concerns over civilians killed or maimed by abandoned land mines preoccupied the Conference and carried the day. While not a party to the treaty, the United States has conceded substantial compliance by policy.<sup>67</sup>

## THE STATE OF THE STATE – SOVEREIGNTY IN THE NEW MILLENNIUM

### Trends and Developments.

Trends evident in 2003 reflect the foregoing discussion. In advanced states, post-industrial society has replaced basic industry and manufacturing, which has migrated to less-developed countries with lower labor costs. Globalization draws nations and peoples closer, despite recent economic setbacks. The World Trade Organization is a powerful international force that influences decisions of the leading economic powers, including the United States.<sup>68</sup> International labor organizations demand basic standards and benefits for workers and workplaces. These trends undermine sovereignty and reflect a tightly structured international environment that constrains even the strongest states to behave in ways promoting international order.

Human rights influence international agendas and domestic actions. International humanitarian intervention, evident in Kosovo, East Timor, and possibly Iraq, is an emerging precedent that demands attention. It is not yet customary international law, but lively debate on the subject tends to redefine how we view sovereignty.<sup>69</sup> This represents, ironically, the triumph of values advanced by Woodrow Wilson at Versailles almost a century ago. The principles of the American and French

revolutions have become universal, though not all states concede that individual rights supersede the welfare of the state, most notably China, the world's most populous state.

### **Themes for the 21st Century.**

International law will play an important role in addressing issues and trends likely to persist for decades to come. The most important of these include: a globalized economy; urbanization; intrastate conflict; clash of cultures; unequal distribution of wealth; environmental degradation; transnational crime; collective security; multilateralism; and humanitarian intervention. Global problems require global solutions; sovereign states cannot solve them, although they can address symptoms within their borders. Most, eventually, will require international cooperation.

### **Implications for Strategic Leaders.**

International law challenges strategic leaders to think globally, not nationally. The positivist approach to international law expressed in the S.S. *Lotus* case: "Restrictions upon the independence of States cannot therefore be presumed,"<sup>70</sup> is threatened by a new paradigm: "a law more readily seen as the reflection of a collective juridical conscience and as a response to the social necessities of States organized as a community."<sup>71</sup> UN Secretary General Kofi Annan articulated this new paradigm as follows:

State sovereignty, in its most basic sense, is being redefined – not least by the forces of globalization and international cooperation. States are now widely understood to be instruments at the service of their peoples, and not vice versa.<sup>72</sup>

The implications of this principle are staggering. Yet Kofi Annan is no revolutionary; his language is reminiscent of Thomas Jefferson's in the Declaration of Independence: "That to secure these rights, Governments are instituted among Men, deriving their just power from the consent of the governed." States exist to promote and protect individual rights and freedoms. The challenge for international leaders is what action the international community should take in those cases where states deliberately and systematically violate the human rights of their citizens.<sup>73</sup>

None of this implies that sovereign states cannot guarantee, promote and advance human rights. To the contrary, the American experience teaches us that individual rights and rule of law are mutually supportive and thrive in a strongly nationalistic, democratic environment. Ironically, the American experience also encourages internationalism in the promotion of democratic values. As President Bush has stated in his *National Security Strategy*: "We will defend the peace by fighting terrorists and tyrants. We will preserve the peace by building good relations among the great powers. We will extend the peace by encouraging free and open societies on every continent."<sup>74</sup> This sentiment resembles Woodrow Wilson's and, indeed, those of most presidents since 1918. Kissinger portrays this as an essential element of American altruism motivating our actions abroad: "Wilson put forward the unprecedented doctrine that the security of America was inseparable from the security of *all* the rest of mankind. This implied that it was henceforth America's duty to oppose aggression *everywhere*. . . ."<sup>75</sup>

The current world situation encourages debate over the scope and authority of international law. Recent American actions in Iraq, taken contrary to international public opinion, without the endorsement of the UNSC, and against the wishes of longstanding allies such as France, Germany, and Turkey, support Mersheimer's proposition that great powers behave as their interests dictate.<sup>76</sup> Perhaps sovereignty is alive and well after all.

Unilateral action can, at least in certain cases, achieve the same results as multilateral efforts. Proponents of international order and rule of law argue that lasting order cannot be imposed unilaterally. The Congress of Vienna in 1815, which created the “Concert of Europe,” was a collective, multilateral effort, albeit predicated on sovereignty. But it took enormous cooperation to maintain international order for 100 years. Even the British Empire at its height in the 19th century realized its limitations and attempted to construct a favorable balance of power. John Ikenberry, in *After Victory*, analyzes the rebuilding of international order after major wars. He says the diplomats of 1815 created a “constitutional order,” which are “political orders organized around agreed-upon legal and political institutions that operate to allocate rights and limit the exercise of power.”<sup>77</sup>

Ikenberry’s concept of “constitutional order” helps to explain how the current international system evolved after World War II, and how it operates today. At its heart was the sharing of power by the United States, by far the most powerful state in the world in 1945. The framework was an extensive system of multilateral institutions, including alliances, which bound the United States and its primary partners in Europe together.<sup>78</sup> The Cold War may have accelerated this process, but it did not create it.<sup>79</sup>

If this theory is correct, then the primacy of international law and institutions is no accident, but instead the direct and expected result of efforts to create a framework of mutually supporting and binding ties. As we have seen, these international institutions have performed as designed. It should come as no surprise, viewing the international system in this way, that international organizations and politics restrain the choices and actions of sovereign states. From this perspective, international order displays many of the characteristics of municipal order.<sup>80</sup> Ikenberry explains this: “if institutions – wielded by democracies – play a restraining role . . . it is possible to argue that international orders under particular circumstances can indeed exhibit constitutional characteristics.”<sup>81</sup>

## THE NEW WORLD ORDER AND AMERICAN HEGEMONY

### Who Owns International Law?

What is America’s role as the sole superpower in the current environment? How will the international system respond to the threat of global terrorism? Can it maintain the security and prosperity created by American leadership since 1945? Can the rule of law accommodate the national interests of the great powers and protect the interests of weaker states threatened by demagogues, genocide, civil war and internal armed conflict? The remainder of this article will attempt to suggest answers to these questions.

Dynamic, disparate forces challenge the international order. Globalization promises prosperity and freedom, but failed states, disease, pollution, and rising birthrates hold large segments of the world’s population hostage. Furthering individual rights and enforcing collective security requires international cooperation, but depends at present upon the good will and determination of powerful sovereign states.

A brief look at two recent developments illustrates the nature of the challenge and provides insights as to possible courses of action. The first of these is the creation of the ICC; the second is the American-led war on terrorism.

The ICC is an idea whose time has come. It fulfills the hopes and aspirations of a majority of the world’s nations. Eighty years in the making, from Versailles in 1919 to the Rome Statute in 1997, it reflects a new consensus on international justice and the rule of law. Recognizing that sovereignty protected rulers and their agents from accountability for crimes ranging from aggressive war to democide,<sup>82</sup> the ICC provides a permanent forum for prosecution when state courts cannot or will



not act. As of this writing 139 nations have signed the treaty, and 89 have ratified it. The Court commenced operations on July 1, 2002, and, according to its charter, enjoys almost universal jurisdiction.<sup>83</sup> Its potential impact is enormous, even without U.S. participation.<sup>84</sup>

At the same time, the United States leads international efforts to locate, isolate, and destroy international terrorist groups with global reach. These groups threaten international order and prosperity. They promote extremist views and promise false hopes to states and individuals left behind on the road of progress. While most states support and encourage American efforts to eradicate this plague, the international system is not well-suited for the struggle. There is no international agreement on terrorism, and none that even attempts to define the term. Several treaties address individual terrorist acts—hijacking, murder, money laundering, illegal crossing of borders, etc., but their solutions require state action—apprehension, extradition, and prosecution of individual terrorists.<sup>85</sup>

To date, therefore, the international response to terrorism depends upon American leadership, moral and physical. Coalitions are formed to fight terrorism, but they form and reform constantly depending on where American efforts are focused. In Afghanistan a multilateral effort enjoyed broad international support;<sup>86</sup> in Iraq, another theater in this global war, the coalition fell short of expectations, and the intervention remains controversial.<sup>87</sup> The search for order and the rule of law means different things to different states. America may lead, but others need not follow.

These events are closely related. They represent opposite poles of debate over how we are to pursue Ikenberry's "constitutional order" on a global scale. While most states agree in theory with multilateral institutions, the utility of the UN, and the need for rule of law within and among states, international law must contend with the "friction" of sovereignty.<sup>88</sup> This uneasy relationship is likely to continue. Ironically, some states and prominent individuals have called for the ICC to investigate American intervention in Iraq as an "illegal" use of force in violation of treaty law and customary law.<sup>89</sup>

### **Unilateralism: What Price Sovereignty?**

This situation is unhealthy for international order. The new world order described in preceding sections of this chapter is real, and it is here to stay. The ties that bind the international community are strong and enduring, and international institutions enjoy unprecedented support and influence. Perhaps the most amazing point of all is that American values and leadership were instrumental in creating this environment. We are reminded once again that we have to be careful what we wish for.

American actions are well-intended, although many people sympathetic to American interests do not accept this proposition at face value. To the extent that American national interests must be served, we can continue to make unpopular decisions and execute American grand strategy without broad international support. But we cannot do so indefinitely. America may act unilaterally on a case-by-case basis, weighing costs and benefits. We need to be honest with ourselves when we do so, however. Others may perceive our actions as excessive and bullying.

The cost of military intervention can be high: proponents must establish a legal basis, a *jus ad bellum*, for action; they must apply force consistent with the laws of armed conflict and possible mandates of the UNSC; the fighting must be controlled both in time and in space; fallout and political reactions must be anticipated; and, lastly, those advocating intervention must expect the unexpected. Murphy's Law applies to all human endeavors. Given the national interest in defeating terrorism and preserving international order, some degree of risk is normal and expected.



## The Road Ahead: Surviving in the New World Order

We do not operate in a vacuum. The international environment outlined in this chapter demands our attention, if not our cooperation. It provides several useful lessons to guide our conduct in the 21st century.

First, multilateral action is preferred in most cases. America lacks the political and military strength to go it alone in every instance. U.S. economic and military power provides the mobility and ability to go anywhere, but coalitions provide additional resources, political support, and legal justification and legitimacy for international operations. If international relations theorists are correct, states that pursue hegemonic order motivate other powers to combine to frustrate their efforts. Although such a backlash against American hegemony is not evident at present, no one can guarantee that further unilateral adventures will not produce one.

Second, the United States has tremendous capabilities at its disposal without employing the military element of power. Diplomatic, economic, and informational tools provide enormous flexibility in formulating strategy and handling complicated problems as they arise. Infrequent demonstration of American military power will suffice to remind opponents of military capabilities while diplomats pursue peaceful resolution of disputes by other means. This approach will also reassure friends, allies and critics alike of American intentions and demonstrates a willingness to exhaust all reasonable alternatives before applying force. It will preserve valuable goodwill.

Third, every crisis does not require international intervention or the use of military forces. Acknowledging the threat posed by global terrorist networks, most international crises are local and have little impact on terrorism or global security. Many of them, we need to remind ourselves, may be safely ignored and left to others to solve. Unless international stability is seriously threatened, mobilizing the international community and its resources might prove counterproductive. We have learned, since the heady days of 1991, of the great Gulf War Coalition forged by President Bush, that the new world order promised by the collapse of the Soviet Union and the end of the Cold War has not come to pass, at least not in the way we imagined it. But there is a new world order and states have to live in it.

The fourth and final lesson we can draw from this analysis of international law and sovereignty is that the international system as it exists (and as it was designed) reflects American values and American visions for the future. It is a legitimate part of our heritage. When we presume that all institutions oppose our interests because some do, or presume that all treaties are suspect because some are, we deny that heritage. More often than not, international institutions and agreements further American interests.

It is important to remember that democracies tolerate differences, and in fact thrive on them. If the core of "constitutional order" in the world is Western democracy, then we must expect that there will be disagreements and heated debate among states. We will not always agree on everything. But in a constitutional system everyone must play; the rules do not allow a state to simply take its ball and go home whenever it does not get its way. True, no referee will step in, blow a whistle, and impose a penalty, but true international order, just like domestic order, depends upon mutual respect and cooperation and responsible behavior. Those who claim global leadership within the system have the greatest responsibility to ensure the system works. It is time to reassess America's role and reclaim our rightful position as the leader of the world community. Struggling against the ties that bind us, like a modern Gulliver, is counterproductive.

## ENDNOTES - CHAPTER 18

1. U.S. War Department, General Orders (GO) No. 100, Instructions for the Government of the Armies of the United States in the Field, April 24, 1863. The first comprehensive summary and codification of the humanitarian rules governing land warfare. Frequently called the "Lieber Code" after its author, Dr. Francis Lieber, G.O. No. 100 furnished inspiration for the Geneva Conventions of 1864 and 1929 and the Hague Conventions of 1899 and 1907.
2. Werner Levi, *Contemporary International Law*, Boulder, CO: Westview, 1991, p. 14.
3. John J. Mersheimer, *The Tragedy of Great Power Politics*, New York, W. W. Norton & Company, 2001, pp. 2-3.
4. John W. Spanier and Robert L. Wendzel, *Games Nations Play*, 9th Ed., Washington, DC, Congressional Quarterly, Inc., 1996, 22.
5. George W. Bush, *The National Security Strategy of the United States of America*, Washington, DC: The White House, September 2002, p. 3.
6. William Blackstone, *Commentaries on the Laws of England*, Book One, Chapter One, p. 118, The Avalon Project, New Haven, CT: Yale Law School, available from [www.yale.edu/lawweb/avalon/blackstone](http://www.yale.edu/lawweb/avalon/blackstone).
7. Alexander Hamilton, "The Federalist, No. 15," *The Federalist*, New York, The Modern Library, 1941, p. 86.
8. E.g., The prohibition of alcohol, U.S. Constitution, Amendment 18. Fourteen years later it was repealed by Amendment 21.
9. J. L. Brierly, *The Law of Nations*, 6th Ed., Oxford, UK: Oxford Press, 1991, p. 1.
10. E.g., Convention on International Civil Aviation, Chicago Convention, 1944; UN Convention on the Law of the Sea, UNCLOS III, 1982.
11. E.g., The United Nations Framework Convention on Climate Change, May 9, 1992; Kyoto Protocol to the United Nations Framework Convention on Climate Change, December 11, 1997.
12. Rome Statute of the International Criminal Court, United Nations Diplomatic conference of Plenipotentiaries on the Establishment of an International Criminal Court, July 17, 1998.
13. Horace B. Robertson, Jr., "Contemporary International Law: Relevant to Today's World?" *U.S. Naval War College International Law Studies*, Vol. 68, John Norton Moore and Robert F. Turner, eds., Newport, RI: Naval War College Press, 1995, p. 3.
14. Brierly, p. 17.
15. Levi, p. 6.
16. Brierly, p. 17.
17. *Ibid.*, p. 3. See also Levi, pp. 6-9.
18. Statute of the International Court of Justice, Art. 38.
19. The *SS Lotus Case*, Fr. v. Turk., Permanent Court of International Justice, 1927, Ser. A, No. 10, September 7, 1917, pp. 18-19: "The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law. . . ." International law scholars disagree on the fundamental nature of law. There are two distinct schools of thought. The Monist view holds that international law and municipal, state law are simply parts of an integrated system. The focus is on the individual. Dualists believe that international law and municipal law are two distinct systems. The focus of domestic law is the individual; the focus of international law is on states. These views influence contemporary debate. See Levi, pp. 22-23.

20. Levi, p. 35. Levi cites as an example the launching of Sputnik by the Soviet Union, which claimed that artificial satellites could fly unimpeded over state territory, and the general acceptance of this proposition.

21. *Ibid.*, p. 5.

22. Brierly, p. 66.

23. Although both predictability and stability are encompassed in the phrase "rule of law," the phrase is itself of fairly recent origins, representing the triumph of the western democracies since World War II. Historically, international law has concerned itself more with creating a stable, predictable world, rather than with a particular technique used to accomplish these ends.

24. Democracy in ancient Greece, notably Athens, was real and vibrant but limited in modern terms: only citizens could exercise political rights or hold land; women had few rights; slavery was an essential institution. None of this, however, diminishes the power and influence of Greek thought on leaders of the Enlightenment. See William Y. Elliott and Neil A. McDonald, *Western Political Heritage*, New York, Prentice-Hall, 1955, pp. 63-74.

25. Brierly, p. 7.

26. *Ibid.*, p. 13.

27. Mel Brooks, Director, *History of the World, Part I*, Fox Films, 1981.

28. Levi, p. 10.

29. Bernard Grun, *The Timetables of History*, 3rd Ed., New York, Touchstone, 1991, p. 294.

30. Levi, p. 8.

31. *Ibid.*, p. 9.

32. Henry Kissinger, *Diplomacy*, New York, Touchstone, 1994, p. 78.

33. *Ibid.*, pp. 40, 127.

34. See Fareed Zakaria, Chapter 5: "The New Diplomacy, 1889-1908," *From Wealth to Power*, Princeton, NJ: Princeton University Press, 1998.

35. *Ibid.*

36. Eric S. Krauss and Mike O. Lacey: "Utilitarian vs. Humanitarian: The Battle Over the Law of War," *Parameters*, Vol. 32, Summer 2002, pp. 73, 76.

37. *Ibid.*

38. GO No. 100, *supra* note 1.

39. The Hague Conventions of 1899 were largely incorporated in the Conventions of 1907, of which five are important: (1) Convention Relative to the Opening of Hostilities, October 18, 1907, 36 Stat. 2259; (2) Convention Respecting the Laws and Customs of War on Land and Annex, October 18, 1907, 36 Stat. 2277; (3) Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, October 18, 1907, 36 Stat. 2310; (4) Convention Concerning Bombardment by Naval Forces in Time of War, October 18, 1907, 36 Stat. 2351; and, (5) Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of July 6, 1906, October 18, 1907, 36 Stat. 2371.

40. Kenneth Anderson, "Who Owns the Rules of War?," *New York Times Magazine*, April 13, 2003, p. 38.

41. Kissinger, p. 259.
42. *Ibid.*, p. 247.
43. Pamphlet (PAM) 27-161-2, *International Law, Volume II*, Washington, DC: Headquarters, Department of the Army, 1962, p. 221. These trials, known as the Leipzig trials, demonstrated the problem obtaining jurisdiction over war criminals—Germany was not defeated and occupied as in World War II. The Leipzig trials did motivate the allies in 1945 to establish an international tribunal at Nuremberg.
44. Kissinger, p. 247.
45. *Ibid.*, p. 373. The Washington Conference of 1922 attempted to regulate capital ships; the London Conference of 1930 attempted to regulate submarines as well. See PAM 27-161-2, *supra*, p. 16. For a detailed study of the Naval Treaties see W. Hays Parks, “Making Law of War Treaties: Lessons from Submarine Warfare Regulation,” *U.S. Naval War College International Law Studies*, Vol. 75, Michael N. Schmitt, ed., Newport, RI: Naval War College Press, 2000, p. 339.
46. The Kellogg-Briand Pact, or Pact of Paris, is formally known as The General Treaty for the Renunciation of War, August 27, 1928, 46 Stat. 2343.
47. Kissinger, p. 40.
48. Brierly, p. 47, quoting from the International Conciliation Pamphlet, 1941.
49. Universal Declaration of Human Rights, United Nations General Assembly, December 10, 1948.
50. *Ibid.*, Preamble.
51. See the Convention on the Prevention and Punishment of the Crime of Genocide, December 9, 1948, 78 U.N.T.S. 277, Art. VI; the Geneva Conventions of 1949, four separate conventions—on the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, on the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, the Geneva Convention Relative to the Treatment of Prisoners of War, and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War; and Protocols to the Geneva Conventions of 1949, 1977. These conventions form the nucleus of what is commonly called “International Humanitarian Law.”
52. E.g., The Food and Agriculture Organization, the World Health Organization, the International Civil Aviation Organization, the UN Educational, Scientific and Cultural Organization, the International Labor Organization, and the International Monetary Fund, to name only a few.
53. E.g., the START and SALT strategic arms negotiations and Anti Ballistic Missile (ABM) treaties with the USSR, and multilateral international agreements, including the Conventional Weapons Treaty, 1980, the Chemical Weapons Convention, 1993, and the Ottawa Treaty on Anti-Personnel Land Mines, 1997.
54. Notes 11 and 12, *supra*.
55. E.g., Ivo H. Daalder, “The United States and Military Intervention in Internal Conflict,” in *International Dimensions of Internal Conflict*, Michael E. Brown, ed., Cambridge, MA: MIT Press, 1996, p. 461.
56. UN Charter, Chap. I, Art. 2, para. 1; and Chap. XI.
57. Eric Larabee, *Commander in Chief*, New York: Touchstone, 1987, p. 632.
58. *Ibid.*
59. E.g., Vietnam. Our efforts to combat aggressive communist expansion encountered international opposition both at the UN and in other international forums. Agreements such as Protocols I and II to the Geneva Conventions of

1949 and the UN Convention on Law of the Sea displayed a distinct anti-Western and anti-American bias, yet reflected the considered opinion and practice of many states. International law was no longer the sole province of the great powers and the “civilized” states, and traditional American leadership in international law began to fade.

60. SALT, START, ABM, START II, etc.

61. Nuclear weapons, and other weapons of mass destruction have been banned from space, although space has not been “demilitarized.” Treaty on Principles governing the Activities of States in the Exploration and Use of Outer Space Including the Moon and Other Celestial Bodies, Outer Space Treaty, 1967.

62. International Humanitarian Law essentially encompasses the principles enunciated in the Geneva Conventions of 1949 and Protocols I and II of 1977.

63. See *Joint Publication (JP) 3-08, Interagency Coordination During Joint Operations*, Vol. II, October 9, 1996, Appendix B, for a detailed listing of NGOs and countries in which they operate.

64. There are many examples. International support of the Palestinians is one; international efforts to remove white racist governments in Rhodesia and South Africa are another.

65. The Ottawa Treaty, formally known as the “Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and Their Destruction,” December 1997. The Ottawa process featured active participation by NGOs and international celebrities. Their priorities were humanitarian, not utilitarian in nature. See Krauss and Lacey, *supra*, note 36 at p. 81.

66. Preface to the Ottawa Treaty, *ibid.*

67. On September 17, 1997, President Clinton announced that the United States would develop alternatives to anti-personnel land mines by 2003, and would replace all “dumb” land mines in South Korea by 2006. The principle U.S. objection to the Ottawa Process was its failure to acknowledge U.S. fielding of “smart” or self-destructing land mines. The Conventional Weapons Convention of 1980 prohibits indiscriminate laying of mine fields and requires mapping, marking and removal, among other requirements. The Ottawa Process is unlikely to stop rogue states and revolutionary movements from indiscriminately laying and abandoning mines.

68. World Trade Organization sessions have attracted enormous demonstrations by diverse groups ranging from environmentalists to religious organizations to unrepentant communists.

69. See, e.g., George K. Walker, “Principles for Collective Humanitarian Intervention to Succor Other Countries’ Imperiled Indigenous Nationals,” *American University International Law Review*, Vol. 18, No. 1, p. 35; John C. Yoo, “The Dogs That Didn’t Bark: Why Were International Legal Scholars MIA on Kosovo?” *Chicago Journal of International Law*, Spring 2000, p. 149, available from [www.proquest.umi.com/pqdweb?TS](http://www.proquest.umi.com/pqdweb?TS).

70. *Supra*, note 19.

71. *Legality of the Threat or Use of Nuclear Weapons*, International Court of Justice, July 8, 1996, Declaration of President Bedjaoui at para. 13., quoted in Robert F. Turner, “Nuclear Weapons and the World Court: The ICJ’s Advisory Opinion and Its Significance for U.S. Strategic Doctrine,” *U.S. Naval War College International Law Studies*, Vol. 72, Michael N. Schmitt, ed., Newport, RI: Naval War College Press, 1998, 309, 312.

72. Kofi A. Annan, “Two Concepts of Sovereignty,” *The Economist*, September 18, 1999, p. 49.

73. See Thomas W. McShane, “Blame it on the Romans: Pax Americana and the Rule of Law,” *Parameters*, Vol. 32, Summer 2002, p. 57.

74. Bush, *National Security Strategy*, *supra*, note 5, Preface.

75. Kissinger, p. 47.



76. Mersheimer, *supra*, note 3.

77. G. John Ikenberry, *After Victory: Institutions, Strategic Restraint, and The Rebuilding of Order after Major Wars*, Princeton, NJ: Princeton University Press, p. 29.

78. *Ibid.*, p. 163. These institutions included the UN, NATO, The Marshall Plan, and the World Bank, among others.

79. *Ibid.*, p. 166.

80. *Ibid.*, p. 4.

81. *Ibid.*, p. 6.

82. Democide refers to the torture and killing of citizens by their own governments, generally despotic and totalitarian in form. One figure attributes 170 million deaths to democide over the course of the 20th century, a number two to four times greater than the total number killed in war. See John Norton Moore, "Opening Comments," *Military Law Review*, Vol. 7, No. 10, 1995, p. 149. Professor Moore, Director of the Center for National Security Law at the University of Virginia School of Law, made these comments in a symposium on "Nuremberg and the Rule of Law: A 50-year Verdict" at the U.S. Army Judge Advocate General's School, November 17, 1995.

83. Universal Jurisdiction is based upon the principle that certain crimes violate international interests and norms and that states may take action regardless of the location of the crime or the nationality of the perpetrator or the victim. At present international law recognizes universal jurisdiction for certain offenses, e.g., crimes against humanity, war crimes covered by the Geneva Conventions of 1949. The apprehension of Nazi war criminal Adolf Eichmann in Argentina and his trial in Israel in 1961 is often used to illustrate the concept. Others would extend the principle further, to cover domestic crimes that violate humanitarian principles not formally recognized in international law. See *The Princeton Principles on Universal Jurisdiction*, the Princeton Project on Universal Jurisdiction, Princeton, Program in Law and Public Affairs, 2001.

84. President Clinton signed the treaty on behalf of the United States on December 31, 2000. It was never sent to the Senate for ratification, and on May 6, 2002, the United States officially notified the UN of its intention not to become a party. See U.S. Department of State Press Statement containing the official notice, October 29, 2002, available from [www.state.gov/r/pa/prs/ps/2002/9968pf.htm](http://www.state.gov/r/pa/prs/ps/2002/9968pf.htm).

85. See, e.g., Convention on Offenses and Certain Other Acts Committed on Board Aircraft, September 14, 1963, 20 U.S.T. 2941; Convention for the Suppression of Unlawful Seizure of Aircraft, Hijacking, December 16, 1970, 22 U.S.T. 1641; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Sabotage, September 23, 1971, 24 U.S.T. 564.

86. The UNSC endorsed, although it did not direct, efforts to remove the Taliban and destroy al Qaeda bases in Afghanistan.

87. The UNSC did not support intervention in Iraq beyond weapons inspectors. With at least two of the permanent members, France and Russia, likely to veto any Security Council Resolution sanctioning invasion, the United States led a "coalition of the willing."

88. As Undersecretary of State Marc Grossman stated on May 6, 2002, as he explained why the United States withdrew from the ICC Treaty: "We believe that states, not international institutions are primarily responsible for ensuring justice in the international system." Remarks at the Center for Strategic and International Studies, distributed via email, May 6, 2002, available from [Listmgr@PD.STATE.GOV](mailto:Listmgr@PD.STATE.GOV).

89. This represents politics as much as law. UN Security Council sanction is not a prerequisite for intervention. Article 51 of the Charter permits state action in self defense and customary law provides an independent basis for action. The Kosovo precedent of international humanitarian intervention without Security Council approval also supports American intervention to remove the rogue regime of Saddam Hussein. International law scholars do not agree on these points.



## CHAPTER 19

### A NATIONALIST'S VIEW OF LAWFARE<sup>1</sup>

David G. Bolgiano

We have no eternal allies and we have no perpetual enemies. Our interests are eternal and perpetual, and those interests it is our duty to follow.

—Lord Palmerston, 1848

Following the September 11, 2001, terrorist attacks that claimed the lives of nearly 3,000 Americans, mostly noncombatants, 21-year old Lance Corporal Sam Damon enlisted in the U.S. Marine Corps out of an overwhelming sense of patriotism. The son of a Vietnam War veteran, his ancestors had fought in almost every major American conflict since his great grandfather arrived from Austria at Ellis Island in 1891. Risking their lives for the United States, the Constitution, and their fellow citizens was a matter of honor for the men of the Damon family. They had no idea, however, that within 10 years young Sam Damon would be fighting for his liberty as a pawn being sacrificed in the name of “globalism” before the international community. Having performed his duty with diligence and valor in the mountains of Afghanistan in the years 2008-09, he faced prosecution years later in an International Criminal Court for the crime of “aggression.”<sup>2</sup>

The preceding fictional account should bring chills to the core of any American service member or his family. Yet, despite such a chilling reality, many lawyers, scholars, and policymakers continue to march the United States down the road to full membership in the International Criminal Court (ICC). This article explores the darker sides of such a trek from both legal and strategic perspectives by examining three important fracture points that make joining the ICC irreconcilable with our constitutionally-based republican form of government: constitutionally protected individual rights; the American legal notion of the individual right of self-defense; and, the influence of *Sharia* law.

#### THE STRATEGIC PERSPECTIVE OF LAWFARE

When looking at the U.S. Army War College's Strategy Formulation Model<sup>3</sup> it is important to recognize the tension that exists between global interests and the core values and national interests of the United States. To the peril of America's national interests, and ultimately her core values, the legal discussion and concomitant risk assessment concerning this issue is monopolized by those favoring a globalist's approach.

If the United States is to retain both its primacy and core constitutional principles, it must flatly reject the call for “a law more readily seen as the reflection of a collective juridical conscience and as a response to the social necessities of States organized as a community.”<sup>4</sup> When it comes to defending its core values and beliefs, it must similarly reject the notions of former UN Secretary General Kofi Annan who stated:

State sovereignty, in its most basic sense, is being redefined – not least by the forces of globalization and international cooperation. States are now widely understood to be instruments at the service of their peoples, and not vice versa.<sup>5</sup>

On certain matters, such as international protocols on freedom of navigation or protection of intellectual property rights, international law helps foster free trade and collective prosperity. On other issues, where agreements would fundamentally undermine the principles and protections of our Constitution, the United States may have to simply agree to disagree with the international community. Once clearly stated, both adversaries and allies will know our intent and resolve as to defending these principles and issues.

These issues are important to strategic leaders now more than ever due to the increasing demands brought about by both the positive and negative effects of globalization. In a project called “Seven Revolutions,” the Global Strategy Institute at the Center for Strategic and International Studies (CSIS) identified and analyzed the key policy challenges that policymakers, business figures, and other leaders will face out to the year 2025. In an effort to promote strategic thinking on the long-term trends that too few leaders take the time to consider, CSIS identified seven areas of change it expects to be most revolutionary and relevant:

- Population
- Resource management and environmental stewardship
- Technological innovation and diffusion
- The development and dissemination of information and knowledge
- Economic integration
- The nature and mode of conflict
- The challenge of governance.<sup>6</sup>

It is this last area—the challenge of governance—that most tempts many policymakers and lawyers to militate for a stronger international rule of law. Moreover, those so inclined often see traditional Westphalian nation-states as impediments to the management and development of future global governance. While the future problems identified by CSIS can be positively affected by an international legal structure focused on free trade, commerce, and other communal problems, efforts to expand the authority of international law over the individual should be vigorously resisted.

Contrary to the beliefs of those propounding a more internationalist view of the legal world order, a nationally-focused strategy will result in a not so fragile peace and a more secure world marketplace for commerce, ideas, and freedom. This is because America’s course, rooted in constitutionally-derived principles of individual freedom, will be less susceptible to constantly shifting vicissitudes of international collectivism at the base political level. Moreover, if the United States steers clear of the entanglement of international laws that are increasingly focused on the internal policies of sovereign states, she will be less likely to be drawn into errant, misguided acts of interventionism.

A number of military judge advocates and legal scholars have taken up the internationalists’ call by wrongly believing that international law (as defined by the collective states) demands obedience and trumps allegiance to our Constitution and country.

The ICC should be seen as an integral part of the current globalizing tendency in which nations seek to exercise their sovereignty not unilaterally but through cooperative arrangements and rules. This also includes rules to stimulate and regulate the global economy, protect the environment, control the proliferation of weapons of mass destruction, and curb international criminal activity. The United States has long been a leading exponent, and will be a prime beneficiary, of this growing international framework of cooperation.<sup>7</sup>

There is a certain seductive and glamorous element to rubbing elbows with diverse intellectuals from near and afar—

After 37 years of practicing public international law in general, and dealing with the law of war in particular, I have had the opportunity to form close working relationships with numerous foreign colleagues. In meeting with these individuals in international forums post-9/11, the following scenario has become all too familiar. Spying me across the room, they rush forward—spilling coffee and tea in the process—and exclaim: “What are you people doing? What are you Americans thinking?”<sup>8</sup>

—but one must never lose sight of the fact that our system of constitutional government is the *sine qua non* of why we fight. As so eloquently stated by William F. Buckley, Jr., “Materialistic democracy beckons every man to make himself a king; republican citizenship incites every man to be a knight.”<sup>9</sup> Therefore, it may first behoove all military officers to recall their simple oath of office:

I, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign or domestic, that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservations or purpose of evasion; and that I will well and faithfully discharge the duties of the office upon which I am about to enter; So help me God.<sup>10</sup>

This oath, as opposed to the enlisted oath, does not swear to “obey the orders of the President of the United States, the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice.” There remains only the obligation to defend the Constitution against all enemies, foreign and domestic.

Accordingly, when striving to craft, direct, or influence policy or strategy, a collective, universal rule of law should not be the ultimate goal. This is especially true when the agreed upon universal rule would diminish constitutionally-based protections of any American, especially our service members. George Washington warned in his farewell address:

The nation which indulges towards another a habitual hatred or a habitual fondness is in some degree a slave. It is a slave to its animosity or to its affection, either of which is sufficient to lead it astray from its duty and its interest. Antipathy in one nation against another disposes each more readily to offer insult and injury, to lay hold of slight causes of umbrage, and to be haughty and intractable, when accidental or trifling occasions of dispute occur. . . . So likewise, a passionate attachment of one nation for another produces a variety of evils. Sympathy for the favorite nation, facilitating the illusion of an imaginary common interest in cases where no real common interest exists, and infusing into one the enmities of the other, betrays the former into a participation in the quarrels and wars of the latter without adequate inducement or justification.<sup>11</sup>

It would behoove America to keep Washington’s warning in mind as it evaluates its relations with the collective global community in the context of the ICC. By examining the U.S. commitment to the ICC in light of three specific areas—constitutionally protected individual rights; the American legal notion of the individual right of self-defense; and, the influence of *Sharia* law—the diminution of America’s constitutionally-derived values is more clearly observed. Such a diminution creates an unacceptable fracture of the very social contract—the Constitution—that binds Americans to their government.

Looking at the ICC construct through the lens of our constitutional republican form of government, one sees a court empowered and steered not by a firm rule of law but rather by a collaborative process indentured to the will of the organization rather than a true rule of law designed to protect the individual. As a constitutional republic, America is premised upon the primacy of the individual, not the republic. This is a peculiarly American notion foreign to most other nations, but especially those oligarchies, monarchies, and theocracies comprising the ICC.



## CONSTITUTIONALLY PROTECTED INDIVIDUAL RIGHTS

As explained by International Law scholar and Soldier, Michael L. Smidt:

... there are some significant domestic constitutional issues that should be examined by others. First, the Constitution grants the sole authority to try U.S. citizens to the federal and state courts. Second, certain Bill of Rights protections will not be present at the ICC. Third, certain procedural and structural protection found in U.S. courts may be absent as well.<sup>12</sup>

In essence, the ICC fails to provide basic 4th Amendment protections against unlawful searches and seizures<sup>13</sup> and the 6th Amendment right to a speedy trial.<sup>14</sup> The right of confrontation, also found under the 6th Amendment, may be drastically impaired due to the ICC's extremely relaxed rules on admitting hearsay evidence. Moreover, there are no procedural safeguards in place to provide those charged in the ICC with adequate and competent representation:

The promise of international criminal law, however, is being eroded by a failure to recognize that a critical underpinning of this new legal order must be the rights of defendants and how to institutionalize these rights so that there is equality of arms between the defense and the prosecution.<sup>15</sup>

Depriving America's volunteer warriors of constitutional protections that are routinely extended to even the lowliest of our criminal elements would be ironic if not tragic. A most chilling scenario for any Soldier, Sailor, Airman or Marine would be to survive a life and death struggle of close personal combat only to be caught in the cross-hairs of a politically motivated ICC adjudging them not by constitutionally-derived standards of reasonableness as enunciated by the Supreme Court of the United States, but rather by whatever expedient criminal law formula is in vogue. For instance, the ICC has yet to define the fourth crime in its statute alongside war crimes, crimes against humanity and genocide: the crime of "aggression."

I think I can anticipate what will constitute a crime of "aggression" in the eyes of this Court: it will be a crime when the United States of America takes any military action to defend its national interests, unless the U.S. first seeks and receives the permission of the United Nations.<sup>16</sup>

Aggression, or a crime against peace, has been recognized as an international crime since the post-World War II war crimes trials. However, the crime is controversial and difficult to define.<sup>17</sup> In Mogadishu, U.N. military spokesman, Major David Stockwell stated, "everyone on the ground in that vicinity was a combatant, because they meant to do us harm. In an ambush, there are no sidelines and no spectators."<sup>18</sup>

From Marine Lance Corporal Justin Sharratt's exoneration from criminal culpability in the aftermath of the November 19, 2005, killings of alleged noncombatants in Haditha, Iraq (after many in the international community and even a U.S. Congressman had already convicted him in the court of public opinion) to the near constant post-shooting assessments occurring in both Iraq and Afghanistan today, America's warriors are already under constant threat of criminal indictment.<sup>19</sup> It is only the American constitutionally-based system of justice that protects those warriors from being wrongfully imprisoned for perceived mistakes in judgment. This protection would evaporate under many international law constructs. Why then should the United States expose its uniformed service members (or civilians and contractors) serving overseas to such nebulous legal constructs?

## The Individual Right of Self-Defense.

To understand the issue one first needs to understand the robust protections afforded our warriors by both the Constitution and American case law surrounding the use of force in self-defense. Throughout the mission spectrum, from seemingly benign humanitarian assistance missions to hard fought counterinsurgency operations, most use of force decisions at the individual level in the “three block war”<sup>20</sup> environment are predicated on the right of self-defense.

To appreciate this inherent right of self-defense as recognized and applied in the American system of justice, it is worth examining its historical roots. Historically, the right of self-defense has been viewed not as a statutory or legal right, but as a divine natural right permanently bestowed upon all persons by virtue of existence.

William Blackstone, the father of English Common law,<sup>21</sup> wrote, “[s]elf defense is justly called the primary law of nature, so it is not, neither can it be in fact, taken away by the laws of society.”<sup>22</sup> “The right of having and using arms for self-preservation and defense” is one of the five auxiliary rights people possess to “protect and maintain ‘the three great and primary rights’ personal security, personal liberty, and private property.”<sup>23</sup>

The Founding Fathers used English common law as a platform to build the U.S. Constitution. English common law long recognized an individual’s right to self-defense as a natural and divine right.<sup>24</sup> The drafters were heavily influenced by the works of William Blackstone, and drafted the core of the Constitution to protect life, liberty, and property. Self-defense was a part of the right to personal security, as one could not be secure in his safety without the right to defend against those wishing to deprive him of it.<sup>25</sup> Mirroring Blackstone’s statements, Samuel Adams wrote: “[a]mong the natural rights of the Colonists are these: First, a right to life; Secondly, to liberty; Thirdly, to property; together with the right to support and defend them in the best manner they can.”<sup>26</sup> The Constitution reflects Blackstone’s influence in the Bill of Rights, which explicitly protects our rights to life, liberty, and property, and freedom from governmental intrusion. Inherent in all of this is the individual right of self-defense.

Such constitutional protections and values are at odds with an internationalist’s view of the world order and role of governance: one need only look at the invasive European Union rules to see such displays of bureaucratic intrusiveness:

There is the banning of local Punch and Judy shows in case they encourage domestic violence; insulting committee chairmen by labeling them “chair” - a piece of furniture; changing words like “man” or “black” in case they cause offence; banning competitive sports days so that there are no winners or losers and stopping parents taking photographs of their children in case they are thought to be pedophiles (sic).<sup>27</sup>

As a nation, the United States may bend its principles by treaty to affect a perceived economic gain. However, on fundamental concerns America must never submit to the will of the collective international masses when discerning what constitutes a justifiable act of self-defense. This is because collective thought often reflects collective ignorance as evidenced by the restrictions imposed by the United Nations (UN) that have plagued General Bipin Rawat, an Indian Officer who commands UN forces in Democratic Republic of Congo.

Under their rules of engagement, Gen Rawat’s forces are always denied the advantage of surprise. They must shout verbal warnings and fire shots in the air before they can engage any rebels. Their operations are not allowed to risk a single civilian casualty.<sup>28</sup>

One need not travel to the hinterlands of the Dark Continent to find such anomalies in the international community. In 1993, in Northern Ireland's Belfast Crown Court – In the heart of English Common Law – British Paratrooper Lance Corporal Lee Clegg was convicted of murdering a passenger in a stolen vehicle driven by her friend at high rate of speed through a British Army checkpoint. Clegg was serving with the Parachute Regiment's 3rd Battalion when he and other members of a 14-man army patrol fired at the car after warnings to stop were ignored. Clegg fired a total of four shots at the car after he believed the vehicle presented an imminent threat of death or serious bodily injury to himself or innocent others. Unbelievably, in the clear vision and safety of 20-20 hindsight, the trial court found that three of the four bullets Clegg fired were justifiable, because he thought the car was being driven at a colleague, but convicted him because the fourth shot was fired when the vehicle had gone past the patrol.

Eventually, Clegg was cleared on appeal.

The period of time which separated the firing of the first three shots from the fourth (if it was fired into the side of the car) was minimal. The circumstances in which the final shot was fired could not be divorced from the other shots. This is true, in my opinion, whether the last shot was fired at the side or at the rear of the car. The motivation of the accused in firing the fourth shot cannot realistically be segregated from what happened immediately before it.<sup>29</sup>

But, not before he spent time in prison as a convicted felon. Had Clegg, like Lance Corporal Justin Sharratt, had the benefit of the American constitutional protections and rule of law, such folly and heartache would have been avoided.

Across the mission spectrum, from humanitarian relief operations to force-on-force conflict, it is abundantly clear that America can justly and lawfully support uses of force in self-defense. This extends to the rules as they apply to the individual Soldier, Sailor, Airman, or Marine.

In matters of individual or unit self-defense, as spelled out in the unclassified portions of the Standing Rules of Engagement (SROE) and Standing Rules for the Use of Force (SRUF) for U.S. Forces, service members possess an inherent right of self-defense predicated solely on a reasonable response to a demonstrated hostile intent or hostile act (intended to inflict death or serious bodily injury to self or friendly forces).<sup>30</sup> This SROE principle is often at odds with the ROE of coalition partners, but such dichotomies never result in mission compromise. It is easy to imagine, however, how such dichotomies could result in errant, politically-motivated prosecutions at the ICC.

The procedures and scrutiny that our forces face under U.S. law and practice is onerous enough. While it is necessary to ensure that service members follow the rules and use force appropriately, the perception and reality is that America itself often subjects our forces to the wrong legal standard and improperly-focused investigations. Inevitably, this results in hesitation and mistrust. The following October 2007 communiqué from a young Army noncommissioned officer (NCO) in Iraq highlights this folly:

There is nothing to come of this except making my Soldiers scared to pull the trigger and that's all that this is doing. They see me getting questioned everyday over something as dumb as firing back when fired upon. God only knows what they would be trying to do if we accidentally killed one [of] the 'wrong' people.<sup>31</sup>

As recently stated by Major General Gary L. Harrell,<sup>32</sup> USA (Ret.), former Deputy Commanding General, U.S. Army Special Operations Command, "The only tactical solution when confronted

with an imminent threat of death or serious bodily injury is to immediately respond with overwhelming force and continue to apply that force until the threat is over.” Too often, commanders and judge advocates with little or no true close quarters combat experience, attempt to substitute their own notions of reasonableness for the warrior on the scene. The Supreme Court of the United States has consistently recognized this as folly for our domestic police forces:

... such reasonableness must be judged from the perspective of a reasonable Officer on the scene, rather than with the 20/20 vision of hindsight . . . the calculus of reasonableness must embody allowance for the fact that police Officers are often forced to make split-second judgments about the amount of force that is necessary in a particular situation in circumstances that are tense, uncertain, and rapidly evolving.<sup>33</sup>

In situations that often mirror those encountered by civilian law enforcement, Soldiers must be able make split-second deadly force decisions. Why, then, should the United States subject its warriors to the folly of a foreign rule of law and system of justice that *would* judge with the 20/20 vision of hindsight with the added element of political animus?

### **Influence of Sharia Law.**

When speaking of the U.S. Supreme Court, Noah Feldman cogently noted:

In these all-important processes, as always in the history of the court, people are everything. Justices vary widely in temperament, ideology, intelligence and preparedness. The best justices can be really very impressive; the worst ones truly disastrous.<sup>34</sup>

One could safely treble the potential for damage wrought by an ICC comprised of a conglomeration of judges assembled according to its Charter. Article 36 of the ICC states, *inter alia*, that the selection of judges take into account the need for the representation of the principal legal systems of the world and equitable geographical representation. With the global Muslim population standing at 1.57 billion, meaning that nearly 1 in 4 people in the world practice Islam, the influence and impact of *Sharia* law on such a Court must not be ignored.<sup>35</sup>

Legal scholar Alan Dershowitz pointed out how *Sharia* law impacts the world’s rule of law while commenting on an incident that transpired in September 2009:

Last week, Israeli Defense Minister Ehud Barak—the former Dovish Prime Minister who offered the Palestinians a state on all of the Gaza Strip, 95% of the West Bank and a capital in East Jerusalem—was arrested when he set foot in Great Britain. (He was quickly released on grounds of diplomatic immunity because he was an official visitor.) And now Moshe Yaalon, an Israeli government minister and former Army Chief of Staff, was forced to cancel a trip he was scheduled to make in London on behalf of a charity, for fear that he too would be arrested.

The charges against these two distinguished public officials are that they committed war crimes against Palestinian terrorists and civilians. Yaalon was accused in connection with the 2002 targeted killing of Salah Shehadeh, a notorious terrorist who was responsible for the deaths of hundreds of Israeli civilians and was planning the murders of hundreds of more. As a result of faulty intelligence the rocket that killed Shehadeh also killed several civilians who were nearby, including members of his own family. Barak is being accused of war crimes in connection with Israel’s recent military effort to stop rockets from being fired at its civilians from the Gaza Strip.<sup>36</sup>

This real world example shows it is not a specious stretch to assert that politics will trump the rule of law in many instances. Nor is it inconceivable to envision how the rule of law as applied by



the ICC will be usurped by groups applying legal constructs not only foreign but fundamentally at odds with the principles enunciated by the Founding Fathers.

One need not go to radical or extremist Jihadi websites to find potential for conflict between the rule of law as understood by western civilization and that set forth in Islamic society. From the English language translation of the Saudi-published *Interpretation of the Meanings of the Noble Qur'an in the English Language*, one can read that *jihad*—holy fighting in Allah's Cause—is a requirement of Islam:

The Verses of the Qur'an and the Sunnah (the Prophet's legal ways, orders) exhort Muslims greatly to take part in Jihad and have made quite clear its rewards, and praised greatly those who perform Jihad (the holy fighting in Allah's Cause) and explained to them various kinds of honours which they will receive from their Lord (Allah). This is because they - Mujahidin are Allah's troops. Allah will establish His religion (Islam), through them (Mujahidin). He will repel the might of His enemies, and through them He will protect Islam and guard the religion safely. And it is they (Mujahidin) who fight against the enemies of Allah in order that the worship should be all for Allah (Alone and not for any other deity) and that the Word of Allah (i.e. none has the right to be worshipped but Allah and His religion Islam) should be superior.<sup>37</sup>

The 1990 Cairo Declaration (the "Universal Declaration of Human Rights in Islam") was drafted and subsequently ratified by all the Muslim member nations of the Organization of the Islamic Conference (OIC). This declaration was an Islamic response to the post-World War II UN Universal Declaration of Human Rights (UDHR) of 1948. The OIC represents the entire Muslim Ummah (or global community of individual Muslims) and is the largest single voting bloc in the United Nations (UN).<sup>38</sup>

Both the preamble and concluding articles of the Cairo Declaration make plain that it is designed to supersede Western conceptions of human rights as enunciated in diverse bodies of law such as the U.S. Bill of Rights and the UDHR.<sup>39</sup> The opening of the preamble to the Cairo Declaration repeats a Koranic injunction affirming Islamic supremacism, (Koran 3:110; "You are the *best nation* ever brought forth to men...you believe in *Allah*"), and states, "Reaffirming the civilizing and historical role of the Islamic Ummah *which Allah made the best nation. . .*"<sup>40</sup> The preamble continues,

Believing that fundamental rights and universal freedoms in Islam are an integral part of the Islamic religion and that no one as a matter of principle has the right to suspend them in whole or in part or violate or ignore them in as much as they are binding divine commandments, which are contained in the Revealed Books of God and were sent through the last of His Prophets to complete the preceding divine messages thereby making their observance an act of worship and their neglect or violation an abominable sin, and accordingly every person is individually responsible—and the Ummah collectively responsible—for their safeguard.<sup>41</sup>

The Cairo Declaration also maintains that "All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'a" that "The Islamic Shari'a is the *only* source of reference for the explanation or clarification to any of the articles of this Declaration."<sup>42</sup>

The Cairo Declaration's reference to the *Ummah* is not generally understood by Western tradition:

A concept that has no a real equivalent in the West, discussions of the Ummah in Islamic terms ends up seeming too opaque to most Western sensibilities. Either way, decisionmakers and analysts are prone to discount Islamic concepts they do not understand by characterizing them in cultural mythology or utopian terms. As with the associated concept of the caliphate, the Ummah is a currently existing reality



given specific definition in Islamic law and reflected in the national constitutions of the Muslim countries surveyed. In terms of either the greater Arab Nation or the Muslim Ummah, one needs look no further than currently existing Ummah-level organizations like the Arab League, the Supreme Islamic Counsel, the Organization of the Islamic Conference (OIC) or the Muslim World League – all of which have demonstrated an ability to speak with authority.<sup>43</sup>

At the core of the radical front of Islam, the hard-core elite of al Qaeda and the Muslim Brotherhood recognize the irreconcilability of Islam with a constitutional republic. Sayyid Qutb, the father of the Muslim Brotherhood, wrote a 30-volume commentary on the Quran, later condensed to a short manifesto called *Milestones Along the Way*. In it Qutb expounds that the entire Islamic world had left true Islam, and that he and his co-believers were the only ones who understood Islam. He felt the target of the struggle should be the United States and Britain, whose notions of democracy directly contradicted his definition of *tawhid* (the Islamic notion of the Supremacy and oneness of God). Interestingly, Qutb was among those executed in one of Egyptian President Naser's crack-downs in the 1960s, but his brother Mohammed Qutb fled to Saudi Arabia and became a university teacher; among his pupils was Osama bin Laden.<sup>44</sup>

If the United States willingly enters into the legal corpus or sphere with the global community, it should recognize that the other parties to the agreement will not be playing with the same spirit of ecumenism. While some would argue that we should join the ICC in order to be able to shape it – “Those who claim global leadership within the system have the greatest responsibility to ensure the system works.”<sup>45</sup> – the cold reality may be that certain strongly held beliefs within the global community are simply incompatible with the development and implementation of one corpus of law. Elements of *Sharia* law provide a shining example of such incompatibility.

## CONCLUSION

American Exceptionalism is only as dead as America allows it to become. Alexis de Tocqueville's acknowledgement that the United States holds a special place among nations was fundamentally predicated upon its constitutional precepts that allowed for a country of diverse immigrants to thrive under a democratic republic. Diminishing or ceding such values solely to achieve international consensus for consensus sake is not in America's collective or individual best interest. Doing so also ignores the sage warning of Walter Lippmann: “A policy is bound to fail which deliberately violates our pledges and our principles, our treaties and our laws. The American conscience is a reality.” The Senate may cede certain sovereign immunities when ratifying treaties with foreign governments, but it should not cede the constitutional liberties and protections of our individual citizens, especially those who volunteer to fight in far off lands.

In very real and personal terms, no American, especially those in the military, should be militating for the United States to expose her young Lance Corporal Damons to the prospect of being hauled before a hostile, politically-inspired international court to answer allegations that he violated nebulously defined crimes. This is especially true if such a warrior would have to proceed in a system absent the full protections of his constitutionally guaranteed rights.

## ENDNOTES - CHAPTER 19

1. Charles J. Dunlap, Jr., "Lawfare Today," *Yale Journal of International Affairs*, Winter 2008, p. 146. Major General Dunlap, while not inventing the term, "lawfare," is certainly the author most cited and credited with expounding on its meaning and relevance in the making of modern strategy. He recently redefined its meaning as "the strategy of using—or misusing—law as a substitute for traditional military means to achieve an operational objective."

2. Lieutenant Colonel Kyle Siegel, Connecticut Air National Guard, was the genius behind this fictional construct. The Sam Damon name, of course, is a literary reference to Anton Myers's military classic, *Once an Eagle*.

3. For the U.S. Army War College Strategy Formulation Model, see Appendix 1.

4. Thomas W. McShane, "International law and the New World Order: Redefining Sovereignty," J. Boone Bartholomees, Jr., ed., *U.S. Army War College Guide to National Security Issues, Volume II: National Security Policy and Strategy*, Carlisle, PA: Strategic Studies Institute, U.S. Army War College, June 2008, p. 221, quoting, *Legality of the Threat or Use of Nuclear Weapons*, International Court of Justice, July 8, 1996, Declaration of President Bedjaoui at para. 13., quoted in Robert F. Turner, "Nuclear Weapons and the World Court: The ICJ's Advisory Opinion and Its Significance for U.S. Strategic Doctrine," Michael N. Schmitt, ed., *U.S. Naval War College International Law Studies*, Vol. 72, Annapolis, MD: Naval War College Press, 1998, pp. 309, 312.

5. Kofi A. Annan, "Two Concepts of Sovereignty," *The Economist*, September 18, 1999, p. 49.

6. Global Strategic Institute, "Seven Revolutions," Washington, DC: Center for Strategic and International Studies, available from [csis.org/program/seven-revolutions](http://csis.org/program/seven-revolutions).

7. Sarah Sewall, "The International Criminal Court," Carr Center for Human Rights Policy Working Paper T-00-02, Cambridge, MA: Harvard Kennedy School, 2000, p. 7.

8. David E. Graham, "A Long, Hard Fall from the Pedestal," *Joint Force Quarterly*, Issue 54, 3d quarter 2009, p. 30.

9. William F. Buckley, Jr., *Gratitude: Reflections on What We Owe to Our Country*, New York: Random House, 1990, p. xxi.

10. 5 United States Code § 3331. See also Department of the Army (DA) Form 71, July 1999.

11. Washington's Farewell Address 1796, cited from *The Avalon Project: Documents in Law, History and Diplomacy*, New Haven, CT: Yale Law School's Lillian Goldman Law Library, 2008, available from [avalon.law.yale.edu/](http://avalon.law.yale.edu/).

12. Michael L. Smidt, "The International Criminal Court: An Effective Means of Deterrence?" *Military Law Review*, Vol. 167, 2001, p. 219, citing U.S. CONST. art III, § 1; and Cara Levy Rodriguez, "Slaying the Monster: Why the United States Should Not Support the Rome Treaty," 14 AM. U. INT'L. REV. 805, p. 815.

13. U.S. CONST. Amendment IV. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

14. U.S. CONST. Amendment VI. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

15. David Stoelting, book review of *International Criminal Law and Human Rights*, by Claire de Than and Edwin Shorts, London, UK: Sweet and Maxwell, 2003, 550 pages, in *Human Rights Quarterly*, Vol. 27, No. 4, 2005, pp. 1365-1367.

16. Smidt, *supra*, at p. 203, quoting Hearing on the Creation of an International Criminal Court Before the Subcommittee on International Operations of the Committee on Foreign Relations, 105th Cong. 60, 1998, statement of Senator Jesse Helms.

17. Smidt, *supra*, at p. 203, citing Walter Gary Sharp, Sr., "Revoking an Aggressor's License to Kill Military Forces Serving the United Nations: Making Deterrence Personal," 22 Maryland Journal of International and Trade, Vol. 1, 1998. The "planning, preparation, initiation, or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing," is the crime of aggression.

18. Smidt, *supra*, at p. 212, citing Mark Husban, "Spectators Pay High Price in Somalia Theater," *London Times Observer*, September 12, 1993, p. 12.

19. Congressman John Murtha stated, "There was no firefight. There was no IED that killed these innocent people. Our troops overreacted because of the pressure on them, and they killed innocent civilians in cold blood." NBC Nightly News, May 17, 2006. See Civil Complaint, "Wuterich v. Murtha," United States District Court for the District of Columbia, p. 20.

20. Charles C. Krulak, "The Strategic Corporal: Leadership in the Three Block War," *Marines Magazine*, January 1999.

21. Charles L. Cantrell, "The Right to Bear Arms: A Reply," 53 Wis. B. Bull. 21-26, October 1980.

22. William Blackstone, *Commentaries on the Laws of England*, (1766), Book 3, The Avalon Project, New Haven, CT: Yale Law School, p. 141.

23. *Ibid.*

24. 1 Hawkins, *Pleas of the Crown*, Ch. 28, §14, 7th Ed., 1795.

25. 3 Blackstone, p. 141.

26. Constitution Society, "Samuel Adams, The Rights of Colonists, November 20, 1772," available from [www.constitution.org/bcp/right\\_col.htm](http://www.constitution.org/bcp/right_col.htm).

27. John Midgley, "Warning: The European Union and Political Correctness," London, UK: The Bruges Group, available from [www.brugesgroup.com/mediacentre/comment.live?article=8963](http://www.brugesgroup.com/mediacentre/comment.live?article=8963).

28. David Blair, "UN commander says hands are tied in Congo," *The Daily Telegraph*, London, November 17, 2008.

29. "The Queen v. Lee William Clegg," In the Crown Court of Northern Ireland, November 3, 1999.

30. Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3121.01B. Standing Rules of Engagement (SROE), June 13, 2005. It is important to note that the authority to use force in self-defense does not originate in the SROE, but is merely codified for U.S. forces there.

31. Undisclosed Noncommissioned Officer (NCO) e-mail to the author, October 12, 2007. The NCO's duties included providing squad-level escort duties to civilian members of diverse inter-agency task forces in the Iraqi theater.

32. Major General Harrell made these comments in 2006 in a video-taped interview for the Navy's Center for Security Forces as it was developing its own Judgment-based Engagement Training for its Riverine Forces. General Harrell formerly commanded Special Operations Command Central during Operations ENDURING FREEDOM and IRAQI FREEDOM and 1st Special Forces Operational Detachment-Delta (Delta Force) after serving there at the Company, Troop, and Squadron levels of commands.

33. *Graham v. Connor*, 490 U.S. 386, 1989.

34. Noah Feldman, "When Judges Makes Foreign Policy," *New York Times, Sunday Magazine*, September 28, 2008.
35. Erik Gorski, "Report: Global Muslim Population Hits 1.57 Billion," The Associated Press, October 8, 2009.
36. Alan M. Dershowitz, "The Hypocrisy of Universal Jurisdiction," *Hudson New York*, an on-line feature of Hudson Institute, October 6, 2009. Mr. Dershowitz is the Felix Frankfurter Professor of Law, Harvard Law School.
37. Stephen C. Coughlin, "To Our Great Detriment: Ignoring What Extremists Say About Jihad," Unclassified Thesis submitted in support of Masters of Science in Strategic Intelligence Degree, National Defense Intelligence College, July 2007, p. 10; quoting Sheikh 'Abdullah bin Muhammad bin Humaid, Chief Justice of Saudi Arabia, Appendix III – "The Call to Jihad (Holy Fighting for Allah in the Qur'an Statement)," located in *Interpretation of the Meanings of the Noble Qur'an in the English Language: A Summarized Version of At-Tabari; Al-Qurtubi, and Ibn Kathir with Comments from Sahih Al-Bukhari*, trans. and commentary by Dr. Muhammad Taqi-ud-Din Al-Hilali, and Dr. Muhammad Muhsin Khan, DARUSSALAM: Riyadh, Saudi Arabia, 1995, pp. 963-964.
38. According to its own web site ([www.oic-oci.org/](http://www.oic-oci.org/)), "the Organization of the Islamic Conference (OIC) is the second largest intergovernmental organization after the United Nations which has membership of 57 states spread over four continents. The Organization is the collective voice of the Muslim world and ensuring to safeguard and protect the interests of the Muslim world in the spirit of promoting international peace and harmony among various people of the world."
39. The Cairo Declaration on Human Rights in Islam, adopted and issued at the 19th Islamic Conference of Foreign Ministers in Cairo on August 5, 1990. "Reaffirming the civilizing and historical role of the Islamic Ummah which God made the best nation that has given mankind a universal and well-balanced civilization in which harmony is established between this life and the hereafter and knowledge is combined with faith; and the role that this Ummah should play to guide a humanity confused by competing trends and ideologies and to provide solutions to the chronic problems of this materialistic civilization.
40. *Ibid.*, Preamble.
41. *Ibid.*
42. *Ibid.*, Arts. 24 and 25.
43. Coughlin, p. 79.
44. Mary Habeck, "Teaching the Long War and Jihadism," an essay based on her presentation at "U.S. Foreign Policy and the Modern Middle East," a Summer Institute for Teachers sponsored by The American Institute for History Education and The Wachman Center of the Foreign Policy Research Institute, held June 25-27, 2009, in Philadelphia. Copyright Foreign Policy Research Institute, available from [www.fpri.org/](http://www.fpri.org/).
45. McShane; *ibid.*, p. 211.

## CHAPTER 20

### THE UNITED STATES AND THE INTERNATIONAL CRIMINAL COURT

**Thomas W. McShane**

Our greatest strength . . . is not our military might . . . [o]ur greatest strength is the rightness of our cause. For generations, Americans have stood tall for the Rule of Law and in support of human rights . . . that's why other civilized nations look to U.S. for leadership and then follow that lead. If we lose that, we will have lost our greatest weapon.<sup>1</sup>

– Admiral John D. Hutson (Judge Advocate General, U.S. Navy, Ret.)  
in testimony to the Senate Armed Service Committee, July 14, 2005.

The American experience illustrates the paradox of international law. Americans have been instrumental in the development and evolution of international law for more than a century.<sup>2</sup> It is no accident that the United Nations (UN) was created in San Francisco in 1945 and is housed in New York City. Americans played key roles in revising the laws of war and expanding protections for all in the 1949 Geneva Conventions. Throughout the 20th century, Americans supported the use of international tribunals as a means to bring war criminals to justice and to demonstrate the power and rule of law. The Nuremberg Tribunal was a landmark in international law. Despite these achievements, segments of the American public regard international law as something sinister – a foreign conspiracy to illegitimately restrain the exercise of American sovereignty and the use of American power to pursue national interests. This was demonstrated in 1919 by Woodrow Wilson's ambitious but doomed efforts to persuade the Senate to ratify the Versailles treaty creating the League of Nations. Similar fears of infringement on American sovereignty still color public discussions about the UN, the International Criminal Court (ICC), and treaties banning the employment of land mines and cluster munitions. For a time, distrust of foreign entanglements even delayed the establishment of the North Atlantic Treaty Organization (NATO), until bipartisan congressional leadership made the treaty a national priority.<sup>3</sup> Yet history reveals that international organizations, particularly NATO, have been instrumental in helping to achieve American foreign policy objectives for over 60 years.

The ICC is the latest example of this paradox. The ICC represents the most comprehensive and successful effort thus far to create a standing international court to deal with international crimes. On July 17, 1998, 120 nations signed an international agreement in Rome establishing the ICC (also referred to as the Rome Statute).<sup>4</sup> The United States was heavily involved in all aspects of the conference, from drafting treaty articles to negotiations over specific treaty language, and American representatives made significant contributions to the rules of procedure and evidence. Because of disagreement over several key provisions of the treaty,<sup>5</sup> the U.S. delegation eventually parted company with key allies such as Canada, Australia, and most of NATO, and refused to sign the Rome Statute. The United States joined a small group of dissenting states that included China, Libya, Iraq, Israel, Qatar, and Yemen.<sup>6</sup> The ICC commenced operations at The Hague on July 1, 2002, following ratification of the treaty by the 60th signatory state. The ICC continues operations today without American participation or support. As of this writing, 139 states have signed the Treaty, and 110 of those have ratified it, becoming parties to the Treaty and the Court. The United States continues to encounter criticism and second and third order effects as a result of its failure to join the ICC.<sup>7</sup>



The U.S. objections to the ICC are both legal and political in nature. The ICC on its face promises to deter or punish rogue states and corrupt leaders who commit war crimes and murder their own citizens, a goal we share. Yet many Americans believe that international (or “foreign”) law and courts violate American concepts of sovereignty and justice.<sup>8</sup> This standoff has lasted for a decade, and it is time to revisit the ICC. Contemporary challenges of terrorism and piracy and failure of the U.S. Military Commission at Guantanamo, Cuba, to successfully prosecute terrorist suspects (and the prospect of trying them in U.S. federal courts) indicate that we should consider other possible solutions that further U.S. interests. The ICC might be one of those solutions.

This chapter will examine the ICC in the context of international norms regarding the rule of law. In other words, how does the international community promote stability, security, predictability and accountability while combating genocide, war crimes, terrorism, piracy, and the like? What are the standards? What role should the ICC play in all this? This chapter will trace the development of international courts from the end of World War I to creation of the ICC, reviewing their composition, characteristics, and relative strengths and weaknesses. It will compare and contrast alternative means of bringing international criminals to justice, including domestic courts, military commissions and international tribunals. It will examine key events leading up to the signing of the Rome Statute (Treaty) establishing the ICC in 1998 and analyze key provisions of the treaty. Lastly, it will discuss American reservations, the effects of nonparticipation, and prospects for accommodation.

## THE DEVELOPMENT OF INTERNATIONAL COURTS<sup>9</sup>

### Crime and Punishment: the Search for International Justice.

We need to briefly define law international law. Law provides a foundation for order, stability, and predictability. Reduced to its basics, law prescribes norms of societal behavior, or as Blackstone says in his *Commentaries*, “a rule of civil conduct, commanding what is right, and prohibiting what is wrong.”<sup>10</sup> Laws are prescribed by the state, but they are usually based on widely-shared religious, cultural and moral values. As such, the law depends on voluntary compliance, or more precisely on social pressure to conform. Sanctions are imposed in cases where individuals will not or cannot comply.

The population at large broadly accepts most laws because they reflect societal values; laws that do not reflect widely-held moral beliefs or serve no constructive societal purpose are often ignored, and prove difficult to enforce.<sup>11</sup> Law is evolutionary, not stagnant. Laws change constantly and considerably over time to address societal needs. This reasoning underlies municipal or domestic law, but does it apply to international law? Does international law promote stability and predictability, and if it does, can it do so as effectively as domestic law?

International law has been defined as “the body of rules and principles of action which are binding upon civilized states in their relations with one another.”<sup>12</sup> Critics question international law’s Eurocentric origins (states that share Western ideals and norms) and its effectiveness in today’s global society. Nonetheless, international law plays an essential role in global trade, commerce, banking, politics, public health, and law enforcement. International treaties regulate sea and air routes, privileges and immunities, and claims for loss or damage,<sup>13</sup> and establish standards for the sciences, health, and the environment.<sup>14</sup> By tradition, international law regulates the conduct of states, not individuals. The international system is predicated on the sovereignty of individual states.

International law is both “public” and “private.” The Law of War is a branch of public international law regulating armed conflict between states and within states suffering from religious,

tribal, or civil conflict. The Law of War, often referred to as International Humanitarian Law,<sup>15</sup> was the foundation for the tribunals at Nuremberg, Germany, and Tokyo, Japan, following World War II, and later for the international tribunals organized to adjudicate war crimes and crimes against humanity in the former Yugoslavia, Rwanda, and Sierra Leone.<sup>16</sup> These efforts represent a dramatic change of events – asserting international legal norms over individuals. The ICC takes international justice to a new level; the ICC is a permanent, standing tribunal exercising global jurisdiction.<sup>17</sup>

In most respects international law resembles municipal law: it provides a foundation for order, is founded on religious, cultural and moral values, ensures stability and predictability, and enjoys general acceptance among states. International law protects rights of states and individuals alike. In one way, however, the international system differs from municipal systems. It provides no sanction for noncompliance, no penalty imposed by a higher authority. International Courts have long suffered from deficiencies of jurisdiction, justice, and enforcement. Hence, international law is often criticized for its lack of predictability and its inability to impose judgment on violators, whether states or individuals.<sup>18</sup> These problems stem from lack of consensus and political will in several areas: inability to define crimes, inability to agree on rules and procedures, and inability to obtain jurisdiction over potential defendants.

The ICC addresses these concerns. It can seize and try individuals who violate international treaties, laws of war, and human rights in cases where states fail to bring them to justice. The Court's jurisdiction is much broader than any previous international court has enjoyed. The ICC has the authority, though perhaps not the means, to enforce its writ virtually anywhere – a concept referred to as “Universal Jurisdiction.”<sup>19</sup>

### **Universal Jurisdiction in Theory and Practice.**

Universal jurisdiction seeks to regulate and punish behavior considered to be outside civilized norms. It allows any state to enforce such norms anytime and anyplace in accordance with treaty, custom, or practice. Universal jurisdiction is not a new idea, but an important one if states and international organizations want to enforce international law.

Universal jurisdiction proved itself effective in the 18th and 19th centuries in suppressing piracy. The community of nations regarded pirates as dangerous, stateless criminals, answering to no law, and they were bad for business. Therefore any state with a sufficiently strong navy could deal with pirates as it deemed appropriate – death, capture, trial, imprisonment, or summary execution. Neither domestic nor international law afforded pirates any meaningful protection.<sup>20</sup> Western nations largely eliminated piracy in the 19th century without any formal international agreement because the British, the French, and other nations dedicated their considerable naval power to the problem.<sup>21</sup> The United States played a small but significant part in this fight by dealing with the Barbary pirates, providing the fledgling Navy and Marine Corps legendary heroes and feats of daring for the ages.<sup>22</sup> Similarly, when Great Britain outlawed slave trading in 1807,<sup>23</sup> the Royal Navy led an aggressive campaign against those operating slave ships, disrupting and effectively ending the international slave trade. Both piracy and a modern form of the slave trade continue to make headlines today, but the ICC as currently constituted lacks jurisdiction over either crime. We will revisit this rather glaring oversight later.

At the end of World War I, the United States led a movement to try the Kaiser and other German military and civilian leaders for war crimes arising from their role in initiating hostilities and for atrocities committed against noncombatants by the German Army. President Woodrow Wilson wanted to convene an international tribunal to try these defendants, but the Allies could not agree, and the Germans would not cooperate. The Allies eventually settled for a few German

domestic trials, resulting in a handful of convictions and relatively mild sentences.<sup>24</sup> The Kaiser lived out his life in exile in the Netherlands. Woodrow Wilson's vision for a League of Nations with its own court, the Permanent Court of International Justice, did materialize, but Wilson could not persuade Americans to join it.<sup>25</sup> The League and its Court eventually proved ineffectual in preventing the creation, arming, and expansion of the fascist and communist dictatorships, and could not prevent World War II.<sup>26</sup>

Contemporary application of universal jurisdiction traces its origin to the War Crimes Trials following World War II and the Geneva Conventions of 1949.<sup>27</sup> The Nuremberg tribunals charged high-ranking government and military leaders with crimes against peace, war crimes, and crimes against humanity. The tribunal characterized the defendants as international criminals, although the major trials were held in Germany by virtue of the Allied occupation. Since then, various Nazi war criminals have been seized in many countries. Most were returned to states such as France or Germany where their crimes occurred, but in 1960 Israeli operatives captured Nazi fugitive Adolf Eichmann in South America and returned him for trial in Israel in 1961 in a clear exercise of universal jurisdiction.<sup>28</sup>

Modern examples of universal jurisdiction include a series of international agreements outlawing hijacking and terrorism dating from the 1960s.<sup>29</sup> Almost all those captured for these crimes have been tried in various state or national courts because no international forum was available. The Torture Convention of 1984<sup>30</sup> and the UN-Sanctioned Tribunals for Yugoslavia and Rwanda specifically provide for universal jurisdiction.<sup>31</sup> Individual states may assert universal jurisdiction based on domestic laws or constitutions. Belgium and Spain, among others, have charged third party nationals with violating Spanish law for crimes of war or crimes against humanity occurring on other continents, though not without controversy.<sup>32</sup> Whether it is wise or practical to have both international and national judicial systems asserting universal jurisdiction is a subject worthy of debate, but it is outside the scope of this chapter. It certainly affects the political equation.<sup>33</sup>

The United States asserts extraterritorial jurisdiction over individuals who commit crimes against American citizens or property anywhere in the world based on U.S. Federal Law. Although similar in some respects to universal jurisdiction, extraterritorial jurisdiction is a fundamentally different concept. A good example of extraterritorial jurisdiction is the trial and incarceration in the United States of former Panamanian President Manuel Noriega for complicity in the American drug trade. Other states were not obligated to treat Noriega as an international criminal, but were obligated to comply with traditional criminal extradition treaties.<sup>34</sup> The United States uses both extraterritorial jurisdiction and universal jurisdiction in its efforts to prosecute terrorists; extraterritorial jurisdiction for attacks in the United States or on Americans abroad, and universal jurisdiction for war crimes and other terrorist acts wherever committed.

In practice, universal jurisdiction has proven more effective in combating piracy and slavery than in bringing terrorists to justice, but there are successful examples of states tracking down and convicting international terrorists. NATO nations such as Germany and Italy successfully fought the Red Brigade terrorists operating in Europe in the 1970s and 1980s and brought them to justice in European national courts. The United States successfully prosecuted Islamic extremists who conspired to blow up the World Trade Center in 1993. The United States has been largely successful in capturing and detaining terrorists since September 11, 2001, but less successful in trying and convicting them. Trials at Guantanamo Bay, Cuba, by military tribunal have run aground on political and legal shoals. A handful of terrorists have been tried for federal crimes in U.S. domestic courts, and several high-profile cases have been successfully prosecuted.<sup>35</sup> Other states including Canada, the United Kingdom, Spain, Germany, Saudi Arabia, Pakistan, and Indonesia have successfully prosecuted terrorists in domestic courts.<sup>36</sup> Most, but not all, of those convicted were

captured in the territorial jurisdiction of the states where they committed their crimes. Some were extradited under existing treaty obligations.

The prime motivation for creating the ICC and applying universal jurisdiction is the ability to capture and try state leaders for war crimes or crimes against their own people. This process uses international law to prevent or punish crimes committed by governments against their citizens, but works by targeting individuals, particularly heads of state and other culpable senior leaders. The strategic goal is a legal framework that promotes stability and rule of law and deters criminal conduct, yet retains the ability to prosecute individuals or groups that are not deterred. Over the course of the 20th century, the percentage of noncombatants killed, wounded, and murdered in conflicts has risen steadily.<sup>37</sup> Additional millions have been victims of calculated violence by their own government, and these crimes would fall within the purview of the ICC.<sup>38</sup> The list of perpetrators includes Hitler's Germany, Stalin's Soviet Union, Pol Pot's Cambodia, Pinochet of Chile, successive Governments of China and North Korea, and the former Hutu Government of Rwanda. In this respect, a targeted legal tool like an ICC indictment may be at least as effective in addressing genocide, war crimes, etc., as a UN Security Council Resolution or the threat of military intervention. War, by comparison, is a blunt instrument with unpredictable second and third-order effects, as Clausewitz reminds us.<sup>39</sup>

## THE INTERNATIONAL CRIMINAL COURT

### **The Rome Statute and the Limits of American Diplomacy.**

The 20th century featured three major world wars, two hot, one cold, and the clash of powerful ideologies such as liberalism, communism, and fascism. The best and the worst of human nature were on public display, often at the same time. Tentative steps to form world government were taken, but neither the League of Nations nor the United Nations were designed to govern effectively. International Courts, including the Permanent Court of International Justice (affiliated with the League of Nations) and its successor, the International Court of Justice (of the UN), could resolve legal disputes between states but lacked jurisdiction over individuals.<sup>40</sup> In the end, states were left with diplomacy, economic power, and military force to deter aggression and restore peace, but no means to adjudicate guilt.

The Allied tribunals that tried German and Japanese civilians and military personnel at Nuremberg and Tokyo after World War II succeeded for the first time in prosecuting individual criminals in an international forum. Nuremberg also represented the idea that it was possible to enforce individual rights against state encroachment. After the trials of the major war criminals at Nuremberg and Tokyo, thousands of lower-ranking officials and soldiers were tried and convicted in subsidiary tribunals run by the United States, the United Kingdom, France, and the Soviet Union. Still, despite overwhelming evidence of guilt and scrupulous attention to due process, these tribunals have never escaped criticism as exemplifying "victor's justice."

The creation of the UN in 1945 and the proceedings of the postwar tribunals were watershed events. They altered the rules regarding a state's right to wage war and the way it treats its citizens. Together they announced to the world that the international community would not tolerate aggressive war, and it would hold individuals who commit war crimes and crimes against humanity personally responsible for their acts.

The Cold War prevented the UN and the international community from establishing an effective international court. For obvious reasons—political disagreement over ideology, terminology, and procedural hurdles—no agreement could be reached. The Soviet Union and China wielded veto powers over any UN action initiated by the West to create an international criminal court.



In the 1990s, after the Cold War and the dissolution of the Soviet Union, the UN enjoyed more success in creating international tribunals to deal with abuses in the former Yugoslavia, Rwanda, Sierra Leone, and even Cambodia. Yet these courts, like Nuremburg, were ad hoc creations, dealing with only one specific state or region at a time. Creating a new court every time it might become necessary was neither an effective nor efficient remedy. The obvious solution was a standing criminal court with the authority to assert its writ and jurisdiction worldwide.<sup>41</sup>

The UN International Law Commission began drafting provisions for an ICC as early as 1949, but efforts faltered because of the Cold War stalemate and because the Commission could not agree on a definition of crimes, particularly genocide. Subsequent proposals surfaced in 1989, 1993, and 1994. The work of the Preparatory Committee for the Establishment of a permanent International Criminal Court, begun in 1995, formed the basis for the meeting in Rome in 1998.<sup>42</sup>

The United States, contrary to popular opinion, was favorably predisposed toward an International Court when the Rome Conference began in 1998. As a leading proponent of international criminal trials, including the Nuremburg, Tokyo, Yugoslavia, and Rwanda tribunals, the United States had a vested interest in a standing court. It would be more accessible, probably more efficient, and in the long run much less expensive than a succession of ad hoc courts.<sup>43</sup>

Discussions in Rome over crimes that would be brought before the court focused on the most well-established international crimes, those that traced their origins to the Nuremburg prosecutions: genocide, crimes against humanity, and war crimes. These became Article 6 (Genocide), Article 7 (Crimes against Humanity) and Article 8 (War Crimes) of the eventual treaty. The fourth major crime at the center of deliberations, the crime of Aggression, resembles the Nuremburg charge of "Crimes against Peace,"<sup>44</sup> but the representatives could not agree on a definition. Article 5, paragraph 2 states: "The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. . . ."<sup>45</sup> While the failure to define aggression caused the American negotiators some concern, the debate over the Court's jurisdiction became the principle source of conflict.

The jurisdictional debates focused on two alternative models for asserting ICC jurisdiction. The first required that all cases originate in the United Nations Security Council (UNSC) the second permitted states or individuals to present evidence to ICC prosecutors for investigation and, if substantiated, prosecution.

The United States preferred to have jurisdiction originate with the UNSC, where it exercised veto power. Unfortunately, other permanent Security Council members, including Russia and China, also possess veto authority. The outcome would protect U.S. citizens, but reduce the likelihood of effectively responding to genocide, crimes against humanity, and war crimes. It would not significantly alter the status quo. U.S. negotiators sought an option that would protect American service members, deployed in some 100 countries, from politically-motivated prosecution for acts that would otherwise fall within the law of armed conflict.<sup>46</sup>

The majority of the states represented in Rome preferred an independent court not controlled by the Security Council that would afford even small states an equal say in pursuing prosecution.<sup>47</sup> Over the course of the Conference, these states clarified their positions and solidified their resolve for an independent ICC – independent of the UN, although loosely affiliated with it, and independent of the great powers. The Conference went on to construct a model favoring universal jurisdiction. Any state party to the treaty could bring a complaint for ICC investigation against any crime committed on its territory. Hence, states that did not sign the treaty might find their citizens subject to ICC prosecution if they committed a crime in the territory of a signatory state.<sup>48</sup>

The representatives in Rome realized that universal jurisdiction did not automatically provide a sufficient or practical basis for capturing and trying offenders. Their goal was to promote states



to act responsibly and prosecute their own criminals, not to usurp state jurisdiction as a matter of routine. The ICC was to be a “safety net” to complement national courts.<sup>49</sup> The theoretically unlimited powers of states to refer cases to the ICC Prosecutor under Articles 12 and 13 of the Statute were deliberately limited by Article 17.<sup>50</sup> Article 17 makes “inadmissible” any potential case that is investigated or tried by a state having “jurisdiction over it.”<sup>51</sup> To prevent sham or half-hearted investigations and prosecutions from rendering a case inadmissible, Article 17 excludes from its protection instances where the “State is unwilling or unable genuinely to carry out the investigation or prosecution[.]”<sup>52</sup> Under Article 18, the ICC prosecutor must give notice of any proposed investigation to states exercising jurisdiction over the case; the states then have 30 days to initiate their own investigation. Any state investigation begun under Article 18 automatically renders the case inadmissible before the ICC for a minimum of 6 months, and in practice longer given procedural requirements. Because the United States pursues war crimes and other offenses committed by U.S. service members under the Uniform Code of Military Justice (UCMJ),<sup>53</sup> Articles 17 and 18 provide substantial immunity from ICC prosecution. These articles provide significantly less protection, however, to American political leaders, such as the President or Secretary of Defense, who do not fall under the UCMJ.

Despite the additional protections of Articles 17 and 18, the U.S. delegation continued to oppose the Treaty unless the Conference provided specific safeguards to U.S. nationals. Others perceive this position as a demand for immunity for Americans. Those states already inclined to support the ICC, including most major U.S. allies, became even more entrenched in their determination not to concede to U.S. demands and even more committed to adopting the Treaty. The final vote on July 17, 1998, was a lopsided 120-7.<sup>54</sup>

### **The ICC meets the U.S. Congress.**

The American negotiators in Rome supported Department of Defense (DoD) positions at the expense of those advocated by the Department of State (DoS)<sup>55</sup>, but in reality the DoD positions represented the prevailing view in the U.S. Senate. The Senate must ratify most international agreements before they become binding as part of the “Supreme Law of the Land.”<sup>56</sup> The leading opponent of the Treaty in the Senate, Jesse Helms of North Carolina, distrusted both the UN and international law in general. The American public tends to share his opinion both then and now.<sup>57</sup> In 1998, American forces had been actively engaged in Peacekeeping and Peace Enforcement missions for almost a decade, including Somalia, Haiti, and Bosnia, and narrowly missed participating in international missions to Rwanda and East Timor. U.S. Soldiers, Sailors, Marines, and Airmen were stationed in hot spots around the world, and Helms portrayed the treaty as surrendering U.S. sovereignty and abandoning American Soldiers to foreign prosecution in violation of the U.S. Constitution.<sup>58</sup>

President Clinton personally supported U.S. participation in the ICC, and the United States officially signed the ICC Treaty on December 31, 2000, the last day it was open for signature. Clinton was a sufficiently shrewd politician to realize the Treaty would never be confirmed by the Senate, and it languished in limbo until President Bush directed U.S. Undersecretary of State John R. Bolton to deliver a note to the UN on May 6, 2002, announcing U.S. intentions to withdraw from the Treaty, in effect “un-signing” it.<sup>59</sup>

Congress reacted forcefully to the Rome Statute. As an additional roadblock to American participation in the ICC, the U.S. Service-members’ Protection Act (usually referred to as the American Service-members’ Protection Act of 2001, or ASPA, from an earlier version of the bill), was passed into law and signed by President Bush on August 3, 2002.<sup>60</sup> The ASPA required the United States to withdraw military assistance from countries belonging to the ICC and restricted U.S. participation

in UN operations unless the United States received immunity from prosecution before the ICC. This began a chain-reaction of events.

After the ICC began operations on July 1, 2002, the UNSC, at the behest of the United States and acting under Article 16 of the Statute, requested the Court to exempt from prosecution for a period of 12 months “former officials or personnel from a contributing State not a party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation” unless the Security Council requested otherwise.<sup>61</sup> This resolution, UNSC Resolution (UNSCR) 1422, effective July 1, 2002, was designed to ensure continued American participation in UN and coalition military operations around the world, including Afghanistan and later Iraq. The UNSC renewed the request for a second year effective July 1, 2003. In the face of increasing UN opposition in 2004, the United States declined to seek further extensions. In the interim, the State Department engaged in negotiations with friends and allies to create Article 98 Agreements, under Article 98 of the ICC Statute. Article 98 states that no request to surrender anyone to the ICC would proceed “which would require the requested State to act inconsistently with its obligations under international law pursuant to which the consent of a sending State is required to surrender a person of that State to the Court[.]”<sup>62</sup> The ASPA made U.S. participation in UN Peacekeeping and Peace Enforcement Operations contingent on either a grant of immunity by the UNSC or the existence of an agreement with the host country under Article 98.<sup>63</sup> This kept State Department and DoD representatives who had to negotiate these agreements extremely busy. The United States negotiated its 100th Article 98 agreement on May 2, 2005.<sup>64</sup>

### **What’s Wrong with the ICC?**

The debate over the ICC continues, at least periodically, in defense and international security circles. A recent edition of the *Joint Force Quarterly*<sup>65</sup> contains articles debating the pros and cons of American participation in the ICC. Arguments against the ICC may be summarized as follows: first, the ICC does not comply with U.S. constitutional and procedural safeguards; second, participation in the ICC would represent an improper surrender of U.S. sovereignty to an unaccountable international body, and closely connected to this is U.S. opposition to ICC claims of jurisdiction over individuals of states that did not sign the Treaty; third, the ICC usurps the primary role of the UNSC in maintaining international peace and security, further weakening the UN as an international institution. As Colonel James P. Terry, USMC (Ret), former Deputy Assistant Secretary in the Department of State and former Legal Counsel to the Chairman of the Joint Chief of Staff writes, “The ICC represents a step forward in the evolution of a justice process addressing more than national interests and prerogatives. But a great deal more remains to be done before the United States should ratify the Rome Statute.”<sup>66</sup>

Sovereignty allows states to act in their best interests without foreign interference. States need not join international organizations, although enforcing collective security requires international cooperation. Globalization promises prosperity and freedom, but disease, poverty, drought, and rising birthrates cripples many states and promotes conflict. Bad governance aggravates the problem. As a practical matter, enforcing stability and protecting human rights depends on the good will and determination of powerful sovereign states. In this regard, the United States has become the indispensable power<sup>67</sup> out of necessity; international order and security of the global “commons” depends on the security umbrella provided by the U.S. military. The U.S. military, Terry and others argue, must be free to act unhindered by the threat of prosecution at the discretion of international judges who work for a court the United States does not recognize.<sup>68</sup>

A brief look at the American-led war on terrorism illustrates the nature of the challenge facing American policymakers and provides insights as to why so many of them do not believe the ICC

further U.S. national security. The United States leads international efforts to locate, isolate and destroy international terrorist groups with global reach. These groups threaten international order and prosperity. A great many states (at least in private) support and encourage American efforts to eradicate this plague, but the international system is not well-suited for the struggle.<sup>69</sup> There is no international agreement on terrorism, and none that even attempts to define the term. Several treaties address individual terrorist acts – hijacking, murder, money laundering, illegal crossing of borders, etc. – but their solutions require state action: apprehension, extradition, and prosecution of individual terrorists in national courts.<sup>70</sup> The ICC, many feel, is nothing more than a distraction that adds nothing to the struggle, especially since the ICC’s list of crimes excludes terrorism.

To date, therefore, the international response to terrorism depends on American leadership, moral and physical. In Afghanistan a multilateral effort still enjoys broad international support;<sup>71</sup> in Iraq, the anticipated coalition never materialized, and the intervention remains controversial.<sup>72</sup> The search for order and the rule of law means different things to different states. America may lead, but others need not follow. Building international institutions takes patience, skill, and faith.

The tension between sovereignty and international cooperation raises a question of how best to pursue what G. John Ikenberry refers to as an international “constitutional order.”<sup>73</sup> While most states agree in theory with the need for international institutions such as the UN and the need for order and rule of law among states, international law must contend with the “friction” of sovereignty.<sup>74</sup> This uneasy relationship is likely to continue with a rising China and reenergized Russia aggressively pursuing national interests while cynically honoring UN formalities. Sovereignty remains a powerful force in international politics and the foundation for both the UN and the ICC. Individuals and human rights groups have the power to contest actions by sovereign states or even international organizations that disproportionately impact civilians. An example is the case against NATO military actions in Yugoslavia in 1999, actions initiated for purely humanitarian purposes. The complaint to the European Court of Human Rights alleged that NATO illegally used military force to target a television station in Belgrade.<sup>75</sup> Hundreds of complaints have been made to the ICC against U.S. military actions in Iraq and Afghanistan since the ICC began operations in 2002.<sup>76</sup> From these events, one might conclude that the international order is chaotic, and that the ICC has yet to demonstrate its relevance or effectiveness.

Other events, including indictment by the ICC of the President of Sudan over alleged crimes in Darfur<sup>77</sup> and the ICC Review Conference scheduled for 2010, may help define how effectively the ICC will operate in the future. Many critics of the current treaty expect the Review Conference to consider changes that may make the ICC more acceptable to the United States and other reluctant partners.<sup>78</sup>

### **Why is the ICC a Good Idea?**

The traditional, positivist approach to international law is expressed in the S.S. *Lotus* case: “Restrictions upon the independence of States cannot therefore be presumed.”<sup>79</sup> This approach is challenged by a new paradigm: “a law more readily seen as the reflection of a collective juridical conscience and as a response to the social necessities of States organized as a community.”<sup>80</sup> In the words of former UN Secretary General Kofi Annan:

State sovereignty, in its most basic sense, is being redefined – not least by the forces of globalization and international cooperation. States are now widely understood to be instruments at the service of their peoples, and not vice versa.<sup>81</sup>

The concept that individuals have rights enforceable against states has strategic implications, but it is not revolutionary. Kofi Annan's language is reminiscent of Thomas Jefferson's in the Declaration of Independence: "That to secure these rights, Governments are instituted among Men, deriving their just power from the consent of the governed." As the philosophers of the Enlightenment told us, states exist to promote and protect individual rights and freedoms. These principles, unfortunately, are not universally recognized. The challenge today is what action the world community should take in cases where states deliberately and systematically violate the human rights of their citizens.<sup>82</sup> Global threats require global solutions. The ICC was created to help address these concerns, but the Court's ability to succeed in a volatile, uncertain, chaotic, and ambiguous world is uncertain.

The ICC is an old idea but a young institution. Almost 80 years in the making, from Versailles in 1919 to the Rome Statute in 1998, it reflects a new consensus on international justice and the rule of law. Recognizing that sovereignty protected rulers and their agents from accountability for crimes ranging from aggressive war to democide,<sup>83</sup> the ICC provides a permanent forum for prosecution when state courts cannot or will not act. As of this writing, 139 nations have signed the treaty, and 110 have ratified it. The Court commenced operations on July 1, 2002, and has initiated a number of prosecutions while investigating others.<sup>84</sup> Its potential impact is enormous, even without U.S. participation.<sup>85</sup>

Can the ICC fulfill its promise? The Rome Statute was adopted in 1998, in the aftermath of the Cold War, when Western powers felt they could impose law and order on failed states and renegade governments in Somalia, Rwanda, Kosovo, and East Timor. Setbacks in Somalia, lack of will in Rwanda, and modest results in Bosnia, Kosovo, and East Timor failed to discourage the interventionists. And while the International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) achieved modest success, a permanent court seemed more promising than a string of ad hoc tribunals.<sup>86</sup>

Arguments supporting U.S. participation in the ICC feature the following points. First, all international agreements signed and ratified by the U.S. cede some amount of national sovereignty in order to achieve other national interests; treaties once ratified, like the U.S. Constitution itself, become the "Supreme Law of the Land." Second, the ICC is a court of last resort and the protections of Article 17, known as Complementarity, virtually ensure that U.S. Soldiers will not be investigated and tried by the ICC because it is U.S. policy to investigate and try war crimes. U.S. civilians too are subject to federal prosecution for war crimes under Federal Criminal Law.<sup>87</sup> Third, U.S. credibility and its dedication to the rule of law have been damaged by failure to participate in the ICC. As Commander Bryan A. Hoyt, USN, writes, "At the strategic level, U.S. policy on the ICC separates the United States from the overwhelming majority of the world's modern societies and is further isolating America from its partners and potential partners."<sup>88</sup>

Both sides concede that the creation of a standing international court that serves as a safety valve or court of last resort is a positive development. The U.S. Government has supported international courts since the end of World War I. It serves little purpose for the United States and its allies to place their soldiers at risk to impose order and dispossess outlaw regimes if the perpetrators can simply seek asylum in a safe place and avoid extradition and reckoning. The ICC is designed to eliminate (or at least greatly reduce) safe havens for dictators and tyrants.

ICC advocates argue that military power alone cannot maintain stability indefinitely, and that unilateral effort will eventually fail.<sup>89</sup> The Congress of Vienna in 1815, which created the "Concert of Europe," was a collective effort but predicated on the sovereignty of the great powers. It took enormous cooperation to maintain international stability for 100 years. Even the British Empire at its height in the 19th century realized its limitations and sought a favorable balance of power. In



his book *After Victory*, John Ikenberry analyzed the rebuilding of international order after major wars. He says the diplomats of 1815 created a “constitutional order,” which he describes as “political orders organized around agreed-upon legal and political institutions that operate to allocate rights and limit the exercise of power.”<sup>90</sup> Drawing on British and American constitutional models, most would agree that a strong and independent judicial system would be a desirable element of any such “constitutional order.”

Ikenberry’s concept of “constitutional order” helps to explain how the current international system evolved after World War II, and how it operates today. At its heart was the sharing of its vast power by the United States in 1945. The United States created an extensive system of multilateral institutions, including alliances that bound the United States and its primary partners in Europe together.<sup>91</sup> The Cold War accelerated this process, but it did not create it.<sup>92</sup> As history proves, these international institutions have performed as designed. It should come as no surprise, therefore, that international organizations and politics restrain the choices and actions of sovereign states. From this perspective, international order displays many of the characteristics of municipal order.<sup>93</sup> Ikenberry explains: “if institutions – wielded by democracies – play a restraining role . . . it is possible to argue that international orders under particular circumstances can indeed exhibit constitutional characteristics.”<sup>94</sup>

### **Can the United States and the ICC Reconcile Their Differences?**

U.S. reservations to the ICC sometimes seem irreconcilable, but the two sides may not be as far apart as it appears. American policymakers are not opposed to some of the advantages the ICC offers, such as global reach and international legitimacy, but the devil, as always, is in the details. Key sticking points include protections for U.S. nationals, ICC jurisdiction over nonparties, prosecutorial discretion to bring charges without UNSC review, and the civil law orientation of the Court. A brief discussion follows.

It is unlikely the ICC will concede blanket immunity or special exemptions in return for American participation. The UNSC asked the ICC to refrain from prosecuting officials or personnel from UN contributing states not parties to the ICC (read United States) in 2002 and 2003,<sup>95</sup> but this proved embarrassing for both the United States and the UN. The United States has now negotiated bilateral Article 98 agreements with most allies and partners, and no longer needs blanket immunity. The best deal the United States might be able to secure for its membership in the ICC is the possibility of a UNSC override of an ICC indictment. An alternative resolution might include modifying the ICC Treaty to prevent prosecution of third-party nationals without the consent of their governments.

Either of these changes would reduce the likelihood of ICC prosecution in the unlikely event that the ICC Prosecutor indicted an American and both the ICC pre-trial judges and the appellate panel voted to uphold the Prosecutor’s decision.<sup>96</sup> They address the practical problem of asserting international jurisdiction over individuals and alleviate concerns about sovereignty. The civil law orientation of the ICC, however, will remain a sticking point for Americans who cannot conceive of handing over U.S. citizens for prosecution by any court that does not recognize U.S. constitutional safeguards.

Most of the world uses the civil law model, which is code-based as opposed to the precedent-based Anglo-Saxon common law model.<sup>97</sup> Civil law courts do not use juries for criminal cases, and instead use “prosecutors” who are frequently judges serving as prosecutors in trials before other judges. Despite safeguards including free defense counsel for indigent defendants, presumption of innocence, proof of guilt beyond a reasonable doubt, and evidentiary protections found in U.S. courts, the ICC is still a “foreign” court. Prosecutors can appeal acquittals, and the death penalty is



prohibited. No one under 18 may be tried. Adherents of American “Exceptionalism” will not readily accept that any foreign system of justice can adequately protect American freedoms. In truth, Americans are routinely tried in foreign courts for crimes they commit abroad, and even U.S. military members are subject to host-nation prosecution for off-duty crimes in foreign communities.<sup>98</sup>

Piracy and terrorism were not major issues in 1998, but the United States should ask the ICC to add them to its list of crimes. An agreement on piracy is not beyond reach. The danger and impact of piracy are well-known, and every state that benefits from global trade has a stake in reducing or eliminating the practice. The problem is finite and a concerted effort is likely to achieve results. A coalition of states is already working to deter and defeat pirates off the Somalia coast, but one persistent problem has been what to do with captured pirates. Disregarding for a moment that any state that wishes can invoke universal jurisdiction today and prosecute pirates, the ICC provides an ideal international forum for prosecution with little downside.

Terrorism remains the elephant in the room that no one wants to notice. We have treaties that address terrorism’s symptoms, but none that deals with the act of terrorism itself. If the ICC were to make terrorism a crime, it would open up new possibilities for attacking terrorist sanctuaries, funding, and support streams. It may not be possible to reach an agreement on terrorism that satisfies everyone,<sup>99</sup> but any solution that enables the ICC to try terrorists and incarcerate them for the duration of their sentence will symbolize international resolve.<sup>100</sup> Too many Guantanamo detainees released by the United States to their home countries under international pressure have subsequently been turned loose and implicated in terrorist activity. The current system obviously does not work.

## CONCLUSION

Key players both in and out of the U.S. Government need to revive national debate over the ICC; in particular what conditions would be necessary to ensure U.S. participation. Reasoned debate about the ICC and possible benefits of membership is a rare commodity at present. Most of those who express a viewpoint on the ICC do so as a matter of faith, reinforced by commentators on both ends of the political spectrum. It is likely most have never read the Rome Statute or the Court’s Rules of Procedure and Evidence, drawing their information from secondary sources instead. This is true even in the military, which has a greater interest than most in the progress of the ICC. A study by the Henry L. Stimson Center characterized this “knowledge gap:” “Most interviewed within the military – outside of the experts in the legal and academic communities – had only a rudimentary understanding of how the Court is designed to operate.”<sup>101</sup> Debate over the ICC between 1998 and 2002 was commonplace, but ended rather abruptly after the Court began operations in July of 2002. The American media appears to have lost interest after President Bush’s note to the UN in May, 2002, effectively withdrawing from the Treaty.

Recent events surrounding the war on terrorism, notably the pending closure of the U.S. confinement facility at Guantanamo Bay and the transfer and trial of dangerous terrorists in federal courts, should generate discussion of alternative forums, including the ICC. Piracy off the coast of Somalia has had a significant impact on global trade and inspired an international debate over what to do with captured pirates. But at present the ICC lacks jurisdiction over either terrorism or piracy. These omissions need to be addressed before the ICC Assembly of State Members that usually meets annually, as well as other changes that might improve the Court’s visibility and credibility.<sup>102</sup> The United States will need to actively pursue the inclusion of these agenda items through its allies and partners, since the United States is not a member of the ICC. The ICC ought to be interested in securing U.S. participation (and other nonparticipants such as India and China) for financial reasons at least. Obviously, politicians, the public, and the Departments of Justice,

State, and Defense will disagree over what form those changes should take and what baseline protections must exist, but agreement is possible.

Is the ICC vital to American interests? The answer is probably not. American policy pursues the same goals as the ICC but on a parallel track. On the other hand, there is a cost to nonparticipation that is not quantifiable, but is real. It is embarrassing that an American Secretary of Defense might be unable to travel to Europe for fear of arrest for war crimes.<sup>103</sup> Of the 192 UN member states, 139 have signed the Rome Statute in spite of U.S. objections. The United States will have to make concessions if it wishes to join, but the risk of American Soldiers being prosecuted by the ICC has been greatly exaggerated. Sustaining the rule of law and accountability for crimes on a global scale is indispensable. Too many states at present cannot or will not bring perpetrators to justice, while other states grant them sanctuary. The world can do better. The ICC can help, and U.S. leadership would make the ICC more effective. It is important enough to study and debate in a broader national dialogue.

## ENDNOTES - CHAPTER 20

1. Admiral John D. Hutson, Judge Advocate General, U.S. Navy, Ret., testimony to the Senate Armed Services Committee, July 14, 2005.

2. U.S. War Department, General Orders (GO) No. 100, Instructions for the Government of the Armies of the United States in the Field, April 24, 1863. The first comprehensive summary and codification of the humanitarian rules governing land warfare. Frequently called the "Lieber Code" after its author, Dr. Francis Lieber, G.O. No. 100, furnished inspiration for the Geneva Conventions of 1864 and 1929 and the Hague Conventions of 1899 and 1907.

3. See Stanley A. Weiss, "Lott's Choice: It's Henry Cabot Lodge or Arthur Vandenberg," *New York Times*, April 21, 1997, available from [www.nytimes.com/1997/04/21/opinion/](http://www.nytimes.com/1997/04/21/opinion/); State Department History of NATO, available from [www.state.gov/r/pg/ho/time/cwr/102468.htm](http://www.state.gov/r/pg/ho/time/cwr/102468.htm).

4. Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9 (1998), UN Diplomatic conference of Plenipotentiaries on the Establishment of an International Criminal Court, July 17, 1998, reprinted in 37 I.L.M. 998, 1998.

5. Controversial provisions include jurisdiction over nationals of states that do not join the ICC. We will discuss this provision and others in greater detail later in this chapter.

6. Yemen and Israel later signed the treaty, as did the United States, but none of them ratified it, and are not participants in the Court.

7. See Bill Richardson, "A New Realism," *Foreign Affairs*, January/February 2008, available from [www.foreignaffairs.com](http://www.foreignaffairs.com); Kenneth Roth, "The Case for Universal Jurisdiction," originally published in *Foreign Affairs*, September/October, 2001, reprinted in Global Policy Forum, available from [www.globalpolicy.org/intljustice/general/2001/roth08.htm](http://www.globalpolicy.org/intljustice/general/2001/roth08.htm).

8. These include constitutional rights such as trial by jury, and American independence in international affairs. We'll examine them in more detail later in the chapter.

9. Portions of this section are taken from the author's chapter in an earlier edition in this series entitled "International Law and the New World Order: Redefining Sovereignty," Chapter 16, J. Boone Bartholomees, Jr., ed., *U.S. Army War College Guide to National Security Issues, Volume II: National Security Policy and Strategy*, (3rd Ed.), Carlisle, PA: Strategic Studies Institute, U.S. Army War College, 2008.

10. William Blackstone, *Commentaries on the Laws of England*, Book One, Chapter One, New Haven, CT: The Avalon Project, Yale Law School, p. 118, available from [avalon.law.yale.edu/18th\\_century/blackstone\\_bk1ch1.asp](http://avalon.law.yale.edu/18th_century/blackstone_bk1ch1.asp).

11. E.g., the prohibition of alcohol, U.S. Constitution, Amendment 18, repealed by the 21st Amendment 14 years later. "Recreational" use of marijuana in the United States today may reflect the same phenomenon.

12. J.L. Brierly, *The Law of Nations*, 6th Ed., Oxford, UK: Oxford Press, 1991, p. 1.

13. E.g., Convention on International Civil Aviation, Chicago Convention, 1944; UN Convention on the Law of the Sea (UNCLOS III), 1982.

14. E.g., the UN Framework Convention on Climate Change, May 9, 1992; Kyoto Protocol to the UN Framework Convention on Climate Change, December 11, 1997.

15. The terms are essentially interchangeable. The foundation of International Humanitarian Law (IHL) rests on the Nuremberg Tribunals, the UN Charter, and the Geneva Conventions of 1949 and their protocols. Modern Law of War, or Law of Armed Conflict, abbreviated as LOW or LOAC, shares the same foundation, which includes the customary Law of War. IHL also incorporates so-called "human rights" treaties on Genocide and Torture, among others (the crime of Genocide owes its roots to the Nuremberg prosecutions.)

16. The International Criminal Tribunal for the former Yugoslavia, S/RES/827, 1993, May 25, 1993; The International Criminal Tribunal for Rwanda, S/RES/955, 1994, November 8, 1994; The Special Court for Sierra Leone, S/RES/1315, 2000, August 14, 2000. The tribunals for Yugoslavia and Rwanda were created by the UN; the tribunal for Sierra Leone is a joint venture between the UN and the government of Sierra Leone. More recently, the UN assisted in establishing the Special Tribunal for Lebanon in concert with the Lebanese Republic, S/RES/1664, 2006, March 29, 2006, and the UN supports the Cambodian Khmer Rouge Trials into the mass murders that occurred between 1975 and 1979, available from [www.unakrt-online.org/01\\_home.htm](http://www.unakrt-online.org/01_home.htm).

17. Rome Statute of the International Criminal Court, Articles 12 and 13.

18. Horace B. Robertson, Jr., "Contemporary International Law: Relevant to Today's World?" John Norton Moore and Robert F. Turner, eds., *U.S. Naval War College International Law Studies*, Vol. 68, Newport, RI: Naval War College Press, 1995, p. 3.

19. The term appears to be of relatively recent origin, but the concept is not. It may reflect customary international law. Universal jurisdiction is the concept that some crimes are so fundamentally wrong that they violate all international norms, and perpetrators may be captured and tried for their crimes by any country, or by an international tribunal. See *The Princeton Principles on Universal Jurisdiction*, the Princeton Project on Universal Jurisdiction, Princeton, NJ: Program in Law and Public Affairs, 2001.

20. See Max Boot, "Pirates Then and Now," *Foreign Affairs*, July/August 2009, pp. 94-107.

21. *Ibid.*

22. The Marine Corps Hymn recalls battles "from the Halls of Montezuma, to the shores of Tripoli." Tripoli, Libya, was the site of action by the U.S. Navy and Marine Corps during the war against the Barbary pirates in the first decades of the 19th century. Names of the heroes include Lieutenant Presley O'Bannon, Captain Stephen Decatur, and Commodore Edward Preble.

23. Slavery remained legal in the United States until the passage of the 13th Amendment in 1865, but Congress banned the importation of slaves into the United States effective January 1, 1808, pursuant to Article I, Section 9, of the U.S. Constitution. See Eric Foner, "Forgotten Step Toward Freedom," *New York Times*, December 30, 2007, available from [www.nytimes.com/2007/12/30/opinion/30foner.html](http://www.nytimes.com/2007/12/30/opinion/30foner.html).

24. Pamphlet (PAM) 27-161-2, *International Law, Vol. II*, Washington, DC: Headquarters, Department of the Army, 1962, p. 221. Ambitious plans drawn up at the Paris Peace Conference in 1920 called for some 900 war criminals to be tried in international trials, but Allied disunity and German recalcitrance prevailed. As a compromise 12 German soldiers ranging from private to lieutenant general were tried in German courts; six were convicted, but the most severe jail sentence issued was 4 years. These trials, known as the Leipzig trials, demonstrated the problem obtaining jurisdiction over war criminals—Germany was not defeated and occupied as in World War II. The Leipzig trials did help motivate the Allies in 1945 to establish an international tribunal at Nuremberg.

25. See Weiss, "Lott's Choice," (n. 3 above).
26. Henry Kissinger, *Does America Need a Foreign Policy?* New York: Touchstone, 2002, p. 43.
27. The Geneva Conventions of 1949 expanded protections to civilians caught in conflict. The four Conventions are: for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 (GWS); for the Amelioration of the Condition of Wounded Sick, and Shipwrecked Members, August 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85 (GWS Sea); Relative to the Treatment of Prisoners of War, August 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 (GPW); Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 (GC). Common Article 3, which is the same in all four Geneva Conventions, prescribes minimum humanitarian standards that apply everywhere at all times.
28. Roth, "The Case for Universal Jurisdiction" (n. 7 above). The seizure of Eichmann was widely criticized at the time as a glorified kidnapping, since the Israelis captured Eichmann and brought him back to Israel without the knowledge or the consent of the Argentine government.
29. See, e.g., Convention on Offenses and Certain Other Acts Committed on Board Aircraft, September 14, 1963, 20 U.S.T. 2941; Convention for the Suppression of Unlawful Seizure of Aircraft (Hijacking), December 16, 1970, 22 U.S.T. 1641; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation Sabotage, September 23, 1971, 24 U.S.T. 564.
30. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN GA/res 39/46, December 10, 1984.
31. *Ibid.*
32. Spain created an international uproar in 1998 when it demanded that the UK extradite exiled Chilean dictator Augusto Pinochet to stand trial in Spain for alleged human rights violations committed years earlier in Chile. The UK declined to extradite Pinochet because of his declining health. Belgium brought charges against Rwandans for the genocide there in the 1990s, and later threatened U.S. officials, including Secretary of Defense Donald Rumsfeld, with prosecution for alleged war crimes in Iraq. Rumsfeld responded by threatening to move NATO Headquarters out of Brussels. Both countries have since reduced their aggressive stance, but Germany and France have recently considered cases arising out of U.S. actions at Abu Ghraib. See Rachel Kerr, "Prosecuting War Crimes: Trials and Tribulations," *The International Journal of Human Rights*, Vol. 10, No. 1, March 2006, p. 79; Adam Zagorin, "Exclusive: Charges Sought Against Rumsfeld Over Prison Abuse," *Time*, November 10, 2006, available from [www.time.com/time/printout/0,8816,1557842,00.html](http://www.time.com/time/printout/0,8816,1557842,00.html); Paul Chevigny, "The Limitations of Universal Jurisdiction," *Global Policy Forum*, March 2006, available from [www.globalpolicy.org/](http://www.globalpolicy.org/).
33. See Chevigny; Christiane Wilke, "A Particular Universality: Universal Jurisdiction for Crimes Against Humanity in Domestic Courts," *Constellations*, Vol. 12, No. 1, 2005, p. 83.
34. Noriega's capture as part of Operation Just Cause in 1989 is controversial because of the American invasion of Panama to stop acts of aggression against American citizens and to eject Noriega from office. Whether the intervention was authorized under international law remains disputed, but there's no real controversy over trying Noriega for drug crimes that affected U.S. citizens and violated U.S. law. More recently, the 2007 Italian trial, *in absentia*, of a U.S. Soldier who shot and killed an Italian intelligence Officer and wounded an Italian journalist at a checkpoint near the Baghdad airport in 2005 is another example of extraterritorial jurisdiction, though the Italian courts eventually determined they lacked jurisdiction over U.S. Soldiers acting within the scope of their duties.
35. E.g., Richard Reid, the infamous "Shoe Bomber," and Jose Padilla, an American arrested in Chicago returning from a terrorist-related trip abroad, both had their cases resolved in U.S. District Courts. Reid pleaded guilty, but Padilla was convicted by a jury. As a rule, prosecutors in U.S. Federal Court face the highest evidentiary and proof standards—higher than international courts, including the ICC.
36. The ICC has jurisdiction only over crimes that occurred after July 1, 2002, the date the Court officially commenced operations. Any offenses committed before that date must be resolved by domestic courts or military commissions. The ICC has no jurisdiction over terrorism.



37. See John Norton Moore, "Opening Comments," *Military Law Review*, Vol. 149, 1995, pp. 7-12.

38. *Ibid.*, p. 10. Democide refers to the torture and killing of citizens by their own governments. John Norton Moore cited a figure as high as 170 million, a number two to four times greater than the number killed in war. Professor Moore, Director of the Center for National Security Law at the University of Virginia School of Law, made these comments in a symposium on "Nuremberg and the Rule of Law: A Fifty Year Verdict" at the U.S. Army Judge Advocate General's School, November 17, 1995.

39. War is "Composed of primordial violence, hatred, and enmity, which are to be regarded as a blind natural force; of the play of chance and probability within which the creative spirit is free to roam; and of its element of subordination, as an instrument of policy. . . ." Carl von Clausewitz, *On War*, Michael Howard and Peter Paret, eds. and trans., Princeton NJ, Princeton University Press, 1984, p. 89.

40. See Article 14, The Covenant of the League of Nations, Article 14, The Avalon Project, available from [avalon.law.yale.edu/20th\\_century/leagcov.asp](http://avalon.law.yale.edu/20th_century/leagcov.asp); The Statute of the Permanent Court of International Justice, Article 36, available from [www.worldcourts.com/pcij/eng/documents/1920.12.16\\_statute.htm](http://www.worldcourts.com/pcij/eng/documents/1920.12.16_statute.htm); and the UN Charter, Chap. XIV, "The International Court of Justice," available from [www.un.org/en/documents/charter/index.shtml](http://www.un.org/en/documents/charter/index.shtml).

41. Michael P. Scharf, *The Debate over the Permanent International Criminal Court*, International Debate Series, No. 1, St. Louis, MO: Washington University School of Law, Whitney R. Harris Institute for Global Studies, 2002.

42. Global Policy Forum, "Timeline of International Humanitarian Law," available from [www.globalpolicy.org/intljustice/general/2001/timeline.htm](http://www.globalpolicy.org/intljustice/general/2001/timeline.htm). The meeting was formally known as the United Nations *Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court*, commonly known as the "Rome Conference." See Michael A. Newton, "Comparative Complementarity: Domestic Jurisdiction Consistent with the Rome Statute of the International Criminal Court," *Military Law Review*, Vol. 167, 2001, pp. 20-73, note 3 at 21.

43. Newton, n. 43; Scharf.

44. See M. Cherif Bassiouni, "Establishing an International Criminal Court: Historical Survey," *Military Law Review*, Vol. 149, 1995, pp. 49-63, at p. 54.

45. Rome Statute, Art. 5, para. 2.

46. ICC cases arise in one of four ways. See Arts. 13 and 15 of the Rome Statute: first, any member of the assembly of states who have signed on to the ICC may refer a case for investigation; second, the UNSC may refer a case under its Chap. VII powers; third, the ICC Prosecutor initiates investigation on his own authority (*proprio motu*); the fourth possible way, under Art. 12, allows states not parties to the ICC to refer a case against one of their nationals if the state consents to the jurisdiction of the ICC for the case.

47. Not unlike the U.S. Constitution, which created an independent Judiciary to balance the Executive and Legislative branches.

48. Rome Statute, Art. 12. The court has jurisdiction over crimes committed after July 1, 2002, within the territory of a signatory state, or committed by a national of a signatory state. Therefore crimes committed by U.S. citizens in Iraq would not fall under ICC jurisdiction, since neither Iraq nor the United States is an ICC member. Afghanistan, however, is a member state, and war crimes by U.S. citizens in Afghanistan could be subject to ICC jurisdiction unless barred by an Art. 98 or other superseding agreement.

49. Newton, p. 45.

50. *Ibid.*, 49. Newton also argues that the UNSC could use its powers under Art. 13(b) to refer a case to the ICC to preempt a self-interested state prosecution which might render the case inadmissible under Art. 17.

51. Rome Statute, Art. 17, para. 1.(a).



52. *Ibid.*

53. Title 10, United States Code, Sections 801-940.

54. See Newton, pp. 22, 23. The final package was submitted by the Officers running the Conference after a late-night meeting that excluded the United States and voted on without further meetings or discussion. Last-minute amendments proposed by the United States and India were never considered as a groundswell of the "like-minded" states. Only China, Libya, Iraq, Qatar, Yemen, and Israel voted with the United States against the final Statute.

55. Victoria K. Holt and Elisabeth W. Dallas, *On Trial: The U.S. Military and the International Criminal Court*, Report No. 55, Washington, DC: The Henry L. Stimson Center, March 2006, p. 19.

56. U.S. Constitution, Art. VI.

57. While American opinion polls on the UN go up and down, a majority of Americans don't think the UN does a good job. The Gallup Poll, February 9-12, 2009, shows 26 percent of Americans believe the UN does a good job, while 65 percent say it does a poor job. The same poll reflected historical results going back to 1995; figures range from 35 percent in August 1995 to a high of 58 percent in February 2002. Except for the period 2000 to 2003, fewer than 50 percent of the respondents said the UN did a good job. The Rasmussen Poll dated September 24, 2009, showed 29 percent of Americans regard the UN as an ally of the United States. On a slightly different subject of international law, the *World Public Opinion.Org* poll taken between April and July 2009 reflects that 69 percent of Americans believe the United States should follow international law. Whether this indicates a similar percentage might endorse the ICC is questionable.

58. Holt and Dallas, p. 20.

59. The note read "This is to inform you, in connection with the Rome Statute of the ICC adopted on July 17, 1998, that the United States does not intend to become a party to the treaty. Accordingly, the United States has no legal obligations arising from its signature on December 31, 2000. The United States requests that its intention not to become a party, as expressed in this letter, be reflected in the depository's status lists relating to this treaty."

60. Public Law 107-206, 2006, 22 U.S.C. 7401-7433, 2003. See James P. Terry, "The International Criminal Court: A Concept Whose Time Has *Not* Come," *Joint Forces Quarterly*, Issue 48, 1st Quarter, 2008, p. 36.

61. UN Press Release SG/SM8749 SC/7790, June 12, 2003, Statement to the Security Council by Secretary-General Kofi Annan over Extending UN Peacekeepers' Immunity from ICC Action, September 8, 2009, available from [www.un.org/News/Press/docs/2003/sgsm8749.doc.htm](http://www.un.org/News/Press/docs/2003/sgsm8749.doc.htm).

62. Rome Statute, Art. 98.

63. ASPA, note 44, SEC. 5.

64. U.S. State Department Press Statement, May 3, 2005. Some states, such as Brazil, have been adamant against signing Art. 98 agreements, and that led to these states being barred for several years from attending U.S. military schools under the International Military Education and Training (IMET) program. This is an important aspect of international security cooperation and builds strong relationships. See Robert D. Ruiz, "Negative Impact of Article 98 Sanctions in the Western Hemisphere," Strategy Research Project, Carlisle, PA: U.S. Army War College, March 30, 2007.

65. James P. Terry, "The International Criminal Court: A Concept Whose Time Has *Not* Come," (n. 59 above); Brian A. Hoyt, "Rethinking the U.S. Policy on the International Criminal Court," *Joint Forces Quarterly*, Issue 48, 1st Quarter, 2008, pp. 30-35.

66. Terry, p. 40.

67. Various references have been used to describe America's relative position over the past 2 decades: "a unipolar world," "hyperpower," and "global hegemon" are three common ones. Oddly, there has been little public debate in

the United States over what global role Americans think the United States should play. Since September 11, 2001, American policy has been reactive, focused on the war on terrorism. After a year in office, the Obama administration has laid the groundwork for a different national strategy, but what that will be remains unclear.

68. The term “global commons” refers to the international airspace and the oceans. It is the space that is indispensable for international trade and commerce to operate efficiently. The United States secures this space, with assistance from partners, much as the British did in the days of the Empire.

69. Amos N. Guiora, *Global Perspectives on Counterterrorism*, New York, Aspen, 2007. Guiora, a former Israeli judge advocate, discusses the tension between terrorism as an act of war and terrorism as a crime. While al Qaeda may be waging war on the West, only the United States and a few Allies apply a wartime paradigm incorporating military commissions as appropriate to adjudicate war crimes. A majority of states apply a criminal paradigm treating terrorist acts as crimes, and adjudicating them in national courts along with other crimes. The international system has never come to grips with this tension. See Guiora, chaps. 9 and 10.

70. See, e.g., Convention on Offenses and Certain Other Acts Committed on Board Aircraft, September 14, 1963, 20 U.S.T. 2941; Convention for the Suppression of Unlawful Seizure of Aircraft (Hijacking), December 16, 1970, 22 U.S.T. 1641; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sabotage), September 23, 1971, 24 U.S.T. 564.

71. The UNSC endorsed, although it did not direct, efforts to remove the Taliban and destroy al Qaeda bases in Afghanistan since 2001.

72. The UNSC did not support intervention in Iraq beyond sending weapons inspectors. With at least two of the permanent members, France and Russia, likely to veto any Security Council Resolution sanctioning invasion, the United States led a “coalition of the willing.”

73. G. John Ikenberry, *After Victory: Institutions, Strategic Restraint, and The Rebuilding of Order after Major Wars*, Princeton, NJ: Princeton University Press, 2001, p. 29.

74. Undersecretary of State Marc Grossman explained why the United States withdrew from the ICC Treaty: “We believe that states, not international institutions are primarily responsible for ensuring justice in the international system.” Remarks at the Center for Strategic and International Studies,” May 6, 2002, available from [2001-2009.state.gov/p/us/rm9949.htm](http://2001-2009.state.gov/p/us/rm9949.htm).

75. *Bankovic & Others v. Belgium, the Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, Turkey and the United Kingdom*, European Court of Human Rights Application no. 52207/99. The case was investigated and dismissed. UNSC approval is not a prerequisite for intervention, but the Kosovo precedent of international humanitarian intervention remains controversial.

76. These complaints raise the issue of political prosecution. Between July 1, 2002, when the ICC began operations, and February 9, 2006, the Office of the Prosecutor of the ICC received some 750 communications accusing the United States of criminal acts, although to date no one has been prosecuted. See Holt and Dallas, p. 72.

77. The ICC indicted President Omar Hassan Ahmad Al-Bashir of Sudan in July 2008. See Andrew Natsios, “Waltz with Bashir,” *Foreign Affairs*, available from [www.foreignaffairs.com](http://www.foreignaffairs.com).

78. Holt and Dallas, p. 74.

79. *S.S. Lotus Case*, Fr. v. Turk., Permanent Court of International Justice, 1927, Ser. A, No. 10, September 7, 1927, pp.18-19: “The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law. . . .” In other words, states retain all sovereign rights except those they concede by treaty or other international agreement.

80. *Legality of the Threat or Use of Nuclear Weapons*, International Court of Justice, July 8, 1996, Declaration of President Bedjaoui at para. 13., quoted in Robert F. Turner, “Nuclear Weapons and the World Court: The ICJ’s Advisory Opinion and Its Significance for U.S. Strategic Doctrine,” *U.S. Naval War College International Law Studies*, Vol. 72, Michael N. Schmitt, ed., Newport, RI: Naval War College Press, 1998, pp. 309, 312.

81. Kofi A. Annan, "Two Concepts of Sovereignty," *The Economist*, September 18, 1999, p. 49.
82. See Thomas W. McShane, "Blame it on the Romans: Pax Americana and the Rule of Law," *Parameters*, Vol. 32, Summer 2002, p. 57.
83. John Norton Moore, pp. 7, 10.
84. See The American Society of International Law, *ASIL Insights*, Vol. 12, Issue 15, July 28, 2008, available from [www.asil.org/insights080728.cfm](http://www.asil.org/insights080728.cfm).
85. President Clinton signed the treaty on behalf of the United States on December 31, 2000. It was never sent to the Senate for ratification, and on May 6, 2002, the United States officially notified the UN of its intention not to become a party. See U.S. Department of State Press Release, available from [2001-2009.state.gov.pa/prs/ps/2002/9968.htm](http://2001-2009.state.gov.pa/prs/ps/2002/9968.htm).
86. Other international tribunals have since been created and currently operate in Sierre Leone and Cambodia under at least nominal UN auspices. See note 15 above.
87. Title 18, U.S. Code, Section 2441.
88. Hoyt, p. 30.
89. Imperial overstretch is a common theme of many books, including Edward Gibbon's classic, *The History of the Decline and Fall of the Roman Empire*, Paul Kennedy's *Rise and Fall of the Great Powers*, and more recently Fareed Zakaria's *The Post-American World*.
90. Ikenberry, p. 29.
91. *Ibid.*, p. 163. These institutions included the UN, NATO, The Marshall Plan, and the World Bank, among others.
92. *Ibid.*, p. 166.
93. *Ibid.*, p. 4.
94. *Ibid.*, p. 6
95. UN Press Release SG/SM8749/SC 7790.
96. Under Art. 18, any state, whether a party or not, may appeal the indictment of one of its nationals.
97. Civil Law systems are based upon Roman Law. Laws are compiled into "codes" that cover virtually any contingency. Ultimate authority rests in the code, not case precedent as in common-law systems. Many European states still use legal systems heavily influenced by the Code of Napoleon. A brief summary of civil law is available from [www.infoplease.com/ce6/society/A0812355.html](http://www.infoplease.com/ce6/society/A0812355.html).
98. Status of Forces Agreements (SOFAs) are international agreements that spell out the rights, privileges, immunities, and duties of the host nation and visiting military. For example, serious crimes committed off U.S. bases in Germany are frequently handled by German authorities under both the NATO SOFA and the separate German-American Supplemental Agreement. DoD policy is to maximize U.S. jurisdiction over U.S. Forces stationed overseas, DoDD 5525.1. For further information on SOFAs and their language, see the Center for Law and Military Operations (CLAMO) website, available from [www.jagcnet.army.mil](http://www.jagcnet.army.mil).
99. The problem of defining who is a terrorist will remain. The old cliché "one's man terrorist is another man's freedom fighter" is alive and well. A focus on terrorist acts and defining elements of the crime seems the only way to attack the problem. A narrow, focused approach should succeed with most states, who share the same goal of reducing, and eventually marginalizing, terrorism as a strategy or tactic.

100. The author is convinced that international or military tribunals are fully capable of adjudicating terrorist acts, but the backlash against the U.S. military commissions at Guantanamo indicates the ICC might be perceived as a more "legitimate" forum. See Kenneth Anderson, "The Failed Madrid Verdicts," *The Weekly Standard*, November 26, 2007, p. 14.

101. Holt and Dallas, p. 66.

102. Rome Statute, Art. 112. The 8th Assembly of State Parties met November 18-26, 2009. Under Arts. 121 and 123, the first formal Review Conference of the Assembly of States to consider amendments to the Rome Statute was to have take place 7 years after the Court began operations, which was 2009. As of this writing, the first Review Conference was scheduled to begin on May 31, 2010, in Kampala, Uganda.

103. Peter Weiss, "Run, Rummy, Run," *Global Policy Forum*, December 6, 2006, available from [www.globalpolicy.org](http://www.globalpolicy.org).

## CHAPTER 21

### RETOOLING U.S. PUBLIC DIPLOMACY AS A STRATEGIC INSTRUMENT OF FOREIGN POLICY

Marybeth P. Ulrich

The shape of the world a generation from now will be influenced far more by how well we communicate the values of our society to others than by our military or diplomatic superiority.

—Senator William Fulbright, 1964<sup>1</sup>

Public diplomacy refers to U.S. programs dedicated to promoting U.S. interests, values, culture, and policies within foreign audiences. The United States employs cultural exchanges, education programs, and foreign broadcasts to convey U.S. interests and ideals to foreign audiences.<sup>2</sup> Public diplomacy aims to facilitate the understanding of the American people and its policies and to broaden the dialogue between American citizens and institutions and their counterparts abroad.<sup>3</sup>

Joseph Nye's introduction of the concept of "soft power" as an essential complement to "hard power" captures the essence of public diplomacy. Nye wrote of the "soft power of attraction" essential "to draw target publics into the U.S. web of influence."<sup>4</sup> The achievement of U.S. foreign policy goals is greatly facilitated when more friends and allies share our interests and contribute to their accomplishment. In the case of the War on Terror, victory is directly related to prevailing in a battle of ideas, which public diplomacy tools seek to shape.

The 9/11 Commission called for action "to compete as vigorously on the ideological battlefield as we do on the military and intelligence fronts."<sup>5</sup> The Department of State (DoS) Advisory Group on Public Diplomacy, the General Accounting Office, the Heritage Foundation, the Council on Foreign Relations, and the 9/11 Commission have all issued reports stating that a greater emphasis is needed by the U.S. Government on public diplomacy.<sup>6</sup>

This chapter takes the position that current approaches to public diplomacy are flawed and must be reconsidered and appropriately funded in order to acquire the public diplomacy capabilities needed to win the War on Terror. Furthermore, public diplomacy must be integrated into the policymaking process in the form of a comprehensive and coherent strategy. Specific recommendations will follow from the evaluation of three criteria: national interests, costs, and public opinion. The research method draws on extensive studies by government bodies and think tanks like the Council on Foreign Relations, the Heritage Foundation, the Congressional Research Service, and the Pew Research Center, in order to cull the most essential findings and recommendations to convince senior policymakers that more must be done to improve U.S. public diplomacy.

#### BACKGROUND

The Gulf War coincided with the end of the Cold War. In Operations DESERT SHIELD and DESERT STORM, the United States assembled the greatest international coalition in history. America's former chief adversary, the Soviet Union, supported the U.S.-led initiative to push Saddam Hussein's troops out of Kuwait. President George H. W. Bush's "new world order" became a moniker for what was perceived to be a more benign international environment. U.S. political leaders, in turn, called for the reduction of the Cold War era force structure and deemphasized public diplomacy as a Cold War relic.<sup>7</sup> In 1999, between 50 percent and 83 percent of foreign populations polled held favorable views of the United States, further mitigating the priority for public



diplomacy funding.<sup>8</sup> In 1999 Congress disbanded the United States Information Agency (USIA), which had been the U.S. Government agency dedicated exclusively to public diplomacy. USIA's information and exchange programs were integrated into the State Department under the new Under Secretary for Public Diplomacy and Public Affairs. The broadcasting arm of USIA fell under a new independent entity, the International Broadcasting Bureau (IBB).<sup>9</sup> Meanwhile, the forces of globalization increased the accessibility of information among people worldwide requiring the United States to adapt its strategic communications to suit the needs of a global information society. The biggest technological change has been the globalization of information via the internet.<sup>10</sup>

Since September 11, 2001 (9/11), public diplomacy tools have been employed to influence Muslim and Arab populations to combat terrorism. European and other U.S. friends and allies have also been targeted to bolster coalition support for the War on Terror. The establishment of a Policy Coordinating Committee (PCC) to improve interagency coordination of public diplomacy activities, increased funding, and new initiatives both within the Department of State, USAID, and the Department of Defense (DoD) point to the importance of public diplomacy as a tool in a long term struggle where the battle of ideas is the center of gravity.

The areas of public diplomacy used to influence foreign target audiences are international information programs, educational and cultural exchange programs, and international nonmilitary broadcasting.<sup>11</sup> Often included in a canvas of public diplomacy programs is the National Endowment for Democracy (NED), which operates at arm's length from the DoS, but which DoS principally funds. NED's mission is to assist democratic movements worldwide by leveraging its status as a private, nonprofit entity primarily in the area of foreign elections.<sup>12</sup>

The primary agencies involved in these areas are the DoS, the IBB, and the NED.<sup>13</sup> Within the DoS, the Office of International Information Programs (IIP) and the Bureau for Educational and Cultural Affairs (ECA) focus on strategic communications and international exchanges respectively. In addition, the bipartisan Broadcasting Board of Governors (BBG) administers the Voice of America (VOA) and numerous surrogate entities such as Radio Free Europe/Radio Liberty (RFE/RL) and Radio *Marti* (broadcast to Cuba).<sup>14</sup> Several new initiatives launched since 9/11 include Radio *Sawa* and a 24-hour news channel, *Alhurra* (the free one), broadcast to the Middle East. The newest DoS entry aimed at "Telling America's Story" is a web site for foreign audiences, *www.america.gov*.<sup>15</sup>

According to the Congressional Research Service, the \$1.2 billion budgeted for public diplomacy activities in FY07 is comparable in constant dollars to the amount spent in 1980 (actual dollars level is about double).<sup>16</sup> Since 2001, congressional appropriations for public diplomacy programs have increased by 57 percent (in actual dollars) with an average increase of 8 percent per year.<sup>17</sup> Later, I will examine the debate over whether these levels are adequate to meet the threat.

*The National Security Strategy of the United States of America* (NSS), published in March 2006, establishes two inseparable priorities: "fighting and winning the war on terror and promoting freedom as the alternative to tyranny and despair."<sup>18</sup> The NSS posits further:

From the beginning, the War on Terror has been both a battle of arms and a battle of ideas—a fight against the terrorists and against their murderous ideology. . . . In the long run, winning the war on terror means winning the battle of ideas, for it is ideas that can turn the disenchanted into murderers willing to kill innocent victims.<sup>19</sup>

The diplomatic instrument of power is a critical component in the NSS's objective to advance freedom and human dignity through democracy as the long-term antidote for transnational terrorism. Essential to this end is the continued reorientation of the DoS toward transformational

diplomacy.<sup>20</sup> A key component of transformational diplomacy is the strengthening of public diplomacy to:

advocate the policies and values of the United States in a clear, accurate, and persuasive way to a watching and listening world. This includes actively engaging foreign audiences, expanding educational opportunities for Americans to learn about foreign languages and cultures and for foreign students and scholars to study in the United States; empowering the voices of our citizen ambassadors as well as those foreigners who share our commitment to a safer, more compassionate world; enlisting the support of the private sector; increasing our channels for dialogue with Muslim leaders and citizens; and confronting propaganda quickly, before myths and distortions have time to take root in the hearts and minds of people across the world.<sup>21</sup>

Since 9/11, there has been an increased focus on departments and agencies across the government contributing to the mission of improving America's image. Besides the NED mentioned above, other U.S. Government agencies involved in de facto public diplomacy include the Peace Corps and USAID. Both involve people-to-people communication in U.S. Government funded programs in pursuit of U.S. policy interests, and as such both perform a strategic public relations function.<sup>22</sup> USAID, in particular, is charged with publicizing U.S. humanitarian assistance.<sup>23</sup> Additionally, the DoD has embarked on initiatives to aggressively conduct foreign communications. The much maligned Office of Strategic Influence was a short-lived effort that came on the scene in the fall of 2001 and was later replaced by the Office of Strategic Communication, which has the mission of coordinating and disseminating combat information. The DoD funded contracts worth \$300 million over 5 years to create media products aimed at improving the U.S. public image abroad. The Joint Psychological Operations Support Element of the U.S. Special Operations Command has been coordinating these efforts.<sup>24</sup>

## EVALUATION

Next, we will evaluate the effectiveness of U.S. public diplomacy efforts according to three criteria: national interests, costs, and public opinion.

### **National Interests.**

In the aftermath of 9/11, one question weighed most heavily on Americans' minds, "Why do they hate us?" Public diplomacy in the Cold War was aimed at countering Soviet power and influence. The primary objective now is to counter the influence of Islamic extremism in order to defuse the root cause of terrorism.<sup>25</sup> Policymakers and the public alike now share the realization that strong negative opinions of the United States affect the propensity of friends and allies to be helpful in the War on Terror and assist terrorist groups in their efforts to recruit new members.<sup>26</sup>

Furthermore, consensus is growing that public diplomacy can no longer be viewed simply as a means of marketing or selling the "American brand." Public diplomacy must be integrated into the policymaking process at the earliest stages, because global attitudes increasingly determine the success of American strategy. This is especially true in the war of ideas that is at the heart of the War on Terror. In the Bush administration, U.S. strategic choices have been largely unconstrained by international opinion.<sup>27</sup> Shifting efforts toward shaping public opinion to enhance U.S. credibility and the acceptability of U.S. policies will pay off in the long term.

There is an inextricable link between American foreign policy choices and public diplomacy. Regardless of the correctness of the various policy choices, each policy decision has consequences in terms of how it resonates abroad.<sup>28</sup> Improving America's image abroad is a specific foreign

policy goal but cannot be disconnected from the overall U.S. foreign policy agenda.<sup>29</sup> Multiple analyses reiterate the conclusion that America's image in the Middle East and around the world can only be changed with good policies.<sup>30</sup>

So which policy goals are being helped and which are being hurt by the current approach to public diplomacy? The first pillar of the March 2006 *National Security Strategy* is to promote freedom, justice, and human dignity.<sup>31</sup> Opportunities to provide humanitarian aid to populations with poor perceptions of the United States have paid off and should be leveraged through greater spending on foreign aid. The United States saw a spike in favorable opinion among Indonesians after the United States provided disaster relief in areas hard hit by the December 2004 tsunami. Relief work in Pakistan after the October 2005 earthquake had similar positive effects.<sup>32</sup> These examples indicate that greater public diplomacy payoffs could have occurred with an even quicker and more generous response to these critical populations in the battle for ideas.

On the negative side, continuing to pursue national interests through a foreign policy that is perceived as aggressive, unilateral, narrowly self-interested, and unconstrained will not result in improving the U.S. global image.<sup>33</sup> Effective public diplomacy is critical to winning the war of ideas, but simply focusing on communicating a message that in policy terms is loathed by its target audience will not sway public opinion. Polls show that Arab respondents understand and respect American values, but they do not see American policy reflecting those values. The images from the Abu Ghraib Prison in Iraq and Guantanamo Bay in Cuba detracted from American credibility and have undermined even the best public diplomacy efforts.

Change must fall along two main dimensions. First, the United States must increase public diplomacy capabilities through an integrated approach that transcends departments and agencies and even the private and public sectors. Resources should be increased (this aspect is developed in the next criteria). Funding should be commensurate with the potential for return on investment in the overall strategy for winning the War on Terror. The United States also needs to address personnel issues in terms of positions and training. Second, beyond building public diplomacy capabilities, the most significant change needed is to integrate public diplomacy into the policymaking process in the form of a comprehensive and coherent strategy. Such a strategy would consider the benefits of proactively shaping public opinion as policy is being developed. A proactive approach would also take into account the constraint that public opinion abroad may have on the achievement of foreign policy ends, especially the ways through which they are achieved.

## Costs.

Considering the important role public diplomacy plays in the overall success of U.S. foreign policy, especially in combating the rise of terrorists bent on the destruction of the American way of life, U.S. spending on public diplomacy is inadequate. The DoS Bureau of Resource Management called the state of funding "absurdly and dangerously inadequate," especially in the Middle East.<sup>34</sup> A team of Heritage Foundation researchers noted that the United States spends \$30 billion annually on intelligence gathering in an effort to find out what others around the world are thinking, but only \$1.2 billion per year on trying to shape these thoughts.<sup>35</sup>

The legacy of underfunded and uncoordinated public diplomacy programs can be corrected by elevating funding to a level commensurate with its role as a vital component of U.S. foreign policy. Current levels of public diplomacy funding represent only 4 percent of the international affairs budget. In contrast, investing one percent of the nation's proposed \$379B military budget on public diplomacy would result in a budget increase to \$3B to \$4B.<sup>36</sup>

A specific funding program that experts argue would dramatically enhance the overall effectiveness of public diplomacy is foreign public opinion polling. Such spending would enable

the identification of potential target audiences along a continuum of support. Gains could subsequently be made by targeting moderate audiences and those who self-identify as “undecided” or offering “soft support” for U.S. policies. Currently the “U.S. government spends only \$5 million annually on foreign public-opinion polling, far less than the research costs of many U.S. senatorial campaigns and only a fraction of the \$6 billion spend for these purposes by American private-sector organizations.”<sup>37</sup>

VOA and NED funding should be restored to and eventually exceed Cold War levels. In the decade following the Cold War, Congress cut funding for international broadcasting by 40 percent. Since 9/11, however, VOA’s budget increased 45 percent to the level of \$652 million in FY 2006.<sup>38</sup> New international broadcasting initiatives targeting the Middle East should continue to receive new funding while programmers experiment with formats that effectively mix substance and “ratings.” The bottom line is that U.S. public diplomacy must be funded at significantly higher levels – with funding increases phased in over several years. The increased resources should be tied to specific objectives and monitored closely for effectiveness.<sup>39</sup>

Increased spending, especially funding targeted at the areas outlined above, will improve the effectiveness of U.S. public diplomacy. Real progress, however, depends on a sensible organization that eliminates the legacy of stove-piping and enhances coordination within the State Department and across the relevant government agencies. The development of a public diplomacy doctrine and overall strategy laying out working principles, coordination procedures, and criteria for evaluating the success of the strategy over time will also ensure that increased spending produces better results.<sup>40</sup>

The cost of ineffective public diplomacy is already evident. Five years into the Iraq war, the U.S. global image continues to slip, even among the public in countries closely allied with the United States. Short-term gains made through disaster relief in Indonesia and Pakistan have eroded to pre-disaster levels.<sup>41</sup> The final criteria evaluated below, public opinion, will elaborate on the most recent polling. Coalition partners have steadily withdrawn troops and announced their mission in Iraq complete in the face of weak public support for continued assistance to the United States. Every effort must be made now to improve the funding and execution of U.S. public diplomacy programs. The opportunity to prevail in the battle of ideas may be slipping away.

### **Public Opinion.**

The Pew Research Center’s Global Attitudes Survey indicates that America’s global image continues to slip while international support for the War on Terror continues to wane.<sup>42</sup> However, the effectiveness of public diplomacy efforts is limited by the substance of American policies. As former congressman Lee Hamilton observed, “public diplomacy can only present policies, it cannot shape them.”<sup>43</sup> For example, the 2006 Pew survey showed that the Iraq war continues to be a drag on the U.S. global image, with majorities in 10 of the 14 countries surveyed responding that the war has made the world a more dangerous place. In addition, favorable opinions of the United States fell in most of the countries surveyed.<sup>44</sup> The polling data indicates that U.S. public diplomacy efforts are not making inroads into global attitudes toward either Americans or U.S. foreign policy.

Majority support for the U.S.-led War on Terror can be found in only two of the 15 countries surveyed, India and Russia, both of which have significant problems with domestic terrorists. However, in the case of India, America’s favorability rating dropped 15 points in 1 year.<sup>45</sup> Unfavorable attitudes persist in predominantly Muslim countries. By all accounts public diplomacy efforts in the Middle East are a failure. For example, in Egypt, a country that has received more U.S. aid in the past 20 years than any Muslim country by far, only 15 percent of Egyptians have a favorable opinion of the United States.<sup>46</sup> In the 2006 Pew survey, the percentage of Egyptians supporting the US-led war on terror remained at 10 percent, where it has hovered since 2002.<sup>47</sup>



A 2006 GAO audit evaluating the effectiveness of the State Department's public diplomacy programs focused on a continued inability to engage Muslim audiences. While some resources have been shifted to the Muslim world ranging from a 25 percent increase in the Near East to a 39 percent plus up in South Asia, the number of authorized overseas positions in regional bureaus held steady. Furthermore, the report concluded that human capital challenges, such as poor language proficiency and short tours of duty, are compounded by security concerns at most posts in the Muslim world. Consequently, public diplomacy Officers in the Muslim world spent less time communicating with local audiences than their positions require. The current mix of information programs, media programs, and cultural and educational exchanges should be reconsidered with greater emphasis placed on cultural and educational exchanges. Objective reports assessing the effectiveness of U.S. public diplomacy cited the cultural and educational exchange programs as the most effective. The media programs have been perceived as less effective due to the U.S. credibility problem in the target populations. While these perceptions persist, the United State will benefit from investing in local moderate media operations and those of our Allies with common interests, but without the credibility stigma of the United State in the Middle East. Finally, an underdeveloped aspect of the information programs is translating more English language texts into Arabic. In the past century, only 10,000 English language books have been translated into Arabic.<sup>49</sup>

The current trends in the effectiveness of U.S. public diplomacy are poor.

In sum, the promise of America's public diplomacy has not been realized due to a lack of political will, the absence of an overall strategy, a deficit of trained professionals, cultural constraints, structural shortcomings, and a scarcity of resources. Money alone will not solve the problem. Strong leadership and imaginative thinking, planning, and coordination are critical.<sup>50</sup>

Policymakers are beginning to understand that the Cold War public diplomacy structure must be retooled and appropriately resourced to make a more effective contribution to U.S. national security interests. At a minimum, the conceptualization and execution of public diplomacy programs must reach its full potential. The goal of spreading freedom and democracy throughout the globe is unrealizable "unless America has a more coordinated, cooperative mechanism tailored for public outreach."<sup>51</sup>

## CONCLUSIONS AND RECOMMENDATIONS

This chapter argued that current approaches to public diplomacy are flawed and must be reconsidered and appropriately funded in order to acquire the public diplomacy capabilities needed to win the War on Terror. Evaluation of three criteria: national interests, costs, and public opinion illustrated that the Bush administration efforts have fallen short in every area. A new public diplomacy paradigm is needed that integrates public diplomacy into a comprehensive strategy for winning the War on Terror. Such a strategy would recognize that improving America's image abroad is in and of itself in the national interest. Effectively communicating U.S. policies is essential to building the coalitions critical to the policies' successes and for dissuading potential terrorists to do harm to U.S. interests. As the 2006 NSS asserted, winning the War on Terror depends on winning the battle of ideas.<sup>52</sup>

Beyond this strategic reconceptualization of public diplomacy's role among all national instruments of power, much work can be done in the short term to improve the effectiveness of public diplomacy programs currently underway. Attentive oversight, strong leadership, cultural literacy, and adequate funding will contribute to improving the U.S. image across the globe. Furthermore, public diplomacy must be integrated into the policymaking process in the form of a comprehensive and coherent strategy.



## **Specific Recommendations.**

### *Overall Public Diplomacy Strategy.*

1. Develop a comprehensive and coherent strategy for public diplomacy.
2. Incorporate public diplomacy tools into policy formulation to shift toward proactive vs. reactive actions.
3. Create an independent not for profit “Corporation for Public Diplomacy” to bridge gap between public and private sector initiatives akin to the Corporation for Public Broadcasting (CPB).

### *Improving Communications to Target Audiences.*

1. Move toward two-way dialogue in place of one-way push-down mass communication.
2. Increase funding for broadcasts to Arab and Muslim populations and rebuild scholarship, exchange, and library programs targeted at young people.
3. Use supportive indigenous, influential messengers whenever possible to help foster internal dialogue and debate.
4. Recognize that the Muslim world, in particular, responds more favorably to U.S. values and freedoms than it does to U.S. policies. (Messages that focus on Muslims “hating freedom” are ineffective.)

### *Maximize Multilateral Approaches.*

1. Maximize opportunities to engage in multilateral approaches to communicate Western values and the benefits of modernity.
2. Coordinate strategic communications efforts with sympathetic allies that may be regarded as more credible than the US.
3. Improve relationship with foreign press and increase access of foreign journalists to senior U.S. officials.

### *Retool Public Diplomacy Instrument for Greater Effect.*

1. Reconstitute the USIA or a similar entity with public diplomacy as its sole mission.
2. Invest in foreign public opinion research, recruiting, training, media studies, and expanded field staffing.
3. Improve the language and cultural training of public diplomacy Officers.
4. Increase opportunities for educational and cultural exchanges.

## **Implementing Recommendations in the National Security Process.**

The first three recommendations focus on increasing the role of public diplomacy in the overall

strategy formulation process. Implementation requires a shift in bureaucratic mind-set recognizing that public diplomacy must be part and parcel of policy involvement. All members of the national security community should be involved, including those in the public sector.

The next four recommendations emphasize the message itself, and in particular, the means through which the message is delivered. Implementation requires abandoning Cold War structures and methodologies in order to employ more effective ways to deliver America's message. The following three recommendations explore multilateral approaches. Too often the United States is perceived as being the sole advocate for its message abroad, when the principles of freedom, democracy, and human rights are shared by much of the world. Implementation requires the adoption of a multilateral mindset and the initiation of public diplomacy campaigns to turn around negative U.S. images in societies that largely share our values.

The final four recommendations focus on retooling the public diplomacy instrument. Implementation requires financial investment as well as revamping training policies. Restructuring DoS to separate USIA or creating a similar stand-alone entity is also required. Recognizing that exchanges have the greatest potential to contribute to the long term national interests requires a shift in priorities among current programs.

Many challenges face the United States as it seeks to reverse a steady decline in the world's regard for its image and policies. The beginning of a new presidential administration in 2009 is a critical window of opportunity to take concrete steps to regain America's "soft power," the power to attract the world to U.S. values and culture. Public diplomacy should be regarded as a strategic instrument of foreign policy and given resources and leadership commensurate with that role. Success in the War on Terror will remain elusive absent such action.

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## CHAPTER 22

### A PRIMER ON CIVIL-MILITARY RELATIONS FOR SENIOR LEADERS

Marybeth P. Ulrich

Civil-military relations describes a field of study as well as an arena of participation in the political life of the state. As a field of study, civil-military relations is multidimensional and interdisciplinary. Political scientists, sociologists, philosophers, and historians as well as national security practitioners all bring their unique perspectives to the field. As an arena of political participation, civil-military relations links the political and military components of strategy. The Prussian theorist, Carl von Clausewitz, was clear in his view that war is a political act. "The political object is the goal, war is the means of reaching it, and means can never be considered in isolation from their purpose."<sup>1</sup> It should come as no surprise then, that the civilian leadership and its generals are collaborators in the arena through which state interests are advanced, especially when violence or the threat of violence is employed. Consequently, any military activity is arguably a necessary object of political determination.<sup>2</sup>

What distinguishes civil-military relations from general studies of politics or national security affairs is its focus on the military as the actor of primary interest of study. The focus is generally on the military leadership and its relationship with its political masters. Attention is also paid to the military as an institution interacting with other national security institutions. A key assumption of the field is that armed forces develop a unique set of institutional attributes stemming from the power the state cedes to them to secure the state. The military is recognized as a distinct entity in the political system and in society at large. How the military conducts its relationships with its political masters and clients across the political and societal scenes reveals a state's pattern of civil-military relations.

Tension between the civilian and military spheres is inherent in their relationship. In the absence of mature democratic institutions, these spheres vie for power and control over each other. Ensuring civilian control, or more accurately "political control" of the military is a dominant theme in civil-military relations. While Samuel Huntington in his classic work, *The Soldier and the State*, depended on professionalism as the best method of achieving civilian supremacy through "objective civilian control,"<sup>3</sup> Samuel Finer warned in his classic work, *The Man on Horseback*, that professionalism "may lead [the military] to see themselves as the servants of the state rather than of the government in power."<sup>4</sup> Consequently, the study of professionalism, particularly the military's institutional preferences and norms regarding its relationship with its civilian masters is an important aspect of the study of civil-military relations.

Even in the most advanced democratic systems, managing the participation and influence of the military institution to maximize military effectiveness, sound strategy, and the democratic principles of the state is an ongoing challenge. In the age of modern warfare the state's civilian national leadership depends especially on the expert knowledge resident in the military sphere as a critical input for decisionmaking. The military, however, depends equally on civilian expertise to understand the wider political ramifications of their putatively military acts.<sup>5</sup> Collaboration between the two spheres is a necessity to craft and execute strategy effectively. Navigating this space between political control and the provision of expert knowledge within specific societal backdrops requires a firm grasp of civil-military fundamentals. It is essential that strategic leaders, civilian and military alike, understand the key principles associated with the military's role in the political and social life of the state.



Civil-military relations is a broad field of study with great relevance for national security professionals. Developing professional competencies across its varied dimensions will yield great professional pay-offs for strategic leaders and the states they serve. Recognizing that a civil-military dimension is present in most strategy and policy issues will foster the ongoing process of developing the civil-military competencies needed to carry out civilian and military roles in the national security process.

The primer's goal is to alert its readers to the scope of the field. The intent is to foster interest in the additional competencies that civilian and military participants alike must acquire to fulfill their responsibilities in the national policy process. The seven sections that follow introduce the key principles and dimensions essential to gaining strategic level competency in this critical field.

## **THE CONCEPT OF CIVILIAN SUPREMACY IS SUPREME**

Civil-military relations in a democracy are uniquely concerned that designated political agents control designated military agents.<sup>6</sup> Acceptance of civilian supremacy and control by an obedient military is the most important principle of civil-military relations in democratic states. Indeed, the concept of civilian supremacy transcends political systems.<sup>7</sup> Military professionals in all political systems share a mandate to be as competent as possible in their functional areas of responsibility in order to defend the political ends of their respective states. However, military professionals in service to democratic states face the added burden of maximizing functional competency without undermining the state's democratic character.<sup>8</sup> Officers in democratic states serve societies that have entrusted them with the mission of preserving the nation's values and national purpose.

## **MILITARY-POLITICAL COLLABORATION REQUIRES DISTINCT ROLES AND RESPONSIBILITIES**

Nearly all strategic level national security decisions occur in the civil-military nexus. This nexus includes interactions between the uniformed military, elected officials, political appointees, and career civil servants across the relevant government agencies and departments.<sup>9</sup> Military-congressional interactions, or their equivalent in parliamentary systems, are also important relationships to cultivate. This could also include congressional staffers who often possess legislative expertise and may be influential actors in their own right. Legislative bodies in democracies are empowered with, at a minimum, some level of oversight, budgeting authority, and organizing power. They are also crucial for their proximity to the people and the importance of sustaining legitimacy for particular policies. This is especially true in wartime.<sup>10</sup>

In the case of the United States, constitutional sharing and separation of national security related powers requires collaboration between the executive and the legislature. Military officials, uniformed and civilian, have the responsibility to provide expert advice to their "masters" in both the executive and legislative branches. Power sharing of some kind over the use of force and regulation of the military institution is typical of all democratic systems. However, there are distinct differences in the responsibilities of political and military agents in the policy collaboration process stemming from differences in their constitutional roles.

Additionally, there are distinct differences in political and military agents' political and military competencies. Political agents are likely to have greater experience in the strategic and political dimensions of national security policy, while military agents will be more rooted in the technical expertise and operational knowledge related to the use of force.<sup>11</sup> National security policy outcomes are optimized when participants on both sides of the relationship commit their respective military and political competencies to the task at hand and subsequently collaborate in the processes of policy and strategy formulation, execution, and adaptation.

Ideally, the result is a carefully vetted policy that has benefited from the contributions of the relevant military experts and also reflects the careful assessment of the civilian national leadership cognizant of the domestic political and international strategic environments. Such collaboration requires constant professional development for all national security professionals involved.

The advice of military actors will be on more solid footing if it stems from some degree of understanding the strategic and political contexts that form the civilian leadership's decisionmaking backdrop. Colin Gray argues that achieving effective dialogue between the civilian national leadership and its generals can be difficult. "Politicians and generals tend to lack understanding of, and empathy for, each other's roles. It is not so commonplace to notice that politicians and generals are often less than competent in their own sphere of responsibility, let alone in the sphere of the other."<sup>12</sup> Developing senior Officers with the ability to formulate sound military advice and civilians capable of strategic thinking requires institutional support for appropriate career broadening assignments such as opportunities for military Officers and civilians to study and teach in the military education system. Civilian graduate education is also important and should be recognized in both the civilian and military promotion systems.<sup>13</sup>

Civilian leaders with greater familiarity of the military sphere will be better equipped to choose among competing proposals and to perhaps suggest that a viable option is missing. A particular military competency that would serve the civilian leadership especially well is mastery of the strategic thought process<sup>14</sup> that is the foundation of senior military leaders' decisionmaking. Military actors, in turn, will benefit from exposure to the broader strategic and political environment. Such experience will temper their military advice with important contextual knowledge.

However, the distinct responsibilities of military and civilian actors must always be maintained. The responsibility for national policy decisionmaking cannot be ceded to military actors, regardless of the perception of the military leadership's expert knowledge. Civilian national leaders, especially the President, should be careful not to blur the vastly different scopes of political and military decisionmaking. Senior Officers must keep in mind that they render advice to elected officials responsible for the nation's overall national policy. Such policy decisions must take into account the feasibility and political sustainability of various courses of action.

Civilians should also recognize their responsibilities related to managing the civil-military climate. As Richard Kohn noted, "civilian officials have every incentive to establish effective collaborative relationships with the senior military leadership."<sup>15</sup> These norms governing civilian participants' behaviors focus on fostering trust and respect between the civilian and military professional spheres. Civilians will benefit from taking the time to recognize the military's unique cultural attributes and values. Awareness of the military's standards of professionalism such as its preference for apolitical service, its expectation of accountability, and the military leadership's role to provide its best professional advice strengthens military-governmental collaboration.

## **PROFESSIONAL RESPONSIBILITY TO DEVELOP NORMS GOVERNING CIVIL-MILITARY BEHAVIOR LIES WITH THE PROFESSION**

Developing a widely shared set of norms regarding civil-military behaviors is the responsibility of the military profession. Civilians also have a professional responsibility to promote a favorable climate for civil-military relations. As noted earlier, first among the professional norms is acceptance of the principle of civilian supremacy. Related norms govern principles for voicing military dissent in the policy process, standards for participation in partisan political processes, and expectations for the political behavior of retired members of the profession.<sup>16</sup>

## The Bounds of Dissent.

Collaboration between military and civilian national security professionals maximizes the competencies of each. However, legitimate disagreement is common in any collaborative decision-making process. Civilian policymakers should encourage military professionals to offer their best advice and not punish military participants who work within the established bounds of dissent in the democratic national security decisionmaking process. Military leaders should expect that their professional military judgment is heard, but they must also recognize when their actions exceed the bounds of dissent.

When acts of dissent take military leaders beyond their roles as advisers to the civilian leadership to become political actors themselves, then the limits of dissent have been exceeded. When military and civilian leaders have different policy preferences it may be possible for the military to, in effect, achieve its desired preference through willful nonimplementation of the policy or by inappropriately influencing the public political debate. Military professionals must guard their behavior when they think their judgment is superior to the civilian agents, who have the authority and responsibility to make policy decisions. In democracies, who makes such calls may be more important than the call itself for the continued viability of the democratic process.

At the same time, military professionals must step up to their responsibilities to assert their strategic expertise. Such inputs influence strategic deliberations and continue throughout the process of strategy adaptation that may be necessary in the execution phase. Questions related to the role of the senior military leadership in policy deliberations were prominent in H. R. McMaster's indictment of the Joint Chiefs in *Dereliction of Duty: Lyndon Johnson, Robert McNamara, the Joint Chiefs of Staff, and the Lies that Led to Vietnam*.<sup>17</sup> Lieutenant Colonel Paul Yingling raised parallel questions of accountability to the current generation of general Officers. His *Armed Forces Journal* essay criticized senior military leaders for providing insufficient advice to the civilian leadership crafting Iraq War policy.<sup>18</sup> Yingling argued that such actions contributed to the war's policy failures.

A robust civil-military curriculum would also include discussion of the role of resignation as a form of dissent. As Richard Kohn and Richard Myers recently argued, "There is no tradition of military resignation in the United States, no precedent—and for good reason."<sup>19</sup> Other analysts have criticized the military for not playing the "resignation card" as a route to influence policy and strategy outcomes.<sup>20</sup> Members of the profession should explore these arguments and begin to develop their strategies for expressing disagreement in ways that do not disadvantage their subordinates and their profession, or infringe on civilian control.

Understanding civil-military roles in the policy process and effective leverage of military expertise in civil-military interactions is a critical variable for successful policy outcomes. Managing disagreement across the civil-military spheres is an important strategic leader competency that, in turn, raises key ethical and professional questions.

## The Perils of Partisan Politics.

The perception that the American Officer corps has become increasingly "Republicanized" came to the fore in the 2000 presidential election raising questions about the tradition of an apolitical military.<sup>21</sup> Limiting participation in politics to the military advisory role and balancing rights as citizens poses a challenge for the military profession. A key element in this balancing act is the management of society's perceptions of the military as an institution. The ethic of the "policy relevant nonpartisan" is a critical civil-military norm. At stake is the military profession's servant relationship with society. Implications also exist for maintaining the legitimacy of the military's special status in society as "managers of violence."<sup>22</sup>

## Other Areas in Need of More Explicit Civil-Military Norms .

Expectations regarding the political behavior of retired senior Officers continue to vary across a broad spectrum. There was mixed reaction to what has come to be known in recent political-military folklore as “The Revolt of the Generals” – the April 2006 uncoordinated protests of newly retired general Officers calling for the dismissal of Secretary of Defense Donald Rumsfeld over the planning and conduct of the Iraq War. While some criticized these actions as undermining civilian control, others lauded the retirees for speaking out, if belatedly.

Varied reactions among retirees in the profession indicated the lack of a professional consensus regarding the continuing legal and moral obligations that retirees are expected to fulfill. What norms should be established for retired Officers serving as media commentators, especially with regard to analyzing ongoing operations? In addition, the profession also lacks consensus on what is appropriate regarding partisan politicking among the retired general Officer ranks. Some have called for prominent retirees to consider the effect that “taking sides” in political campaigns has on the profession. The senior members of the profession still serving on active duty as stewards of the profession’s norms can help to set expectations in these areas.

### PATTERNS OF CIVIL-MILITARY RELATIONS VARY ACROSS POLITICAL SYSTEMS

The study of civil-military relations is relevant across political systems. Advanced democracies, authoritarian states, and the range of developing, failing, democratizing, and dedemocratizing states in between, all face the challenge of managing and leveraging the military as a political actor. The different parameters operative in various political systems result in different patterns of civil-military relations.

Influence Advocacy Makes Policy Governs  
(expertise) (policy veto) (limited arenas) (complete control)



Civilian CC undermined Limited Military Rule  
Control (CC) Military Control

**Figure 1: Spectrum of Military Participation in Politics**

Advanced democracies have the luxury of mature democratic institutions, the best barrier to praetorian rule. Post-authoritarian regimes, such as the post-communist states of Central and Eastern Europe and the former military regimes of Latin America, carry the burden of undertaking transitions to democracy with legacies of authoritarian rule still operative across society and the political system. States rebuilding or creating their institutions from scratch in post-conflict scenarios such as Iraq and Afghanistan must be careful that institutional development matures in a balanced fashion ensuring continued political control over the military.<sup>23</sup> In countries struggling to achieve greater standards of economic development, democratic institutions may still be weak and governance poor, tempting the military to intervene.

### Understanding Military Rule and Praetorian Behavior.

Familiarity with the works of such giants in the field as Samuel E. Finer and Alfred Stepan<sup>24</sup> would benefit strategic leaders interested in understanding the rise and fall of military regimes



and the often predictable patterns associated with them. Praetorianism refers to the over-stepping of accepted limits of military participation in the political process. The principle of civilian supremacy is rejected in order to force the military's prerogative to prevail in the political system. Such behavior relies on military coercion as a means of short-circuiting the political process in order to achieve the military's short-term institutional interests. This may involve asserting power through a coup to displace the elected government and install either civilian leadership more favorable to the military or direct military rule. Exercising de facto policy vetoes behind the scenes through the threat of force to ensure that the military's policy preferences prevail over the civilian leadership's is another praetorian tactic.

Finer's study of military regimes in Latin America and Africa led him to develop frameworks useful for predicting the conditions under which military institutions exert political power, and in some cases, overthrow civilian governments. He focused on the attributes of military institutions that seem to be compatible with effective and efficient governance such as technical expertise, non-partisanship, control of vast personnel and other military resources, discipline, and commitment to the national interest. Such traits seemingly predict that military rule may often be successful. In reality, when observers such as Finer tally the results, the findings point to the near certainty that military rule will leave a state in worse shape than when the military first intervened. Here the explanation also lays in the attributes of the military institution, this time those that are incompatible with effective governance. Leading the way among these factors is the distaste for politics and the political process, intolerance of dissent, which leads to repression and decreased legitimacy, and lack of the broad expertise needed to effectively govern.

Praetorian behavior is possible in states with weak democratic institutions and weak civil societies that are collectively unable to pose a sufficient barrier to military coercion. The subsequent intervention inevitably further weakens democratic institutions and sets a precedent that is often repeated, leading over time to underdeveloped states. The long-term potential for effective governance is sacrificed as the military stunts the development of civilian capacities to rule while offering instead its version of authoritarian or semi-authoritarian rule lacking the accountability and expertise essential to good governance.

## **CIVIL-MILITARY RELATIONS AND STRATEGIC CULTURE**

There is also a strategic-cultural dimension to civil-military relations. Understanding the norms governing the civil-military relationships in states as well as the varied interests of armed forces, society, and the government is a prerequisite to understanding a state's national security strategy. Important questions to explore include, "Which actors dominate the process of formulating national security policy and strategy? and, "How synchronous are the interests of the government, the people, and the armed forces?"<sup>25</sup> Furthermore, "Are the political institutions regulating civil-military relations mature or is the political system vulnerable to personality-based politics and/or seizures of power as evidenced in praetorian politics?"

Past and present behavior of states in the international system cannot be fully understood without some knowledge of the role of the military in the state. Authoritarian states prioritize the importance of ensuring that the military and political elites' interests are one, usually at some sacrifice of military professionalism and effectiveness, in order to ensure civilian control. States with a history of military rule or strong influence in politics will have this experience as a permanent dimension of their political culture. For instance, Latin America has emerged in recent decades from an era of near total military rule. Recent scholarship focuses on how these periods of military rule have cast a shadow on current politics and explain different degrees of success in building democratic institutions.<sup>26</sup>



On the other hand, some states, although still developing, such as India, have a strong tradition of noninterference in political affairs. However, when Pakistan broke away from India in 1947, its military established a tradition of continual influence in political affairs and long periods of military rule. Many scholars argue that such interference has stunted the democratic development and overall performance of subsequent Pakistani regimes. Indeed, at the time of this writing national security actors are trying to assess the continued role of the military in Pakistan as President Pervez shed his uniform and appointed a new Army Chief to succeed him.

## **CIVIL-MILITARY RELATIONS AND SECURITY COOPERATION**

Military and civilian officials in the service of advanced democratic states may consider themselves to be immune to the challenges of praetorianism. However, such officials serving abroad are likely to find many opportunities to influence the civil-military relations of other states. Representatives of states' national security apparatuses often come in contact with each other through multinational operations or various other engagement opportunities made possible through security cooperation programs. These "military to military" meetings often involve interactions between defense personnel from different types of political systems. Senior officers and national security professionals in possession of sound civil-military knowledge can leverage these engagements to facilitate the national security objectives of all parties. Increasingly, military professionals are engaging civilians in the course of carrying out their strategic responsibilities. This is particularly true in post-conflict stability operations and state building missions.

It is in such opportunities that the linkage of military objectives and overall strategic political objectives may come into play. For instance, military personnel from advanced democracies assigned to build and train armed forces, as North Atlantic Treaty Organization (NATO) and coalition forces are presently doing in Afghanistan and Iraq, must be cognizant of their responsibility to foster armed forces steeped in the values of governmental control and democratic military professionalism.<sup>27</sup> Strategic leaders with such responsibilities should be able to link their military-to-military engagement with the overall strategic objective of building robust democratic national security institutions. Important questions to ask include, "Are external trainers focusing exclusively on building military competencies to the exclusion of political competencies? Are military personnel being taught the fundamentals of interacting with the civilian national leadership? Is proper emphasis being placed on building the relationship with society at large, to include the media?"

The military leadership of these nascent national armed forces, in turn, must set the example in terms of loyalty to their Constitution and commitment to fostering the development of democratic national institutions. The overall strategic objective shared across the spectrum of actors, external and internal alike, is building a democratic state with an armed forces capable of defending its interests. Yet history bears out that military intervention is a great threat to the sustained development of democratic institutions in developing countries. The record warns that once the pattern of intervention is begun, restoring the state to the path of sustained democracy is more unlikely.

## **THE ARMED FORCES AND SOCIETY**

The relationship between the armed forces and the societies they serve is a key concern of civil-military relations scholars. The worldwide trend away from conscripted armed forces to professional militaries, favored by most societies that can afford them, has great implications for military-society relationships. In this time of war, less than 1 percent of the U.S. population serves in the military. This figure contrasts sharply with previous American wars in times of conscription. Four percent of the population served during Vietnam, 12 percent in World War II, and 11 percent in the Civil War.<sup>28</sup> The reality of the lack of shared sacrifice risks the sustainability of the war effort

for practical reasons such as the lack of deployable troops over many rotation cycles. Also at risk, is the war's political sustainability. Military sociologist David Segal has noted, "In a democratic society, the army is a people's army, a reflection of the popular will."<sup>29</sup> However, at present Segal warns, "The military is at war, but the country is not. And the military resents that."<sup>30</sup>

At issue is the notion of citizenship and national obligation. The resentment David Segal noted stems from the reality of the growing gap between American society and those who choose to serve it. Journalist Tom Ricks observed in his 1997 book *Making the Corps* that demographic data as well as his immersion in military culture suggested that the military is increasingly no longer "of" society, but becoming "separate" from it. The separate lives of America's warriors and its citizenry can spawn resentment, stereotyping, and even hostility across the civil-military spheres. With the children of America's policymaking elite virtually absent from the military ranks, and the children of American families at both the extremely affluent and extremely disadvantaged extremes either opting out of or failing to qualify for military service, what has come to be called the "civil-military gap" is growing.

The media is an often underappreciated and misunderstood tool critical to managing the "civil-military gap." The media is one of the chief links between the military institution and the society it serves. Healthy interaction with the news media reflects both an understanding of the media's function to inform the public and ensure accountability of government institutions. Well managed military-media relations can also highlight the military's effectiveness and opportunities, drawing more citizens to the military.

The experience of embedding reporters in military units in the Iraq War highlighted the different cultures of the military and the media. "Members of the military are trained to do what they are told. Members of the media are trained to challenge and question everything."<sup>31</sup> As one correspondent noted, "What that means, in the end, is that we really have to develop strong relationships. One of the most invaluable experiences I had was to learn who the men were . . . and to develop a relationship and trust and honesty that developed through the several weeks that we were together." Furthermore, democratic military professionals should appreciate and seek to facilitate the press's function in a democratic society, and, at a minimum refrain from actions that undermine the role of the media in the American political system.

Yet another important civil-military competency to be honed, then, is the management of the military-societal relationship. Military and civilian leaders have the responsibility to bridge the civil-military gap. Their actions can be guided by first principles undergirding civil-military relations in democracies, such as the desirability of having all segments of society participate in military service. Professional militaries, dependent on the willingness of volunteers to serve, must invest in robust outreach and public relations programs. Another essential principle is to embrace the requirement to be transparent, accountable, and nonpartisan to make certain that the military institution is "of" its society and focused on its role in achieving the national interest and the democratic character of the state.

## STRATEGIC IMPLICATIONS AND CONCLUSIONS

Strategic leaders with a comprehensive understanding of civil-military relations in all its dimensions are more likely to make effective contributions to effective national security outcomes. Indeed, *The Iraq Study Group Report* pointed to improving civil-military relations in the policy formulation arena as a critical component for restoring the U.S. military.

The U.S. military has a long tradition of strong partnership between the civilian leadership of the Department of Defense and the uniformed services. Both have long benefited from a relationship in which the civilian leadership exercises control with the advantage of fully candid professional advice and the

military serves loyally with the understanding that its advice has been heard and valued. That tradition has frayed, and civil-military relations need to be repaired.

RECOMMENDATION 46: *The new Secretary of Defense should make every effort to build healthy civil-military relations, by creating an environment in which the senior military feel free to offer independent advice not only to the civilian leadership in the Pentagon but also to the President and the National Security Council, as envisioned in the Goldwater-Nichols legislation.*<sup>32</sup>

Perhaps as important as enhancing the prospects of strategic success, is the parallel goal of preserving the democratic character of the state and the critical underlying dynamic between the government, the people, and the armed forces. The range of civil-military competencies to be developed is great. The first steps toward acquiring them are to recognize the professional imperative to do so and the scope of the task at hand. The unique nature of the military profession places much of the responsibility for the development of civil-military competencies and norms in the lap of the profession itself. Gaining civil-military competencies must rank among the life-long professional pursuits of strategic leaders.

## ENDNOTES - CHAPTER 22

1. Carl von Clausewitz, *On War*, Princeton, NJ: Princeton University Press, 1989, p. 87.
2. J. Boone Bartholomees, Jr. "U.S. Army War College Instructor Notes, Theory of War and Strategy, Lesson 4, Academic Year 2008," p. 3.
3. Samuel P. Huntington, *The Soldier and the State*, Cambridge, MA: Harvard University Press, 1957, p. 84.
4. Samuel E. Finer, *Man on Horseback*, New Brunswick, NJ: Transaction Publishers, 2004, pp. 25-27.
5. Idea attributed to Dr. Kathleen Mahoney-Norris, U.S. Air Command and Staff College.
6. Peter D. Feaver, "The Civil-Military Problematique: Huntington, Janowitz, and the Question of Civilian Control," *Armed Forces and Society*, Vol. 23, No. 2, Winter 1996.
7. For instance, in the Soviet Bloc the concept of civilian supremacy was strictly employed. See Timothy J. Colton and Thane Gustafson, eds. *Soldiers and the Soviet State: Civil-Military Relations from Brezhnev to Gorbachev*, Princeton, NJ: Princeton University Press, 1990.
8. Marybeth Ulrich, "Infusing Normative Civil-Military Relations Principles in the Officer Corps," *The Future of the Army Profession*, 2nd Ed., Boston, MA: McGraw Hill, 2005, p. 656.
9. I attribute this conceptualization of the "civil-military" nexus to U.S. Army Colonel Chris Gibson, who presented this in his forthcoming book, *Securing the State*, Chap. 1, London, UK: Ashgate Press, 2007.
10. See Congress-Bush administration conflict over Iraq War, *Early Bird*, July 13, 2009.
11. Ulrich, "Infusing Normative Civil-Military Relations Principles in the Officer Corps," p. 657.
12. Colin S. Gray, *Modern Strategy*, Oxford, UK: Oxford University Press, 1999, p. 58.
13. Fred Kaplan's reporting indicates that such institutional support does not presently exist in the U.S. Army. See Fred Kaplan, "Challenging the Generals," *The New York Times Magazine*, August 26, 2007.

14. The strategic thought process is simply a problem solving rubric focused on the fundamental question, "What do I want and how can achieve it?" When analyzing issues and problems the strategic thought process focuses on the calculated relationship between Ends, Ways, and Means. Ends, Ways, and Means may alternatively be stated as objectives, concepts for achieving the objective, which is sometimes stated as a Course of Action, and resources. This model is a staple of the U.S. Army War College strategy curriculum.

15. Taken from an unpublished exchange entitled, "Civilian Behaviors in Civil Military Relations" between Dr. Richard Kohn and his students in his Army War College elective, "Civilian Control of the Military" taught in the Spring of 2007. Used with the author's permission.

16. A thorough treatment of suggested civil-military norms can be found in Ulrich, "Infusing Normative Civil-Military Relations Principles in the Officer Corps."

17. H. R. McMaster, *Dereliction of Duty: Lyndon Johnson, Robert McNamara, the Joint Chiefs of Staff, and the Lies that Led to Vietnam*, New York: Harper Collins, 1997.

18. Paul Yingling, "A Failure of Generalship," *Armed Forces Journal*, May 2007.

19. Richard B. Myers and Richard H. Kohn, "Salute and Disobey?" *Foreign Affairs*, September/October 2007.

20. Michael O'Hanlon, "Iraq Without A Plan," *Policy Review*, No. 128, December 2004/January 2005, pp. 33-45.

21. "The 2000 Campaign: Support of the Military; Military Backs Ex-Guard Pilot Over Pvt. Gore," *New York Times*, September 21, 2000, p. A1; "E-Day Attack; Military Set to Invade the Polls; Observers Worry About Surge in Partisan Politics," *Times Picayune*, October 20, 2000, p. 5.

22. Samuel P. Huntington singled out "the management of violence" as the military's unique role in society. See *The Soldier and the State*.

23. Dean C. Stodter and Marybeth P. Ulrich, "State Building and the Democratization of Civil-Military Relations in the New Afghanistan," October 2007, Conference CD for the biennial conference of the Inter-University Seminar on Armed Forces and Society.

24. *Finer's Man on Horseback* first published in 1962 is cited above. Stepan's field work analyzing the performance of the Brazilian military regime in the 1960s is an outstanding case study of the cyclic and troubled nature of military rule. See Alfred Stepan, *The Military in Politics: Changing Patterns in Brazil*, Princeton, NJ: Princeton University Press, 1971 .

25. Clausewitz's paradoxical trinity gave great strategic weight to proper management of the relationships between the people, the commander and his army, and the government. See *On War*, p. 89.

26. See Martin Mullins, *In the Shadow of Generals: Foreign Policymaking in Argentina, Brazil and Chile*, Hampshire, UK: Ashgate Publishing, 2006.

27. See Marybeth P. Ulrich, *Democratizing Communist Militaries: The Cases of the Czech and Russian Armed Forces*, Ann Arbor, MI: University of Michigan Press, 1999, pp. 10-11.

28. Kristin Henderson, "Their War," *Washington Post Magazine*, July 22, 2007, p. W10.

29. *Ibid.*

30. *Ibid.*

31. Alicia C. Shepard. *Narrowing the Gap: Military, Media, and the Iraq War*, Chicago, IL: Robert R. McCormick Tribune Foundation, 2004, p. 83.

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## CHAPTER 23

### NEW REQUIREMENTS FOR A NEW CHALLENGE: THE MILITARY'S ROLE IN BORDER SECURITY

**Bert B. Tussing**

No one seems to underestimate the urgency of the requirement, nor have they since before September 11, 2001 (9-11). The United States Commission on National Security/21st Century, commonly known as the Hart-Rudman Commission, recommended that the Executive Branch establish a "National Homeland Security Agency." Among other things, this agency would encompass the Customs Service, the Border Patrol, and the U.S. Coast Guard in a synergistic environment to patrol U.S. borders and police the flow of peoples and goods through hundreds of ports of entry.<sup>1</sup> When the legislation that led to the Department of Homeland Security (DHS) was penned, Border and Transportation Security was one of the original five under-secretariats. When Secretary Michael Chertoff came to town, he entered the Department with "six priorities;" the third of those was to "strengthen border security and interior enforcement. . . ."<sup>2</sup> The new Secretary would make his concerns clear as he unveiled a new organizational structure that would remove bureaucratic layers between his office and Customs and Border Protection as part of an effort to:

. . . gain full control of our borders to prevent illegal immigration and security breaches. Flagrant violation of our borders undercuts respect for the rule of law and undermines our security. It also poses a particular burden to those in our border communities.<sup>3</sup>

Institutionally, the requirement for a robust border security mechanism seemed clear. Functionally, the requirement was even clearer. In the best of times, under the best of circumstances, the need for diligence at the border is compelling.

On a typical day, more than 1.1 million passengers and pedestrians, including 635,000 aliens, over 235,000 air passengers, over 333,000 privately owned vehicles, and over 79,000 shipments of goods are processed at the nation's borders.<sup>4</sup>

Taken together, every year U.S. Customs and Border Protection (CBP) processes nearly half a billion people, 130 million trucks and cars, and 20 million cargo containers through 325 ports of entry.<sup>5</sup>

Curiously enough, however, the immensity of the daily requirement is not the most compelling factor among concerns over the security of the border. What is described above is the routine, legitimate traffic. This allows for the free flow of visitors and commerce, keeping open the doors of the "land of opportunity," and coincidentally, sustaining much of the economy. The greater concern for security lies beyond these factors in an accompanying flow that does not seek legitimate opportunity, but criminal gain; that is not interested in sharing the American way of life, but in undermining it and the institutions and values that sustain it. A report developed in the House of Representatives' Committee on Homeland Security offers an interesting and potentially ominous contrast:

During 2005, Border Patrol apprehended approximately 1.2 million illegal aliens [along the Southwest border between the United States and Mexico]; of those, 165,000 were from countries other than Mexico. Of the non-Mexican aliens, approximately 650 were from special interest countries.<sup>6&7</sup>



The threat along the northern border, while far less publicized, is nevertheless cause for concern—perhaps equal concern, perhaps greater. In 1988, U.S. Customs officials arrested three members of a Syrian terrorist group linked to al-Qaeda in the process of entering the United States with explosives.<sup>8</sup> Members of the terrorist cell that executed the 1993 attack on the World Trade Center (who would eventually train for the attack in Perry County, PA) entered the United States from Canada, and were planning to use Canada as a possible escape route. In December 1999, Ahmed Ressay was arrested crossing into the United States in possession of bomb making materials and plans that would have played out in what became known as the Millennium bomb plot against Los Angeles International Airport.<sup>9</sup> Ressay would be characterized by the State Department as a textbook example of someone who “capitalized on liberal Canadian immigration and asylum policies to enjoy safe haven, raise funds, arrange logistical support, and plan terrorist attacks.”<sup>10</sup>

And the past, we have every reason to fear, may well be prelude, as pointed out by Dr. Todd Hataley of the Royal Military College of Canada:

In the post 9/11 period Canada has continued to raise security concerns in the United States. U.S. security officials believe that Canada is not only home to “sleeper cells” waiting for a chance to cross the border and attack the United States, but also that crossing from Canada has become a favorite route for illegal immigrants, drug smugglers, and potential terrorists.<sup>11</sup>

## THE MILITARY IN (LIMITED) SUPPORT

Juxtapose this history against a northern border that stretches nearly 5,000 miles, and a southwestern counterpart that runs another 2,000, and the challenge confronting CBP is daunting, to say the least. In October 2006 there were 11,000 agents assigned to watch and protect both sets of borders.<sup>12</sup> In May 2006, the administration embarked on a plan to raise those numbers to over 18,000 by the end of 2008, increasing the total number to over 101 percent of the number that stood when the President took office in 2001.<sup>13</sup>

Whether that number will be sufficient is debatable. Regardless, purposed increases do not meet the current requirement. The challenges that inspired these increases will continue until the increases can be brought about—if they can be remedied then. Accordingly, in May 2006, the Administration launched Operation JUMP START, a deployment of over 6,000 National Guardsmen from 48 states designed to “strengthen border security and encourage deterrence.”<sup>14</sup> David V. Aguilar, Chief of the Office of Border Patrol for CBP, testified on the nature of the Guard’s mission before members of the House Homeland Security Committee:

...National Guard units will assist DHS by executing missions such as logistical and administrative support, operating detection systems, providing mobile communications, augmenting DHS’s border-related intelligence analysis efforts, building and installing border security infrastructure, providing transportation and training.<sup>15</sup>

It is important to note, however, that while the presence of the Guard will allow CBP agents to return focus to law enforcement activities along the border, the troops will not join the agents in those activities. At the same hearing, Chief Aguilar was quick to remind the congressmen of one clear distinction between the National Guard and the CBP mission.

However, law enforcement along the border between the ports of entry will remain the responsibility of Border Patrol agents. The National Guard will play no direct law enforcement role in the apprehension, custodial care, or security of those who are detained.<sup>16</sup>

This pronounced distinction in the roles that the National Guard may assume in border operations may seem confusing. After all, the immediate requirement that caused the deployment of the Guard seems to invite additional manpower on the border to assist in surveillance, intervention, apprehension, and arrest. DHS has celebrated the fact that 6,000 National Guardsmen allowed the Border Patrol to return 350 agents to “traditional frontline duties.”<sup>17</sup> If that is the greatest cause for celebration, one might ask why the Guard could not be positioned on those “frontlines.”

Those slightly schooled in laws and regulations surrounding the issue of military support to law enforcement agencies may be even more confused. The hub of much of the discussion on this issue is the Posse Comitatus Act – legislation enacted in the aftermath of the Civil War that largely prohibits the use of the active duty armed forces in enforcing the domestic laws of the United States.<sup>18</sup> Note, however, that the act only applies to federal forces. It does not apply to the National Guard, unless the Guard forces in question have been federalized (in other words, mobilized under Title 10 of the United States Code to perform a federal mission). Title 10, for instance, is the authority under which National Guard units are serving overseas in support of the U.S. mission in Iraq. If the Guard forces are either in a “state active duty” status, or serving under the provisions of Title 32 of the United States Code (a status that sustains the forces with federal funds but leaves control with the state governors and their adjutants general), National Guard forces may serve in a direct law enforcement function.<sup>19</sup> Given that, why the distinction and restriction in the ongoing border operations? Perhaps even more to the point: Why restrict the military – active or reserve – from directly supporting the law enforcement function of the border security mission?

### **Soldiers – Not Policemen.**

The motivation behind the restriction is, perhaps, uniquely American, and embedded in the national mindset. Simply stated, the American people do not want their Soldiers to be policemen or their policemen to be Soldiers. One can trace the philosophical underpinnings of this aversion to the colonies of the pre-Revolutionary War. In those days, the colonists were repulsed by oppressive measures like the Quartering Acts that cast the British forces in the role of overseers and even oppressors.<sup>20</sup> The same attitudes would emerge during Reconstruction following the Civil War, when the federal military was used as an occupying force in the former Confederate states. These historic examples – combined, perhaps, with persistent images of military oppression that accompanied much of the country’s immigrant ancestry from overseas – help us to understand our citizenry’s aversion. Too much of a military presence for too long in their streets seems to rekindle a dormant response in Americans. Consider, for instance, what may be thought of as the subliminal reaction to the presence of the military in the nation’s airports following 9-11. Initially the sight of Soldiers along the concourses of O’Hare and Kennedy International kindled a sense of assurance and accompanying goodwill. But people were soon asking themselves, “Why are these military people here with those rifles and that equipment?” The truth is that Americans have conflicting attitudes about the military. We appreciate their sacrifice. We acknowledge their dedication. We take pride in their prowess and the virtue of their leadership. But we are dedicated to the proposition that Soldiers will ever remain the servants of the people and not their overseers.

Fortunately, no one is more sensitive about the military’s role than the military’s leadership. The clear distinction between the roles and responsibilities of law enforcement and the military is ingrained in the mindset of its generals. Any number of reasons could be cited for this sensitivity, beginning with the fact that the country’s all-volunteer force is very much a military “of the people” and therefore very much “for the people.” Moreover, the most senior leadership currently directing our armed forces came of age as young officers in the Vietnam era. These, with their Soldiers, Sailors, Airmen and Marines, undeservedly bore the derisive brunt of much of a society

turned sour on the war. In the same time period, reports of the Pentagon gathering intelligence against anti-war groups further broadened the divide between America and her military. Institutional assurances were put in place in the 1980s to prevent this type of surveillance from ever occurring again; but having survived that era of distrust, the current uniformed leadership is keenly aware of how important the support of America's citizenry is to its Soldiers . . . and how fragile.<sup>21</sup>

### **Nothing New in the Requirement?**

Having said all that, Chief Aguilar reminds us that border security operations involving the National Guard is not a unique requirement to the new century:

Let me first state that National Guard support and coordination with DHS and the Border Patrol is nothing new. While this new infusion will be on a larger scale, the Border patrol has a history of nearly two decades working with National Guard units to utilize their unique expertise, manpower, technology and assets in support of our mission and as a force multiplier.<sup>22</sup>

In fact, recent history witnesses the U.S. military's involvement in border security operations not only by the National Guard, but by the active duty component as well. In response to a growing connection between border security and counternarcotics programs in the 1980s, President Ronald Reagan signed a National Security Decision Directive that simultaneously described drug trafficking as a threat to national security and authorized military involvement against it.<sup>23</sup> In 1989, the military's Joint Task Force 6 (JTF-6) was created to coordinate the expanding support for "the anti-drug efforts of border region police agencies, including the Border Patrol."<sup>24</sup> As with the Guard's current mission, this task force would eventually play an important role in constructing physical barriers designed to slow or channel the flow of illegal immigrants. Unlike the current Guard commitment, JTF-6 also deployed aviation assets and ground troops along the border.<sup>25</sup>

Support for the military's role along the border continued through the 1990s. In 1991, Congress passed key legislation that allowed the Department of Defense (DoD) to support any agency of the federal government with counterdrug responsibilities. More noteworthy yet, the legislation opened the way for DoD to support state and local government law enforcement agencies toward the same ends.<sup>26</sup> And in 1997, the United States House of Representatives passed a resolution calling for the deployment of 10,000 additional troops in support of counterdrug operations along the southwest border.<sup>27</sup>

Tragedy was to interrupt the final passage of that resolution. On the evening of May 20, 1997, 18-year-old Ezequiel Hernandez, Jr., was herding goats when he was mistakenly shot by the leader of a Marine rifle team observing an area of the Rio Grande known for its illegal drug trafficking. The Marines were members of JTF-6 and had been acting in support of the Border Patrol. They had received no civilian law enforcement training or briefings on local conditions.<sup>28</sup> They acted in accordance with the standing rules of force, and were eventually found innocent of any wrongdoing. But the heartbreaking accident would change the nature of the operation decisively.

The outcry against the tragic occurrence would eventually subside across most of the social landscape, but not from the perspective of the military. Returning to a degree of reticence that surpassed its civilian masters, the Pentagon's uniformed leadership withdrew its armed forces from the border and levied new restrictions that would cast the military in a predominantly technical-support capacity. In the future, JTF-6 would be redesignated Joint Task Force-North, and the personnel-intensive, boots-on-the-ground support provided by the unit in the 1990s would be replaced along the border with ground sensors, radar, airborne platforms, and thermal imagery. Deliberately postured in support of federal, state, and local law enforcement entities, the command's

website notes that its technological focus has allowed for a reduction in manpower requirements.<sup>29</sup> The most significant reduction came in terms of troops on the ground.

This would largely characterize the military's role for both the active and reserve components from the time of the tragedy in Texas until the calamity of 9/11. In the aftermath of the attacks on the World Trade Center and the Pentagon, immediate steps were taken to reinforce the security of the nation's borders. At entry points from both north and south, the President commanded the deployment of roughly 1,600 National Guard troops for 6 months to support federal border officials.<sup>30</sup> New emphasis on maritime and aviation security along, within, and through the approaches to the borders accompanied increased land border security, and were formalized in interagency strategies.<sup>31</sup>

In the midst of these events, the United States Northern Command (NORTHCOM) was established on October 1, 2002, "to provide command and control of Department of Defense (DoD) homeland defense efforts and to coordinate defense support of civil authorities."<sup>32</sup> The new combatant command, primarily responsible for active service components' activities within the domestic confines of the United States, was charged in their mission statement to:

Deter, prevent, and defeat threats and aggression aimed at the United States, its territories and interests within its assigned area of responsibility; and as directed by the President or the Secretary of Defense, provide military assistance to civil authorities, including immediate crisis and subsequent consequence management operations.<sup>33</sup>

This mission statement instantly distinguished the new command from its counterparts overseas. The first part of the mission was reasonably clear, if ominous. "Deter, prevent, and defeat" could be realistically expected as part of a military mission anywhere around the globe. The U.S. Armed Forces identify with this language and are fully prepared to do whatever is required to fulfill its implications. But the second half of the command's mission statement—euphemistically referred to in the Pentagon as the "right of the semicolon" requirement—is less intuitive, and arguably more complex than the first. The powerful segue, "as directed by the President or the Secretary of Defense," is indicative of a very measured approach to this part of the mission. Placing the military in support of civil authorities will concurrently place them in activities normally conducted and controlled by those authorities. And the closer the military comes to controlling civil activities, the less comfortable it finds the mission.

## **A SHIFT IN FOCUS: COUNTERDRUG TO COUNTERTERROR**

The military's directives support its reticence. Civil support is characterized by the DoD as granted in response to domestic emergencies and "for designated law enforcement and other activities."<sup>34</sup> However, the DoD directive regulating military support to civilian law enforcement agencies specifically prohibits the use of the military for interdiction; search and seizure; arrest, apprehension, stop and frisk, or similar activity. Likewise, it prohibits the use of military personnel in the pursuit of individuals, or as undercover agents, informants, investigators, or interrogators.<sup>35</sup>

As the new structure of NORTHCOM was designed to meet the threat, along with a new office in the DoD to oversee it, the support mission for the military along the border was also changing.<sup>36</sup> JTF-6, as previously noted, was redesignated JTF-North. This change in designation would mirror a change in focus away from counterdrug operations to countering transnational threats. Persistent, legitimate concerns about drug trafficking were being overshadowed by revelations of looming threats to our north and south. With respect to Canada, as early as 1998, the Special Senate Committee on Security and Intelligence labeled the country:



a “venue of opportunity” for terrorist groups: a place where they may raise funds, purchase arms, and conduct other activities to support their organizations and their terrorist activities elsewhere. Most of the international terrorist organizations have a presence in Canada. Our geographic location also makes Canada a favorite conduit for terrorists wishing to enter the United States, which remains the principal target for terrorist attacks worldwide.<sup>37</sup>

More recently, the same committee reported that “[a] relatively large number of terrorist groups [is] known to be operating in Canada, engaged in fundraising, procuring materials, spreading propaganda, recruiting followers, and conducting other activities.”<sup>38</sup>

To the south, there is growing concern over efforts to transplant elements of international terrorist organizations among our closest neighbors. In May 2001, Adolfo Aguilar Zinser, former Mexican National Security Adviser and ambassador to the United Nations (UN) warned that “Spanish and Islamic terrorist groups are using Mexico as a refuge.”<sup>39</sup> General James T. Hill, former commander of U.S. Southern Command, warned that the United States faces a growing risk, both from terrorist groups relocating to Latin America and “homegrown” groups originating therein. He warned specifically that Hezbollah and groups like it had established bases in Latin America, taking advantage of nearly ungovernable areas like the tri-border region between Brazil, Argentina, and Paraguay.<sup>40</sup> Add to these viable concerns over Venezuela’s support to radical Islamic groups, and the security concerns surrounding the well-being of the American people at home continue to grow.<sup>41</sup>

Unfortunately, as the military and the law enforcement agencies it supports along the border have moved to confront this new concern, they can ill-afford to ignore the old concerns. As though adding to the population of a snake pit, the arrival of terrorists has done nothing to thin out the presence of drug traffickers among the cartels. Neither has it had an effect in reducing other organized criminal activities like human trafficking, or diminishing the immigration of criminal gangs through Mexico into the United States. A majority report from the House of Representatives Committee on Homeland Security gave voice to these concerns, warning against “the triple threat of drug smuggling, illegal and unknown crossers, and rising violence” facing our communities in the southwest.<sup>42</sup>

Criminals involved in this activity have taken on an air of arrogance that should further spur the nation’s concerns. The aforementioned House study validates frequent reports that the cartels may be literally “outgunning” local law enforcement agencies on both sides of the border, possessing military grade weapons, technologies and intelligence, and their own “paramilitary enforcers.”<sup>43</sup> The enforcers usually restrict their activities to actions against rival factions, but not always. In 2005, just hours after being sworn in as Nuevo Laredo Mexico’s Police Chief, Alejandro Dominguez was killed. Dominguez came to office on the promise of cracking down on the cartels.<sup>44</sup>

The threat across the border should be enough, but there are growing concerns that it cannot be contained there. Violence against U.S. law enforcement officials, from the Border Patrol to local law enforcement agencies, is rising at an alarming rate. From 2004 to 2005, violent incidents against Border Patrol agents on the Southwest border increased 108 percent. During fiscal year 2006, there were 746 violent incidents launched against these agents, including rock assaults, physical assaults, vehicle assaults, and firearm assaults. In March 2006, the House Judicial Committees’ Subcommittee on Immigration, Border Security and Claims conducted a hearing addressing these concerns, noting a growing concern over law enforcement agents literally being “outmanned and outgunned” by criminal elements.<sup>45</sup> In January 2008, a U.S. Border Patrol agent was run down and killed near the Imperial Sand Dunes in Southern California by men suspected of drug and alien smuggling.<sup>46</sup>



General Barry R. McCaffrey, former director of the White House Office of National Drug Control Policy, commented on the disturbing partnership growing between crime and terrorism at the nation's door.

These groups are drawn together because of their complementary capabilities. Terrorists can create chaotic circumstances that allow for illicit activities. Criminal organization have pre-established networks to move and sell narcotics and launder money.<sup>47</sup>

To date, this partnership has not taken on a character that would prompt a traditional "defense" response by the military. However, a recent report from Arizona indicates that concerns of that sort might not be as far-fetched as one might think. Officials at Fort Huachuca, Arizona, the nation's largest intelligence training center, changed security measures in May 2009 after being warned that Islamist terrorists, with the paid assistance of Mexican drug cartels, were planning an attack against the post. The plotters, up to 60 in number, were reported to be Afghan and Iraqi terrorists smuggled into the United States through tunnels with high powered weapons, including anti-tank missiles, Soviet-era surface-to-air missiles, and grenade launchers. The Federal Bureau of Investigation (FBI) will not elaborate on investigations surrounding the threat. Neither will they comment on other reports suggesting the "plot" was a Gulf cartel "plant" to bring the U.S. military in against a rival cartel. The bureau did acknowledge, however, that the report "demonstrates the cross-pollination that frequently exists between criminal and terrorist groups."<sup>48</sup>

The immediacy of genuine defense concerns, as opposed to law enforcement concerns along the border, is certainly open to question. Nevertheless, the evolving, intersecting threats of organized crime and terrorism, masked by the relentless challenge of illegal immigration across the nation's borders, clearly present federal, state and local government officials a dangerous and perplexing set of difficulties. Law enforcement agencies across all three levels of government have the lead in addressing the difficulties. The military has been and continues to be in support. But is the current role being played by the military – under the current circumstances, against the current threat – appropriate?

### **Temporary, but Recurring?**

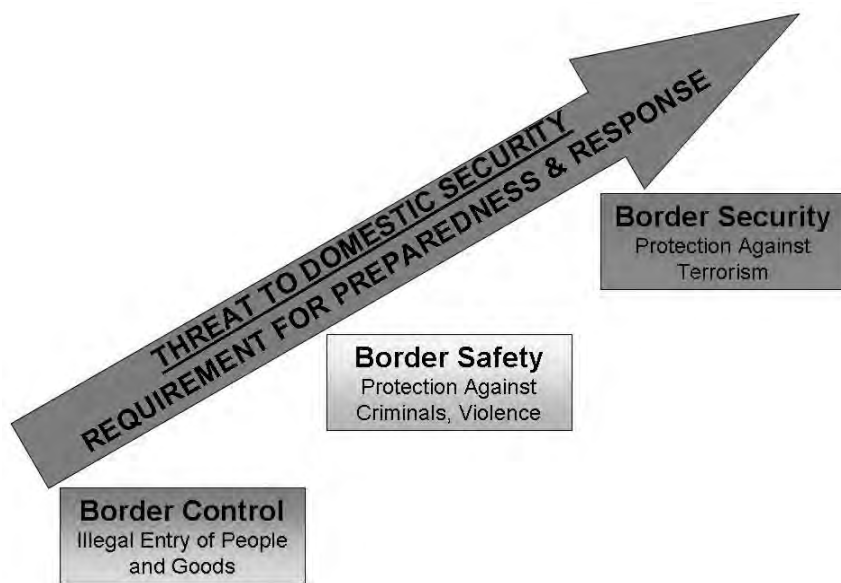
As though hedging bets, all discussion of placing the military in support of U.S. border security operations is consistently couched in terms of temporary requirements. Such was the case in 2002; such was the case again in 2006. It is clear that the current administration is making an honest effort to retool Customs and Border Protection in terms of both technology and "boots-on-the-ground" to meet the broader threat that has emerged since 9-11. The functions that have characterized DoD support along the border – communications and logistical support, lending and operating detection and sensor systems, augmenting border-related intelligence analysis efforts, training, and so forth – are being reflected in the strategic plans of the Department of Homeland Security (DHS). Specifically, the U.S. Customs and Border Protection strategic plan lays out an objective to "maximize border security . . . through an appropriate balance of personnel, equipment, technology, communications capability, and tactical infrastructure."<sup>49</sup> DHS is clearly intent on putting resources behind its rhetoric, directing approximately half of its \$5.4 billion information technology budget for 2008 toward developing and modernizing CBP's capabilities.<sup>50</sup> Ostensibly, the intent is to enable the organization to completely take control of that part of the mission the military has supplemented up to now. The question is, "Can we reasonably expect them to do that?"

Is it reasonable, for instance, to expect the DHS to duplicate the sensor capabilities that have been introduced in their support during this "period of transition?" Is it feasible and/or advisable

for them to reproduce the communication suites that have supported their operations along the southwest border since 2006? Is it fiscally responsible to match the engineer assets that the military has introduced in support of the mission over the last few decades . . . and the maintenance capability . . . and the training capacity? To be sure, DHS has means and capabilities to address all of these functions to a degree; but does it have *enough* means and capabilities to meet the requirement posed by the threat according to current assessments? And if it does, or shall soon, is it fair to assume that DHS will be able to fully meet the evolving requirement to address the evolving threat? Is it safe to make that assumption?

### PLANNING FOR THE LONGER TERM AGAINST A VARIABLE THREAT

I contend that it is not. The DHS current direction toward strengthening border security will not, and never be the final solution. Trying to empower a single federal agency with the ability to solve foreseeable challenges in this area is neither feasible nor advisable. Expecting military forces to continue to “stand in the gap” in their present capacity is also ill-advised – whether referring to the federal component – the active duty forces – or the “states militia” whose strength resides principally in the National Guard. A closer approximation of a solution to the evolving dilemma will begin with the realization that the border challenge must be addressed as a problem that varies with a variable threat (see Figure 1).



**Figure 1. Variable Scale of Border Protection.**

Experience has taught us that the lower end of that threat is embodied in massive numbers of illegal aliens, albeit ones without malicious intent. (Indeed, a significant amount of the nation’s concern in these regards is for the well-being of the aliens themselves.)<sup>51</sup> It is reasonable to assign day-to-day cognizance over that end of the threat to Customs and Border Protection as the clear, “lead federal agency.” As the threat moves further up the scale, introducing a frequently organized criminal element that we have seen trafficking both drugs and human beings, we may envision a requirement literally calling for greater force. That force could begin with a concentration and coordination of other law enforcement agencies (federal, state and local). These, of course,

would be keyed to their requirement by integrated information and intelligence from across the federal interagency. But they should also be served by mechanisms designed for intergovernmental intelligence and information exchange—up and down the chain between federal, state, and local authorities. The exchange would provide warnings and signals of the upper end of the threat spectrum, manifested in the confluence of organized crime and international terrorism. As suggested by Deborah Waller Meyers, the difference in responding to the variations of the threat at our borders may parallel the difference between border control (protection against the illegal entry of people and goods), border safety (protection against criminals, violence, smuggling, etc.) and border security (protection against terrorists).<sup>52</sup>

Becoming bogged down by any discussion surrounding “responsibility” for the security of the border is counterproductive, at best. Rather, federal, state, and local government must arrive at a common understanding of what is needed to provide an acceptable level of security at the borders, and then determine means to provide that security that is feasible, affordable, and acceptable to the American people. Addressing the variable scale, therefore, begins in the federal government with an interagency plan, led by the DHS. The impetus for border protection that began with the consolidation in Customs and Border Protection must be continued to harness the support of other agencies—including but not limited to DoD—that have vital roles in meeting the complexities of the task. This will certainly include institutions like the FBI and the Drug Enforcement Agency, whose traditional operations along both borders provide a background in both information and intelligence exchange with law enforcement. Multiple sectors of the intelligence community, led by the Under Secretariat for Intelligence and Analysis of DHS, can provide the underpinnings of what DoD calls an “active, layered defense.”<sup>53</sup> In turn, they will provide for the security of the nation’s borders, ideally well before the threat reaches them.

A stand-alone federal solution, however, will be doomed to failure. Governor Janet Napolitano of Arizona begrudgingly acknowledged as much when she declared:

States are not responsible for operational control of international borders; however, due to the dire situation that exists along the United States-Mexico border in Arizona, the state has had to act to preserve the rights and bests interests of its citizens.<sup>54</sup>

Concerns mirroring those of Governor Napolitano in the states of Texas, New Mexico, and California led to the memorandum of understanding signed between those states and DoD that is the foundation of Operation JUMP START. Comparable shared concerns between the states of New York, New Hampshire, Vermont, and the federal government led to similar agreements in the initiation and execution of Operation WINTER FREEZE in 2004.<sup>55</sup>

Beyond these exemplary operations, a host of evolving mechanisms are being built to strengthen cooperative efforts between the three levels of government that could be trained against concerns for border security. The FBI’s Joint Terrorism Task Force offices located across the country (notably including Phoenix, San Diego, and El Paso) could certainly be applied toward these ends, bringing together representatives not only from state and local law enforcement, but agencies like the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the Central Intelligence Agency, the Bureau of Immigration and Customs Enforcement, the U.S. Coast Guard, and DoD. Likewise, State Fusion Centers, financially sponsored by development grants from the DHS, are already serving as a primary conduit for information exchange.

The military’s role in the solution set that will be required this combined interagency and intergovernmental solution may be occasionally cumbersome for the services, but is inescapable. The expected transition described by the Bush administration as the impetus behind Operation

JUMP START may begin to solve the immediate problem at the lower end of the variable scale, but it should not be relied upon to address the middle and upper tier concerns. Even assuming that CBP receives a significant infusion of resources that will provide technological solutions, that infusion will not take place overnight. The equipment and expertise currently being provided by the military will, at least for the time being, remain a requirement.

Moreover, technology can only serve to complement boots on the border; it cannot replace them. Whether focused on interdicting the threat or – more ideally – deterring or preventing illegal transit, it is the physical presence of people that will actually accomplish the desired function. Again, DHS recognizes this reality and, along with the infusion of funds provided for technology along the border, it is asking for an increase of \$442.4 million to hire, train, and equip 2,200 new Border Patrol agents.<sup>56</sup> Again these planned increases will not translate into immediate reinforcement along the borders. Moreover, when spread across more than 7,000 miles of border to our north and south, the layer of protection provided by these 2,200 new agents may be exceedingly thin. Therefore – even if only addressing the steady-state, lower-end requirement suggested by the variable scale – sufficient numbers for accomplishing this mission may only be available if the military remains actively engaged.

Keeping the military engaged and, as necessary, bolstering that engagement, will present a series of questions. First, the nation’s leadership must decide which component of the military is best suited to address the issue along our variable scale: the active duty forces, the National Guard, or both? Next, the leadership will have to address the relative capacity of those forces to take on these responsibilities. And finally, having addressed the feasibility of the requirement, we will have to return to the question of whether such engagement is advisable and, most importantly, acceptable to the American people.

## ACTIVE DUTY FORCES

Recent tradition shows that if an active component organization is involved in civil support, its role is specialized, and its numbers are small. A good example is the U.S. Marine Corps Chemical-Biological Incident Response Force (CBIRF). The CBIRF’s mission requires it to respond to credible threats of a chemical, biological, radiological, nuclear, or high explosive yield incident in order to assist local, state or federal agencies.<sup>57</sup> The unit lists an impressive array of capabilities to include agent detection and identification, casualty search and rescue, personnel decontamination, and medical care and stabilization of contaminated personnel.<sup>58</sup> However, the unit is composed of only 350 personnel, and its mission is focused exclusively on CBRNE (Chemical, Biological, Radiological, Nuclear, or High Explosive Yield) incident response. The United States Northern Commands Joint Task Force for Civil Support (JTF-CS) was also designed as a very specialized force dedicated to planning and integrating consequence management support from the DoD to civil authorities following such an incident. However, the task force is essentially a command and control entity without assigned forces or dedicated transportation. In the event of an actual crisis, necessary personnel would be attached to JTF-CS to handle manpower intensive requirements alongside the specialized requirements the unit is uniquely qualified to fulfill.<sup>59</sup>

Joint Task Force North, as already noted, is much more directed to matters associated with the concerns of this chapter. The mission statement of the organization reiterates its relevance here.

As directed, Joint Task Force North employs military capabilities to support law enforcement agencies and supports interagency synchronization within the United States Northern Command area of responsibility in order to deter and prevent transnational threats to the homeland.<sup>60</sup>



As is the case with much of the current National Guard mission along the southwest border, JTF-N has frequently assisted law enforcement efforts by means of detection and monitoring missions and by facilitating engineer support. JTF-N processes and prioritizes requests and then sources them through appropriate active duty units.<sup>61</sup> In addition to these roles, however, the task force has played an important part in providing intelligence analysis and information sharing with federal, state, and local law enforcement agencies; other federal interagency partners; military units in support (from both the active component and the National Guard); and (when authorized and appropriate) Canadian, Mexican, and other international partners.<sup>62</sup> Beyond such support, the task force has a history of conducting collaborative planning with federal, state, and local law enforcement agencies. This ability to plan for complex operations incorporating binational, federal, state, and local stakeholders, highlights a core competency of the military that continues to prove more-than-beneficial in civil support missions inside and outside the United States.

Placed reasonably along the variable scale, the role of JTF-N could be seen in support of the Border Patrol in interdicting and arresting criminal elements. Moreover, it might provide support in intercepting and/or deterring the flow of terrorists over the nation's borders. While very deliberately not involved in arrest and apprehension, the task force can support CBP as the primary law enforcement agency charged with that responsibility. If statutes and regulations were amended to allow JTF-N to join in those more direct functions, however, it is hardly configured to do so. Approximately 150 Soldiers are assigned to the unit. The unit's main contribution is in intelligence and information sharing and in facilitating the introduction of other military forces to accomplish specified ends.

Perhaps curiously, JTF-N may be the only standing force from the military's active component dedicated to an aspect of border security. Its ties to the mission are indirect, born out of a concern over the illicit flow of drugs across our borders. Nevertheless, but the new transition from counter-drug concerns to the newer concerns surrounding counterterrorism will no doubt assure the task force's continued association with the CBP and its partner agencies.

In the meantime, there are other units whose missions could be applied to these endeavors, especially as focus shifts from border control to border safety to border security. The United States Northern Command itself may serve a vital liaison function between the militaries of the United States, Canada, and Mexico, ensuring transparency and encouraging cooperation through bilateral and multilateral Theater Security Cooperation Plans (TSCPs). NORTHCOM's Standing Joint Force Headquarters-North (SJFHQ-N) is poised as a deployable command and control element about which a Joint Task Force could be quickly configured in response to any number of homeland defense scenarios.<sup>63</sup> Pre-designated Quick Response Forces in both the United States Army and the United States Marine Corps could quickly fall in as the key components of those JTFs, if deployed. But they are not, nor are they envisioned to be dedicated forces for border missions.

## THE NATIONAL GUARD

Then again . . . neither is the National Guard. The administration frames the current support mission along the southwest border, like the 2002 mission conducted in the wake of 9/11, as an anomaly. However, unless an unexpected turn of events lifts the threat from our borders or a remarkable (some would suggest inadvisable) infusion of manpower takes place in the Border Patrol, it is likely to be a recurring anomaly. Because in spite of understandable reticence surrounding its use, no force recommends itself better to the mission than the Guard.

The thing that most commends the Guard as the military resource of choice in any civil support mission is its traditional relationship with the civil authorities in need of that support. Recruiting offices across the country remind us of this relationship—an affinity based in the dedication of the



Guard to the people it serves, enhanced by its proximity. No one in the military is more attuned to the border enforcement, safety, and security challenges facing Yuma County, Arizona, than the Arizona National Guard. No one in the Armed Forces is more aware of persistent concerns surrounding Aliens of Interest passing through the Swanton sector of New Hampshire, Vermont, and New York than their Guardsmen. Likewise, no element of the U.S. military enjoys a closer working relationship with the state and local government than those who dwell among them, exercise with them, and plan to respond to emergencies alongside them.

Accordingly, logic continues to dictate that if greater forces are needed along the border, the National Guard is the “go to” solution. The same thought process that calls for closer integration between federal, state, and local law enforcement extends easily to incorporating the local “state militia” in support of those integrated efforts. By further extension, as regional state cooperative efforts like the ones discussed here continue, cooperative, collaborative planning between the adjoining states’ National Guard will provide a synergy that could “close the seams” between states’ borders, while simultaneously addressing the larger national border issue.

While the greatest urgency surrounding border security may exist in the states that constitute those borders, the cost for providing that security is not theirs to bear alone. There are a number of precedents that have been set since 9/11 that allow for greater federal support to those states’ immediate concerns. Notable among these are measures designed to fund deployment and employment of the National Guard in missions that remain under state control. For instance, Title 32 of the United States Code authorizes the Secretary of Defense to provide funds for National Guard missions that remain under the authority of a state’s governor, as “necessary and appropriate” in supporting “homeland defense” activities.<sup>64</sup> Similarly, the potential exists for states’ governors to fund National Guard activities undertaken in state active duty status through Department of Homeland Security grant monies.<sup>65</sup> Additionally, federal funding available to the states via 32 U.S.C. §112 for “drug interdiction and counterdrug activities” could logically be extended to a state force whose mission is tied to the federal effort to interdict these illicit activities coincident with the general policing of our nation’s borders.<sup>66</sup>

Funding issues, however, become secondary when viewed against the greater concern of how the National Guard could afford the additional manpower demands implied in a recurring border security mission. A partial solution to this “more immediate challenge” to the border states is to continue to augment their efforts with National Guard units from other states. Doing so would continue the pattern begun in 2002, revisited in Operation WINTER FREEZE, and currently being exhibited in Operation JUMP START. Officials are quick to point out that military readiness has not and will not be degraded by the Guard’s participation in this endeavor.<sup>67</sup> Rather, the Guard’s support has been portrayed as enhancing the engaged units’ readiness in engineering, logistics, transportation, aviation, medical and maintenance. Given continued federal funding and accompanying cooperation among the states through the Emergency Management Assistance Compact (EMAC), these are means that could be applied to the problem for some time.

One should understand, however, that this is only a partial solution, and one that may not be sustainable. Indeed, rising demands on existing numbers in the National Guard may make sustainability the ultimate “deal breaker” in these discussions. The current strain being felt by the National Guard due to its employment at home and abroad is well-documented. Expecting it to accept an increased burden by way of operations along the border amounts to what has been called “a further strain on already overextended military resources.”<sup>68</sup> What most people fail to realize is that the National Guard has taken on these unprecedented demands, escalating from deployments in Bosnia-Herzegovina and Kosovo in the late 1990s through Operations IRAQI FREEDOM and ENDURING FREEDOM, with historically weakened manpower. Following the fall of the Soviet

Union, the National Guard was charged with making force reductions that have never been recovered. In 1989, the end strength of the National Guard stood at 570,000 personnel. Buoyed by the prospect of a “peace dividend,” that force was reduced by 20 percent to approximately 456,000, of which 350,000 are Army Guard.<sup>69</sup> Balance reduced numbers against the increased operational tempo of the National Guardsmen in the last 3 decades, and the picture becomes bleaker still. In the 1980s, serving Guardsmen accounted for approximately 1 million man-days of duty per year. In the 1990s (with a shrinking force), that figure had grown to 12.5 million man-days. In 2003, statistics showed that these figures had ballooned to 63 million man-days per year.<sup>70</sup>

It is beyond the intent of this chapter to suggest how many personnel are required to effectively secure U.S. borders. In 2005, the late Representative Charlie Norwood (R-GA) sponsored a study that suggested 36,000 National Guardsmen and/or authorized “State Defense Forces” would be required to assist the Border Patrol in securing the southwest border of the United States.<sup>71</sup> At one point before the activation of Operation JUMP START, the administration planned to deploy 10-12,000 troops in support of the border patrol, as opposed to the 6,000 that were eventually sent.<sup>72</sup> Whatever the case, the numbers and the need that inspire them are more than appreciable. Combine our concerns to the southwest with the realization that our border with Canada is twice its size – and that there are only one-tenth the number of border patrol agents as exist in the southwest there to “protect” it – and the immensity of the requirement at hand becomes more appreciable still.

Until now we have only examined numbers, without coming to grips with how those numbers should be applied. It should be obvious that the 36,000 man augmentation envisioned in Congressman’s Norwood’s study were not intended merely for surveillance, intelligence analysis, or engineering functions. They were intended to be postured as the deterrent effect that can only be supplied by boots-on-the-ground, standing in the gap, able to interdict and, as necessary, arrest and apprehend the threat to our people. They were intended to augment law enforcement agents alongside of those agents, occasionally providing peripheral support to their mission, but equally prepared to provide direct support to policing requirements. Were the threats the country is facing still limited to those unintentionally accompanying the “huddled masses yearning to breath free,” the necessity for this augmentation would be significantly different. But, that is not the case, and the nation is obliged to prepare for a greater menace.

We are faced in the center and upper levels of our variable scale with a requirement that fails to fit comfortably in the realm of either law enforcement or national defense. Given the adversaries we have encountered in what has been called the “seam of ambiguity” between the two, the best path is for us to prepare to meet the trials of both environments. With all deference to DHS and especially to their Border Patrol agents, it is illogical to expect them to be prepared for an upper end threat that may see them outgunned. Neither is it logical to expect the American public to duplicate the assets and capabilities contained in the military to perform a function it should be capable of fulfilling. The reticence of the armed forces to take on the more direct involvement envisioned here is understandable – but perhaps wrongheaded. Beyond the question of technology and manpower, of capabilities and numbers, the military requires a new mindset in addressing the border security issue.

The spirit embedded in the Posse Comitatus Act and the laws and regulations that reflect it, are focused on reiterating the role of the U.S. military as the servant of its people. But the preponderance of the concern along our borders does not have to do with the comings and goings of the American people. Our concern is over the illegal entry into our country by those who may wish to do us harm. The nation’s primary defensive focus, as always, remains outward against an external threat – but that focus must now begin on its shorelines and along its territorial boundaries. The studied hesitancy of the DoD leadership should be viewed against how quickly border enforce-

ment issues could become border safety issues, and finally reactive issues of national defense. An organization that justifiably prides itself on a preemptive mentality should bear no umbrage against employing itself as an obstacle to the threats envisioned here.

There is no doubt that this suggested change in the military's paradigm will require a reexamination of statutes, regulations, and directives. But 9/11 has forced many such reexaminations. Moreover, the redirection envisioned here need not automatically alter the traditional relationship between America and its military surrounding matters of domestic law enforcement. It will, however, automatically and exponentially emphasize a message of deterrence along our borders, and bolster the means of defending that border should that deterrence fail.

## CONCLUSION

Border security is not what it used to be. Over the last 3 decades, America's concerns have steadily escalated from what was once as much a humanitarian issue as a security issue, to concerns over paramilitary violence, organized crime, and international terrorism. The requirements to meet these concerns have likewise increased to the point that anything less than an interagency and intergovernmental response will inevitably leave our citizenry vulnerable to a new and expanding series of threats.

One would like to think that the new era of threats to our borders and our people is a temporary condition and that some day soon the nation will be allowed to settle back to a less demanding posture of readiness. Unfortunately, reality does not accommodate those wishes. The "Long War" our leadership forecasts for our nation and our allies cannot be expected to remain "over there." Mr. Craig Duehring, Principal Deputy Assistant Secretary of Defense for Reserve Affairs framed the current state of affairs succinctly and with candor:

The nature of the mission has changed because of the Global War on Terrorism. The potential danger to our country has increased dramatically. It's not just a story of people looking for a better way of life. It is, in fact, a great potential for increased damage to our country, threats to our citizens, to our way of life. That's something that needs to be addressed. We took the border mission for granted for too many years, and that's no longer going to be the case.<sup>73</sup>

The new threat portends a new challenge for the military, both active and reserve components. From the United States Northern Command, through to the individual state's National Guard, our leadership will be required to revisit its thinking, motivation and ethos in addressing this particular "law enforcement" requirement. It will require our government to decide which entities from the depth and breadth of its capabilities are best postured, best equipped, and best trained to meet the trials that lay ahead. Once those means are selected, however, it will require an accompanying commitment from our government to ensure that they are sustainable, in terms of equipment, in terms of technology, and – most importantly – in terms of manpower.

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## CHAPTER 24

### CREATING STRATEGY IN AN ERA OF CHANGE: THE PLAINS INDIAN WARS

Clayton K. S. Chun

American military history abounds with situations that involve rapid changes to the nation's strategic environment. These changes forced Washington to modify policy and strategy to meet new challenges. Existing strategies, force structures, and doctrine became obsolete, and administrations needed to replace or alter them. For example, national and military leaders created new strategies to face evolving threats just after World War II, the Berlin Wall's collapse, and the events of September 11, 2001 (9/11). Emerging threats ranging from nuclear annihilation to terrorism and insurgencies forced national leadership to adapt.

Revised strategies involved novel approaches, which civilian and Army leaders had to create under less than ideal conditions. In some situations, military officers had to plan for and engage with enemies trained, equipped, organized, and operated in ways that were alien to their own forces. Within the federal government, reliance on interagency support to meet national objectives became both a prerequisite and a source of conflict. Without exception, the nation made these changes during times of constrained resources. For example, after World War II, the public demanded a return to a small, permanent peacetime military and conversion of defense industries to consumer production. The government had to balance this demand with the need to maintain a large overseas permanent American military presence. However, changes to post-World War II strategy and policy are not the only example in American history that is useful for today's world.

One case that illustrates this situation is the post-Civil War period. After 4 years of intense conventional warfare, public demands for a return to normalcy forced the federal government to refocus on domestic concerns. The government relegated the military to its traditional mission of protecting the nation's sovereignty. Congress enacted legislation to severely cut the number of Army and Navy personnel and reduce arms procurement. Still, the Army was larger than its pre-Civil War strength. Congress recognized the Army's need to maintain sufficient manpower to aid Southern Reconstruction and allow expanded white settlement in the West. The Army allocated major forces to defending the nation's coastline, while a smaller one became a constabulary force in the interior.

Since colonization, the white settlers and North American Indian populations had been in almost continual conflict. Early American efforts to co-exist with Eastern Indian nations eventually turned to disputes over land. Indian policy before expansion west of the Mississippi River focused largely on tribal resettlement. Treaties forced those tribes that possessed desirable land to areas in the undesirable and distant Great Plains or "Great American Desert."<sup>1</sup> This area stretched from the Mississippi River to the Rocky Mountains. Many government officials believed these lands unsuitable for agriculture or economic development and perfect for Eastern Indian resettlement. Washington could afford to push tribes out to the Plains where there appeared to be little chance of white settlement. Inevitably, natural population growth and immigration to the United States led to pressure for expansion. The growing white population, which doubled from 15 million in 1835 to 31 million in 1860, created demands for additional food and resources.<sup>2</sup> Adding to the pressure, immigration tripled after the Civil War.<sup>3</sup> Farmers found the supposedly infertile Great Plains capable of supporting crops and livestock – the basis of an economic motivation to settle the West.

The 1849 gold discoveries in California also provided ample motivation for western development of the Pacific Coast. Earlier policies that exchanged highly desirable land in the East for less desirable western land worked only if there was sufficient good land available for the white population. As the nation grew, that ceased to be the case.

Hostilities between whites and Indians continued during the American Civil War, although the resulting clashes were minor compared to the military campaigns of the big war. Western state and territorial militias continued to fight in the Plains against relocated and indigenous tribes. An inevitable clash of cultures started to boil. The U.S. Army had fought Indians in the past. These previous encounters involved campaigns where the Army could mobilize its forces and defeat the Indians in relatively set-piece campaigns. Only the Seminoles had given the Army significant persistent trouble, and that resulted largely from terrain considerations. Unlike most Eastern Indian tribes, the plains tribes were mobile, nomadic hunter-gatherers. These tribes were also larger than their eastern cousins. They were becoming a major threat to the burgeoning western settlements.

There was a growing lack of understanding among white Americans about the West. In 1870, 83 percent of the U.S. population lived in eastern states.<sup>4</sup> Most political and military leaders were unfamiliar with the western lands and the native populations that lived there. American interests in the West had initially appeared limited; this perception would change.

Immediately after the American Civil War, President Andrew Johnson attempted to settle problems with the Plains Indian tribes through negotiation. This approach had worked in the past. Johnston created the Indian Peace Commission to remove sources of conflict between the tribes and the government. The commission also sought to protect the personnel and property of the transcontinental railroad.<sup>5</sup> Successful peace treaties would allow Congress to cut the Army's size and help reduce budget expenditures. Continuing problems with the tribes, broken treaties, an expanding white population, and other issues doomed this avenue to peace.

## A NEW ENVIRONMENT FOR THE ARMY

Fighting between settlers and Indians during and after the Civil War had created hatred and distrust. Lack of local law enforcement to protect settlers and Indians forced the U.S. Army to undertake this role. Regular Army units had served in this capacity before the Civil War, but they had moved east to fight in the regular campaigns of the war. State and territorial volunteer militias had replaced them as early as 1861. Unfortunately, these militias created future problems for the Army. In one instance, Colonel John Chivington, Colorado Volunteers, led his units in an attack against peaceful Arapaho and Cheyenne Indians in November 1864 at Sand Creek. Chivington commented: "Kill and scalp all, big and little; nits make lice."<sup>6</sup> The Sand Creek massacre blackened the Army's reputation among tribes, and critics complained about Washington's treatment of the Indian population. It also created major unrest among Plains tribes that would continue after the Civil War.

Army leaders faced several challenges in late 1865. Public demands for reduced government expenditures, personnel cuts, focused attention on continental defense, volunteer and drafted Soldiers, insisting on the Army demobilizing them immediately, and differences in mission requirements forced changes to strategy and operations. Washington's public policies had encouraged large-scale immigration to settle and exploit western land and resources. Facing unrelenting pressure from white settlement, Plains Indian tribes were unwilling to settle on peace terms with the government. The Army had to maintain order in the West, implement policies, and potentially fight campaigns. Conditions for the Army seemed bleak. Senior officers had to adapt to this dynamic environment.



The government reduced the post-Civil War Army's budgets to a minimum. The war-weary nation returned to an era of small government with an emphasis on rebuilding the economy and nation. The federal government reduced War Department funding, as the Congress demanded a balanced budget. Army officers had a record \$1 billion to spend for operations, personnel, and equipment in 1865. By 1878 the country could only afford \$32 million for the Army.<sup>7</sup> These drastic funding reductions forced the War Department to cut personnel. In 1865, the Union Army had over 1 million Soldiers in uniform. Although the Congress had reduced the size of the regular Army, its leaders did recognize the need for additional troops to fulfill its missions. Before the Civil War, Army officers commanded about 18,000 Soldiers. After the Civil War, Ulysses Grant requested a force of 80,000, but Secretary of War Edwin Stanton agreed only to 50,000.<sup>8</sup> The Army would field a total strength of 56,815 Soldiers in 1867.<sup>9</sup> Army leaders would not see a force larger than the 1867 strength until the 1898 Spanish–American War. Budget cuts after 1867 forced additional reductions. By 1877, personnel dropped to only 24,140 officers and enlisted personnel.<sup>10</sup>

Government leaders could not foresee a major threat to the nation's security. If a threat to the nation's existence did emerge, it would probably come from an invasion by European countries. Two oceans continued to protect the country. Its neighbors to the south and north did not present a threat. A revolution forced France out of Mexico in 1866, and the Mexican government was weak. Canadian and British forces to the north posed no threat to the United States. The Army emphasized coastal defense while the mission of pacifying the vast interior fell to the small remaining force of infantry, cavalry, and field artillery units.

Many budget problems arose. Field commanders who wanted repeating rifles and other modern equipment had difficulty convincing a skeptical Congress. The Legislature could point to surplus Civil War-era weapons, uniforms, and field rations that Soldiers could use. Training and forts became inadequate. Fewer Soldiers and the requirement to man coastal defenses forced Army leaders to spread their forces thinly throughout the West. Modern field artillery was a rarity. Instead, Army Headquarters spent its limited funds purchasing coastal defense artillery and fortifications to protect ports and deter invasion.

Other activities also required Army attention. Immediately after the Civil War, Reconstruction diverted military personnel to the task of reintegrating the Southern states into the Union. The Army had to protect former slaves, act as an interim civil government, and rebuild infrastructure. Army Officers served as military governors who operated a legal system that enforced laws and dispensed justice. Army forces moved near the Texas border. Washington used this deployment to illustrate its concerns to Paris about French presence in Mexico.

## **DEVELOPING STRATEGY**

Operating Army units faced several problems trying to develop, shape, and implement policies and strategy. Senior Army officers had to define and interpret policy. For example, what objectives did the President and Congress want the military to pursue? How could the Army's leaders accomplish its mission with shrinking resources? How would they measure success? Could the Army use the same strategy against the Apache in the Southwest it used against the Plains tribes, or would it have to adapt a new approach? These questions forced Army leaders to modify their military planning and operations throughout the Plains.

In terms of strategy, the primary military leaders tended to view the Indian issue through the lenses of their recent personal experience. For senior Army leaders, that experience was one of total war against the Confederacy. Generals William T. Sherman and Phillip H. Sheridan, both of whom would play leading roles in the post-war Army, had commanded Union forces in campaigns in Georgia and the Shenandoah Valley that would come to typify the total nature of that war. Both



Sherman and Sheridan had used tactics aimed at breaking the will of the Southern population and military. Destruction of food stocks, economic activities, and disruption of lives highlighted their approach to defeating the South. These recent experiences among Sherman, Sheridan, and other commanders colored their perspectives on the Indian problem. It was natural for Army leaders to adapt the strategic concepts of total war to the Indian problem. If they could break the Indians' will as they had broken Confederate will, peace could return to the Plains.<sup>11</sup>

Army leaders faced challenges throughout the period of 1865 to the end of the Plains Indian Wars in 1891 while the nation settled the region. National policy evolved from negotiations with the many Indian nations to active campaigning to compel tribes to submit to Washington's demands. As policy evolved, the Army's role changed from setting the conditions for and supporting negotiations to securing territory and forcing tribes to abide by treaty provisions. If tribes refused, the military could conduct combat operations to ensure compliance. Army officers might conduct activities on a reservation to help tribes adjust to reservation life and later conduct actions against the same group. Additionally, the Army served as a nation-building force. Infantry or cavalry units conducted security, humanitarian relief, governance, and construction activities. These forces did not have the training, organization, or equipment to carry out these missions.

The post-Civil War Army was a shadow of its 1865 self. Army strategists who believed that the initial threat to the nation was from an external invasion dominated military thought after the Civil War.<sup>12</sup> The size of the nation, the oceanic barriers, and the Navy's ability to thwart an invasion with a coastal force encouraged Army officers to reevaluate their role. Some argued that the Army needed a larger standing force to fight modern armies, but the public and the government remained unconvinced. Congress cut the number of Soldiers authorized by about half within a few years after the large post-Civil War demobilization. After the Civil War, the Navy was just a coastal defense force; by the 1880s, the public and the government wanted a larger naval force. Threats from expanding European navies, a push to increase American interests globally, rising nationalism, and other rationale pushed the expansion. The Army did not inspire a similar public demand.

The small army in the West had to protect settlers, ensure the Indians stayed on their reservations, secure wagon trains and railroads, and perform other missions as diverse as exploration and law enforcement. One problem that the Army faced was a category of Indians called "roamers." These Indians might stay on reservations in the winter to take advantage of the food and shelter, but during the summers, they returned to their nomadic hunting ways. The only way to ensure peace on the Plains was to force permanently all the Indians onto reservations in areas like Oklahoma or the Black Hills in the Dakota Territories away from major white development. This would require a slow, methodical process.

Army officers throughout the West faced divergent geographic and tribal problems. Government officials could develop policies that worked in the Plains, but might not work in other areas of the country. The Great Plains allowed relatively easy movement, but other areas of the West were composed of deserts, mountains, or thick forests. Apache, Modoc, Nez Perce, Navaho, or other tribes did not share the same beliefs, cultures, or living styles as the Plains Indians. Even within the Plains, Indian nations held different beliefs. The Army often capitalized on these differences to pit tribes against one another and use tribal members as scouts.

Multiple objectives, limited resources, the difficulty of measuring success, and differing tribes and geography forced military and political leadership to craft multiple strategies for the Plains. A "one-size-fits-all" policy could hardly encompass all of the problems in the West. The War Department and field commanders had to recognize many of the limitations implicit in conditions on the Plains to create an effective strategy. Additionally, the War Department was not the only

governmental organization concerned with western problems, and bureaucratic turf issues were always present if not openly on the table. Under these conditions, Washington had to address the Plains Indian problem, but the problem would continue for almost 26 years.

### **Dealing With Several Strategies.**

The American military now faced foes that were different from the one it had fought from 1861 to 1865. The strategic environment had drastically changed for battle-experienced commanders. After five years of mainly conventional war, commanders now had to adapt to a longer conflict dealing more with an insurgency rather than a conventional, uniformed enemy. In the American Civil War, strategic objectives included the capture of major cities and capitals. There were no major permanent Indian population centers to capture or destroy. Army units fought random skirmishes instead of large battles and sieges of conventional wars. Native Americans normally avoided large pitched battles, and the tribes moved rapidly throughout the Plains. Army commanders also had difficulty distinguishing enemy from friendly tribes. Political demands to operate numerous Western small outposts and forts to protect farms and towns further diluted Army strength. These outposts had to serve almost one million square miles in the Southwest, Plains, and Rocky Mountain territories. Dividing the smaller Army forces into geographically dispersed installations created problems for logistics, training, and morale. These factors forced higher-level commanders to delay operations until they could organize activities among diverse units. Fortunately, tribes rarely cooperated to conduct actions against the Army. If the tribes did work together, the resulting alliances were normally short-termed or limited in number. Officers could usually organize actions against single tribes instead of a massive, simultaneous revolt by multiple tribes.

The U.S. Government's strategy involved three lines of operations. First, the government used the Army to enforce treaties. This pitted the military directly against tribes with grievances. Second, Washington's policy was to "settle" Indian tribes by forcing them onto reservations. This approach allowed the Army to limit tribal movements and to distinguish between friendly and hostile tribes based on geography. The government branded tribal members who left the reservation "hostile." Reservation officials could demand that the Army force the return of these "renegades." The final line of operations was expanding the white population in the Plains. This had the secondary effect of limiting the tribes' ability to lead nomadic lives. The transcontinental railroad was a major facilitator in that it provided fast, cheap transportation and indirectly served to destroy the buffalo herds — one of the nomadic Indians' major sources of food.

Sherman and Sheridan used their Civil War experience to craft a strategy. The main problem facing the Army was its lack of mobility that let Indian tribes avoid direct contact and combat. Limited budgets had forced the Army to use more infantry than the mobile cavalry since the cost of training and equipping infantry was much lower than cavalry. For example, in 1872 Army commanders could field 16,002 personnel in infantry regiments compared to 10,562 in cavalry regiments.<sup>13</sup> Reliance on infantry, at many posts, meant that Army units were slow to react to attacks by Indians on settlers, reservations, or other parties. The infantry could move at about 2.5 to 2.75 miles per hour, while cavalry could gallop at 16 miles per hour and walk at 4.<sup>14</sup> Additionally, infantry units could travel at most 15 to 20 miles per day while cavalry could cover longer distances.<sup>15</sup> Infantry units did have a major advantage, they could deliver a greater amount of firepower and could travel long distances in all weather conditions.

If the Army could not move as fast as its enemy could, then it might try to neutralize the Indians' mobility advantage in some other way. The main source of transportation for western Indian populations was ponies. Native populations fed their ponies natural plains grasses, which facilitated mobility during the growing season, but severely limited it during winter. Winter weather

destroyed or covered the ponies' food supply and confined the tribes to relatively fixed and predictable sites. Army cavalry units used horses, of course, but the Army relied on feed grain provided by an extensive logistics system, and only used natural grass as a supplement. Sheridan noted if the Army could "fall upon the savages relentlessly in that season, their ponies would be thin and weak from the lack of food."<sup>16</sup> Without transportation, an Indian tribe had to remain in areas where they were vulnerable, and scouts could track their movements in the snow. Because the Indians had difficulty moving in the winter, the probability of them attacking settlers was low. The reduced threat to settlers allowed the Army to deploy most of its Soldiers in winter campaigning. Since the Army could not conduct many of these campaigns in a single year, this strategy would take time. Sherman and Sheridan would have to use attrition to grind down tribal resistance by massing the Army's small forces to overwhelm its enemies.

Winter campaigns became the focus for Army operations against hostile Plains tribes. Despite the limited Indian mobility, Army units still had to find the tribes. Additionally, most posts throughout the West were small. Army commanders would have to combine the garrisons of these posts to face any sizeable Indian force. Consolidating units took time, and massing enough force to confront a major Indian uprising took even longer. There was, however, a scheme of maneuver that addressed these concerns: converging columns. Commanders could organize multiple columns to approach a hostile tribe from different directions and converge on the battlefield to surround the Indians. This concept allowed the Army to concentrate its scattered units into several mid-sized columns rather than one large unit. Concentration was thus faster. Additionally, the converging columns reduced the possibility of the enemy escaping. The reduced Indian mobility during the winter provided security for the small converging columns—especially the slow-moving infantry—that otherwise might have been vulnerable to defeat in detail.

This strategic concept of converging columns and winter campaigning did have drawbacks. The Army had largely deployed its forces on the Plains to posts and forts that normally had one or two companies. Regimental-sized posts were rare. These forces were widely dispersed, frequently in different geographic command jurisdictions that confused command relations and coordination. Typical companies might have about 40 men, so forts often contained less than 100 Soldiers. Fighting Indians was not the only duty for these companies. During campaigns, the Army still had to maintain the posts, enforce appropriate laws and policies, protect settlers, build infrastructure, and conduct other routine activities. These requirements constrained the number of Soldiers available for campaign. Training was another concern. Isolated, distant posts made regimental exercises all but impossible. Many companies belonged to a regiment in name only. On campaign, the assembled companies would form ad hoc "battalions," but these had never worked or trained together before. Since campaigns took time to organize and execute and consumed essentially the entire available force, the Army could only mount one major campaign per year in a particular region.

Logistics was another problem. Gathering sufficient supplies, ammunition, and transport was a difficult task under normal field conditions. During the winter, it was even harder. Feed for horses, food and ammunition for the Soldiers, towing artillery, and the logistics structure itself created huge demands. Quartermasters had two options to meet those demands: wagon trains or depots. Supply depots further depleted the military force since they needed protection, and wagon trains used limited resources while slowing down the operational movement. The typical solution was a mix of the two systems. Quartermasters established depots as far forward as possible and used wagon trains accompanying the troops to supply immediate needs and shuttle supplies from the depots. Ideally, Army planners would position supply points close to the expected campaign area or conduct actions close to railroads. In either case, supply depots and wagon trains moving between them and the field force were always at risk of an attack.

One of the most difficult problems for commanders using converging columns was coordinating attacks. Communications in the West were limited. This limitation created problems of controlling the columns. Once a campaign began, dispatch riders were the only means of communications between columns. That method was slow and undependable. There were no guarantees that dispatch riders could even locate distant columns to deliver their messages, and individual riders were vulnerable to all sorts of mishaps. The use of telegraph communications was limited to messages between forts or along rail lines (where the telegraph lines ran). Frequently, Army commanders could only guess at the size and location of their targets. If a tribe moved or its size was underestimated, commanders had few options for changing a plan on the move and the converging columns might fail. Additionally, the whole concept depended on an immobilized target caused by winter weather, which was not always the case. The success of the Army's converging column concept depended on surprising an enemy in its camp. A mobile enemy force that detected the threat might defeat the columns in detail.

U.S. Government Indian policy in the West also relied on the reservation system. The concept was that the Department of the Interior's Bureau of Indian Affairs (BIA) would provide food and shelter to the tribes while the Army put them and kept them on the reservations. The BIA intended to divide the tribes by this policy. Keeping the Indians on the reservations allowed the government to monitor and control their activities. Unfortunately, the BIA created appalling conditions on many of the reservations that produced tribal discontent. Questions surfaced about who was responsible for Indian policy. The Army had responsibility for Indian policy until 1849 when it ceded control to the Department of the Interior. The War Department divested itself from the BIA due to the change. Even if the official responsibility was clear, Army officers often believed they were better equipped and trained to operate the reservation system than the BIA agents. Rampant corruption and ill treatment of the Indians by reservation officials created conditions that drove the Indians off the reservations. If Indians left a reservation, BIA officials could order Army units to return forcibly tribe members, and the Army had to face a confrontation that might prove deadly or at least counterproductive. Conversely, BIA agents thought Army officers were often too harsh to run the reservations. Reservation officials had seen the result of winter campaigning and the destruction of tribes. No one organization coordinated activities of the BIA and Army and responsibility was muddled. Major General George Crook, who fought both on the Plains and in the Southwest, commented in 1879 "[a]s it is now you have a divided responsibility. It is like having two captains on the same ship."<sup>17</sup>

The reservation and Army post system did offer a "forced" civilization of hostile tribes. As reservations and posts grew throughout the Plains, white settlements advanced into vacated Indian lands. Sheridan noted the advance of frontier settlements in Kansas, Nebraska, Minnesota, and the Dakotas would "civilize and Christianize the wild Indians."<sup>18</sup> Moving the Indians onto reservations forced the Army to use its limited manpower to patrol, enforce reservation policies, and conduct small-scale operations. The Army typically created posts on the frontier and manned them until the area was peaceful. The War Department then closed or reduced the size of the post and move west into new disputed areas.

If the Army and the BIA could not force tribes onto the reservation, they might encourage a white population boom that would constrain tribal movements. Developing the Plains would literally fence in the tribes. However, Western expansion required a quick and inexpensive means of travel to entice ordinary citizens to move to the Plains and other areas. Ship travel could take months to travel from the Atlantic Coast to California. By 1862, the U.S. Government financially supported a transcontinental railroad to tie the country together. The railroad stretched from Omaha, Nebraska, to Sacramento, California. Once completed in 1869, the railroad allowed mass



movement of people across the nation. Inexpensive land in the Great Plains enticed settlement. The railroad delivered freight and shipped cattle and other agricultural products from the Plains to both coasts. Feeder rail lines expanded the transportation network and further developed the West. This made Plains agriculture economically feasible. Additionally, mineral interests created jobs in mining. Manufacturing demands from domestic and international sources created a market for western minerals. The railroad facilitated this whole process. It also allowed the military to move forces and supplies throughout the Plains.

The railroads brought another problem for the tribes—the destruction of the buffalo. Buffalo herds on the Plains provided sustenance to many tribes. Hunters hired by the railroads to feed construction gangs and satisfy demands for hides started to decimate the buffalo—a process that intensified over the years into a virtual extermination drive. The Plains Indians faced starvation. Sherman believed the transcontinental railroad “right through Indian country . . . prove destructive to the game on which they subsisted and consequently fatal to themselves.”<sup>19</sup> Destroying their food supply might be an effective strategy if the tribes succumbed quickly. However, after years of starvation, Major General John Schofield, commanding the Division of the Missouri, noted in 1884 “Starvation must necessarily drive the Indians to commit depredations upon the settlements in their vicinity.”<sup>20</sup> Starvation as a strategy was thus backfiring. Schofield also noted that treating the Indians fairly and with humanity was a better way to settle problems.

Military action, the reservation system, and the railroads supported the settling of the West. However, there was no single organization responsible for overall conduct of government activities on the Plains. The Army and the BIA had control of activities in their respective areas, but each could influence and affect the actions of the other. Other organizations also influenced events. Business interests, citizens, and others who wanted to develop the West pushed railroads. Politicians were also interested in the Plains development. Differences between the Executive and Legislative branches forced compromises to policies. Within the War Department, the Commanding General of the Army controlled operations while 10 separate staff bureaucracies (e.g. quartermaster and ordnance) were not under his command but worked for the Secretary of War. During the Grant administration, the Secretary of War issued direct orders to commanders in the field, thus further undercutting the Commanding General. Within the War Department, coherent policy and decisionmaking processes were muted.

Not all American citizens agreed with the government’s Indian policies. Eastern humanitarians, the newspapers, and several religious groups protested the poor tribal treatment. These groups protested the Army’s destruction of the tribes, inhumane reservation conditions, the creation of monopolies by the railroad, and other concerns. These policy disagreements spread to Congress. Instead of producing a unified policy, the Eastern urban population was pitted against the people of the rural West. Eastern groups argued for humane treatment of the Indians, while the Western population demanded more protection and aggressive actions by the government to control the Indians. Forging a policy and strategy to settle the Plains created major constraints that would temper the development and execution of an overall strategy.

### **Military Strategy on the Southern Plains.**

The Army’s use of winter campaigning and converging columns was adopted in 1868. There are a number of cases where infantry and cavalry units succeeded in defeating hostile tribes. The Army was able to combine smaller units into a decisive force to conduct these operations. One such successful campaign occurred on the Southern Plains in November 1868 on the Washita River. However, the complex movement of regiments, lack of communications, little or no information about the enemy, isolated columns vulnerable to defeat, and inevitable delays in deployment also



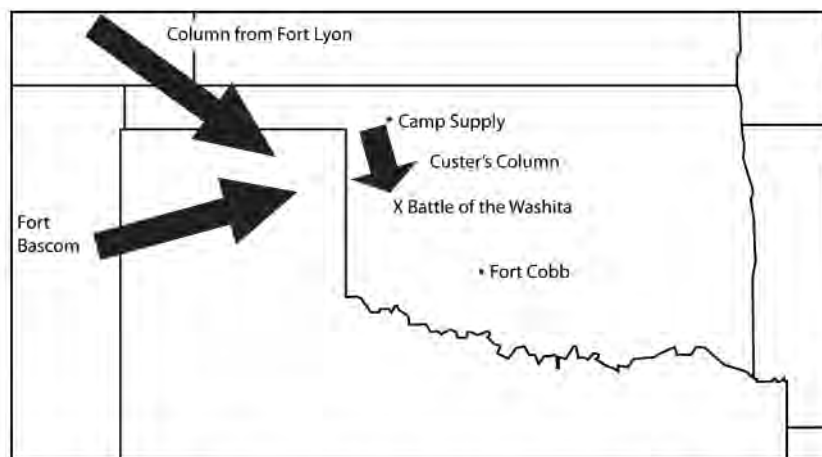
created conditions where defeat was possible. One of the most famous failures in Army military history was the ill-fated attempts to corral Sioux and Northern Cheyenne tribes in Montana in late 1875 through June 1876. The campaign ended in a humiliating defeat in the Little Big Horn Valley with the destruction of a cavalry battalion under General George A. Custer. This chapter will examine those two campaigns.

In late 1868, Cheyenne, Arapahoe, Kiowa, Sioux, and Comanche tribes attacked white settlements across the Texas Panhandle region. Increased white immigration, bitter memories of the Sand Creek massacre, insufficient reservation food, an erosion of freedom, a BIA decision to renege on a previously agreed upon arms and ammunition issuance, and the disruption of buffalo hunting all helped to motivate Indians to raid across the area. Railroad expansion into the region also triggered fears among the tribes that their future was bleak. Army commanders planned to protect settlements from these raids. Sherman, the commander of the Division of the Missouri that controlled Army forces throughout the Great Plains, decided to strike against any renegade tribes. He ordered Sheridan, a subordinate commanding the Department of the Missouri where the raids occurred, to take the field. While Sherman and Sheridan explored options, Cheyenne and Ogalala Sioux made a combined attack on September 17, 1868, against a force of about 50 Soldiers and scouts in what became known as the Battle of Beecher's Island. The Soldiers and scouts deployed to protect the area west of the Kansas Pacific Railroad. They held off a sizeable war party for 8 days.

The Battle of Beecher's Island encouraged Sherman to solve the problem of renegade activity once and for all. He decided in the late summer to conduct a winter campaign to stop these attacks. A support base, Camp Supply, was established in the Indian Territory (later to become Oklahoma) to aid the upcoming winter campaign. Sherman implemented his policy of "total war" to protect settlers and soundly defeat the Indians.<sup>21</sup> Sheridan's forces would use the strategy of converging columns and winter campaigning to catch and destroy those hostile tribes not on a reservation or at directed locations. Army columns from different directions would locate and destroy Indian ponies, food supplies, shelters, and cripple their ability to resist. The only alternative available would be for the survivors to starve or return to the reservation.

Three columns would advance, find, and confront the hostile tribes. One column proceeded from Fort Lyon, in southeastern Colorado. Another force would move forward from Fort Bascom in New Mexico. The last column started from Camp Supply. These forces would push through winter weather and concentrate their search in an ever-shrinking area in the western Indian Territory (see Washita Campaign, 1868 diagram). The column from Camp Supply was led by Lieutenant Colonel George A. Custer and the 7th Cavalry. Custer, an experienced Civil War cavalry Officer, left Camp Supply on November 23. Snow had fallen in the region that would help scouts track any tribal movements, but make Army travel slow.

Sheridan ordered Custer's force to find any Indians near the Washita River. Custer's command consisted of 11 companies of the 7th Cavalry, five infantry companies, and a support train of 450 wagons. Custer's force comprised about 800 Soldiers to fight an enemy of unknown size.



Washita Campaign, 1868

Sheridan's explicit orders were to kill or hang any warriors, capture any women or children, destroy any villages, and shoot any ponies of Indian bands not obeying his demand that tribes move toward Fort Cobb on the Washita River.<sup>22</sup> Seventh Cavalry scouts found the sizeable camp of Chief Black Kettle's Cheyenne tribe on the Washita River. Black Kettle's tribe had suffered the attack at Sand Creek 4 years earlier. Black Kettle had tried to make peace with the Army commander at Fort Cobb, but his efforts failed. Elements of the tribe wanted war. Custer prepared to give it to them and set his attack for the early morning of November 27.

Custer was able to mount an early morning surprise attack that struck a severe blow to the Cheyenne tribes. Black Kettle and over 100 warriors died; unfortunately, many innocent women and children were casualties as well. The Soldiers destroyed almost all of the tribe's ponies, and they burned food stores and shelters. Surviving Indians had no choice but to move to Fort Cobb. Sheridan considered the campaign a great success. Eastern humanitarians complained that Custer's actions were like Chivington's massacre.

Sheridan followed Custer into the region to pressure any renegade Indians to make peace. Word of the attack at Washita spread among the Indians. The Army's actions cowed Cheyenne, Kiowa, and other tribes into accepting Sheridan's demand to live near Fort Cobb.

The campaign demonstrated that winter operations were feasible and could produce substantial results. Surprise attacks during the Indians' most vulnerable season had succeeded. Total devastation awaited any tribes that walked off the reservation. However, Army officers did recognize that winter campaigning was harsh. Searching for an enemy and maneuvering into battle required much effort on men and horses. Supplying food and other items was difficult. There was also no guarantee that Army columns could quickly engage the enemy. Custer had been fortunate that he found Black Kettle early. Instead of defending fixed locations, like towns or reservations, the Army could now take the initiative and go on the offensive. Despite the difficulties, the Army on the Great Plains had found an efficient strategy.

### **The Little Big Horn Campaign.**

The Battle of the Washita was a great success. Unfortunately, using the same strategy might not be as successful under other conditions. Westward migration into the Northern Plains by white settlers boomed in the early 1870s. Railroads, development, the discovery of gold, and the breaking of treaties created conditions for another clash between the Army and several tribes. The results of the campaign would demonstrate the failure of the Army's strategy, but would also push Washington to end the Indian "problem" on the Plains.

Increased pressure on the Sioux and Cheyenne tribes to cede or grant access to more land for white settlement created problems throughout the Northern Plains. Many tribes refused to return to the reservation. Despite protests to stop, the advance of the railroads in lands given by treaty to the tribes engineering survey teams proceeded into these territories. Sioux and Northern Cheyenne leaders realized the arrival of the railroad would seal their fate. Small-scale fighting broke out when the Northern Pacific Railroad tried to push through the Sioux lands in 1873.

A more immediate problem arose that would create a stampede of miners and squatters into tribal lands. Custer had led an expedition into the sacred Black Hills in the Dakota Territory in 1874. The government had ceded the land to the Sioux. The U.S. 7th Cavalry explored potential sites for military installations, but also sought evidence of gold in the area. The expedition found gold, in very small quantities, and Custer reported its presence in exaggerated terms. This claim spurred miners and others to move into the Black Hills. Despite warnings by the Army not to enter the lands, hundreds of miners came to the Dakotas. Army units tried to find and evict these miners and settlers, who fought back with political pressure to get Sioux leaders to give up the land.

President Grant's administration tried to coerce the Sioux leaders. The government redefined reservation rations and payments. New regulations terminated tribal hunting rights. A second expedition into the Black Hills reverified the presence of gold. Despite the unprecedented migration into these sacred lands, the Sioux committed no major attack against miners or the Army. The Sioux tribal leadership did not want to start war over this incident. Grant could accept the situation and face criticism by proponents of taking the land as being too soft on the Indians, or he could opt to evict the Sioux and face a scathing assault on his administration by citizens who saw the ill-treatment of tribes as a stain on the nation's honor.

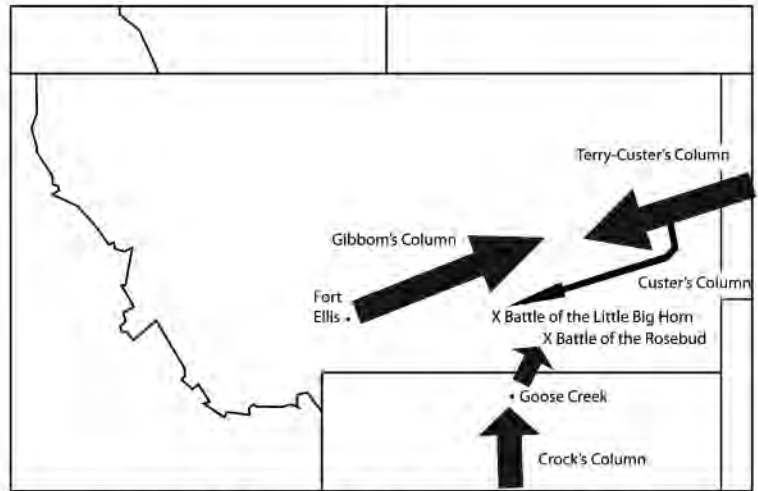
Despite the Sioux leadership's restraint, some tribal members could not accept the outrages against their lands and rights. Indians moved off the reservation and entered lands in Montana and Wyoming around the Powder River. BIA officials requested that the Army force the tribes back onto the reservation. Confusion concerning which agency was in charge of the Indian policy continued. This situation presented Grant another option concerning the Plains tribes. He might be able to coerce the Sioux and Northern Cheyenne tribes by conducting a major campaign to punish the renegades. This action would force the hostile bands to return to the reservation and intimidate tribal leaders to comply with demands to cede more land.<sup>23</sup>

Sherman, now Commanding General of the Army, ordered Sheridan into action to get the hostile tribes back onto the reservations. Sheridan had advanced to command all Army forces in the Great Plains. As Commanding General of the Division of the Missouri, he devised a plan to entrap the hostile tribes in the Montana and Wyoming territories. The converging column strategy and the use of winter campaigning was the basis for Sheridan's initial strategy. Sheridan wanted to start operations in December 1875. He ordered commanders to prepare for military operations, but field commanders could not prepare quickly enough. Units were under strength, some did not have sufficient supplies, and it took time to gather forces from distant posts. Officers had to plan operations and prepare for operations under secrecy. Additionally, scouting reports provided only sketchy accounts of hostile Indian locations. Delays ensued until a winter campaign was no longer possible. The campaign would now take place in late spring or early summer. The greatest advantage of the strategy was lost. Army units would have to fight against tribes that were not in a weakened state; rather they would strike the Indians during their peak hunting season. Catching the tribes in camp would be difficult while hunting parties operated in the surrounding regions. The hunting parties' presence dramatically increased the likelihood of the Army discovering them and losing the element of surprise. The Army might face a fully prepared Indian force ready to defend its camp. It could also face an attack on one of the converging columns.

Sheridan organized the campaign to attack from three directions (see Little Big Horn Campaign, 1876 diagram). He sent a column under Colonel John Gibbon east from Fort Ellis in Montana. Brigadier General George Crook led another column headed north from Fort Fetterman in Wyoming. Brigadier General Alfred Terry and Lieutenant Colonel George Custer would move west from Fort Abraham Lincoln, Dakota Territory. The columns were relatively small. Gibbon fielded 436 Officers and men. Crook's column contained a slightly larger force of 692 Soldiers. The Terry-Custer force amounted to over 1,000 men. Custer and the 7th Cavalry Regiment was the largest contingent. The regiment had 32 Officers and 718 enlisted men. Sheridan also faced coordination and command issues since Crook and Terry commanded their own geographic departments that could interpret policies and orders differently.

The three columns would search for the tribes and tighten the noose around the hostile Indians. Despite years of pitting superior military strength against smaller divided bands of Indians, the resistance against the reservation system and distrust of Washington leaders continued. Attrition did weaken some tribal resistance, but the exploitation of the Black Hills, railroad expansion, poor

conditions on the reservations, never-ending white demands for more Indian land, broken treaties, continued pressure by the BIA and the Army to limit summer hunting off the reservation, and other concerns pushed many tribes to unite and leave BIA jurisdiction. Sheridan and the Army commanders believed the renegade tribes had settled in the Rosebud Valley in Montana. Scouts and reservation agents could not provide an accurate estimate of the size of the Indian campgrounds. Some reports from Fort Abraham Lincoln indicated that 1,500 lodges of Sioux Indians under Chief Sitting Bull were near the Little Missouri River.<sup>24</sup> The size of the encampment indicated that there were 3,000 warriors. BIA officials thought that the total size of the hostile warrior force was only 500 to 800.<sup>25</sup> No one knows the actual number of Indians, but estimates of Sitting Bull's camp range from 1,500 to 6,000 warriors.<sup>26</sup> The three columns were sufficient to handle and defeat a force of 500 to 800, but the Indian force was much larger than expected.



Little Big Horn Campaign, 1876

Gibbons' column left Fort Ellis on April 1. The column advanced along the Yellowstone River. Scouts reported signs of Indian activity. Word had spread among the Northern Cheyenne, Sans Arc, and other tribes that the Army was about to start operations. A raid in the Powder River Valley, under Crook, 2 months earlier had tipped off the tribes that the Army was planning an operation. Gibbon advanced eastward, but only encountered harassing attacks for several weeks. He did not find the main campgrounds. Gibbon continued east hoping to link up with Terry and Custer.

Crook moved north from Fort Fetterman on May 29 and advanced through Wyoming without incident. This condition soon changed after Crook entered southern Montana. Indians who had harassed Gibbons had moved south. Bands of Sioux and Cheyenne warriors moved from the Rosebud Creek area near Crook. Word of the departure of tribes from the reservations encouraged other Indians to depart for the Montana campgrounds. Reports from these Indians indicated that Crook was moving northward. Crook's force had established a supply camp in northern Wyoming at Goose Creek. Crook organized his column to enter Montana and possibly fight Sitting Bull.

Sioux and Cheyenne warriors struck Crook on June 17. Army units had crossed the Rosebud Creek and hundreds of warriors under Crazy Horse surprised Crook while his Soldiers made morning coffee. The warriors caught the surprised cavalry and infantry units in a valley. After 6 hours of fighting, Crook retained possession of the battlefield. Casualties had been relatively light, and the Indian warriors had left the valley. The Battle of the Rosebud appeared to be a victory for Crook. However, he ordered a retreat to Goose Creek. The general decided to wait and bring up reinforcements before advancing. Crook had fended off the attack, but his force was effectively disabled, and it could not support the Terry-Custer column. The same Sioux and Cheyenne warriors that had faced Crook would soon fight again; this time they would meet Custer at the Little Big Horn.

By June 21, Gibbon and Terry had combined forces. Terry still did not have sufficient information about the exact whereabouts or strength of the Indian campgrounds. Thus, he devised a plan



to catch the Indians based on sketchy information. Scouts had seen indications that Sitting Bull's campground was in the Little Big Horn Valley. Terry thought he could use Custer's cavalry as a strike force to approach the Little Big Horn from the south and drive north. Terry could then move into the Little Big Horn from the north and seal the valley. Terry envisioned that Custer would act as the hammer, and he would be the anvil. His force would trap and defeat the hostile Sioux and Cheyenne warriors. Crook's forces would catch-up to the other two columns, and they could support the attack.

Custer entered the lower Little Big Horn Valley. The 7th Cavalry was organized for battle into three ad hoc battalions; Custer led one. Indian scouts did find Sitting Bull's camp and reported that the campgrounds were extensive. Custer believed that they had been mistaken. He used two battalions to try to flush any Indians from the southern end of the valley. His battalion would enter the valley a few miles above the other two battalions. Custer had always been successful in this maneuver. Warriors could fight, but the sight of a large cavalry force normally caused them to retreat. He could cut them down in their flight. His plan was a tactical version of Terry's operational scheme. Unfortunately, he made his plan predicated on bad intelligence and the assumption the Indians would not stand and fight. Unfortunately, the Indian force greatly outnumbered the 7th Cavalry, and Sitting Bull and the other chiefs were not ready to retreat but were instead prepared to do battle.

On June 25, the 7th Cavalry moved into position to strike the camp. One battalion moved into the southern end of the Little Big Horn, where they were repulsed and forced to retreat. The other battalion came to support the now surrounded cavalymen. These two battalions would stay fixed by persistent Indian attacks. They could not help Custer. Custer attacked alone against the entire Indian camp. Unsupported and outnumbered, his battalion was defeated, with all 210 officers and men killed. Terry and Gibbon arrived in the area 2 days later, but the Indian tribes had dispersed.

The Little Big Horn campaign proved an Army failure. The Army did not capture or force back renegade tribes onto the reservation. The failed campaign created a backlash from Washington. Public outcry demanded action against the Sioux and Cheyenne. The Army conducted operations throughout the summer. Even after the "hostile" tribes surrendered, the public mood had turned to vengeance, not accommodation.<sup>23</sup> The Army initiated a campaign to stamp out resistance by any tribe, Indians were disarmed, the Congress authorized the Army to impose military rule on the reservations, and the Secretary of War gave Sheridan approval to conduct more winter campaigns. Although the Sioux and Northern Cheyenne had triumphed over the Army in 1876, the tactical triumph would lead to their eventual downfall.

### **Adapting Strategy on the Plains.**

The post-Civil War period was an interesting opportunity for the U.S. Army and its leaders. The nation had returned to an inward looking policy of domestic and economic expansion. Washington still considered a foreign attack as the largest threat to national security. However, the possibility of large enemy navies and armies occupying the coastline as had happened during the Revolution and the War of 1812, seemed remote. Still, the primary role of the military establishment was the defense of the nation's borders. Fighting on the Plains and other areas were secondary objectives, especially with the few resources available.

Sherman and Sheridan produced a very workable, effective strategy of using winter campaigning and converging columns. Leader experience, adaption to a foe's vulnerabilities, resource constraints, and judgment shaped strategy development. The strategy, in combination with the BIA's reservation system and improved transportation capability were very effective in the late 1860s. Cracks in the strategy started to appear due in part to reductions in the size of the Army. The BIA's



reservation policy, poor conditions on the reservations, broken treaties, frustration, and growing realization among tribal leadership that their way of life was fast disappearing created greater hostility among a wider population of tribes. Tribal leaders became more willing to fight than be coerced into negotiations. Instead of fighting isolated bands or tribes of Indians, the Army faced large diversified tribes able to meet on a battlefield. The Army continued to believe that its strategy for controlling the Indians would work. Winter campaigning restricted operations. Officers and men had to fight over a few months per year to combat hostile tribes. When units executed a campaign, officers required significant time and resources to prepare. Operations became constrained by design or fact.

Early battlefield success created an environment where Sherman and Sheridan believed that their strategy was unbeatable. Changing conditions and faulty implementation of the strategy caused major problems during the 1876 campaign. Unwilling to modify or halt the military action, the campaign was a disaster. Intelligence information was not available, a late start meant the campaign missed the winter season, coordination between columns was difficult to achieve, logistics was spotty, and other concerns made success for the campaign problematic from the beginning. Failure resulted in 1876 for a number of reasons one of which was the use of a strategy that was unsuited for the conditions facing the Army at the time.

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## CHAPTER 25

### U.S. RELATIONS WITH NORTH KOREA, 1991-2000

**J. Boone Bartholomees, Jr.**

The Democratic People's Republic of Korea (DPRK), or North Korea as it is commonly known, has been a thorn in the side of U.S. policymakers since the 1950s. At the end of World War II, the victorious allies split Korea with the northern half under Soviet-sponsored Communist control. President Kim Il Sung attempted to unite the peninsula by force in the Korean War (1950-53). Failing that, he adopted a policy of self-reliance that isolated the DPRK from outside influence while retaining reunification under northern rule as the regime's ultimate policy objective. Kim's son and designated successor, Kim Jong Il, continued his father's policies after the elder Kim's death in 1994. Decades of economic mismanagement have left the DPRK heavily reliant on international aid for such basic needs as energy and feeding its population. North Korea's massive conventional military establishment, its long-standing tradition of regional military provocation, its repeated proliferation of military hardware, its persistent pursuit of long-range missile development, and its open programs for the development of nuclear weapons are major challenges for the United States and the international community.<sup>1</sup> This chapter will use the case of U.S. policy toward North Korea during the period 1991 to 2000 to demonstrate the coordinated, and sometimes uncoordinated, use of various elements of national power. The reader should be able to recognize the use of diplomatic, informational, military, and economic power as well as other factors like domestic and international politics, multinational and nongovernmental actors, carrots and sticks, and unilateral and multilateral actions. The 10-year case has the benefit of seemingly reaching conclusions on some aspects of the issue while simultaneously leaving many unresolved. History has shown that even the resolved issues, or ones where resolution looked probable, have raised their ugly heads again, so one may see the roots of current issues in the solutions to earlier ones.

It is useful to begin by establishing why the issues outlined below matter and why the nations spent so much time, energy, and treasure on them. We do that by reviewing the author's impression of the interests of the major national players. U.S. interests in North Korea are fairly straightforward. Washington wants regional stability to protect and advance its larger interests in the region, which are actually in its relations with China, Japan, and South Korea. To achieve stability, the United States wants a peaceful, nonaggressive, non-nuclear North Korea that is economically stable (if not prosperous) and refrains from exporting missile technology or supporting terrorism. Normalization of economic and diplomatic relations with North Korea is a desirable goal, but not one for which the United States appears to be willing to make much sacrifice. Unification of the Korean peninsula would be acceptable under the leadership of the democratic South. The United States can be expected to continue to honor its defense commitments to South Korea and Japan at least as long as North Korea continues to present an existential threat to either of those nations. The Bush administration included North Korea on a list of nations in which it wanted to end tyranny and promote democracy; at this time it does not appear the Obama administration will be as aggressive in that arena.<sup>2</sup> The United States seems to be willing to accept the absence of a formal peace treaty ending the Korean War, and does not place that issue high on its agenda.

North Korea is an unusual country in almost every respect, and its perception of its national interests is no exception. Pyongyang has its own myth of its national history that includes the United States occupying the South and invading the North. It views the United States and its "puppet" South Korean ally as an existential threat. Thus, North Korea's primary interest in the relationship

is national survival, an interest indistinguishable from regime survival in the eyes of the ruling elite. North Korea would like to see unification of the peninsula under its control, although it is unclear how far Pyongyang would go to achieve that dream. Beyond that, the DPRK has an interest in improving its economy (on its own terms) and supporting its massive military (for political reasons). In the short-term, North Korea is constantly in need of cash — it habitually imports much more than it earns — so it sees economic or financial aspects to many issues that other nations might miss. Thus, the DPRK sees its nuclear and missile programs as essential projects for its defense against an imperialistic United States, but in both cases is willing to exploit its position through foreign sales or even negotiate away certain capabilities or programs for enough economic advantage. For policy and prestige reasons North Korea prefers to negotiate bilaterally with the United States rather than with South Korea or groups of nations. North Korea seems to place a high value on a negotiated peace treaty to formally end the Korean War.

South Korea's interests include normalized economic and diplomatic relations with a peaceful, stable, nonaggressive, non-nuclear North Korea. Being already under the North Korean gun, development or proliferation of missile technology is not as big an issue with Seoul as it is with Washington. Earlier desires for reunification in the near-term moderated somewhat as a result of observing the expense and political/social issues of German reunification; however, reunification at some point is still an almost universally desired goal. Seoul adds interests in reuniting families divided by the Korean War and economic investment in North Korea to its list of interests. A peace treaty with the North would be of significant internal political value to Seoul. The commonalities for all three nations are normalized relations leading to eventual possible reunification and the nuclear and missile programs; these form the heart of the relationship.

Other regional actors whose interests would play major roles in the process are the People's Republic of China (PRC) and Japan. Chinese interests on the peninsula include: a peaceful, stable peninsula, preservation of the Kim regime, stability of the larger region, continued expansion of trade with South Korea, prevention of a flood of refugees that might destabilize the economically hard-hit northeastern region of China, and prevention of a pro-U.S. unified Korea on the Yalu. Japan is interested in a peaceful, stable, non-nuclear peninsula and expanded trade with all the nations involved.

Pyongyang's nuclear weapons development program began in the 1980s — if not much earlier. Although in 1985 pressure from the international community forced the North Koreans to sign the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the North did not establish a safeguards agreement with the International Atomic Energy Agency (IAEA) as required by the treaty.<sup>3</sup> The safeguards agreement is significant because along with many other features, it grants the IAEA on-site inspection authority.<sup>4</sup> In 1988, Republic of Korea's (ROK) President Roh Tae Woo initiated a major diplomatic engagement to normalize relations with Pyongyang; the initiative had little initial traction. In September 1991, President George H. W. Bush announced the unilateral withdrawal of all tactical nuclear weapons deployed outside the United States. The announcement was intended to induce the Russians to reciprocate elsewhere in the world, but it included approximately 100 U.S. weapons based in South Korea. In coordination with the United States, President Roh a few days later unilaterally declared the denuclearization of South Korea. U.S. withdrawal of weapons, and South Korean renunciation of their development, construction, or use satisfied North Korea's major demands, and Pyongyang consented to negotiations with its southern neighbor. By the end of the year, the two Koreas had signed two major agreements: the Agreement on Reconciliation, Nonaggression, Exchanges, and Cooperation (the "basic agreement") and the Declaration on the Denuclearization of the Korean Peninsula (the "joint declaration").<sup>5</sup> Subsequently, the two Koreas negotiated the cancellation of the annual combined Korean-U.S. military exercise



series “Team Spirit,” which the DPRK considered threatening.<sup>6</sup> The withdrawal of nuclear weapons from the peninsula, the denuclearization agreement, and the exercise cancellation met all of North Korea’s demands. Pyongyang concluded a comprehensive safeguards agreement with the IAEA.

Although the nuclear arena seemed to have reached a satisfactory solution, the related issue of proliferation of missile technology was still bothersome. In March 1992, the United States imposed 2-year sanctions on two North Korean companies, Lyongaksan Machineries and Equipment Export Corporation and Changgwang Credit Corporation, for missile proliferation. The Korean companies, which like all North Korean companies were arms of the government, had been involved with missile-related sales to Syria. The sanctions were for violations of various U.S. laws and Category 1 violations of the Missile Technology Control Regime (a voluntary international agreement to control sales of missiles and components) that applies to export of complete missile systems, major components, or unmanned aerial vehicles with a significant payload capacity.<sup>7</sup> However, since the sanctions only banned the sale or purchase of military hardware to and from the United States, and neither Syria nor North Korea buy or sell munitions in the United States, the impact was more psychological than economic or military. Shortly thereafter, the nuclear situation began to unravel again.

North Korea had submitted its nuclear materials declaration, a document listing sites subject to inspection and the amount of plutonium it possessed, in May 1992. The IAEA inspectors discovered major discrepancies in the report and asked for clarifications and inspections the DPRK considered intrusive. South Korea, whose policy goal was to have the North’s nuclear program under tight IAEA control, threatened to resume Team Spirit exercises if the DPRK did not accept the disputed inspections. Neither side would blink, so when the United States and South Korea jointly announced the resumption of Team Spirit in 1993, talks between the two Koreas broke down. By March 1993, continued disputes over IAEA inspections and allegations of North Korean cheating on its NPT obligations led Pyongyang to issue the required a 3-month notification prior to withdrawing from the NPT for national security reasons. This was followed quickly between April 1 and 7 by successive IAEA actions to declare North Korea in violation of its safeguards agreement, to refer the issue to the United Nations Security Council (UNSC), and to formally censure North Koreans for its actions (a first for the IAEA).<sup>8</sup>

Tension on the peninsula heightened dramatically, and the Clinton administration scrambled to salvage the situation. Initial threats to submit the issue of North Korean Nonproliferation Treaty (NPT) withdrawal to the UNSC foundered on Chinese objections. The Chinese did not want United Nations (UN) sanctions on their neighbor; instead, they pressured the United States to negotiate directly with the North Koreans, which was one of the major DPRK objectives.<sup>9</sup> Congressional skeptics warned that the administration should prepare the public for failed talks and develop plans for more drastic measures like reintroduction of nuclear weapons on the peninsula. Japan offered trade and aid for a peaceful, non-nuclear armed North Korea, although Pyongyang was not receptive to that approach. In June 1993, the United States and North Koreans met in bilateral talks in New York City that produced mixed results. The United States had reportedly been willing to make concessions, including opening U.S. bases in South Korea to North Korean inspection to demonstrate the absence of nuclear weapons and once again cancelling Team Spirit, for North Korean renunciation of its withdrawal from the NPT. However, Pyongyang’s extreme distrust of the IAEA and its insistence on retaining the option to withdraw from the NPT meant the best the negotiators could achieve was a Korean suspension of its withdrawal—issues like inspector access to nuclear waste sites that had been at the heart of the matter remained for future negotiations. The United States did not make concessions for such half measures other than assurances of non-aggression and non-interference in North Korean internal affairs. Agreement came at the

9th hour, and the two sides did not even appear together to make the post-negotiations announcement.<sup>10</sup> Nevertheless, the DPRK could show the world it had negotiated with the United States as an equal, and the United States had convinced the North Koreans to return to the NPT. More important, “the two sides had succeeded in establishing negotiations as the means to resolve the North Korean nuclear issue.”<sup>11</sup>

A second round of talks that began in Geneva in July 1993 was set against the backdrop of increased pressure on the North Koreans. In Seoul for a visit after an economic summit in Tokyo, President Clinton reassured the South Koreans that U.S. troops would remain in their country as long as they were needed, and warned North Korea that stopping the spread of nuclear weapons was a key element of his strategy for the Pacific region. South Korean President Kim Young Sam warned the international community would take “appropriate countermeasures” if Pyongyang developed nuclear weapons. These statements mirrored Japanese concern expressed earlier at the summit that for internal political reasons it might not be able to vote for the permanent extension of the NPT (due to expire in 1995) if North Korea continued pursuing nuclear weapons.<sup>12</sup> More specifically, *The New York Times* reported, “If the Geneva talks do not yield an agreement, Secretary of State Warren Christopher has said the United States will ask the United Nations to impose economic sanctions against North Korea.” In this case, hope rested primarily on diplomatic negotiations since there was little economic or military leverage against the North.<sup>13</sup> The talks produced small concessions by the North Koreans. In exchange for some normalization of relations, reduced inspection requirements, and an assurance of its energy supply to compensate for suspension of operations at nuclear facilities, the DPRK agreed to halt its nuclear weapons program and renew talks with the IAEA about inspection protocols.<sup>14</sup>

Promising to allow inspections and actually doing so are different things. The North dragged its feet, film and batteries began running out in the cameras monitoring DPRK facilities, and Hans Blix, the head of the IAEA, was ready to announce that he could no longer assure the continuity of safeguards for the DPRK’s nuclear program. The United States simultaneously cajoled with offers of improved diplomatic and economic relations (including once more canceling Team Spirit) and threatened to take the issue to the UNSC. Because of the complexity of the situation, responses and positions had to be coordinated with at least the South Koreans and Japanese.<sup>15</sup> The Chinese claimed privately to be unable to influence North Korea on this issue and counseled not backing Kim Il Sung into a corner.<sup>16</sup> In February 1994, just in time to head off UNSC action, the DPRK finalized an agreement with the IAEA allowing inspection of all seven of its nuclear facilities. On March 1, 1994, the first IAEA inspectors to visit North Korea in over a year arrived to begin inspections. Within days they were embroiled in a dispute with the government over access to the Yongbyon plutonium reprocessing site. The DPRK walked out of talks with South Korea at Panmunjom threatening war saying that “Seoul will turn into a sea of fire” if the South and the United States continued pressuring about inspections.<sup>17</sup> The United States prepared to take the issue to the UNSC despite known Chinese support for the North. The administration decided to try to persuade the Chinese to abstain rather than veto the sanctions and to pursue a graduated set of sanctions that would give the North Koreans time to change their behavior. Sanctions might involve actions as diverse as cutting financial remittances from individuals in Japan, resuming Team Spirit exercises, or stopping oil shipments to the North. The IAEA Board of Governors approved a resolution calling on the DPRK to cooperate fully with its inspectors. President Clinton announced the dispatch of Patriot missiles and 800 troops to South Korea; he also reassured the South Koreans that he would consider an attack on them an attack on the United States. However, imposing UN sanctions was not as easy as the administration hoped. China was reluctant, and even reliable Asian allies doubted the utility of economic sanctions against the already hermit-like DPRK. The

result was the issue festered in the UNSC, with China supporting the DPRK and the United States unwilling to force a vote in the face of a potential Chinese veto. The Chinese agreed to statements by the UNSC, urging the North Koreans to allow inspections and even vaguely threatening sanctions, but did not allow the actual imposition of sanctions.<sup>18</sup>

In April 1994, U.S. Secretary of Defense William Perry journeyed to Japan to assess the degree of potential Japanese support should there be a need to enforce sanctions or should the situation deteriorate to war. The Japanese government, in the process of reorganizing after elections, was supportive in theory, but faced real political and constitutional issues. Japan would have to be a major player in any sanctions regime since an estimated 300,000 Koreans-Japanese sent \$600 million to \$1.6 billion annually to relatives in North Korea. Cutting that flow would be politically unpopular, if it were achievable. Militarily, the Japanese constitution and supporting legal system were designed to prevent anything except strictly defensive war. The major political party opposed efforts to change that structure and make Japan a “normal” nation. The practical result was that U.S. forces enforcing a blockade or engaged in combat operations (unless Japan had been attacked and was thus a combatant) would not be able to base out of Japan or count on Japanese support even for resupply.<sup>19</sup>

To compound the issue and escalate it to crisis proportions, in May 1994 the DPRK began removing about 8,000 spent fuel rods from its reactor at Yongbyon without the oversight of international inspectors. This was especially provocative since the spent rods were a potential source of weapons grade plutonium. International pressure increased to the point that North Korea announced it was withdrawing from the IAEA (as distinct from the NPT).<sup>20</sup>

In June 1994, former President Jimmy Carter announced that he was going to North Korea to try to resolve the impasse. Carter went on his own initiative and in a private capacity, but had the Clinton administration’s blessing and support. The White House described the former President as a “potentially important emissary,” National Security Advisor Anthony Lake briefed him before his departure, and State Department officials brought him up to date on U.S. policy.<sup>21</sup> Despite the unofficial support, the Carter trip did not seem to be well-coordinated with the administration, which occasionally contradicted or disputed statements by the former President and showed evidence of not understanding exactly what he had negotiated.<sup>22</sup> Nevertheless, the Carter mission thawed relations significantly. The former President was able to convince Kim Il Sung to halt his nuclear program in a verifiable manner pending the outcome of bilateral U.S.-DPRK negotiations. He also convinced the aging North Korean leader (he would die less than a month later) to meet South Korean’s president in summit talks—a proposition welcomed by the South. Kim promised IAEA inspectors could go to and remain at Yongbyon to ensure nearly 5 bombs worth of used fuel did not disappear. In return, once the west could verify a freeze in the DPRK nuclear program, threats of sanctions would cease, and high level U.S.-DPRK talks would resume leading to what the North Koreans hoped would be a peace treaty with the United States and world assistance in acquiring less proliferation prone nuclear reactors. *The New York Times* noted, “Mr. Carter was probably premature in declaring the Korean nuclear crisis over, but his intervention may have usefully pointed the way toward its eventual resolution.”<sup>23</sup>

Talks between the United States and DPRK building on the momentum from the Carter trip began in Geneva on July 8, 1994, but were suspended the next day due to the death of Kim Il Sung. Negotiations resumed on August, 4, 1994. These talks proceeded apace and concluded a week later with a signed statement that established a three-stage process to eliminate North Korea’s nuclear weapons program in exchange for a promise of light-water reactors that are proliferation resistant to replace the DPRK’s existing graphite-moderated reactors as well as movement toward normalized economic and diplomatic relations with the United States.<sup>24</sup> Hammering out the details of the



original outline took several months, but the two countries signed an “Agreed Framework” on October 21, 1994. The North agreed to close its graphite reactors and related facilities under IAEA supervision; it would remain a party to the NPT and allow the IAEA to implement safeguard agreements. The United States agreed to lead a group of nations to provide light-water reactors to the DPRK and to deliver heavy fuel oil to compensate North Korea for power generation losses during the underlap of closing the graphite reactors and bringing on line the light-water reactors. The DPRK would have to be in full compliance with its safeguard agreements, to include IAEA inspection of two highly contentious nuclear waste disposal sites, before the new reactors would be delivered. The 8,000 spent fuel rods would be turned over to a third party for disposal. At the end of November 1994 the IAEA confirmed that construction had been halted at two North Korean nuclear sites, and the sites were non-operational.<sup>25</sup>

1995 was a year of reduced tensions in U.S.-DPRK relations. The United States, South Korea, and Japan formed the Korean Peninsula Energy Development Organization (KEDO) to finance and construct the promised light-water reactors. The North Koreans continued state sponsored international illegal activities like drug dealing that had been part of its revenue plan for years, but it did not make any unusually provocative moves in either the nuclear or the missile realms. There was some delay when Pyongyang initially refused to accept South Korean designed reactors, but 3 weeks of negotiations resolved that issue with the decision that KEDO would select the design and the DPRK would select the prime contractor. A larger cause of delay was reluctance by the U.S. Congress to appropriate funds for reactor construction. Meanwhile, in accord with the framework, the United States began loosening restrictions on the North Koreans in a limited range of mainly economic activities.<sup>26</sup>

The United States began 1996 by trying to exploit the apparent thaw in relations with North Korea while simultaneously mitigating the deterioration of North-South relations. In response to DPRK forward movement of military units and resumption of infiltration of armed soldiers across the Demilitarized Zone (DMZ), U.S. and ROK forces were on heightened alert and exercising near the border. However, January also saw the first ever U.S./DPRK negotiations on the over 8,100 Korean War MIAs. The talks in Hawaii on that subject broke down without significant progress when the North Koreans would not agree to a joint recovery mission. The refusal reflected a split between the DPRK foreign ministry that wanted the mission and the more reactionary military. It also reflected a cash-strapped Pyongyang’s desire to be reimbursed for bodies it had returned during 1993 and 1994. (The Koreans had presented a bill of \$4 million to cover expenses of recovering 162 bodies.) Regardless of results, the conduct of talks at all was hopeful. Also in January, the United States engaged the North Koreans on missile proliferation. Pyongyang responded that it was open to discussion if the United States further reduced sanctions. The issue of sanctions was becoming critical to the North since summer flooding in 1995 had produced famine. The South Koreans held back on aid to the North in an attempt to link food aid to improved relations, and trilateral talks between the United States, South Korea, and Japan reached the conclusion that the famine was overstated, and food aid was inappropriate.<sup>27</sup>

In April the pace of activity picked up. Pyongyang announced that it would no longer respect the DMZ between itself and the ROK and then proceeded to consciously and conspicuously violate the zone. In response, *The New York Times* reported that the United States and ROK were discussing deploying a U.S. AWACS to Korea or perhaps having the South Koreans buy one of the sophisticated aircraft. Additionally, the international community for the first time openly recognized that the DPRK was actively counterfeiting U.S. currency, although evidence remained incomplete. The impoverished DPRK had actually been counterfeiting as government policy since at least 1989, but the issue had received little notice – and would not become a serious U.S. policy concern until

2005. A state that exported an estimated \$1.684 billion in 2007 (mostly to South Korea and China and just above the 2008 levels of Kyrgyzstan and Cyprus) while importing an estimated \$3.055 billion in the same time period, needed some means to cover its trade deficit. Pyongyang chose a combination of counterfeiting U.S. currency, counterfeiting brand name cigarettes, and dealing in illegal drugs (initially heroin). The summer flooding in 1995 and 1996 hit the poppy crop as well as legitimate agriculture, so in 1995 the DPRK had begun increasing its importation of ephedrine—a basic source drug for methamphetamines—which would eventually rise to overshadow heroin as a North Korean illegal drug export.<sup>28</sup>

The United States and South Korea took the initiative in a less directly confrontational manner. Shortly before bilateral U.S./DPRK talks in Berlin on missile proliferation scheduled for April 21-22, Presidents Clinton and Kim Young Sam jointly proposed four-party peace talks between the United States, ROK, DPRK, and Japan. Timing looked good despite the military tensions along the DMZ based on the North's economic problems and approaching elections in both the United States and South Korea that might benefit from resolution of the long-standing peace treaty issue.<sup>29</sup> The South Koreans followed that announcement with an authorization for three South Korean companies—Samsung, Daewoo, and Taechang—to invest a total of \$19 million in respectively a telecommunications joint venture, appliance and electronics manufacturing, and mineral water production in the North.<sup>30</sup> Pyongyang, which had been actively seeking peace talks with the United States but did not want the South Koreans involved, was in a tough spot. In Berlin it apparently countered a U.S. proposal that the North follow the MTCR with a demand that the United States offset the loss of revenue should it follow that course. Despite the apparent progress on the missile issue, almost exactly a month after the Berlin meetings the United States placed sanctions on the DPRK and Iran for missile technology transfer violations.<sup>31</sup>

The MIA issue continued to percolate. In frustration or to put pressure on the Americans, the North Koreans announced they were disbanding their team that searched for U.S. remains from the Korean War. After further negotiations, the United States paid \$2 million for earlier recovery efforts in exchange for future participation in a joint recovery team.<sup>32</sup> At the end of May 1996, Representative Bill Richardson (D-NM), accompanied by State and Defense Department officials, journeyed to North Korea to encourage Pyongyang to accept the peace treaty negotiations proposal and to work on missing-in-action (MIA) recovery issues. Richardson was not an official envoy, but he had administration support. The Richardson trip produced minimal results since Pyongyang was reportedly too focused on its food crisis to address other issues. In June in response to UN requests and other evidence the famine was real and severe, the United States, ROK, and Japan all reversed their earlier joint position and pledged \$6 million, \$3million, and \$6 million in food aid respectively.<sup>33</sup>

North Korea continued its odd behavior and dispatched a submarine into ROK waters in late September 1996. The submarine ran aground but landed 26 armed infiltrators—some in South Korean uniforms—before being captured by South Korean forces. Over a period of weeks, an intensive manhunt by South Korean Army forces captured or killed all but one of the presumed infiltrators. North Korea was furious about the death of its soldiers. Apparently in an attempt to set up a trade for the single surviving infiltrator from the sub, Pyongyang arrested a U.S. citizen and charged him with espionage. The U.S. citizen, a self-proclaimed missionary who was caught swimming the Yalu in an attempt to enter North Korea, was eventually released 3 months later after personal intervention by Representative Richardson.<sup>34</sup> In late October 1996, the United States announced that it had detected indications that the DPRK was preparing to test a medium-range missile capable of reaching Japan. Tensions between the two Koreas, already sky high over the submarine infiltration incident, escalated further, with Seoul threatening to cancel the light-water



reactor deal, which would have scuttled the entire nuclear arrangement with the North. Visits, promises, and reassurances by U.S. State Department officials prevented the collapse of the nuclear deal without significantly lowering the tension. The United States moved reconnaissance ships and aircraft to Japan. Several bilateral meetings in New York eventually produced a cancellation of the test fire.<sup>35</sup>

A second round of bilateral U.S.-DPRK talks on missile proliferation in January 1997 produced no results. The North Koreans agreed to attend a briefing about what President Clinton's proposed four-way peace talks would look like, but canceled successive briefings. When the briefing finally occurred in March 1997, 11 months after the four-way talks were first proposed, the North Korean response was noncommittal. Since summer flooding once again resulted in famine, the United States and South Korea pledged \$10 million and \$6 million respectively in February to the World Food Program for famine relief in the North.<sup>36</sup> The food aid did not prove to be sufficient. The World Food Program collected \$100 million for North Korea (about 200 metric tons of food), but the United States found it necessary to add \$15 million worth of corn in April. The corn announcement was made a day before a scheduled meeting with the North Koreans about the four-way peace talks to preempt an expected request for more food aid and a week after Cargill, Inc. announced that as a result of direct negotiations with North Korea authorized by the Clinton administration it was selling an undisclosed amount of American wheat to the DPRK.<sup>37</sup> Removing food from the negotiating table was probably not popular with the North Koreans. DPRK officials had been surprisingly frank in April with a visiting delegation of U.S. senators when they told their guests that tensions between the military and the foreign ministry over inability to provide food and fuel might scuttle the peace talks. The assessment appeared to be correct since the talks finally broke down when the South Korean delegation went back to Seoul in frustration at the lack of any response from the DPRK delegation. The North Koreans also delayed missile proliferation talks scheduled for May. Those talks, when they finally occurred June 11 through 13 produced no results. In August 1997 the United States imposed new sanctions for missile proliferation on the Korea Pungang Trading Corporation and the Lyongaksan General Trading Corporation, both entities of the DPRK.<sup>38</sup>

In early 1998 the financial crisis that began with the collapse of the Japanese economic miracle in 1997 and then spread around the world began to directly impact relations with North Korea. Austerity programs in Japan and South Korea and domestic politics in the United States threatened to retard the already slow progress of the promised new North Korean light-water nuclear reactors. Seoul, whose financial situation was so bleak it took a \$3 billion loan from the World Bank in December 1997, hinted that it might not be able to meet its pledged obligation. The U.S. Congress was already balking at directly funding the reactors, although it had appropriated \$100 million for fuel supplies for the North and had pledged backup financing for the \$3 billion World Bank loan to the South.<sup>39</sup>

In his inaugural address on February 25, 1998, newly-elected South Korean President Kim Dae-jung announced a "sunshine policy" to improve north-south relations through cooperation and reconciliation. Shortly thereafter, the South Koreans (in response to a World Food Program request) offered 50,000 tons of food aid to their northern neighbors with a promise of more if Pyongyang asked for it.<sup>40</sup> If President Kim Dae-jung hoped the food aid would produce better behavior by the DPRK, he was to be disappointed.

In April 1998, the United States imposed sanctions on North Korea and Pakistan for missile technology transfers between the DPRK and the Khan Research Laboratory in Pakistan. Days later, the north Koreans, demanding more food aid before they negotiated further and stalled negotiations with the South about the reunion of divided families – its first bilateral negotiations with

South Korea in over 4 years.<sup>41</sup> In May, with the Clinton administration struggling to get funds for fuel oil from a Republican Congress without unwanted strings and the North Koreans frustrated at the slow pace of progress on fulfilling the west's promises, the DPRK announced it was suspending its efforts to carry out the 1994 Agreed Framework and intended to unseal the Yongbyon reactor; simultaneously, it stopped technicians from packing the last of the spent fuel rods for shipment outside the country. Pyongyang used talks with a financial analyst from the 20th Century Fund (a U.S. mutual fund company) to transmit its displeasure to Washington.<sup>42</sup> Soon thereafter, talks to try to reach an agreement on how to conduct the now 2-year-old four party peace proposal foundered on the issue of U.S. troop presence on the Korean peninsula. In June, the official North Korean News agency announced the DPRK would not cease missile technology exports without compensation and eased economic sanctions. A month later the North Koreans showed off their latest technology with the launch of a Taepodong 1 three-stage (initially reported as two since the third stage did not work) ballistic missile with a range of 900 to 1,200 miles. The test, which Pyongyang claimed placed a small satellite in orbit – a claim U.S. Space Command disputed – flew over Japan. Another round of talks on missile technology proliferation took place in New York in October 1998 with no significant results. The North Koreans refused to back off missile proliferation in exchange for reduced sanctions, since the 1994 Agreed Framework already was supposed to be producing reduced sanctions. December talks about a suspected North Korean underground nuclear site at Kumchang-ni similarly ended with agreement in principle of U.S. inspection of the site but no agreement on compensation the DPRK should receive for such concessions.<sup>43</sup>

U.S.-DPRK relations during 1999 were dominated by U.S. worries about missile proliferation and the suspected nuclear site at Kumchang-ni. Korean work on the new underground facility at Kumchang-ni threatened to destroy the 1994 Agreed Framework, while missile tests and continued exportation of missile technology served to raise fears and tension. The Central Intelligence Agency (CIA) estimated that the Taepodong 1 with slight modifications could reach parts of Alaska and Hawaii, and that if the Taepodong 2 had three stages, it could deliver a large payload to the western continental United States with poor accuracy. Considering that kind of evidence, the North Korean Taepodong 1 test, and the warnings of a bipartisan blue ribbon panel led by former (and future) Secretary of Defense Donald Rumsfeld that the United States was vulnerable to ballistic missile attacks by rogue states like North Korea, the Clinton administration reversed a long-standing position and proposed a limited, national anti-ballistic missile system that could be shared with – and potentially joint funded by – regional partners like Japan and South Korea. The anti-ballistic missile (ABM) Treaty posed one problem, but a vehement Chinese objection was more immediately serious in terms of U.S.-DPRK relations. The Chinese did not want a regional anti-missile defense system that might protect Taiwan from the hundreds of missiles the Chinese had facing that island.<sup>44</sup> The Chinese probably also feared an anti-missile defense would have an adverse effect on its strategic retaliatory capacity should that be needed.

On March 17, 1999, the United States and DPRK concluded months of negotiations on the site at Kumchang-ni by signing an agreement that allowed U.S. inspectors into the site for periodic inspections in exchange for promises to continue food aid. Less than a week later the United States announced (in a declaration supposedly unconnected with political negotiations) that it would send 200,000 metric tons of food and seed potatoes worth \$60 million to the North. A fourth round of missile talks later in the month only produced an agreement to meet again. Those two lines played out in late May. A U.S. inspection of the site at Kumchang-ni between May 20 and 24 found no evidence of nuclear activity – just a huge, empty tunnel. At the end of the month, former Secretary of Defense William Perry, now serving as the administration's North Korea policy coordinator, headed the highest level official U.S. diplomatic team to visit Pyongyang since the Korean

War. Four days of talks produced disappointing results. Kim Jong Il refused to meet with Perry, who delivered a letter from President Clinton, and the negotiations could only agree to meet again at an unspecified time and place.<sup>45</sup>

As the year dragged on, progress on the missile issue seemed more and more elusive. Military clashes did not help the prospects for resolution of the issues. In June, the South Korean Navy sank a North Korean naval vessel, killing the entire 17-man crew during a half-hour gun battle. The North immediately suspended contacts with the South – a major blow to President Kim Dae Jung’s plan for bettering relations between the countries.<sup>46</sup> In August, responding to North Korean preparations for renewed missile tests, Japan leaked that it was considering acquiring refueling capability for its F-15 fleet that would allow retaliation against North Korea in response to a missile attack. Both South Korea and Japan were participating in the U.S. anti-missile development program, and in accordance with a 1979 agreement South Korea was negotiating with DoD to get permission to build long-range missiles capable of reaching all of North Korea. Secretary Cohen was reported to be amenable if Seoul joined the Missile Technology Control Regime. As tests of the Taepodong 2 neared, Cohen announced from Seoul that the United States and its allies would respond with all available measures except military to any test firing.<sup>47</sup> The pressures may have had an effect. At talks held in Berlin between September 7 and 12, 1999, the DPRK agreed to a long-range missile test firing moratorium for the duration of talks with the United States. In exchange, the United States promised partial lifting of economic sanctions.<sup>48</sup>

Within days, North Korean policy coordinator William Perry delivered his review of U.S. policy toward the DPRK recommending a new, comprehensive and integrated approach to relations with the North that included reciprocal steps to normalize relations. Three days after Perry delivered his report, the Clinton administration announced it was significantly easing sanctions against the DPRK. The North would be able to purchase U.S. consumer goods and transport goods and people between the United States and North Korea. Individuals in the United States would be allowed to make remittances to North Koreans, and American companies would be allowed to invest in the DPRK’s underdeveloped raw materials sector.<sup>49</sup> Further reduction in tariffs would require congressional action, and in actuality the easing did not occur as announced. On December 15, 1999 – 5 years after negotiating the Agreed Framework – the participating parties signed an agreement for construction of two light-water reactors for the North Koreans.<sup>50</sup>

If 1999 ended on a high note, President Clinton was not able to exploit the success before the end of his term. The year 2000 featured ups and downs in the negotiation process that in the long run produced little of substance. In April, the United States again sanctioned the North Korean military-backed Changgwang Sinyong Corporation for category 1 violations of the MTCR based on missile sales to Iran. That was the third time the company (under that name – it operates with several variants) had been sanctioned for missile proliferation, and it would not be the last.<sup>51</sup> Conversely, at the end of May, U.S. inspectors once again found nothing to report on their second inspection of the suspected nuclear site at Kumchang-ni.<sup>52</sup> In the meantime, North-South relations were dominating the news. Months of intense negotiations led to an historic summit between Kim Jong Il and Kim Dae Jung on June 13-15, 2000, at the conclusion of which the two leaders signed a document agreeing to work for peace and unity between the two Koreas. Specific steps were limited but significant – especially agreement for early reunion of families split by the war and cultural exchanges, both issues that had been part of the 1991 agreement but had never come to fruition. It was the spirit of the talks and agreement that brought hope.<sup>53</sup>

The United States sought to exploit the progress and announced relaxation of some economic sanctions – the same relaxation promised in September 1999. The next day Pyongyang reaffirmed its missile test moratorium. In July, U.S. and DPRK negotiators met in Kuala Lumpur for a fifth

round of missile talks. The talks failed over compensation to North Korea for lost revenue if it halted missile sales. The North wanted \$1 billion a year, and the United States balked at such a figure, while promising economic normalization. There was a brief flurry of activity around a report that Pyongyang was willing to exchange cessation of missile development in exchange for a U.S. promise to launch its satellites. This came from a comment by Kim Jong Il to Vladimir Putin that may have been a joke but was taken seriously.<sup>54</sup> Secretary of State Madeleine Albright was unable to develop the issue during a meeting with North Korean Foreign Minister Paek Nam Sun at the Association of Southeast Asian Nations (ASEAN) Regional Forum in Bangkok, and Kim Jong Il told a meeting of South Korean media executives the comment was meant in jest.<sup>55</sup> Nevertheless, after confirming the statement with the Russians, the United States continued to take Kim's comment as a serious proposal.

The two Koreas exchanged visitors from separated families, and talks to continue and expand the program seemed to be going well. U.S.-North Korean talks on nuclear, missile, and terrorism issues resumed with some indication of progress toward removing the DPRK from the State Department's list of countries that support terrorism – an essential precursor to any but symbolic improvement in economic relations. Vice Marshal Jo Myong Rok, second man in the DPRK, visited Washington, left a letter for President Clinton, and met with the secretaries of State and Defense. Secretary Albright met with Kim Jong Il in Pyongyang to discuss among other things a summit meeting between Kim and President Clinton. However, another round of talks in November on the missile issue failed to produce an agreement, and time essentially ran out. The summit did not occur before Bill Clinton left office.<sup>56</sup>

The George W. Bush administration that assumed office in January 2001 shared its predecessor's policy goals in terms of North Korea. It approached the relationship, however, in a fundamentally different manner, and is beyond the scope of this chapter. What we have seen is the complex play of a variety of actors using a wide range of elements of power as tools to achieve their interests as they perceived them. Where interests coincided, there was a chance for cooperation; where they differed, there was the possibility of competition or even conflict. In any case, the game was played by discrete, intelligent players acting in real time with only limited knowledge of the interests, motives, tactics, or goals of the other players. Their actions are irrevocable (there are no do-overs or reset buttons) and influence the future environment. Thus, the issue of U.S.-North Korea relations is a classic wicked problem. Chances are it will continue to be so for the foreseeable future.

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## CHAPTER 26

### PAINTING YOURSELF INTO A CORNER: CONFLICT TERMINATION, UNCONDITIONAL SURRENDER, AND THE CASE OF JAPAN

Clayton K. S. Chun

Designing policies to settle a conflict might seem like a relatively uncomplicated process of compelling an adversary to surrender. For example, defeating a fielded force or capturing a nation's capital city are typical objectives sought to end conflicts. Frequently, the immediate goal of ending a war overrides the planning for the transition to a more peaceful condition. In some situations, a country or alliance might decide on a strategic goal or policy that becomes counterproductive to ending the war. A ceasefire does not automatically end a conflict. Opposing sides may stop fighting only to take a breath before resuming the struggle unless the underlying political disagreements have been resolved. Setting terms to end a war requires consideration of political objectives and the enemy's willingness to accept those terms.

In World War II, Berlin, Germany, and Tokyo, Japan, fell after Allied forces destroyed the Axis' ability to wage war. Washington, London, and Moscow had agreed on one major requirement to end the war: the Axis powers' unconditional surrender. This particular goal served key political objectives, such as solidifying Allied resolve and gaining public support, but created a number of problems later in the war. Unconditional surrender demands against Germany and Japan did help solidify Allied resolve, but as World War II progressed, national and military leaders began to question this policy. From a simple means to facilitate Allied cooperation, rigid Japanese surrender terms forced the United States and its Allies to plan a series of actions that might have resulted in an invasion of the Japanese home islands and further costly combat. Because of the atomic bomb and other actions, events proved otherwise, and the war terminated without an invasion.

Unconditional surrender posed potential problems even after the war ended. One of the biggest challenges facing President Harry S. Truman was how to rebuild Japan based on democratic ideals. Some in Truman's cabinet believed the unconditional surrender terms would derail this effort. This case study offers an illustration of how the goal of setting surrender terms affected major policy considerations and decisions during and after the war. Unconditional surrender offers a simple but stark example of how a major goal of the war constrained Allied policy.

#### WHY ELEMENTS OF CONFLICT TERMINATION ARE KEY

How should a nation or alliance end a war? B. H. Liddell Hart spoke for most national leaders when he said, "The object in war is a better state of peace—even if only from your own point of view."<sup>1</sup> If one agrees that war has its roots in political and national objectives, and a nation can use a range of political, economic, social, and military tools to achieve its objectives, then what objectives it chooses and how it pursues those objectives will naturally influence both the conduct and termination of the war. Desired end states, which must reflect the achievement of fundamental political objectives, should shape the conduct of the war from beginning to end. Failure in this respect may preclude a permanent solution and set the stage for future conflict.

Frequently, discussions on conflict termination focus on the "winning" side. However, unless one side completely destroys its opponent, the "losing" side normally has some ability to influence surrender terms. This is because if not completely destroyed, the loser by definition still retains the ability to prolong the conflict. The winner should consider its adversary's concerns; otherwise



the prospect for continuing the conflict increases. Reasonable diplomatic and political terms may motivate a defeated country to accept surrender. Carl von Clausewitz recognized the relationship between political outcomes and conflict termination. If a war ends without a mutually acceptable political settlement, the “defeated state often considers the outcome merely as a transitory evil, for which a remedy may still be found in political conditions at some later date.”<sup>2</sup> Without an agreement that satisfies all parties, a cessation of hostilities cannot be final. An insurgency, a new political order, or some other obstacle to peace might surface. A nation may be militarily defeated, but getting it to accept that defeat and the terms of surrender demands much more than decisive battlefield results.

For the winning side, creating a lasting settlement requires actions that create conditions that are conducive to convincing the losing side to accept surrender. These actions are often taken in conditions of imprecise information, a dynamic environment, extreme cultural differences, and other constraints. Unless adversaries maintain an open dialogue during hostilities or have a reliable flow of current political information about an opponent’s position regarding acceptable surrender terms, they are left to send messages to the opposition via public pronouncements or trusted intermediaries. Such messages might be misinterpreted or incomplete, delivered to an inappropriate recipient, or fail to evoke a response. Today, the widespread use of intelligence regarding an opponent’s interests and motivations complicates the matter. Sources may conflict or the information gathered may be so voluminous it takes excessive time to analyze—and the best intelligence may not reveal an opponent’s intentions, beliefs, or internal discussions. Nevertheless, officials do, of course, use intelligence to craft terms for the cessation of hostilities. Once terms are crafted, the issue becomes ensuring the desired message is transmitted and received without distortion or possibility of misinterpretation. In some situations, setting conditions up front can help define and channel the options available for an adversary. Conversely, setting the wrong conditions can seriously affect both the chances of surrender and the chances for a lasting peace.

Conflict termination is always limited and conditioned by what is possible. The adversary may respond adversely or unexpectedly to peace overtures and prolong the conflict. Similarly, allies may do things that undercut the termination process and lengthen the war. A nation needs sufficient flexibility to alter surrender terms and even basic political objectives based on intelligence and enemy actions. While certain objectives may seem to be beyond compromise, it is amazing how often small concessions can produce significant results. Determining when and how to modify objectives in a conflict is crucial to affecting an opponent’s behavior and potential acquiescence to surrender terms.

How commanders plan and execute military campaigns also often has a significant impact on an adversary’s decision to end a conflict. Similarly, diplomatic initiatives or other political acts intended to isolate an opponent that appear to be appropriate wartime measures may cause a foe to be skeptical of post-conflict relations or conditions. For example, an alliance with an opponent’s traditional rival is a natural wartime move; it may, however, reduce the enemy’s confidence in its chances of receiving fair and equitable treatment during peace negotiations. War is such a significant act that national and military leaders often concentrate so closely on short-term actions and objectives that they miss longer-term opportunities.

U.S. efforts during World War II to end the war with Japan illustrate the problem of adapting to changing circumstances and the impact of objectives, government organization, domestic society and economics, military potential, and justice on conflict termination. Washington’s insistence on a policy of unconditional surrender had a unifying effect early in 1942, but by mid-1944 various officials were questioning the policy. Unconditional surrender seemed too constraining in light of future interests.

## UNCONDITIONAL SURRENDER

Unconditional surrender is a harsh demand on a defeated nation. A country or alliance that offers such terms to an enemy eliminates any chance of negotiating conditions — it is a take it or leave it proposition. Such terms set a very high standard for all the parties involved. The implication of such terms is that the enemy has been so thoroughly defeated diplomatically, militarily, and economically that it has no option but to succumb. The winning side often demands adherence to specific provisions that may be announced only after the surrender. By the very nature of the term unconditional, no preconditions are set or information given about the future of the defeated country in advance of its surrender. The issuer accepts the fact that it has placed its opponent in a position with no honorable way out.

A policy of total submission has advantages for the winning side. It is an uncomplicated condition that defers the tough decisions about the post-war world. As such, it is often easier for alliance members to support than terms that reflect their possibly divergent national interests. Unconditional surrender makes supporting policies and taking actions that might not be popular domestically much easier. Because it is unspecific about what terms will be demanded of the enemy, suffering tremendous casualties or physical destruction might be tolerable since the costs-benefit analysis is essentially impossible to determine — or everyone gets to imagine his own set of benefits and thus can set them proportionate to the costs. The total commitment of all alliance members makes seeking a separate peace more difficult. If the alliance's war aim is simply to achieve a ceasefire with subsequent negotiations, each state's losses might affect its motivation to continue. Unconditional surrender, however, sends a clear message that the issuer demands nothing less than total victory.

In any extended conflict, the possibility of war weariness is a reality. Whether the nation's fate is at stake or if its interests are tangential to the conflict, a lengthy fight can try the public's patience. A demand for unconditional surrender represents commitment. Fighting to a final victory sends a clear commitment message by the government to the people. The country can more easily mobilize its resources to end the conflict or continue to fight.

Countries dominated by authoritarian regimes might not change through voluntary or negotiated measures. One way to ensure they do change to suit the victor is to occupy or control the defeated country after the war. Demanding an unconditional surrender may create conditions where regime change or a restructuring of society is possible. At least in theory, reforming the governmental and social structures may produce a more peaceful state.

Despite its benefits, a demand for unconditional surrender may also create problems. One major concern is that this condition limits an enemy's response. An adversary's only option is to accept or reject the proposition. Unconditional surrender sends a message that the war can only end with total victory and abject defeat. A belligerent may concentrate on unconditional surrender and overlook changes in the military or the political situation. Assumptions made by the parties advocating unconditional surrender are often unrealistic, making the proposal unacceptable to some adversaries.<sup>3</sup> The primary focus is on the power dictating surrender and usually ignores the adversary. Curiously, the power that must accept the defeat ultimately has the power to decide when the war ends. Unless it accepts the terms of surrender, the war could continue indefinitely.

As with any surrender terms, the enemy may attempt to create conditions that force its foes to rethink unconditional surrender. It might adopt a strategy of attrition to try to make the war too costly for its rival. Those are standard, accepted means. However, faced with a demand for unconditional surrender, a government may use weapons, tactics, or behaviors that it might not otherwise contemplate. If the government has no other option, it could resort to weapons of mass destruction or other radical alternatives. Attacks on military targets might increase in intensity.

Plans can also shift to civilian targets in an attempt to increase pressure on the enemy's government or break a population's will to resist

The opposing sides might interpret the precise meaning of "unconditional" surrender differently. Generally, the demand for unconditional surrender means total victory with no compromise. Unless the unconditional surrender ultimatum is accompanied by some modifier or explanation, an adversary has no option but to assume its government, society, and very existence as a nation are at risk – the threat is existential. Existential threats force nations to fight to the death, which may be a needless condition if the opposing side intends to retain the important elements of nationality and simply did not communicate its intention precisely.

Placing the ultimate demand on an enemy creates other constraints on conflict termination. If a nation does not accept total defeat, then the side demanding total victory may have difficulty enforcing the surrender. Suppose a nation has defeated an opponent on the battlefield, but its enemy does not accept unconditional surrender. Forcing that rival to capitulate may require more effort than the winning side originally imagined. Likewise, should the presumed winner need to end the conflict quickly, it may back away from unconditional surrender and signal its willingness to settle on terms less than total victory. This option can have unintended consequences. Given the apparent weakening in surrender demands, the opposing government may decide that if it fights a little harder it might extract even better terms. With stiffened resistance, each side would face greater casualties and a prolonged war.

All these issues with unconditional surrender interact with the characteristics of alliances to further complicate the situation when one or both of the warring parties is an alliance. The presence of multiple actors pursuing perhaps divergent interests makes an announced objective of unconditional surrender an attractive proposition, especially if holding the coalition together appears to be more vital than sorting out post-war political arrangements. The alliance or coalition is still subject to all the normal pressures of internal national politics, elections, opposition parties, public dissent, war weariness, etc.; however, the simple goal of unconditional surrender may make separate peace treaties that fracture the alliance less likely. The case of unconditional surrender and Japan in World War II illustrates many of these thorny issues.

### **The Casablanca Conference and the Use of Unconditional Surrender.**

The United States and its allies faced a grim strategic situation in late 1941 and early 1942. German forces had taken most of Western Europe and were advancing on Moscow. American and British forces could only manage attacks on the periphery of German territory. The Soviet Union seemed likely to succumb to Germany's relentless attacks. Japan's Imperial military forces had damaged the U.S. fleet in the Pacific and defeated Allied ground forces throughout the region. The Japanese seemed unstoppable. A repeat of a separate peace between Berlin and Moscow like the Treaty of Brest-Litovsk, March 3, 1918, that ended World War I hostilities between Russia and Germany, would be a disaster for Washington and London. The surprise attack on Pearl Harbor, Hawaii, atrocities in the Philippines, inhuman actions in occupied Europe (the magnitude of which were not yet fully appreciated), and the Soviet Union's near collapse stirred the American public to support a total war against the Axis powers.

In January 1943, President Franklin D. Roosevelt (FDR) was preparing for a major policy meeting with British Prime Minister Winston Churchill in Casablanca. The conference would give the President an opportunity to announce his conditions for Axis surrender. Before leaving for Casablanca, Roosevelt disclosed to the Joint Chiefs of Staff that the basic Allied war aim should be the unconditional surrender of the Axis powers.<sup>4</sup> His goal was to assure Soviet Premier Josef Stalin that American and British forces would advance to Berlin and seek total German capitulation—

they would not leave the Soviets dangling by signing a separate peace. The U.S. Army and Navy staffs were surprised at this decision since Roosevelt had not requested any study of the implications of unconditional surrender.

On January 24, following the Casablanca Conference, Roosevelt announced the unconditional surrender policy. Churchill did not expect this announcement.<sup>5</sup> Whether Churchill was startled due to the timing or manner of the release, it did not stop him from offering his approval. FDR and Churchill had discussed the concept of unconditional surrender during the conference, and the British prime minister had agreed to these considerations with respect to Germany and Japan. Churchill had earlier suggested that the demand for unconditional surrender not be used against Italy since a conditional surrender in all likelihood would speed Rome's demise.<sup>6</sup>

The unconditional surrender announcement should not have been a great shock. The President had hinted about this approach in his congressional address on December 8, 1941. He declared that a state of war existed between Washington and Tokyo, and the speech concentrated on a theme of "absolute victory." German and Italian declarations of war against America only added to the President's concern regarding the state of Allied morale. With regard to the Axis powers, noted military historian Russell Weigley commented that the Casablanca Conference's declaration of unconditional surrender as an Allied policy left the impression that the American military strategy was one of "annihilation."<sup>7</sup>

The Casablanca Conference became synonymous with unconditional surrender – a policy that seriously affected Allied military strategy related to Germany and Japan. The focus of future military actions became the destruction of the Axis powers; Washington appeared to give little attention to post-war Germany, and Japan appeared to be of no interest beyond the military realm.<sup>8</sup> Roosevelt had removed the potentially contentious distraction of post-war policy. The focus on total victory over Berlin and Tokyo was popular with the American public and seemed to unite the allies. FDR, Churchill, and Stalin could debate the fate of Germany after its demise. The American President would set conditions regarding Germany and Japan only after the war.<sup>9</sup> Unfortunately, the lack of political guidance would leave these decisions to others after FDR's death in April 1945. Without guidance on the vision of the post-war political landscape, Allied military staffs were free to create military plans devoid of political considerations. They created plans for the occupation of Germany and Japan from scratch in a political vacuum.

The President's desire for unconditional surrender may have had its roots in World War I. Roosevelt was concerned about Germany's ability to wage war in the future. He resolved that Germany's defeat after World War II should result in conditions that would not allow it to undertake another major war. Unconditional surrender would permit the Allied powers to dictate every aspect of post-war activities from physical to political reconstruction. There would be no escaping or compromising the Allied terms. In the future, neither Berlin nor Tokyo would be able to point to violations of a negotiated peace, as Berlin had with the Treaty of Versailles.

Roosevelt's worries about post-World War II Germany may have been misplaced. As the war wound down the destruction of major German cities, massive casualties, the prospect of long-term occupation by the Allied powers, near total economic disruption, potential Communist expansion, and other conditions did not seem to mimic conditions after World War I. By May 1945, the German government and society were largely destroyed. These conditions required massive aid, not demands for reparations or punishment.

The Italians were never forced to accept unconditional surrender. During the Allied invasion of Sicily, a successful uprising toppled Benito Mussolini's government on July 24, 1943. General Dwight D. Eisenhower offered an armistice and an end to the bombing of Italy.<sup>10</sup> Eisenhower sought options to end Italy's participation as an Axis power. On September 8, after the Allied land-



ings at Salerno, the Italian government publicly announced its surrender, following secret negotiations with the Allies. The war continued on Italian soil, but it was between the Allies and Germans.

### **Did Unconditional Surrender Fit Japan?**

In June 1942, after the Battle of Midway, Allied military action began to chip away at Imperial Japanese outposts. American and British forces, however, lacked sufficient resources to make a direct attack on Japan. Instead, they employed a slow, methodical advance through the Southwest and Central Pacific that permitted American forces to move closer to Japan. These gains would eventually allow American strategic bombers to strike Tokyo. The strategic bombing program would complement the U.S. Navy's submarine blockade that restricted maritime transportation around Japan. Military and merchant marine shipping suffered horrendously. The Japanese home islands were isolated and could not import vital finished goods, foodstuffs, and raw materials. Allied military forces waged a relentless war of attrition as Japanese forces wasted away on bypassed Pacific outposts.

In 1943 Department of State officials had examined how to get Tokyo to surrender. One option was to drop the unconditional surrender requirement. A study by an interagency group recommended the retention of the emperor. The group believed that the emperor would be instrumental in a democratically-elected, constitutional government under an Allied occupation. Disarming the Japanese military, dismembering the empire, restructuring the government, changing society, and maintaining the peace all would require control and influence that the emperor could provide.<sup>11</sup> Reconstruction required stability, and the emperor could play a vital role in support of these efforts. Despite these considerations, the official policy remained unconditional surrender.

Churchill expressed concern about unconditional surrender demands for Japan at the Yalta conference in February 1945. The conference outlined the final plans for the assault on Japan. Allied forces would intensify their naval blockade and aerial bombardment of Japan in preparation for the invasion of Kyushu and Honshu. An overwhelming Allied invasion would force Emperor Hirohito to accept unconditional surrender. Churchill, however, sought an alternative. British casualties in Europe had been heavy, and the country's morale, economy, and military forces had suffered under the strain. The Prime Minister believed that if the Allies offered an alternative to unconditional surrender, Tokyo might end the war a year and a half sooner and save lives and resources.<sup>12</sup> A major Japanese concern was the future of the emperor. If the Allies gave assurance that the Japanese could retain the imperial system, an earlier surrender might be possible. Army Chief of Staff General George C. Marshall and FDR's military advisor Admiral William D. Leahy supported modification of the unconditional surrender edict to include a provision allowing for the retention of the emperor and the imperial system.<sup>13</sup> Roosevelt still believed, however, that a softening of terms would not be sufficient to induce the Japanese to surrender. Harry Hopkins, FDR's political advisor, and Assistant Secretaries of State Archibald MacLeish and Dean Acheson also opposed any change in the surrender terms. Churchill, not wanting to undercut the president's position, let the matter drop.

American military advances through 1944 had demonstrated mastery over the Imperial Japanese forces; however, it was obvious that the Pacific war was far from over. The Japanese military still controlled Burma, Southeast Asia, Manchuria, parts of China, Korea, and were preparing a formidable homeland defense. Tokyo had endured massive defeats of its air, land, and naval forces, but it still maintained the will and capability to exact a high toll on any Allied invasion forces used against the home islands. American and Japanese losses both continued to mount. Iwo Jima and Okinawa demonstrated the ferocity of the Japanese forces and confirmed Tokyo's military will to resist. Allied military commanders knew they would prevail, but wondered when and how many casualties they would have to sacrifice before achieving victory.



Competing military strategies clouded decisions on how to proceed. The most logical course of action, according to George Marshall, was to invade Japan. Army and Marine Corps units along with Allied forces would first take southern Kyushu to establish bases for bombers. Next, combined forces would intensify the blockade of Japan and support the landings on Honshu. Once Allied forces landed on Honshu, they would drive on Tokyo and demand surrender. Marshall argued there was no guarantee that continuance of a naval blockade and bombing campaign would achieve surrender, and both options would take time. American intelligence sources were aware of detailed Japanese preparations to defend the islands, and many experts projected a bloody invasion. Admiral Leahy estimated that American military units would suffer up to 35 percent casualties or 268,000 killed and wounded in action against Japanese forces during the Kyushu invasion.<sup>14</sup> Actions against Honshu, especially around Tokyo, would see even higher losses.

Admiral Ernest King, Chief of Naval Operations, believed that continued naval blockade and bombardment would eventually force Japanese capitulation. By the summer of 1945, submarines, surface forces, and carrier task forces had strangled Japan's economy and resources. Submarines continued to sink merchant shipping and reduce food imports to a trickle; starvation of the Japanese people became a real possibility given the projection of a poor rice harvest in 1945. There was ever-diminished movement between the Japanese islands and the Asian continent due to increased Allied military presence. The Navy had derived many of its strategic concepts for the Pacific campaign from pre-war plans to advance through the Central Pacific and establish bases from which to blockade and attack the Japanese islands. Based on those, King believed he could provide a firm date for Japanese capitulation.

Air power advocates believed that strategic bombing would paralyze an adversary's government, military, and economy. This paralysis would lead to the stunting of enemy battlefield capabilities that would eventually cause collapse and surrender. When the U.S. Army Air Forces (AAF) was finally able to establish air fields in China and the Pacific within range of Japan, it initially attacked using its doctrine of pinpoint bombing of military and economic targets. Unfortunately, trying to conduct daylight, precision bombing was problematic over Japan. Weather conditions, problems with the new B-29 bomber, dispersed Japanese industry, and other concerns forced a change in tactics. AAF leaders added night raids using incendiary weapons to destroy industrial and military targets. Such attacks also devastated the cities surrounding the factories. These raids started to have a telling impact on Japanese industry and civilian morale. B-29 raids, if permitted to continue, would destroy all of Japan's major cities by September 1945. AAF Major General Curtis LeMay, who led Pacific B-29 forces, predicted surrender by October.<sup>15</sup>

Another option was to increase military pressure on the Japanese by opening a new military front. Roosevelt and Churchill had advocated that the Soviet Union declare war on the Japanese. This strategic move would continue to tie up Japanese forces to Manchuria, China, and Korea. The Soviets had initially resisted the idea while they fought Germany. Stalin promised to enter the war against Japan when the European war ended, but there was no agreed upon date. As the western powers watched the brutal occupation of Eastern Europe by Soviet forces, the State Department raised concerns about a Soviet presence in post-war Japan and Asia. Ultimately, the drive to achieve the near-term objective of unconditional surrender would overshadow any possible impact on the post-war political landscape of Asia. Japanese resistance was weakening, and the Soviet Union simply entered the war to enjoy the spoils of victory. Moscow would demand reparations and the return of lost territories from the Japanese along with a broader role in post-war Asian affairs.

Roosevelt had approved the use of atomic bombs against Germany, if it were available, and had asked engineers and scientists to prepare for such use in January 1945. Technical problems,

however, delayed their debut until July 16, 1945 when a plutonium bomb was tested in New Mexico – well after Berlin’s surrender. Although scientists and engineers did not know the full effect of nuclear weapons, they knew such weapons would have tremendous destructive power. The U.S. Government’s commitment to use atomic bombs against Japanese targets would demonstrate the will to inflict similar destruction on Tokyo if Japan did not accept unconditional surrender. The atomic bomb, a viable threat of invasion, increased naval blockade, expanded strategic bombing, and the Soviet Union’s entry into the war all would hopefully lead to a rapid end to the war and make an invasion unnecessary.

Roosevelt’s intent to settle political objectives following the surrender of the Axis powers remained, but his plans would go unfulfilled. On April 12, 1945, FDR died along with his post-war political vision. Truman assumed the presidency and was presented few options. Roosevelt had failed to keep Truman informed of his intentions or strategies. Truman did not even know about plans for the atomic bomb.

### **Getting Japan to Surrender and Post-War Considerations.**

By April 1945, the Joint Chiefs of Staff had approved plans for the invasion of Japan. General Douglas MacArthur, the senior Army Officer in the Pacific, prepared operational concepts and invasion plans. The major concern among national and military leaders was projected American casualties. Almost all of the more than 22,000 Japanese forces on Iwo Jima had died in March defending the island. American deaths numbered almost 6,900 killed and over 18,000 wounded. The American invasion of Okinawa resulted in an even bloodier encounter. From April to June, U.S. Army, Marine Corps, and Navy units slowly defeated Japanese forces on Japan’s southernmost island. More than 12,000 American military personnel were killed and over 36,000 wounded. Japanese military and civilian casualties soared to over 110,000 known deaths. Although the Imperial Japanese Navy and most of Tokyo’s remaining air forces were decimated, military personnel continued to serve in suicide and kamikaze units. Japanese military and civilian culture demanded a fight to the death.

American military planners and intelligence officers began to speculate about the level of opposition General MacArthur would face in Kyushu and Honshu. Signals intelligence indicated that Japanese defensive resources and personnel had started to increase precipitously. Initial American intelligence estimates put Japanese uniformed military on Kyushu at 246,000 personnel on May 12, 1945. A month later, the estimate rose to 300,000. By August 2, Japanese troop levels in Kyushu topped 534,000.<sup>16</sup> Later estimates would reach 600,000. Civilian defense units, transfers of personnel into Honshu and Kyushu from China, and the raising of kamikaze units alarmed Allied leaders. If Okinawa was an example of events to come, the United States would need more forces.

Truman faced a real problem of producing more troops. American forces in Europe were clamoring for demobilization and a return home. European-based veterans felt they had earned their release and that others should fight in the Pacific. War weariness among the American public became a major concern. Reduced casualties, halting economic disruption due to the war, and a return to normalcy were demands made by thousands of anxious civilians and service personnel. If Germany had been the main threat to world peace, then Japan was not as important. Berlin had been defeated; Japan was weakening and many felt a transfer of European-based units was unnecessary. Existing Pacific forces could handle the war.

Commanders in the Pacific did not share that optimism. They had attacked Imperial forces with massive naval and air power throughout the theater. However, the advance became more difficult and Japanese resistance increased as the campaign neared the home islands. Veteran Pacific units would conduct the invasion of Kyushu. Those worn divisions required support from newly

created units or ones transferred from Europe. European-based divisions might be veteran units in name only. Pressure to demobilize military personnel would force Washington to fill units with raw recruits. Such units and veteran Marine Corps divisions would be used to attack the heart of Japan. The casualty rate could be expected to be high.

After years of conflict, Japan was near exhaustion. Most of the top-level Imperial Japanese military forces had been shattered by continuous fighting. The country's industry and cities had been bombed. Japanese leaders did not have many options to influence the end of the war. Unconditional surrender posed an unknown fate. If accepted, Japan might be divided and occupied. The key issue facing the Japanese people was the fate of the emperor and the imperial system. Leaving the fate of the emperor in the hands of the victorious Allies could mean that Hirohito would be subject to a war crimes tribunal. The only other option for Japan was to continue the war. Stubborn fighting might still convince the Americans they were paying too high a price and might force Washington to think twice about surrender terms and possibly offer a negotiated peace. Negotiations might allow Japan to achieve several desirable goals: territorial integrity, retention of the imperial system, freedom from foreign occupation, retention of its military, and prevention of war crime tribunals. Japan had never surrendered, and a foreign occupation was unthinkable.

Complicating the decision process was the fact that the United States and Japan had no formal communications link. Public announcements, published newspaper accounts, and actions constituted the most direct ways of expressing policies and intentions. The Japanese attempted to contact Washington through foreign intermediaries, but that was an unreliable method. Unfortunately, rhetoric and political posturing clouded messages sent to the Japanese. Leaks about revisiting unconditional surrender could backfire and cause the Japanese to strengthen resistance; they would certainly embarrass Washington and might affect public support for the war. Conversely, the Japanese government would lose face if it was seen as negotiating with the enemy, and there was a possibility of a military coup to force a continuation of the war.

Truman's concerns about unconditional surrender began to increase. He asked several senior advisors to evaluate how to force Japan to surrender. The high-level interagency group consisted of Secretary of War Henry L. Stimson, Secretary of the Navy James Forrestal, and former Ambassador to Japan Joseph Grew, now an undersecretary of State.<sup>17</sup> The group analyzed the Allied goal of unconditional surrender. Washington had never defined the term. Perhaps the government could retain the unconditional surrender policy and still make a public declaration of how it would treat Japan after the war. Such information might encourage the Japanese to relent and surrender. The group did recommend keeping the emperor.

Stimson and Grew strongly backed the option of retaining the emperor. They thought the imperial system was essential to maintain the country's culture, society, and soul. Without any assurance of keeping Hirohito in power, the Japanese government, military, and public would, in all likelihood, fight to the death. Washington could remove this obstacle by making a definitive announcement regarding surrender terms. A timely capitulation might forestall Soviet entry into the war. A stable post-war Japan would also facilitate reform and reduce the need for a large occupation force. If the Japanese people witnessed the emperor accepting surrender, they would likely accept their defeat and the dissolution of the empire. An emperor who had accepted defeat and renounced militarism would reduce the chance of renewed initiatives to expand Japan's borders.

Critics vehemently disagreed with letting Hirohito remain as emperor. Many believed that Hirohito was personally responsible for the war. Some American officials could not separate the emperor's role from the conduct of the war. They believed giving him amnesty would defeat the very purpose of fighting Japan. These critics, like Acheson and MacLeish, pointed out practical reasons not to modify FDR's unconditional surrender demand. Any sign of lessening this requirement

would make the United States appear weak to both the Japanese and America's allies. Instead of encouraging Japan to surrender, the Japanese will might be strengthened by Washington's offer. The Allies might also view this change in position as a sign of lessening support for the defeat of Japan and commitment to post-war agreements. The Soviet Union might exploit this as an opportunity to move into East Asia. There was a real possibility that the American public would condemn the administration after being told for years that Japan and the emperor would be held accountable for the war.

The Japanese government was also divided. Not all Japanese cabinet members were behind efforts to continue the war at all costs. Despite the unconditional surrender demand, there were several Foreign Ministry "peace" advocates who sought a negotiated war settlement through a foreign intermediary. They believed the only major power they could fruitfully approach was the Soviet Union. Despite conflicts in 1904-05 and several border clashes in 1939, Tokyo thought that it could rely on Moscow to broker a peace. The Japanese and Soviets had signed a neutrality treaty in 1941, in which Japan continued to put great faith. Unknown to the Japanese was Stalin's commitment to aid the United States and Britain in the Pacific war. The only question that remained was when he would launch an attack in Manchuria.

Sato Naotake, Japan's ambassador in Moscow, sought out Soviet Foreign Minister Vyacheslav Molotov at the end of June 1945. Japanese hopes for peace rested on convincing Molotov that in exchange for Soviet support Japan would promise a long, peaceful relationship. Additionally, Tokyo would sweeten the deal by offering to create a neutral buffer in Manchuria, renounce certain fishing rights, and negotiate any issues of Soviet interest. The main Japanese objective was for a ceasefire. Tokyo would keep the imperial system. The Japanese were also willing to withdraw from selected areas and renounce the 1905 Portsmouth Treaty that awarded Russian territories to Japan.<sup>18</sup> By this point in the war, American intelligence analysts had already broken the Japanese diplomatic codes, so Washington was well aware of Tokyo's peace overtures. "MAGIC" signal intelligence intercepts revealed the Japanese Foreign Ministry's efforts to gain Soviet support. American leaders now knew some Japanese leaders were attempting to negotiate a settlement.

Molotov evaded any appearance of trying to help Sato. Stalin's promise to help the United States and Britain would provide more benefits than the few territories and concessions offered by the Japanese. A Japanese total defeat would disarm a powerful Soviet foe in Asia. With Japan's defeat, the Soviet Union would witness the removal of a major impediment to Moscow's post-war Asian activities. The Soviets ensured they were on the winning side in an effort to share in any future war booty.

Stimson and Grew continued to press Truman about communicating with the Japanese regarding the possibility of retaining the emperor. They believed that any Japanese peace faction armed with this assurance or at least the possibility of maintaining the emperor would convince the hard-line militarists that surrender was the best option.<sup>19</sup> But critics had their doubts: were the Japanese delaying their surrender to prepare stronger defenses for the homeland? There was always the chance that continued discussion might weaken American resolve on a host of other political issues.

Divisions widened in Tokyo. Within the Foreign Ministry some officials wanted a negotiated peace; others were willing to accept unconditional surrender just to stop the war. Imperial Japanese Army leaders were unwilling to accept defeat and wanted to fight to the last man. The Imperial Japanese Navy had already lost most of its war fighting capability except for the kamikaze planes and naval vessels retained to strike any American invasion fleet. Japanese naval leaders doubted the Army's ability to continue, but even so, they still supported efforts to continue the war.<sup>20</sup> The Japanese public's support for the war and its morale began to ebb. Thousands had perished, food



was scarce, news about the ever shrinking empire leaked to the public, Japanese sacred soil in Okinawa had been lost, and the destruction by daily B-29 attacks was hard to dismiss. Public displeasure about the war started to turn to resentment with regard to the emperor.

Truman attended the last major Allied conference in Potsdam Germany in late July 1945 with Churchill and Stalin. The conference would settle some post-war agreements over Germany, but it would also examine Japan. Truman and Churchill pressed Stalin for his date on entering the Pacific war. Of the other Pacific strategic options, Truman supported the invasion but was reluctant to give final approval to launch the attack. The president was still concerned about the path the war against Japan should take. The invasion would be bloody, but the unconditional surrender option seemed too difficult to change at this time.

The Potsdam conference cemented Allied policy regarding Japan. Stalin agreed to declare war on Tokyo and start military operations against Japanese forces in Manchuria and Korea by early August. The United States, Britain, and China issued a proclamation that finally defined the terms of surrender for the Japanese. The Potsdam Declaration served as the official communication to the Japanese government to end the war. The terms of the July 26 declaration were non-negotiable.<sup>21</sup> Allied leaders demanded a reformed Japanese government that would remove any "authority and influence" that led the Japanese people to war. The declaration also required Tokyo to dismantle its war-making capability, to include all of Japan's military industry and forces. Allied military forces would occupy Japan. American and other nations would administer Japan until a "new order" should be created and its military capability destroyed. Japan's hopes to retain some of its occupied territories were dashed. The Japanese would only keep Honshu, Kyushu, Hokkaido, Shikoku, and other minor islands. Allied tribunals would prosecute war criminals.

With respect to long-term post-war policy, the declaration-stated that the Allies would not "enslave" or impoverish the Japanese people. Instead, the Allies wanted to create a democratic state with freedom of speech, religion, thought, and a respect for human rights. The Allies would build a peaceful state. If the American and British governments attempted to press for a more severe occupation, then Japan's early claims that it was freeing Asians from colonialism might appear true. Similarly, the return of former colonial territories to Britain, France, and the Netherlands was a sensitive issue. The United States would retain control of the Philippines, but Washington had guaranteed Manila's independence. In the post-war period, the face of Asia and the Pacific would change markedly. Roosevelt and Churchill had agreed to certain principles in their August 14, 1941, Atlantic Charter that would serve as a guide for the war. One of their policies was that "they respect the right of all peoples to choose the form of government under which they will live." Self-determination and the decolonization of Asian countries seemed to be a natural extension of the Atlantic Charter. Allowing for post-war occupied territories and the reformation of Japan would be test cases.

The Potsdam Declaration made no direct reference to the emperor, but supported the Atlantic Charter. There was, however, a cryptic statement about any future Japanese government. The Allies wanted a government established by "the freely expressed will of the Japanese people." The intent of the statement was to permit the Japanese to keep the emperor and the imperial system, if they desired. Although there was no direct reference promising to retain the emperor, the condition seemed ambiguous enough to allow that possibility. Peace advocates could interpret that the stated conditions permitted the imperial system to continue. Others argued that the Potsdam Declaration was nothing new and that without a guarantee to the emperor, the imperial system would go with the rest of the Japanese government. The declaration also ended with a threat. If the Japanese government did not accept unconditional surrender, then it would face "prompt and utter destruction."



## Forcing Surrender.

While President Truman and the other Allied leaders discussed policy at Potsdam, American commanders in the Pacific prepared to invade Kyushu. Okinawa's fall, in June 1945, was the last stop before Kyushu. American naval and air superiority would soon dominate the seas and skies of Japan. Four years of hard fighting had left Tokyo's ground force a shadow of its prewar strength. Still, the Japanese military fought with a determination and fanaticism that worried field commanders and Washington planners alike. Invasion seemed the only choice to ensure surrender.

Scientists and engineers had finally perfected a nuclear weapon—a weapon that could destroy an entire city. The Japanese public had withstood massive incendiary attacks by hundreds of B-29s, what if the United States could arm several aircraft with atomic bombs? The combined atomic bombings and Soviet invasion should certainly shock Tokyo into surrender. The United States had the alternative of inflicting greater destruction on Japan without invasion by employing the atomic bomb. Stimson saw the atomic bomb as a means to demonstrate to Tokyo that the promise of the Potsdam Declaration of “utter destruction” was real. Stimson was also concerned that an invasion would force the Japanese people to support their military's policy of continued fighting. In the Secretary of War's view, dropping the atomic bomb would send a message to the emperor, the government, and military.<sup>22</sup> The Japanese strategy of slowing American advances with bloody attrition would become moot. Further, any Soviet advances in Northeast Asia would deprive Japan of shrinking raw materials, foodstuffs, and force Tokyo to commit substantial military forces on that front. This demand for additional forces would mean that Japanese home island defense units might not receive required replacements to face the Americans.

The atomic bomb offered an opportunity to deliver a tremendous psychological shock to Tokyo. Dropping two weapons would maximize that impact. Washington had to convince the Japanese that it possessed the capability and will to deliver nuclear weapons indefinitely. If one bomb were used, Tokyo might dismiss it as a singular event. A second bomb would demonstrate that Washington had the ability and will to continue using these weapons. Unknown to the Japanese was the fact that United States only had two available bombs and a steady supply would require time. This limitation ruled out a demonstration release since it would require one of the weapons. American planning staffs decide the bombs could be dropped by the first week of August. MacArthur's staff had scheduled the Kyushu invasion for November 1. Truman could always initiate the invasion if the bombs failed.

On August 6, 1945, a B-29 dropped a uranium bomb on Hiroshima. The weapon destroyed much of the city. Three days later, a second crew dropped a more powerful plutonium bomb on Nagasaki. These weapons convinced the emperor and many of the cabinet that seeking an immediate surrender and peace was the only option. Despite protests from the Imperial Japanese Army and Navy, the emperor demanded compliance with his desire to surrender to the Allies. The Japanese hope to retain occupied lands, oversee military demobilization, avoid occupation, and derail war crime tribunals paled in comparison to the prospect of total destruction.

The day after the Nagasaki raid, the Japanese government sent a note through the Swiss government to the American State Department. The note offered to surrender and accept the Potsdam Declaration with an exception. That provision was that Washington ensure “His Majesty as a Sovereign Ruler” of Japan. The provision about self-determination of the future Japanese government was not explicit enough for the peace advocates. Secretary of State James F. Byrnes' reply to the Japanese offer through the Swiss *Chargé d' Affaires* was a reiteration of the Potsdam Declaration. The response specified that after surrender “the authority of the Emperor and the Japanese government to rule the state shall be subject to the Supreme Commander of the Allied powers,” and it demanded that Hirohito order the surrender of all military units. Byrnes again made specific

mention of allowing the Japanese people to decide “The ultimate form of government by the freely expressed will of the people.”<sup>23</sup> Three days later, Tokyo accepted the Potsdam Declaration.

### **Unconditional Surrender: Self Imposed Constraints.**

National and military leaders rightfully spend a tremendous amount of time and effort developing and planning diplomatic, economic, military, and other means to wage war. The immediate threat posed by an adversary can force leaders to think and react in the present without sufficient flexibility to adapt to future conditions. Political leadership must appease constituents, alliance members, organizations, and fulfill its responsibility to maintain its national sovereignty. Time constraints and insufficient information can also limit choices available to leaders. Planning for conflict termination is just as important as designing a successful military campaign. In fact, the whole point of war is to seek a better or more permanent political condition through conflict termination. How a nation ends its war with a foe can determine future relations. U.S. planning for conflict termination against Japan illustrates the difficulty of anticipating and planning for the end to a war.

Unconditional surrender had emboldened Japan to resist any call for cessation of hostilities. The country’s leadership recognized that its nation and society would be changed to reflect the very political, economic, and social structure that it abhorred. The fate of the military, society, and the existence of the state would be left in the hands of the conquering nations. There was little motivation, aside from avoiding further bloodshed and destruction, to accept unconditional surrender. Nazi and Imperial Japanese government officials had helped create a global war. They would be the ones to face war crime tribunals. Japan’s national and military leadership could already see what was happening to its former partner Germany. It was natural to expect Allied policy toward Japan would be similar.

Likewise, the limited options offered by unconditional surrender and the Potsdam Declaration constrained Allied diplomatic and military leaders to a few strategic options. These options shaped the actions that Washington was willing to take in its efforts to force surrender. Military victory had to come first. All other considerations were afterthoughts. More strategic flexibility might have had far reaching effects on Allied efforts to change the Japanese public’s will, the military’s support for the war, future economic conditions, reconstruction, or other opportunities to seek a better peace.

After suffering heavy casualties in Europe and the Pacific, the Allies would face a determined Japanese defense of the home islands. Insisting on unconditional surrender left no room for Washington to modify its strategy. Some American officials insisted on maintaining the Potsdam Declaration demands, believing any changes would undermine public support, strengthen enemy resolve, and cast suspicions on Washington’s motives. If Truman was willing to negotiate conditions for surrender, critics warned the Japanese would ask for more. Reducing the pace or scope of military operations was not an option. The only concession Washington could make was to send vague references regarding the imperial system’s future.

Admittedly, any change to unconditional surrender terms would be difficult. The American public wanted Hirohito punished for Pearl Harbor and war crimes throughout Asia and the Pacific. Public sentiment supported a total victory over Japan. Germany had already capitulated to the Allies and accepted unconditional surrender. Many felt Japan should be treated no differently. Unfortunately, painting the war termination requirements with a broad brush against all of the Axis powers treated all enemies, their motives, interests, and weaknesses the same. Roosevelt did not consult with the military nor did he speak with State Department experts when developing and implementing his policy for conflict termination. Crafting the surrender terms for particular

cultures, nations or situations can provide an opportunity to develop a dialogue with an adversary, turn a former foe into an ally.

American policy in Asia and the Pacific was linked primarily to military actions. Forcing the Japanese to accept unconditional surrender made the invasion of Japan necessary. Military units would have to prosecute the war until Tokyo collapsed. The United States could not use a “carrot and stick” approach to reward Japanese gestures related to peace. The only alternative open for the United States was to increase the scope and level of violence in an effort to force acceptance of the Potsdam Declaration. Washington could only threaten greater destruction—an action that hinted to the Japanese that Allied pledges of creating a just society were empty promises. The drawback of using harsher military means was not lost on American officials. Secretary Stimson had warned the Chief of AAF General Henry H. Arnold that he did not want the United States to outdo Hitler “in atrocities” by conducting mass incendiary attacks against Japan’s cities.<sup>24</sup>

Unfortunately, Washington and Tokyo did not have any means of direct communications. The Japanese were unsuccessful in using Soviet, Swiss, and Swedish diplomatic channels to support their objectives to end the war. Although Tokyo’s thoughts with regard to surrender were far from the Potsdam Declaration’s terms, the potential to communicate positions might have led to an earlier surrender. The only methods of communication between the two factions were public statements. Washington feared that any direct communications with Japan might be interpreted as secret negotiations by both the Japanese and Soviets, making any demand for unconditional surrender appear disingenuous. Washington could only hope that the Japanese would correctly interpret its ambiguous pronouncements.

Adding to the dilemma was the fact that Washington did not have sufficient information related to rival positions within the Japanese government. Intelligence sources were limited. American intelligence relied on signals and some photographic means to assess Japanese military capabilities and government intentions. Washington had a huge advantage with its use of MAGIC, but analysts could offer only a glimpse of the intelligence picture—not the rationale of the Japanese government. Intercepted propaganda radio broadcasts and print media were of limited value in assessing the political situation. Photographic intelligence could only track and assess Japanese military strength and capabilities. Missing was any human source of information. Allied intelligence organizations could not infiltrate spies into Japan nor did they have the ability to question high-ranking prisoners of war or officials regarding Tokyo’s intentions. State, Navy, and War Department staffs could only speculate regarding views and positions within the Japanese government about unconditional surrender.

In the end, post-war Japanese and Asian political objectives were dramatically affected by the unconditional surrender requirement. Allied planning for the post-war was delayed awaiting Tokyo’s demise. The desire to get Japan to surrender would result in numerous problems for Washington’s strategists and planners. The push for Soviet intervention would trade-off short-term benefits for the expansion of communist influence in China, Korea, and, perhaps, Japan itself. For a shortened conflict, Stalin would be permitted to occupy key territories, demand concessions, and have a voice on post-war Japan. Societies and nations suffering from a continued Japanese presence would trade their situation for Soviet “liberation.” Although American military and government officials debated how to rebuild Japan, the emphasis was on occupation rather than reconstruction. Because they did not have a comprehensive plan for the post-war, the Allies risked both a longer war and a longer occupation.

Likewise, Allied demands for the imperial system’s end, dissolution of the military, and reform of the Japanese government could create a host of problems. Eliminating the Imperial Japanese military’s position and widening the role for the ordinary Japanese citizen in government were

laudable objectives. These goals were, in fact, possible, but Japanese military leaders, industrialists and others opposed such reforms because they had much to lose. Maintaining a functional government was another matter. The Allies would have to dissolve and then reconstitute the government. Questions concerning security, representation, acceptance of the new government, civil administration, and myriad other concerns might plague the Allied occupation until a new government could be formed. The role of any future emperor in government was a major concern. If the emperor could order adherence to Allied occupation and reform, then acceptance of such reforms had a greater possibility of success. Any doubts about the imperial system's future would almost certainly reduce the emperor and his ministers' commitment to reform.

Japan's unconditional surrender offers insights regarding conflict termination. Ultimately, Japan did accept unconditional surrender, and the Allies had a relatively peaceful transition. Still, inflexible terms, limited communications, a lack of post-war political goals, and failure to understand the adversary's values and interests constrained the Allies' efforts to end the war. Japan's mounting casualties, economic and physical devastation, the Allied naval blockade and aerial bombardment, the atomic bomb, and a Soviet invasion combined to force the Japanese to accept the Potsdam Declaration. Understanding why an enemy continues to fight and what terms a government might find acceptable in surrender can significantly enhance an adversary's ability to craft conflict termination conditions. Future conflicts that involve nonstate actors, alliances, or failing governments all have the potential for making conflict termination and post-war considerations even more difficult.

War and conflict are dynamic. Political alliances, objectives, public support, battlefield success, adversarial strength, and alliance commitment all have the potential to change over time. Defining and planning the desired end-state early in a conflict is critical. Without guidance regarding where and how a nation should proceed, political and military objectives will be difficult to achieve. Nations may not agree to alliances, military leaders might not be able to plan and execute campaign plans, and public support for the conflict may wane. Initial planning should contain sufficient vision and flexibility to change as political goals and objectives change. A conflict termination plan needs to encompass this ability for change just as military leaders need to be able to adapt to a changing battlefield.

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## CHAPTER 27

### THE GUERRILLA WARFARE PROBLEM: REVOLUTIONARY WAR AND THE KENNEDY ADMINISTRATION RESPONSE, 1961-1963

Frank L. Jones

On January 6, 1961, at the Moscow Meeting of World Communist Leaders, Soviet Premier Nikita Khrushchev promised his nation's support for "wars of national liberation," defined as those "which began as uprisings of colonial peoples against their oppressors [and] developed into guerrilla wars."<sup>1</sup> With several insurgencies already simmering around the world in Laos, Vietnam, and Algeria, Khrushchev's words not only indicated an intensification of what seemed to be a purposeful strategy to undermine Western interests in the developing world, but also unwittingly functioned as a call to arms for the presidential administration about to assume office in a few weeks.<sup>2</sup>

President-elect John F. Kennedy seized on Khrushchev's speech as a prophetic warning to his new administration. In his inaugural address on January 20, 1961, Kennedy replied to the challenge: "Let every nation know, whether it wishes U.S. well or ill, that we shall pay any price, bear any burden, meet any hardship, support any friend, oppose any foe to assure the survival and the success of liberty."<sup>3</sup>

The concern was not mere rhetoric. The President took an intense interest in communist revolutionary warfare, or what he called "subterranean war," from his reading of current history, his study of Communist support to insurgents in ongoing conflicts, his 1951 visit to Vietnam where he concluded that the war between France and the Vietnamese insurgents required use of the political instrument of power, and most importantly, his views on Cuba, which symbolized for him an example of a successful Communist guerrilla takeover. As Douglas Blaufarb, a counterinsurgency scholar, intimates, these factors helped frame Kennedy's worldview and his "sense of mission."<sup>4</sup> They also caused him to spur his staff and the bureaucracy to give this subject priority attention, going so far as to read out portions of Khrushchev's speech at the first meeting of the National Security Council, and direct the agency heads to scrutinize it and to disseminate it to their staffs for the same purpose.<sup>5</sup> As a senior official later recalled, one of the questions he posed to his senior appointees soon after the inauguration was, "What are we doing about guerrilla warfare?"<sup>6</sup> Nevertheless, more concretely, on February 3, 2 days following the initial meeting of the National Security Council, Kennedy approved NSAM No. 2, which directed the Secretary of Defense, Robert S. McNamara, to consult with other agencies and examine the means for placing more emphasis on the development of U.S. counterinsurgency forces.<sup>7</sup> Kennedy also met privately with the Joint Chiefs of Staff to ask what each of the Services was doing on counterinsurgency training. The Chairman of the Joint Chiefs of Staff, General Lyman Lemnitzer, informed the President that while the U.S. military had studied the British experience in Malaya and the French experience in Southeast Asia, the military was not doing enough. Kennedy requested a memorandum on the issue.<sup>8</sup>

Kennedy's passion for this topic did not subside, but accelerated. Within weeks, he approved a list of 19 tasks categorized under five headings for his new administration to tackle. The first heading was "problems of military force and policy; e.g., the deterrence of guerrilla warfare."<sup>9</sup> Shortly thereafter, he sent Congress the first of his Special Messages on the Defense Budget that included language stipulating the need for a "strengthened capability to meet limited and guerrilla warfare. . . ." He also noted, that the United States, "must be ready to deal with any size force, in-

cluding small externally supported bands of men and we must help train local forces to be equally effective."<sup>10</sup>

Meanwhile, Kennedy dove into the subject himself, reading the works of Mao Zedong and Ernesto "Che" Guevara, the Argentine guerrilla warfare theorist who had fought alongside Fidel Castro in Cuba, and expected his senior advisors and the military to study them as well. He also indicated a personal interest in the U.S. Army Special Forces as the organization best suited to respond to communist insurgency because of its special skills and languages needed to work with local populations. However, because he was not content with a solely military response to the problem, in March 1961, he directed the formation of an interagency group under the leadership of Richard Bissell, a deputy director of the CIA, to examine how best to organize the government for counterinsurgency, which he envisioned as having three components: military assistance, political reform, and economic development.<sup>11</sup>

At a joint session of Congress in May 1961, Kennedy underscored that a military response to communist guerrilla warfare was not sufficient or foremost; instead, it required expanded attention using economic assistance, information and intelligence. Speaking about economic and social progress abroad, the President stated that the struggle of freedom in the developing world "depends on the strength of their economic and their social progress. We would be badly mistaken," he continued, "to consider their problems in military terms alone. No amount of arms and armies can help stabilize those governments which are unable or unwilling to achieve social and economic reform and development." He argued, "social injustice and economic chaos invite insurgency," and that even the most adroit counterinsurgency efforts cannot be successful where the local population is so mired in its "own misery to be concerned about the advance of communism."<sup>12</sup> He requested \$535 million in foreign aid for "perimeter countries directly threatened by overt invasion."<sup>13</sup> Congress responded by passing the Foreign Assistance Act of 1961 to "promote the foreign policy, security and general welfare of the United States by assisting people of the world in their efforts toward economic development and internal and external security and for other purposes."<sup>14</sup> Further, section 501 of the legislation specifically noted that U.S. foreign assistance was aimed at improving the capacity of "friendly countries . . . to deter, or, if necessary, defeat Communist or Communist-supported aggression, . . . assisting friendly countries to maintain internal security and stability...essential to their more rapid social, economic, and political progress."<sup>15</sup>

## FORGING A COUNTERGUERRILLA POLICY

For Walt Rostow, Kennedy's deputy special assistant to the President for national security affairs (deputy national security advisor), Khrushchev's message was also deeply significant, and as one of the leading proponents of economic development theory and nation-building he was shaping Kennedy's response. Since the 1950s, the former MIT professor had immersed himself in formulating policy recommendations urging the United States to act more vigorously in providing economic and military assistance to the Third World, especially nations confronting communist-led insurgencies. The culmination of his thinking appeared in his 1960 book, *The Stages of Economic Growth: A Non-Communist Manifesto*. As the historian and Kennedy advisor Arthur M. Schlesinger would later write, "Guerrillas were also an old preoccupation of Walt Rostow's."<sup>16</sup>

In his book, Rostow constructed economic development models and concluded that the main sphere of U.S.-Soviet rivalry would be in the underdeveloped world.<sup>17</sup> Specifically, he posited that all societies proceed through five comparatively similar stages of economic development. Of these, the second stage, the transformation to modernity (that he titled "Pre-conditions for Take Off"), was the most destabilizing, as traditional values and institutions collided with ones that were more modern, producing disorder and conflict in every aspect of the society's political, social,

and economic life. Rapid population growth, urbanization, and technological change complicated the transition, as did the contending forces of colonialism, nationalism, and regionalism. He argued that a “revolution of rising expectations” existed that if remained unfulfilled, could persuade people in underdeveloped societies to embrace Communism as an expeditious path to modernization. In his estimation, Communism flourished during the transitional stage, manipulating and undermining the aspirations of the masses for ends antithetical to the ambitions of these peoples. He further believed that practitioners of the social sciences – politics, economics, and sociology – could crush Communism by implementing programs that would induce these transitional societies to “take off” toward attaining Western-style democratic capitalism.<sup>18</sup> Ultimately, for Rostow, Khrushchev’s declaration provided the policy impetus for, as one critic noted, the “wide-spread liberal-social scientist fascination with ‘counter-insurgency’ and ‘nation-building.’”<sup>19</sup>

Rostow was soon spending considerable energy on the “guerrilla warfare problem,” as Robert Komer, a member of the National Security Council staff, called it.<sup>20</sup> Rostow was not alone; by mid-1961, the Kennedy administration was in full throttle, expanding and amplifying the President’s directions regarding the importance of counterinsurgency. In May 1961, the Planning Group, co-chaired by Kennedy’s national security advisor, McGeorge Bundy and George C. McGhee, director of the State Department’s Policy Planning Staff, ordered the addition of counter-subversion and deterrence of guerrilla warfare to the list of urgent planning problems, emphasizing that the topic cover both the doctrine and a range of program actions required to forestall or deal with rural and urban dissidence.<sup>21</sup>

In mid-June, Rostow sought Komer’s advice when he provided him a copy of the draft of a speech Rostow planned to give as an address to the graduating class at the U.S. Army Special Warfare School, Fort Bragg, North Carolina, a few weeks later. The speech, in essence, would be a further articulation of the administration’s response to Khrushchev. Komer thought it “a damn fine draft” but then made numerous comments and suggestions in the margin. Refining Rostow’s policy pronouncement, Komer argued that two major themes deserved more attention than Rostow gave them. First, he reminded Rostow that guerrilla warfare required more than military measures and that the military had to understand this form of warfare to be a broad problem. Second, U.S. military guerrilla and counter guerrilla operations required “mobility, dash, and imagination quite different from normal military operations. Almost all of your great guerrilla leaders (e.g., Wingate, Marion, T. E. Lawrence) were atypical men.” The U.S. military did not cultivate such leaders, therefore, it was imperative to search for such leaders in the military, leaders who could immerse themselves in the local culture and environment as well as develop training regimens that would build up a distinct esprit and provide special qualifications.<sup>22</sup>

Rostow incorporated Komer’s views and on June 28 delivered his remarks at the graduation ceremony. After explaining the concept of modernization and its effects on traditional societies as well as the Communist exploitation of this transitional stage, Rostow outlined the “American purpose and the American strategy.” The United States, he declared, “is dedicated to the proposition that this revolutionary process of modernization shall be permitted to go toward independence, with increasing degrees of human freedom.” The United States sought two outcomes: “first, that truly independent nations shall emerge on the world scene, and, second that each nation will be permitted to fashion, out of its own culture and its own ambitions, the kind of modern society it wants.” To achieve victory in this arena required “many years and decades of hard work and dedication – by many peoples – to bring about.” U.S. national interests required such dedication: “It will permit American society to continue to develop along the old humane lines which go back to our birth as a nation. . . .” Nonetheless, Rostow cautioned that while the United States and other likeminded nations could assist the developing nations, the primary responsibility for

dealing with guerrilla warfare was theirs; it must be undertaken by the society under threat. These nascent governments under attack must not only thwart this peril, but must “build, and protect what it is building.”<sup>23</sup> Thus, as Rostow’s speech makes clear, the significant features of U.S. counterinsurgency policy at this point consisted of three broad propositions: insurgency was a crucial international danger, that it resulted from Communist manipulation of powerful worldwide social forces captured by the term “modernization,” and that the United States was both capable and unwavering in its intent to meet this menace by the suitable use of its national resources.<sup>24</sup>

While Komer credited Rostow with formulating the fundamental doctrine based on the ideas the latter raised in his Fort Bragg address, he also continued to express concern to Rostow that the focus was primarily on the military instrument and not on “preventive medicine.” In Komer’s view, Communist subversion succeeded because the situation was “ripe,” that is, there had been a long period of preparing for covert intervention. Stressing precautionary measures in the initial preemptive phase would be less expensive in the end, minimize the risk of upheaval, and reduce the need for draconian measures to save the imperiled nation. Even such measures were not always successful since the critical issue was implementation.<sup>25</sup>

Roger Hilsman, director of the Department of State’s Bureau of Intelligence and Research and a West Point graduate who served in the U.S. Army and Office of Strategic Services as guerrilla leader in Burma during World War II, also believed that Rostow’s address was a good start, but it was too skeletal to serve as the definitive expression of the administration’s aims. In a speech delivered to the Institute of World Affairs in San Diego and later published as an article in *Marine Corps Gazette*, Hilsman argued that there needed to be changes in the U.S. military’s organization, doctrine, and equipment if it were to conduct proficient counterinsurgency operations.<sup>26</sup> Moreover, Hilsman considered the issue of popular support for counterinsurgency operations to be preeminent for “stable governments and a stable world.” He argued, “It would be mistaken to think that guerrillas cannot thrive where governments are popular and where modernization, economic development, and reform are going forward.” The corollary was also untrue: “the notion that the existence of guerrillas is proof positive that the government is unpopular and therefore not worth supporting.” He characterized this view as “defeatist.”<sup>27</sup> While he agreed that reforms were necessary to attain popular support for the threatened regime, he eschewed a simple formulation that “popular betterment (reform, development, modernization) led to popular support which led to counterinsurgency success.” He presented instead a more nuanced concept—“administrative underdevelopment” that “leaves a vacuum in most of the countryside of an underdeveloped country, the government being perceived as a distant and occasionally heavy-handed force.”<sup>28</sup> In such a setting, a guerrilla group can flourish because the government cannot establish an effective presence among an indifferent populace. Therefore, effective counterinsurgency was not just an issue of introducing reforms, development, and modernization, but demanded that governments develop capabilities to provide security.<sup>29</sup>

Assisting threatened regimes attain such technical competence was a task with which the United States could help. but Hilsman went further, arguing that the United States should advance political reforms by encouraging reformist elements to build viable political parties as well as to promote the will and capacity of the governments to implement social and political reforms as the foundation for modernization.<sup>30</sup> Lastly, the United States must nurture the growth and use of international organizations as a source of help for all these problems (especially before a crisis occurs) as well as to counter Communist accusations of Western imperialism.<sup>31</sup> As one scholar has noted, Hilsman’s ideas constituted a “daring prescription and, in truth, one which appeared very seldom in later doctrinal discussion. Clearly it was a prescription for intervention in depth in the intimate internal affairs of such governments.”<sup>32</sup>



## FORWARD MOVEMENT

Meanwhile, Kennedy recalled General Maxwell D. Taylor, the famed World War II commander of the 101st Airborne Division and former Army Chief of Staff, to active duty in July 1961 to serve as Military Representative to the President, a job that entailed advisory responsibilities in “intelligence and Cold War planning.” Cold war planning included fashioning the administration’s counterinsurgency policy.<sup>33</sup>

Taylor recognized that Komer played a leading role in defining the administration’s new counterinsurgency policy so he solicited the latter’s views on the U.S. military’s counterinsurgency duties. Komer responded with a three-page memorandum in which he again expressed his belief that the term counterinsurgency tended to narrow the focus to a military solution. He underscored his continuing concern that “preventive medicine to forestall a situation from ever reaching the stage of open warfare in the countryside” received little attention. He also argued that most of the situations in which the United States might be involved would be urban discord rather than rural insurgency. While the latter was certainly the case in Southeast Asia, it was not true about other areas of the world such as Iran and Latin America. Political, economic, and social measures were equally essential, and the first line of active defense was usually the police rather than the military. Instead of focusing on an Army counterinsurgency school, local police forces in underdeveloped areas should receive more attention. Additionally, the Military Assistance Program (MAP), focused primarily on overt threats, required careful study as a means of enhancing counterinsurgency capabilities. The key was impeding subversion in its early stages.<sup>34</sup>

By mid-July, the Bissell-led interagency task force (Counter-Guerrilla Warfare Task Force) circulated its draft introductory chapter to its members, which included Rostow. Rostow asked Komer to fill out what the remainder of the document should cover. Komer laid out several areas that the study needed to address. The first was the “knitting a resistant social fabric.” He argued that there needed to be an enumeration of the steps considered necessary to create and maintain a political and socioeconomic environment hostile to rural insurgency or urban disorder. The second issue was “preventive medicine,” that is, steps to take in the stage before open guerrilla warfare. A third area would be military and police measures to cope with an active insurgency, followed by a discussion of how to convince the international community on the challenge of indirect aggression and legitimizing an adequate response. The remaining chapters should be devoted to “sealing off the disease,” by isolating a guerrilla threat from outside support; active counter pressures to start counterinsurgency actions in adjacent enemy territory; and organizing and coordinating U.S. efforts to cope with this issue ranging from education and propaganda to the coordination of police and military programs.<sup>35</sup>

Two months later, in the “Thanksgiving Day Massacre” that resulted in a presidential shake-up of the State Department’s leadership, Kennedy moved Rostow to State to replace McGhee as director of the Policy Planning Staff. Despite the distance from the White House, Rostow remained the major force behind the counterinsurgency warfare study with Komer now the principal NSC staff participant and serving as the final arbiter of its contents.

By early December, Bissell’s task force had nearly completed the study and was formulating the action recommendations. Komer believed that a number of substantive issues needed resolution, particularly in framing the establishment of a high-level coordinating group to oversee counterinsurgency policy and programs across the government. Komer favored having General Taylor serve as the group’s chairman since the problem was interagency in nature. He also remained concerned about preventive measures and the revised draft included his language about the role of MAP as well as the contribution of civilian agencies to countersubversion and counterinsurgency actions. The final report, “Elements of U.S. Strategy to Deal with ‘Wars of National Liberation,’” was completed



in December 1961. Rostow urged Kennedy to approve its recommendations, including its key one – the creation of a high-level interagency committee to monitor and steer the national security community’s counterinsurgency work, including the formulation of policy and doctrine.<sup>36</sup> The Joint Chiefs of Staff study, for which McNamara had been tasked, was also completed in December, and it too urged the President to establish an interagency steering committee.<sup>37</sup>

## THE BUREAUCRATIC RESPONSE

On January 18, 1962, Kennedy, who according to Taylor was unsatisfied with the progress to date, approved National Security Memorandum No. 124 that established the Special Group (Counterinsurgency [CI]), with General Taylor, who drafted the memorandum, as the chairman and with senior representatives from the Department of State, Department of Defense (DoD), the Central Intelligence Agency (CIA), U.S. Agency for International Development (USAID), U.S. Information Agency (USIA), and the chairman of the Joint Chiefs of Staff, as well as Attorney General Robert F. Kennedy and McGeorge Bundy.<sup>38</sup> Kennedy’s frustration with the State Department and USAID’s unwillingness to make counterinsurgency a priority also contributed to its formation. State had refused to accept the operational role that Kennedy expected it to play in coordinating interagency efforts, while the USAID clung to its long-term economic development mission.<sup>39</sup>

As Taylor understood his mandate, the Special Group (CI) was to perform several particular tasks. First, it was to ensure recognition throughout the U.S. Government that subversive insurgency was a political-military conflict of equal significance to conventional warfare. It would also verify that this recognition was manifest in the organization, training, doctrine, and equipment of the Armed Forces and other agencies abroad as well as in the political, economic, intelligence, military aid and informational programs conducted by DoD, State, USAID, CIA, and USIA. A third task was to monitor the adequacy of U.S. resources to deal with insurgency and to make recommendations to adjust those resources to meet anticipated requirements. Lastly, the group was to ensure the development of sufficient interdepartmental programs to prevent or defeat insurgency in countries or regions assigned by the President to the Special Group.<sup>40</sup>

Kennedy’s decision pushed the administration into a more cogent way of organizing itself to deal with the so-called guerrilla warfare problem, emphasizing an interagency focus on civil and military activities and coordinating the application of resources to the situation. The seriousness of his intent became clear when he appointed his brother to the group, to act as his “eyes and ears.” Robert Kennedy reported directly to the President, a fact that the other members knew.<sup>41</sup>

The Special Group (CI) began to meet weekly soon after its establishment and initiated a number of projects. One of its first steps was to undertake the formation of an interdepartmental training program. This concept was codified in National Security Action Memorandum 131, “Training Objectives for Counter-Insurgency,” wherein the President approved several training goals for officer grade personnel of the various departments and agencies with a role in counterinsurgency programs. These officers were required to study the historical background of counterinsurgency, learn the departmental tactics and techniques to counter subversive insurgency, receive special training in counterinsurgency program planning and undergo specific preparation for service in underdeveloped areas. Further, the departments and agencies were required to report by June 1962 on the adequacy of their own counterinsurgency training with reference to the aforementioned objectives.<sup>42</sup>

The military responded quickly to this directive and by July 1962 informed the White House that it had created numerous counterinsurgency courses for officers and had ensured that enlisted men were also receiving basic and advanced counterinsurgency instruction. The civilian agencies also hurried to establish courses to comply with the directive. The CIA was responsible for its

own courses, and the State Department's Foreign Service Institute developed the National Interdepartmental Seminar, a 6-week course, for senior and middle-grade officers from the State Department, USAID and USIA. In addition to the blocs of instruction, the students met personally with President Kennedy and General Taylor at the White House to underscore the president's personal conviction in the importance of this issue.<sup>43</sup>

The education and training of military and civilian personnel was perhaps the easiest initiative to implement as a means of establishing the basis for a coordinated government-wide counterinsurgency effort. It was certainly a measurable way to determine and confirm if the bureaucracy was executing the president's orders. However, the Special Group (CI) found the bureaucracy – both military and civilian organizations – to be resistant to other of its proposals. On April 18, General Lyman Lemnitzer, Chairman of the Joint Chiefs of Staff, commented after a recent trip to South Vietnam that the Kennedy administration was “oversold” on the criticality of guerrilla warfare and too much stress on counterinsurgency efforts would damage the ability of the South Vietnamese Army to meet a conventional attack like North Korea had delivered against South Korea.<sup>44</sup> The Army leadership also opposed elements of the President's counterinsurgency initiative worried that his overemphasis on counterinsurgency would transform the entire Army for this end and would ultimately undermine the service's ability to fight a conventional war in Europe and Korea, which it considered its principal mission. Because the Army did not have the time, funding, or manpower to produce different armies for different forms of warfare, it chose a more measured introduction of counterinsurgency than the President was willing to accept.<sup>45</sup>

The civilian agencies continued to display a lack of enthusiasm for the President's initiative, which is why Kennedy and his closest advisors pressed for the formation of the Special Group (CI) in the first place. Partially this opposition resulted from a fear that the counterinsurgency movement signaled a militarization of policy thereby granting the military increased influence in areas that had been customarily the sole province of the civilian agencies. However, other concerns were at work. The State Department unequivocally snubbed the operational role the president wanted it to assume in coordinating the counterinsurgency effort. A number of senior officials judged the subject to be a distraction from the department's principal mission of foreign policy and diplomacy. Comparable attitudes existed in USAID, which rejected propositions that it forsake its customary long-term development role. The agency proved equally apathetic toward enhancing the capability of indigenous police forces, an essential counterinsurgency instrument it controlled but that it believed was inconsistent with its principal socioeconomic mission.<sup>46</sup>

### **Building the First Line of Defense.**

Within 2 weeks after the Special Group's creation, Robert Komer wrote Taylor and Bundy urging them to prevent funding cutbacks for police programs in developing nations that he believed were “the first line of defense” in preventing subversion and indirect aggression. Funding for foreign police assistance programs under the Overseas Internal Security Program (OISP) was dire, about \$30 million. Initiated by the Eisenhower administration, the program was an “orphan child” in USAID and only the Special Group (CI) could protect it from dismantlement by the new agency leadership that deemed it of marginal value.<sup>47</sup> Bundy took up the matter with Taylor personally, contending that the Special Group needed to press Fowler Hamilton, the USAID administrator, on police programs, as it was an essential element in the administration's counterinsurgency effort. Bundy also directed Komer to draft National Security Action Memorandum No. 132, which Kennedy signed on February 19, 1962. The directive instructed the head of USAID to reemphasize these programs as a means of “contributing to internal security and resisting to Communist-supported insurgency” and to consider giving the program autonomy in USAID so it would not be neglected.<sup>48</sup>

The President's signature on the memorandum was a small and temporary victory, as the USAID bureaucracy resisted the directive. On April 20, Bundy, acting on behalf of the President, signed NSAM No. 146 informing the Secretaries of State and Defense, the Attorney General, the Director of Central Intelligence, and the Director of the Bureau of Budget that the President wanted a review conducted to determine whether police training should remain under USAID or if it should be managed differently. Deputy Under Secretary of State Alexis Johnson was named to chair the committee. The group completed the analysis in late July, which stressed that police were an important but neglected component of internal defense; it recommended that the police program remain in USAID but with tighter management and its budget double in the first year and grow thereafter as needed.<sup>49</sup> Kennedy signed NSAM No. 177 on August 7, which directed the appropriate departments and agencies to execute the report's proposals.

NSAM 177 firmly stressed the President's expectation that the Administrator of USAID would ensure the proposals immediate implementation by demanding he report on his progress by December 1, 1962. Principally, the President directed USAID to increase funding for the police assistance program and to undertake a number of specific management actions, including formation of an interagency police group to assist him with his responsibility for "coordination and vigorous leadership of all police assistance programs. . . ."<sup>50</sup> Thus, an independent office in USAID would have a direct channel of communication with the deputy administrator of the agency. USAID and the Bureau of the Budget would work together to ensure that police program funding remained not only autonomous, with its own funding line in the federal budget, but also would not become a bill payer for USAID economic development programs. To ensure that the President's direction was carried out in the future, the Special Group (CI) would act as an implementation watchdog.

USAID could not dismiss the directive's guidance. On November 1, 1962, the Administrator of USAID established the Office of Public Safety in the agency.<sup>51</sup> With that action, as well as the President's subsequent NSAM in December 1962 that directed emphasis on civil police programs rather than military assistance, the police assistance program was rescued from bureaucratic obscurity and made a key feature of U.S. national security policy toward the developing world.

### **Defining the Administration's Policy.**

Yet, despite these initiatives, the Kennedy administration still lacked an overarching national policy for counterinsurgency. In mid-1962, Kennedy asked for a comprehensive progress report from all the agencies concerned with counterinsurgency activities. Taylor responded to the president's request on behalf of the Special Group (CI), but he recognized that Kennedy's chief concern was the lack of overall U.S. policy guidance.<sup>52</sup>

Taylor addressed the issue head on. He reported that the Special Group (CI) recognized soon after its creation that to achieve agreement on the nature of the problem, establish mutual goals, and assign tasks to the relevant departments and agencies, it was necessary to formulate doctrine and policy guidance. To allay the President's concerns, Taylor informed Kennedy that the Department of State, in collaboration with the other organizations, had prepared a statement of national doctrine that the Special Group was currently reviewing.<sup>53</sup> A month later, the President approved, through NSAM No. 182, the national counterinsurgency doctrine known as the U.S. Overseas Internal Defense Policy (OIDP). He directed its promulgation as the basic policy guidance for the "internal defense of overseas areas threatened by subversive insurgency."<sup>54</sup> In the view of the Department of State's Director for Internal Defense and one of its principal authors, Charles Maechling, the document represented the first complete effort of the U.S. Government to formulate a politico-military strategic program to deal with guerrilla and counter guerrilla warfare.<sup>55</sup>

The OIDP was widely disseminated within the U.S. Government as well as its missions overseas. It began with an analysis of Communist insurgencies that emphasized their derivation as

political reactions to the pressures of modern economic development. The paper stressed that the U.S. response should range from “immunization of vulnerable societies not yet seriously threatened by communist subversion or insurgency” to defeat of “subversive insurgency in countries actively threatened by assisting the government under attack with military as well as nonmilitary means.” However, one aim was to reduce the potential for U.S. military involvement in internal war by enhancing indigenous capabilities to defeat insurgency. “U.S. strategy should not ‘assume a stance against revolution, per se, as an historical means of change’.” Instead, the intent was to scrutinize Communist insurgency through the lens of U.S. interests.<sup>56</sup> In short, as the policy’s principal author would later write, from the standpoint of a strategy, “counterinsurgency is intended to be preventive in character and temporary in application—a technique for tiding weak and unstable governments over periods of internal upheaval until the constructive forces of political and economic development are strong enough to control the situation without external assistance.”<sup>57</sup>

Thus, the paper stated that the preferred means of bringing about successful and mainly indigenous counterinsurgency efforts was through “land reform, civil action, community development, cultivation of existing and emerging elites, police assistance, and diplomatic suasion.” Additionally, identifying, preventing, and defeating communist-directed insurgency required a combination of civil and military capabilities and activities to which each U.S. agency at the Country Team (the ambassador and agency representatives working at the U.S. Embassy) level must contribute. Nonetheless, the primary effort must be indigenous as insurgency was distinctly a local challenge involving the ambitions and commitment of the local people.<sup>58</sup> The final section of the paper assigned each of the departments and agencies specific responsibilities for creating a coordinated and unified approach to the insurgency threat. The Department of State was “responsible for providing overall policy guidance and assuring the coordination of internal defense [counterinsurgency] programs.” It would also coordinate the internal defense programs. DoD was assigned a wide array of roles, but principally it would furnish military assistance to threatened nations by building effective counterinsurgency capability (e.g., civic action, advising, and training) and helping them develop internal defense plans. If the situation worsened, U.S. forces could provide operational assistance, provided the President so directed. USAID would help create the social and economic conditions in threatened countries to prevent subversive insurgency. USIA was directed to “orient its programs toward immunizing the vulnerable sectors of developing societies against communist propaganda and subversion.” CIA’s role was not explicitly stated except that it was to carry out its duties in accordance with its statutory authority and executive directions.<sup>59</sup>

## END GAME

With this task completed, the Special Group (CI) settled into a posture of monitoring what it had set in motion, as the general view was that the group had accomplished most of its “ground-breaking work.” In October 1962, Taylor left his position as the President’s special representative to become Chairman of the Joint Chiefs of Staff, which also meant that he vacated his position as chairman of the Special Group. U. Alexis Johnson argued that it was an appropriate time to move the Special Group (CI) out of the White House to the State Department where it should have been as a matter of bureaucratic function. Secretary of State Dean Rusk and McGeorge Bundy agreed with this change, but Robert Kennedy, who in Johnson’s view wanted to assume the chairmanship of the Special Group, blocked this proposal. After discussions, President Kennedy decided that the Special Group (CI) would remain under White House auspices, but Alexis Johnson would chair it and Michael Forrestal, a member of the NSC staff, would serve as the President’s representative.<sup>60</sup>

By March 1963, Johnson was reporting to the President that the Special Group continued to encourage the establishment of new programs by the departments and agencies, to monitor imple-



mentation of internal defense plans for countries the President assigned to it, to review senior counterinsurgency training programs, and to encourage expansion of civic action programs as well as police assistance programs. Its primary function continued to be reviewing interdepartmental training efforts.<sup>61</sup> In fact, except for a few action memoranda dealing with Special Group (CI) housekeeping details, there would be no further presidential directives on counterinsurgency during Kennedy's presidency.

There was dissension, however, among the Special Group as to its role. Robert Kennedy held that the President expected it to assume wider responsibilities than the members interpreted—solely monitoring programs. This interpretation was too restrictive, and Robert Kennedy believed consideration ought to be given to reexamining the Special Group's charter. Robert Kennedy and Roswell Gilpatric, the Deputy Secretary of Defense, clamored for a more aggressive approach—advocating the group work on items such as identifying potential trouble spots, developing solutions, and reporting these to the President. The other members believed the Special Group should adhere strictly to its terms of reference and thereby avoid impinging on the work of other interagency committees.<sup>62</sup> Robert Kennedy persisted. In Johnson's view, he proved to be overly difficult, "an unguided missile," and "ruthless when protecting what he thought were the President's interests." Johnson soon asked to be relieved from duties as chairman, and Averell Harriman, the Under Secretary of State for Political Affairs, took his place.<sup>63</sup>

The argument over the Special Group's responsibilities did not end there. In July 1963, Charles Maechling, who served as Director for Internal Defense, Office of Politico-Military Affairs, Department of State, sent a memorandum to Harriman suggesting that Harriman, Bundy, and Forrestal meet to discuss the Special Group's scope and terms of reference. Maechling outlined the utility of the Special Group in terms of its ability to overcome bureaucratic roadblocks affecting the administration's counterinsurgency activities; to stimulate and monitor programs that required interdepartmental collaboration such as training, civic action, and police assistance; and to exercise "close and continuing control over policies and programs in 'crisis countries' in the underdeveloped world"; but that it "was now approaching a period of diminishing returns." He believed that the Special Group should be gradually converted to one that focused on blunting the Soviet threat in the underdeveloped world in forms other than insurgency. Specifically, he believed that cultural and economic penetration would be the new concern.<sup>64</sup>

Maechling's proposal was of no interest to Harriman; he did not intend to broaden the Special Group's portfolio. Maechling's plan would be of little consequence anyways. Four months later, President Kennedy was assassinated; Robert Kennedy remained briefly as Attorney General, but his interest in the Special Group languished after his brother's death, as did the Special Group. Although it would survive until 1966, President Lyndon B. Johnson thought it was an unnecessary bureaucratic cog.

## CONCLUSION

The Kennedy administration's policy response to Communist guerrilla warfare had several different dimensions. First was the application of modernization theory to a political-military problem. In essence, Rostow's ideas became the official policy of the United States.<sup>65</sup> Second, it firmed up Kennedy's three-prong strategy for counterinsurgency: applying sociopolitical reforms, economic development, and military assistance as prophylaxis and remedy for the "disease" of insurgency. Third, it accepted the Maoist model of revolutionary warfare as the basis for subversion and insurgency and used it as the frame for designing countermeasures. Further, the policy established that indigenous governments were responsible for defeating insurgents, but that the United States would help. Lastly, it represented, through Kennedy's personal intervention, the formation



of an integrated government-wide counterinsurgency effort, with specific roles assigned to the Departments of State and Defense, the CIA, USAID, and the USIA.<sup>66</sup>

However, the policy suffered from several weaknesses, both conceptually and operationally. First, the policy's prescriptions were too broad and thus difficult to implement in the complex environment in which insurgency flourished. Moreover, as its severest critic, Charles Maechling, noted, the policy implicitly accepted the Maoist postulation that internal conflicts fall in the category of "Peoples Revolutionary Warfare" and thus, are fundamentally struggles to obtain mastery over the environment. Further, in his view, since the policy defined the threat only in terms of Marxist "wars of national liberation," it failed to discriminate between target governments or concerning itself with the domestic origins or root causes of internal turmoil.<sup>67</sup>

This deficiency created a second weakness: the policy did not provide sufficient detail as to how the actions of the various agencies would be incorporated in a unified approach. The policy specified the role of the Special Group (CI) and the ambassadors at the country level, but these actors could only monitor and coordinate, rather than direct and control, which meant that very little integration might actually occur on the ground.<sup>68</sup> The policy contained virtually no political guidance as to the circumstances in which it should be applied, and no criteria for the conditions that the host country had to meet to be eligible for aid programs. Further, there were no U.S. social or economic goals established for any country.<sup>69</sup>

Thirdly, the policy did not have an answer for insurgency as a response to the social, political, and economic dislocation that modernization caused and more importantly, the inequities that existed in the underdeveloped societies. If the indigenous governments were not willing to address those problems, it was unlikely that the United States could successfully compel them to do so. The U.S. Government could threaten to withhold aid until the indigenous government implemented reforms, or it could use covert means to change the regime. The first was likely to instigate resistance to the change because of the stake the elites had in maintaining the status quo. The second was contrary to American values, fueled the perception that the new regime was a mere puppet of the United States, and damaged trust between the incoming government and the United States.<sup>70</sup>

In 1984, a decade after the Vietnam War ended, Maechling wrote in an article for *Parameters*, the Journal of the U.S. Army War College, "In short, OI DP was not a strategic doctrine, but rather an operational blueprint for security assistance programs in certain third world countries to be specified by executive fiat." Its chief purpose, he sniffed derisively, was to "prescribe 'mission assignments' for government agencies."<sup>71</sup> Four years later, Maechling administered a coup de grace by writing that "[i]n the end, only a small part of all this high-level ferment in Washington had much impact on the regimes they were intended to instruct. Except for Vietnam, the insurgency tide that was suppose to inundate the 'free world' either never materialized or churned along at a reduced pace."<sup>72</sup>

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# APPENDIX I

## GUIDELINES FOR STRATEGY FORMULATION

Strategy is an art. It is also somewhat scientific, in that it follows certain patterns which require a common understanding of terminology, adherence to certain principles, and disciplined, albeit creative, thought processes. Remember that these strategy formulation guidelines are not formulas. Strategy will be developed in keeping with the particular features of the time, place, and personalities involved. Nevertheless, these guidelines offer an approach to address the complexity of strategy, and are intended for strategists attempting to achieve the coherence, continuity, and consensus that policymakers seek in designing, developing, and executing national security and military strategies.

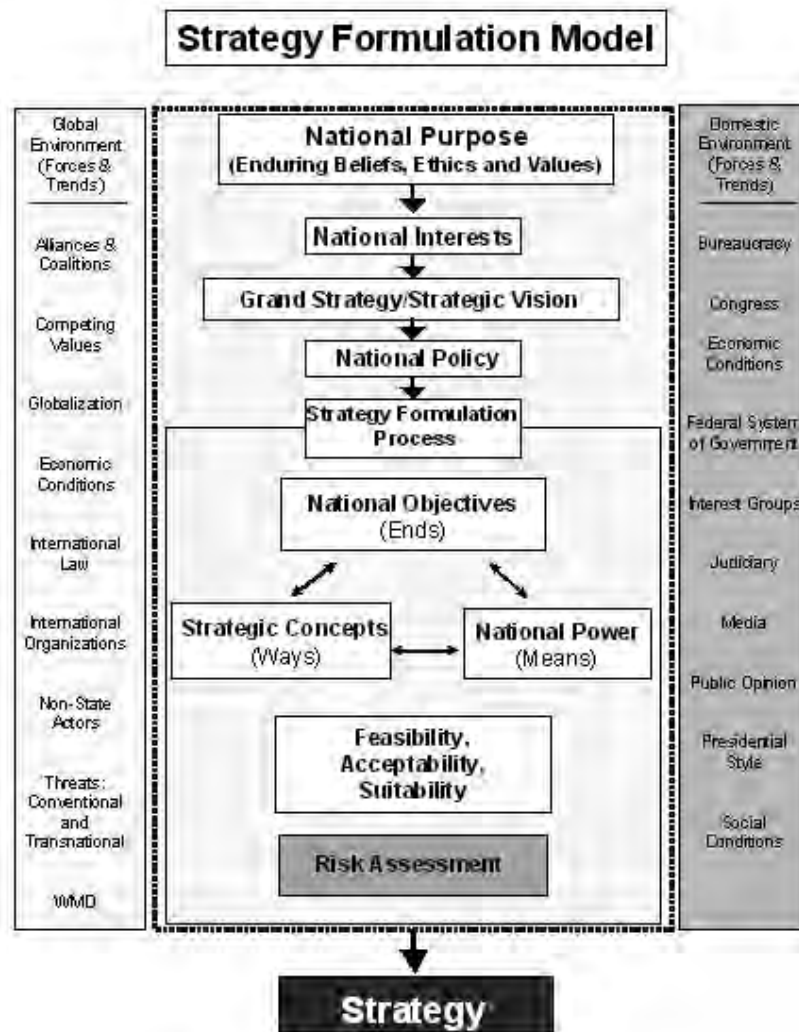


Figure 1. Strategy Formulation Model.

### NATIONAL PURPOSE

This is the starting point for the entire process. Enduring values and beliefs embodied in the

national purpose represent the legal, philosophical, and moral basis for continuation of the American system. From the nation's purpose – as well as an understanding of the nation's domestic and global needs – the United States derives its enduring core national interests. The strategist should return to these considerations in terms of risk assessment at every derivative level of strategy formulation.

### **Core National Interests/Ends.**

There are four generally agreed upon core U.S. national interests: physical security-defined as the protection against attack on the territory and people of the United States in order to ensure survival with fundamental values and institutions intact; promotion of values; stable international order and economic prosperity. These core interests are translated into three grand strategic objectives: preserve American security, bolster American economic prosperity, and promote American values. All administrations focus on these objectives, but depending upon the assessments of threats and opportunities, as well as other variables such as personal beliefs and unique circumstances, Presidents establish different strategic visions of America's role in the world, often causing them to choose to emphasize one objective over the others. For the Carter administration, the initial emphasis was on human rights; for the Reagan administration it was security; and for the Clinton administration, it was the economy. Security is once again the top priority, but in an increasingly globalized world populated by nonstate actors with possible access to weapons of mass destruction, achieving physical security paradoxically may require an equal emphasis on promoting democratic values and generating global economic prosperity.

### **Grand Strategy/Strategic Vision.**

At the grand strategic level, the ways and means to achieve U.S. core national interests are based on the national leadership's strategic vision of America's role in the world. Throughout America's history, this vision has ranged from isolationism to global engagement, containment of Communism to American primacy. To be effective, each new administration has had to express a vision for the U.S. role in the world that does not outrun the experience of the American people, and thus lose the decisive authority or domestic consensus to implement the strategic vision. Is the vision, in other words, suitable and acceptable?

President Franklin D. Roosevelt (FDR), for example, had to act carefully prior to World War II as he moved the American grand strategic vision from isolationism to one of global engagement. And within 5 years after the end of that war, the perception of external threat allowed President Truman to gain support for the grand strategic vision of containment – focused on containing the Soviet Union on the Eurasian landmass.

Grand strategic means involve careful consideration of America's national elements of power at the broadest level. Given the state of the international and domestic environments and the scope of the administration's strategic vision of the U.S. role in the world, a key consideration is the feasibility of employing sufficient U.S. power to achieve core objectives.

*National Policy.* Based on grand strategic decisions, the U.S. political leadership provides national policy in the form of broad guidance concerning America's global role in pursuit of core national objectives. This policy is the start point for strategy formulation at the national level. National policy is conveyed in many iterative and cumulative forms ranging from formal national security directives and pronouncements in presidential and cabinet-level speeches to presidential replies to press queries and cabinet-level appearances on current affairs television shows.



## STRATEGY FORMULATION PROCESS

### General.

(1) Inherent in this more detailed strategy process is an appropriate degree of analysis designed to illuminate alternatives in the face of recognized uncertainties. A general outline for this phase of the strategy process follows:

- (a) Identify U.S. interests.
- (b) Determine level of intensity for each interest.
- (c) Evaluate the issues, trends, and challenges (threats and opportunities) in regard to interests.
- (d) Determine objectives (ends).
- (e) Consider alternative concepts (ways) that utilize available or needed resources (means) to achieve objectives.
- (f) Determine the feasibility, acceptability and suitability of the strategic options.
- (g) Conduct a risk assessment.
- (h) Present policy recommendations.

(2) The analysis must be more than a listing of challenges. To be useful, it must examine and explain which and in what ways U.S. interests are affected. The analysis should seek to identify opportunities and threats to U.S. interests. As a consequence, the strategic analysis will not only be influenced by current national policy, but will help identify recommendations to change existing policies or create new ones. The analysis should address most—if not all—of the following questions:

- (a) What is the current U.S. policy or precedent?
- (b) Who are the other critical actors?
- (c) What are their interests and/or policies?
- (d) With whom does the United States have convergence or divergence of interest/policy?
- (e) What are the other feasible options to employ the U.S. power to implement the policy options under consideration?
- (f) How will the policy be sustained?

(3) The strategy formulation guidelines delineated above can apply equally to all formal national security documents (i.e. National Security Strategy, National Defense Strategy, National Military Strategy, theater military strategy, etc.). The strategist must be able to develop strategies employing all of the instruments of power. Students at the U.S. Army War College (USAWC) will develop and practice these skills in NSPS, elective courses, and the Strategic Decisionmaking Exercise. Remember, the formulation of strategy at any level employs the strategic thought process based on the balancing of Ends, Ways, and Means.

### National Interests.

During the strategy formulation process, the strategist moves beyond the core grand strategic interests to more specific national security interests derived from those core interests in accordance with national policy. These national security interests provide more detail to the nation's needs and aspirations, in terms of the relationship between the foreign and domestic aspects of national security, and are thus the start point for defining strategic objectives for national security related strategies.

(1) As a rule of thumb, interests are stated as fundamental concerns of the nation, and written as desirable conditions without verbs, action modifiers, or intended actions. For example, U.S. national interests might be stated as:

- (a) Access to raw materials – (not “Protect sources of raw materials”).
- (b) Unrestricted passage through international waters – (not “Secure sea lines of communications”).

(2) Categories: The USAWC groups national interests into three categories derived from the four core interests of the United States. Categories help to organize interests. Keep in mind the breakdown is normally artificial. Thus, while “Unrestricted access to Persian Gulf Oil” as a U.S. national interest has a primary category of “Economic Well-Being” for the United States and its allies; it also ties into the other two categories of national interests used by the USAWC. The three categories are:

- (a) Security of the Homeland: protection against attack on the territory and people of a nation-state in order to ensure survival with fundamental values and political systems intact.
- (b) Economic Well-Being: attainment of the conditions in the world environment that ensure the economic well-being of the nation.
- (c) Promotion of Values: establishment of the legitimacy of or expansion of the fundamental values of the nation such as democracy and human rights.

(3) Intensity of interests: Determining the level of intensity helps to determine priority of interests, recognizing that without prioritization, there is the potential for unlimited derivative objectives and the consequent mismatch of those objectives (ends) with resources (means), which are always finite. The degree of intensity of an interest, in particular, should be determined *before* a detailed analysis of threats to those interests. It is important that interests not become a function of a particular threat. If a government begins with a threat assessment before a conceptualization of interest intensity, it may react to a threat with major commitments and resources devoid of any rational linkage to that intensity. Rational cost-benefit analysis should not be allowed to affect the intensity of interest. The three USAWC degrees of intensity are determined by answering the question: What happens if the interest is not realized?

- (a) *Vital*: if unfulfilled, will have immediate consequences for core national interests.
- (b) *Important*: if unfulfilled, will result in damage that will eventually affect core national interests.
- (c) *Peripheral*: if unfulfilled, will result in damage that is unlikely to affect core national interests.

### **Ends-Ways-Means.**

(1) Strategic objectives are derived from national policy and from a detailed consideration of U.S. national interests by category and intensity against the backdrop of issues, trends and challenges (threats and opportunities) that affect those interests. Based on these objectives, strategists then consider alternative concepts and courses of action for the use of the national elements of power. Note the primacy of the objectives – strategy should be ends-driven, not resource-driven, in order to ensure maximum opportunity to achieve the objectives.

(2) Defining the objective (end), therefore, is a critical first step in the strategy formulation process. If the objective is too vague or poorly understood, no amount of resources or careful consideration of ways to employ those resources will ensure success. On the other hand, defining an objective too narrowly may restrict the ways and/or means available. Finally, understanding of the objective is critical to determining success or failure of any particular strategy.

(3) Once the desired end is identified, strategists consider the range of resources (means) available, and then examine potential ways to employ these resources in pursuit of the objectives. While strategy should remain ends-focused, ways are necessarily resource-constrained. Unless a state has nuclear weapons, the concept of nuclear deterrence cannot be adopted in developing its security strategy (there is no “mutually assured destruction”). Therefore, the state must find alternative ways to enhance security or deter attack by a nuclear-capable adversary. Potential alternatives include establishing alliances with nuclear capable countries (i.e., the North Atlantic Treaty Organization NATO), or securing security assurances in exchange for not pursuing attainment of (or eliminating existing) nuclear weapons (i.e., Cuba). If, however, deterrence is perceived to be the only viable option, the state must either work to attain nuclear weapons (i.e., North Korea) or to develop alternative forms of deterrence (chemical or biological weapons, perhaps?).

### **Feasibility, Suitability, and Acceptability.**

Once potential strategy options are identified, each option must be examined to determine its *feasibility* (Do we have the means to execute the ways?), *acceptability* (Does it have domestic and Congressional support? Is it legal? Ethical? Worth the cost?) and *suitability* (Will it achieve the desired ends?). This evaluation process enables the strategist to evaluate the likelihood of success for each option and to select that strategy deemed most likely to attain the desired ends with available means and in an acceptable way. Before a final strategy is recommended or adopted, however, each option must also be subjected to a risk assessment.

### **Risk Assessment.**

Strategies at any level normally lack resources or the ability to employ resources in a manner sufficient for complete assurance of success. As a result, a final and essential test is to assess the risk of less than full attainment of strategic objectives, as well as the risk of second and third order effects that implementation of the strategy could have (i.e., effects on the economy, relationships with allies, etc.). Living with risk is part of the strategist’s business in the modern world, and being able to articulate its character and extent is the first step in reducing its impact. Where the risk is determined to be unacceptable, the strategy must be revised by either reducing the objectives, changing the concepts, increasing the resources, or some combination of these actions. In the deterrence example described previously, the state’s decision about whether to pursue attainment of nuclear weapons rather than entering into an alliance or accepting a security assurance pledge will depend, in part, on the extent to which it is willing to accept the risk associated with each option. If the risk associated with relying on the good faith of its allies and/or potential adversary is unacceptable, then the state will likely try to attain nuclear weapons. On the other hand, if the risks associated with attempting to acquire nuclear weapons (i.e., economic sanctions that might cripple the economy) are too great, the state may have little choice but to pursue other options.

### **Monitor for Success, Failure or Modification.**

The final step in the strategy formulation process is one of continuous monitoring or review of the strategy as it is being implemented. Continuous assessment should be a formalized, recurring process during the life of the strategy that assesses and evaluates the strategy’s ends, ways, means, and risks against the evolving realities and possibilities in the strategic environment. The assessment evaluates for success, failure, essential modifications, or continued appropriateness in regard to the realization of the desired end state(s). The strategic environment is dynamic and continuous change is inherent to it. Strategies that are successful may present new opportunities or require a new strategy to account for the conditions of success. Strategies that are failing beg for

replacement. In addition, unforeseen changes in the strategic environment may occur that justify modification of some aspects of an existing strategy, but are not significant enough to invalidate the greater whole of the strategy. Lastly, national interests and policy can also change over time and as a result new strategies or modification(s) to existing strategies may be appropriate. Ideally, properly formulated strategy is constructed with inherent flexibility and adaptability in its statements of ends, ways, and means. Continuous changes beyond requirements of success, failure and changed conditions, beyond the control of the formulators of the strategy, may be an indicator of poor strategic thinking or a flawed strategy formulation process. Nonetheless, both the strategic environment and the strategy are continuously assessed to ensure strategy supports the directing policy and interests appropriately.

## APPENDIX II

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