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The Iraq Crisis and the Future of the Western
Alliance: An American View

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An American View

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Abstract

In the wake of the Iraq war, there has been a tendency by both the Americans and the Europeans to overlook the difficulties facing the transatlantic relationship that resulted from the Iraq crisis. This approach to dealing with some of the basic issues that emerged during this time is not a healthy one, and these issues must be discussed openly and seriously. This chapter addresses four important matters related to the Iraq crisis: the question of deterrence, whether or not weapons inspections should have been further pursued, pre-emption and its relation to international law, and the crisis that existed within the transatlantic alliance. While both sides have attempted to address these issues, they are in reality much more complex than initial assessments have indicated. The predicaments posed by the Iraq war for the transatlantic alliance are unlike those that the alliance faced during the Cold War, and Europeans must think carefully about what kind of alliance they foresee with the United States in the future.

Introduction

In January 1963, Konrad Adenauer, the chancellor of the Federal Republic of Germany, came to Paris to sign a treaty of friendship with France. This was an event of considerable political importance. The German government, it seemed, had decided to form a kind of bloc with the France of President Charles de Gaulle, a country which for some time had been pursuing a policy with a distinct anti-American edge. Indeed, just one week before Adenauer's visit, de Gaulle had risen up against America. He had announced that France was going to veto Britain's entry into the European Common Market. If the British were allowed in, de Gaulle argued, continental Europe would eventually be absorbed into a 'colossal Atlantic Community, dependent on America and under American control', and this France would not permit.[1] The German government seemed to share de Gaulle's sentiments. How else could its willingness to sign a treaty with France at that particular point possibly be interpreted?

The Americans were enraged by what France and Germany had done, and the Kennedy administration, then in power, decided to take a very hard line. The Europeans, President Kennedy felt, could not be expected to pursue a pro-American policy simply because of what the United States had done for them in previous years. 'We have been very generous to Europe', he told the National Security Council on January 22, 1963, 'and it is now time for us to look out for ourselves, knowing full well that the Europeans will not do anything for us simply because we have in the past helped them.'[2] They would come around, in his view, only if the most intense pressure were brought to bear. America would threaten to pull her military forces out of Europe. The Europeans would be forced to make a choice. It would be made clear to them that they could not have it both ways. If they wanted to be fully independent politically, they would also have to be fully independent militarily—that is, they would have to provide for their own defence.

Kennedy had made the same point a few months earlier in a meeting with the famous writer André Malraux, French minister of culture and a de Gaulle confidant. 'A Europe beyond our influence—yet counting on us—in which we should have to bear the burden of defense without the power to affect events'—this, the president thought, just could not be.[3] De Gaulle, he warned, 'should make no mistake: Americans would be glad to get out of Europe.'[4] And this, it should be noted, was no idle threat. America, in Kennedy's view, did not need Europe. As he told his top advisors on January 25, 1963, 'we can take care of ourselves and are not dependent upon European support.'[5]

West Germany, exposed to Soviet power as it was, was the primary target of this policy. 'There is not much we can do about France', Kennedy said, 'but we can exert considerable pressure on the Germans.'[6] And that pressure could be exerted in one and only one way. 'The threat of withdrawing our troops', the president thought, 'was about the only sanction we had.'[7] It was made abundantly clear to the Germans that if they wanted American military protection, they could not pursue an 'independent', Gaullist, anti-American policy. Those warnings had the desired effect. Forced to choose, the Germans in 1963 chose America.[8]

In January 2003, another German chancellor, Gerhard Schröder, met in Paris with another French president, Jacques Chirac. The two men had come together to celebrate the fortieth anniversary of the Franco-German treaty, but they took advantage of the occasion to adopt a common position on the most important foreign policy issue of the day, the question of a possible war on Iraq.

For months, it had been clear that the United States had been heading toward war with that country. U.S. policy had been laid out, for example, in a major speech Vice President Dick Cheney gave on August 26, 2002. For Cheney—and there was no doubt that he was speaking for the president—the Iraqi threat was growing, and it was important to deal with it sooner rather than later. The Iraqi dictator, Saddam Hussein, had 'systematically broken' all the agreements he had entered into at the end of the Gulf War in 1991. He had promised at that time that Iraq's nuclear, biological and chemical weapons would be destroyed and an inspection regime had been set up to make sure that those

promises were honoured. But work on those forbidden weapons had continued. Iraq had 'devised an elaborate program' to keep the inspectors in the dark. The inspection regime had thus not been able to guarantee that Iraq's 'weapons of mass destruction' [WMD] programs had been shut down permanently. Given the nature of the threat, it was vitally important, Cheney said, to take action before it was too late.[9] And this, one should note, was not just the view of a right-wing clique that had someone managed to hijack government policy. A number of key senators and respected elder statesmen (including former secretaries of state Henry Kissinger, George Shultz and James Baker) basically took the same general line.[10]

This was the policy that first Germany and then France came to oppose, and to oppose in a very direct and public way. Chancellor Schröder, in the heat of an electoral campaign, made it clear by the beginning of September 2002 that he was against a war with Iraq no matter what. He would oppose war even if the U.N. Security Council authorized a military operation.[11] German opinion was heavily anti-war and it seemed that Schröder had decided to try to win what was by all accounts a close election 'by running against America'.[12]

The French position at that time was more ambiguous. In September 2002, it seemed that the French government might be willing eventually to approve the use of force if Iraq were given one last chance to come clean about her weapons programs and to destroy whatever forbidden weapons she still had. The U.S. government had decided, after a serious internal debate, to try to work through the United Nations, and the French foreign minister, Dominique de Villepin, had proposed a possible course of action. At a lunch with U.S. Secretary of State Colin Powell, Villepin 'floated the idea of having two resolutions', one that would demand that Iraq disarm, to be followed by a second authorizing military action if Iraq failed to comply. 'Be sure about one thing', Powell told his French colleague. 'Don't vote for the first, unless you are prepared to vote for the second.' And 'Villepin assented, officials who were there said.'[13]

A resolution was adopted and the Iraqis allowed the UN inspectors, who had left in 1998, to come back in. But as Chirac himself would admit, Iraq was not 'sufficiently cooperative'.[14] For the French, however, this did not mean that the time for military action had come. Instead, the Chirac government dug in its heels. Its opposition to American policy hardened. In January, when Chirac and Schröder met in Paris, France basically aligned her policy with that of Germany: the two countries had come together to oppose America.[15]

Their efforts focused on the U.N. Security Council. The basic tactic was to insist that the use of force against Iraq would be legal only if the Security Council gave its consent and at the same time to do what they could to make sure the Security Council would not authorize U.S. action, not for quite some time, at any rate. In that way, a U.S. military operation would come across as illegitimate; the hope was that rather than engage in what would be branded an illegal use of force, the Americans would back down and war would be avoided. So for six weeks after the Paris meetings, according to one of the best-informed discussions of this affair, Chirac and Schröder 'worked the phones, visited foreign capitals and called in diplomatic chits. Their goal: nothing less than the reining in of what they saw as a rogue superpower. The German ambassador to the U.N. boasted in one confidential e-mail to colleagues at his foreign ministry that their strategy was to isolate the U.S. and make it "repentently come back to the [U.N. Security] Council," seeking compromise.'[16]

It was clear that what was at stake was of absolutely fundamental importance. For the German foreign minister, Joschka Fischer, what was at issue was nothing less than the 'question of a new world order after the end of the Cold War.'[17] And many Europeans opposed the idea of an American-dominated world order—an order which they saw as based on brute force and on the will of a single extraordinarily powerful country. In their view—and one comes across countless articles in the European, and especially the French, press based on premises of this sort—America was a lawless state, an arrogant, overbearing, presumptuous power, a country that no longer felt any obligation to play by the rules, a country that relied on brute force to get what it wanted. And in this view, Europe, in standing up to America, was championing a very different kind of policy. Europe was standing up

for law and for justice, for a 'multipolar world', a more balanced world, a world in which there were limits to what any single country could do.

U.S. leaders obviously did not view things the same way. From their point of view, the whole idea of an Iraq armed with weapons of mass destruction, especially nuclear weapons, was intolerable. They took it for granted that the threat of force, or perhaps even the actual use of force, was the one thing that might prevent Iraq from moving ahead with her weapons program. But the German government wanted to rule out the use of force no matter what. 'In the 21st century', Foreign Minister Fischer said, 'you can't use war to force disarmament.'[18] And the French, especially after January, seemed to take much the same line. 'War', President Chirac said over and over again, 'is always the worst of solutions.'[19] For the U.S. government, which was inclined to view a nuclear-armed Iraq as the 'worst of solutions', the Germans and even the French had apparently opted for what was in the final analysis a policy of appeasement. And the Americans deeply resented both the sort of anti-U.S. rhetoric coming out of Europe and the sort of policy the French and German governments were pursuing, especially from January 2003 on. The Bush administration was particularly angry with the French for (in its view) having led the United States down the garden path. The French government, it felt, had essentially reneged on the deal Villepin and Powell had worked out in September: a 'senior administration official' later told reporters that the diplomatic process 'had been going well' until 'France stabbed the United States in the back.'[20]

On the surface, the crisis seemed to blow over fairly quickly. U.S. leaders threatened that the French would pay a price for their behaviour, but it soon became clear that they had only trivial reprisals in mind. Chirac had warned the East Europeans that their support for America during the crisis would 'reduce their chances' of entering the European Union.[21] But the Americans at no point warned France and Germany that their actions were putting their alliance with the United States at risk. For Kennedy in 1963, the threat to withdraw the American troops from Europe, and thus effectively to end the alliance, was the only real sanction the Americans had. But forty years later, the Bush administration made no such threat. The Americans, in fact, were soon stressing their continuing commitment to the NATO system, and indeed soon both sides were more or less trying to sweep all the problems that had emerged under the rug.[22]

My basic premise here is that this is not a healthy way of dealing with the issue. I think that some basic questions that emerged during the crisis need to be discussed openly and seriously. So instead of focusing on the question of how U.S. policy in the run-up to the Iraq war is to be assessed, or how the policies of the various allied governments are to be judged, I want to try to analyze some of the fundamental issues that this episode brought to the surface. How much of a problem, first of all, would the development of a mass destruction capability by a regime like that of Iraq in 2002 have actually posed? Aren't nuclear weapons, and their biological and perhaps chemical equivalents, essentially unusable, when both sides in a conflict are armed with them? Wouldn't the development of an Iraqi nuclear capability have led to mutual deterrence and thus to a relatively stable strategic relationship? To the extent that an Iraqi capability of this sort would have posed serious problems, couldn't the Iraqis have been prevented permanently from developing such forces through non-military means? Couldn't an inspection regime have done the trick? And if the control regime wasn't up to the job, would it be legitimate for a country to act essentially on its own, without first getting explicit U.N. Security Council authorization? Was unilateral action impermissible under international law, and is a country that dealt with the problem in that way to be branded a law-breaker? These are not the only important issues that need to be dealt with, but they are important enough, and they are the ones I want to focus on here.

The Question of Deterrence

There is no question, in my mind at any rate, that the weapons of mass destruction issue—not so much what the Iraqis actually had, but what they were in all probability going to have if no action were taken—lay at the heart of the Iraq crisis.[23] The U.S. government would have been willing to live with

the Saddam Hussein regime if it had not thought that that regime had active nuclear, biological, and chemical weapons programs. Even the claim that Iraq had various ties with terrorist groups would not in itself have warranted military action if it had been clear that the regime had honoured its commitments and had abandoned all programs for the production of forbidden weapons.[24] And the Bush administration's concern with this issue was not artificially trumped up to rationalize a policy of 'regime change' that had an entirely different basis. The fear was real; even the German and French authorities believed that Iraq had active programs for the development of those prohibited weapons. In early 2002, August Hanning, the head of the German equivalent of the CIA, the BND, said that his agency thought that the Iraqis would 'have an atomic bomb in three years.'[25] In February 2003, Hanning and other BND officials reportedly told a Bundestag committee that they 'believed Iraq had mobile laboratories capable of developing and producing chemical and biological weapons.'[26] And in a March 10, 2003, interview, President Chirac himself referred to an 'Iraq which obviously possessed weapons of mass destruction, which were in the hands of an indisputably dangerous regime and consequently posed a definite threat to the world.'[27] Indeed, the most reasonable inference to be drawn from the story of the U.N. inspection system in the 1990s was that Iraq was determined to move ahead in this area—to do whatever she could get away with. The control regime, of course, had kept her from moving ahead as quickly as she would have liked, but as that regime unravelled, it seemed that nothing would stop her from going ahead with those programs.

But would it have mattered all that much if Iraq had been able to build even a strong nuclear force? Wouldn't the U.S. government have been able to deter the Iraqis from ever actually using those weapons against America or against any of their neighbours? If so, why would an Iraqi nuclear capability have posed a problem? If nuclear weapons are good only for defensive purposes, then why shouldn't countries be allowed to acquire them (or their equivalents)?

In the United States, the most serious criticism of U.S. policy in the crisis turned on this one absolutely fundamental point: that is, on the argument that nuclear weapons cannot be used for coercive purposes—on the idea that in a conflict neither the Iraqis nor their adversaries would have dared to use their nuclear weapons against each other. Indeed, the claim is that they would not even have dared to use non-nuclear forces in a major way. The use of force would have been too risky, given the nature of the weaponry both sides had. If Iraq had acquired nuclear weapons, the prospect of nuclear escalation, this argument runs, would have led to a stable peace, just as it (supposedly) had during the Cold War.

A number of leading American international relations scholars argue along these lines, but I think they're wrong.[28] If Iraq had developed a nuclear capability, it could, I think, have readily been used for coercive purposes. It could easily have been made clear to the Americans—not by making a direct threat, but (in order to reduce the risk of retaliation) in the guise of a simple prediction—that a continuing American presence in the Gulf, for example, would have led to continuing terrorist attacks against America. It is often assumed, of course, that Iraq could never have implemented such a strategy, because the United States could have made it clear that any such attack would had led to a devastating counter-attack: Iraq would essentially have been wiped out if anything of that sort had been attempted. And administration officials have repeatedly warned that the use of massive counter-civilian weapons against America would lead to extremely harsh retaliation. In an article published during the 2000 presidential campaign, for example, Condoleezza Rice, now President Bush's national security advisor, wrote that if countries like Iraq and North Korea acquired weapons of mass destruction, those weapons would be 'unusable, because any attempt to use them will bring national obliteration.'[29] But if top officials honestly believed that they were truly unusable, the U.S. government could have looked on calmly as such states acquired those kinds of capabilities. The fact that it was willing to go to extraordinary lengths to prevent a country like Iraq from being able to build forces of that sort shows that it understood that a massive counter-attack would not be automatic, and that the deterrent effect is therefore far from absolute.

And why is it less than absolute? Suppose the Iraqis developed a nuclear arsenal and adopted a coercive strategy of the sort I just described, and suppose the United States did not accede to whatever

demands the Iraqis put forward. And then suppose a bomb or two were exploded on American soil. How then would the U.S. government respond? Would it simply destroy Iraq, even if there were no proof the Iraqi government was behind the attacks? Presumably if America were attacked in this way, the Iraqis would have gone to great lengths to conceal their responsibility. *Direct* threats would not have been issued, and the operation would have been conducted clandestinely, perhaps with a foreign terrorist organization serving as a vehicle of attack. The Americans would have their suspicions, but in the absence of evidence it might be very hard to hold the Iraqis accountable—at any rate in a way that would warrant the destruction of their whole country. Even if the preponderance of evidence strongly suggested that the Iraqis were responsible, it is by no means certain that the U.S. government would retaliate by killing millions of Iraqi civilians—innocent by its own reckoning—above all if it believed that such an attack would have led to additional Iraqi counter-attacks against the United States or its allies. Would more limited operations—for example, a conventional attack aimed for example at the overthrow of the Iraqi government—be possible in such a case? If the Iraqis had any nuclear weapons at all, the United States might be very reluctant to launch an attack against a regime whose back was against the wall. Given all these considerations, it would not be absurd or irrational for Iraq to judge that the risks were limited and thus to opt for a coercive strategy. And indeed there is a good chance that such a strategy, if adopted, would have the desired effect. The Americans, anticipating the problems they would face, might give way and allow themselves to be pushed out of the Gulf, or indeed out of the Middle East as a whole. But there would also be a certain probability, in such circumstances, that these devastating weapons would actually have been used, by one or both sides.

All of this may sound somewhat speculative, but it is important to note that the U.S. government was actually concerned with problems of this sort. Indeed, one of the main reasons why nuclear proliferation was thought to be a problem had to do with the fact that it was understood that even small nuclear arsenals could be used to support a coercive policy. Thomas Schelling, for example, in a top secret report written for the U.S. government in 1962, had considered the possibility of 'extortionate use' by countries with small nuclear arsenals. He noted that countries might profitably adopt a policy of exploiting that kind of threat; and he thought in particular that the 'strategy of anonymous attack' needed to be examined.[30]

The same sort of concern (but focusing on the threat posed by biological and not nuclear weapons) surfaced during the Gulf Crisis in 1990. The CIA at that time warned that it could not 'rule out that Iraq may have contingency plans to use biological weapons covertly.' Iraq, it thought, 'could attack targets out of range of even its missiles by using special forces, civilian government agents, or foreign terrorists to hand-deliver biological or chemical agents clandestinely.'[31] The point about clandestine attack came up again in 2002 as the Iraq problem again began to heat up. Secretary of Defense Donald Rumsfeld, for example, told a Congressional committee that the United States needed to be concerned about the threat posed by Iraqi biological weapons [BW]. Such weapons, he said, were 'simpler to deliver' than nuclear weapons, and could readily be 'transferred to terrorist networks, who could allow Iraq to deliver them without Iraq's fingerprints.'[32] Charles Duelfer, formerly deputy head of UNSCOM, the UN inspection organization for Iraq, and an acknowledged expert in this area, had made the same kind of point in Congressional testimony earlier that year. 'BW', he said, 'is the most difficult present threat posed by Iraq. They certainly have the capacity to deploy it clandestinely or through surrogates should the regime so decide.'[33] In fact, before the Gulf War the Iraqis had themselves suggested that Arab terrorists in the West could serve as instruments of attack.[34]

So the problems an Iraqi nuclear capability would have posed were very real, especially in a world where large-scale terrorism was a fact of life.

Inspections: A Viable Solution?

If a nuclear capability or its equivalent in the hands of someone like Saddam Hussein was intolerable, was there no peaceful way to ensure that he could not develop a capability of that sort? Over and over again, in the run-up to the war, it was said that an inspection regime was a viable alternative. But was

it? If the use of force were ruled out (as the Germans, for example, wanted), why would the Iraqis have complied with an effective inspection regime? And how could inspections have provided any effective guarantee that Iraq no longer had any stockpiles of forbidden weapons, nor any programs for the development of such weapons, when the Iraqi government could easily prevent well-informed Iraqis from talking openly with the inspectors? Perhaps on occasion violations would be uncovered, but if those discoveries had no consequences for the regime beyond the destruction of the forbidden material that had been found, how much of a deterrent effect would the inspection regime actually have?[35] In the view of U.S. specialists, and not just people connected with the Bush administration, 'an inspection regime that fails to give us high confidence that it is successfully uncovering and blocking any serious WMD development is worse than no regime at all.'[36] If nothing were uncovered, people would say that that proves there was nothing to be found and that further action would therefore be unwarranted. If the inspectors, however, did find something, the Iraqis would destroy it, and that would be the end of it. People would in that case say that that again proved that 'inspections were working' and that there was therefore no basis for military action. In either case, the effect of the inspection regime would be to shield Iraq and enable her to go ahead with her clandestine weapons programs essentially with impunity.

During the crisis, problems of this sort—the problems related to the forcible disarmament of Iraq— did not receive anything like the attention their deserved. There was not enough attention given on either side of the Atlantic to what might be called the theory of an inspection regime. There was not enough attention given in 2002 to the history of the inspection regime in the 1990s, and to the lessons that might be drawn from that story. Most of the Americans familiar with that story had come to the conclusion that that regime had not worked.[37] It was important at that point to try to understand why it had failed; it was important in that context to try to deal with the question of how a new inspection regime could possibly succeed. But the U.S. government did not push the issue: it did not push the advocates of inspections onto the defensive, by demanding to know how the new regime that was proposed would overcome the problems that had led to the failure of the old regime. And in Europe, there was no great interest in examining the issue carefully: if an inspection regime was the alternative to war, what point was there to questioning the viability of such a regime?

So the issue was not dealt with seriously by either side, and the American government, in particular, did not handle this question very skilfully. But the fact that it did not make its case very effectively did not prevent many Americans close to these issues from sensing the problems with the notion that one could deal with the situation by re-establishing an inspection regime. For one thing, they viewed it as odd, to say the least, that the French, who had done their best to weaken the control regime in the 1990s, were now presenting themselves as the champions of inspections.[38] And the Europeans, for their part, tended by and large to think that the Americans were much too quick to give up on inspections. But this is the sort of issue that can be analyzed in a relatively sober way. And to do that, one of the main things we need is a serious political history of the control issue—that is, inspections plus sanctions—from 1991 to 2003, preferably based in large part on captured Iraqi documents. The war may be over, but how Europeans and Americans feel about each other might depend to a certain extent on how issues of this sort are resolved, and one can at least try to think these issues through in the light of the empirical evidence.

The United States and International Law

One of the most serious charges levelled against the United States in the European press, and indeed by some European governments, was that the American government was not acting in accordance with international law. Those charges were echoed by an important body of American opinion; many international law scholars, in particular, saw things in much the same way. The standard argument was that, largely as a result of America's own efforts, a legal system had come into being at the end of World War II. That system, embodied in the U.N. Charter, and based on the principle of the sovereign equality of all states, had 'served as the framework of international relations for the past half century.'[39] The U.N. regime had established real limits on the use of force; international politics had

been 'legally domesticated'; instead of a world of unconstrained violence, one had a world based at least to some extent on the rule of law—that is, on respect for basic legal principles.[40]

But now it seemed that the Bush administration was determined to take whatever measures it felt were needed to deal with developments which in its view threatened American security whether those measures were lawful or not. The U.S. government felt free to act 'preemptively'—that is, to deal with developing threats through military action well before attacks on America were actually mounted.[41] It would not respect the sovereign rights of countries it viewed as hostile to do whatever they wanted on their own territory—not if those countries shielded terrorists, or were developing weapons that might pose a threat to America, and especially not if those two threats were combined. And it would feel free to take any necessary action, in the final analysis, on its own: it felt it had the 'sovereign right' to move ahead without first getting authorization from the U.N. Security Council. The United States, in other words, this argument runs, had broken with tradition and had opted for a 'strategy of violence'— for a world in which the strong did whatever they wanted, unconstrained by any legal principle whatsoever. America had thus broken with the rule of law; the claim was that the United States was bringing about a lawless, dangerous, and exceptionally violent world.[42]

American policy toward Iraq after September 11 was interpreted in the light of what the Americans were saying about their general strategy. The U.S. government and its supporters had little trouble coming up with a legal justification for America's Iraq policy. The argument was that the use of force against Iraq, a country which everyone agreed had not fully complied with the obligations it had accepted at the end of the Gulf War in 1991, had been legitimated by a whole series of Security Council resolutions, especially by Resolution 687, the famous 'mother of all resolutions'.[43] But whether valid or not, in a sense this was a purely technical point. The U.S. decision to launch a military operation was bound to be interpreted in the context of the Bush doctrine. Whatever the technical legal justification, the war on Iraq was publicly justified, and is in fact to be understood, as a 'preemptive' war.[44] The U.S. government made it clear during the crisis that it felt (as Secretary of State Powell put it) that the United States had the 'sovereign right to take military action against Iraq alone.'[45] U.N. resolution or no U.N. resolution, the United States felt it had the right to legitimately take action of this sort.

So the real issue here has to do with that basic claim—that is, with the question of the legitimacy under international law of 'anticipatory self-defence'. And it is important to note that the prevailing, although by no means universal, view among even American students of international law is that the Bush administration view is legally untenable, and that under international law, at least as it has existed since 1945, the right of self-defence is very narrowly circumscribed.[46] According to Article 2, paragraph 4, of the U.N. Charter, all member states are to 'refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations.' Under the Charter, the U.N. Security Council would alone have the right to authorize the use of force. The one exception, provided for in Article 51 of the Charter, was that states would still have the right, both individually and collectively, to defend themselves against armed attack, pending Security Council action. But that right applied only to the case of actual attack, and not, for example, to a case where attack was merely threatened. The scope for unilateral action was thus evidently very narrow; and with the one exception relating to an actual armed attack, the unilateral use of force, the argument runs, was now legally impermissible, even when what a country honestly saw as its 'vital interests' were threatened.[47] A 'presumption against self-help', it is said, lay at the heart of the U.N. system.[48] According to that interpretation, there was in fact not much that a state could do without Security Council sanction, unless it or one of its allies had actually been attacked. 'With the right of self-defence in Art. 51 restricted to the case of armed attack', one scholar writes, 'and with no further exception to Art. 2(4) allowing for the use of force by the individual State, the exercise of force for the enforcement of a vested right or for the purpose of ending another State's unlawful behaviour is prohibited.'[49] Even reprisals were legally permissible only if they do 'not involve the use of armed force.'[50]

What is to be made of this whole line of argument? To get at that question, we first have to deal with a more fundamental issue: what gives a certain principle, like the idea that military reprisals are impermissible, the force of law? How do we know that such a principle is legally binding? And those questions in turn are closely related to the general question of how international law is made, since no given principle is legally binding unless it is produced by a process that gives it the force of law. The law, after all, is not just sitting around someplace waiting to be discovered. It has to be created—and created by a process that gives people the sense that the principles that take shape are legally binding. But created by whom? Legal scholars, obviously, do not have the right to actually make the law; the principles they put forward are not legally binding simply because they say they are. And there is no world parliament, no supra-national body with recognized legislative power. Even the U.N. General Assembly does not have the authority under the U.N.'s own Charter to actually make law. Nor does the World Court have any law-making power. It does not even have the right under its own statute to issue legally binding interpretations of the law, except when states voluntarily agree to accept its jurisdiction.

How then is international law actually made? The only really plausible answer is that the law is made by the states themselves. 'Governments derive their just powers from the consent of the governed', and in this case, it is the states who are the governed, and it is they themselves who in one way or another decide on the principles they are to be governed by. It is not as though the governments of the world have had the basic principles of international law handed down to them. It is the states themselves who establish international law, by accepting in practice various principles that constrain their behaviour, and especially by agreeing to treaties that define what those principles are. 'International law', as the famous legal scholar Lasso Oppenheim pointed out long ago, 'is a law not above but between states.'[51] As a result, the states have to accept a given principle as law for that principle to be legally binding. Some scholars go even further. 'Each nation', Hans Morgenthau, for example, says, 'is bound only by those rules of international law to which it has consented.'[52] And this is not just a view which only the most hardened realist theorists hold. Even someone like Louis Henkin, whose thinking was by no means rooted in the realist tradition, made essentially the same point. 'In principle', he wrote, 'new law, at least, cannot be imposed on any state; even old law cannot survive if enough states, or a few powerful and influential ones, reject it.'[53]

It is in this context that the basic texts—above all, the U.N. Charter—that define the international legal order need to be interpreted. If the Charter is to be taken seriously, the governments that drafted it would have had to be serious about bringing a new legal regime into being. It follows that to see what new law was really being created, one has to understand what new obligations governments at the time thought they were taking on. When they agreed to the Charter, what did the founders of the United Nations think they were doing? What sorts of constraints—that is, new constraints—did they think the U.N. Charter would impose on their future behaviour? Did they really believe that the use of force, unless it was explicitly authorized by the Security Council, would no longer be legally permissible, except in the event a state was responding to an actual armed attack on itself or an ally?

The only way to get at the answers is to look at the historical evidence—that is, to look at evidence that throws some real light on the question of what the governments understood the Charter to mean when that document was first hammered out. And to understand what they had in mind, it is important not just to look at the record of what was said publicly in the formal discussions at the conferences at which the Charter was drafted. If the goal is to understand how people really felt—and not just to understand the line governments were taking in public—it is obviously essential to look at sources that were secret at the time—the records, for example, of key meetings in which responsible officials expressed their views.[54] And the most important readily available source of this sort—most important, because the U.S. government played the leading role in drafting the Charter—is the first volume in the U.S. State Department's *Foreign Relations of the United States* series for 1945, the volume dealing with U.N. affairs.

What the evidence in that volume shows is that the U.S. drafters did not believe that they were giving away very much by accepting the Charter. According to John Foster Dulles, then a key member of the delegation to the conference drafting that document, the principle that would eventually become

Article 2(4) of the Charter gave the United States pretty much a free hand to use force whenever it liked. Under that principle, he pointed out, the member states 'pledged to refrain from the use of force in a manner inconsistent with the purposes of the organization. Since the prevention of aggression was a purpose of the organization, action to prevent aggression in the absence of action by the Security Council would be consistent with the purposes of the organization.' That meant that there would be no legal constraint on what the United States could do. As Senator Arthur Vandenberg, the leading Republican on the delegation, noted, Dulles's 'point reduced itself to the principle that we have the right to do anything we please in self-defense.'[55]

Administration representatives saw things much the same way. Leo Pasvolsky, a key State Department official concerned with U.N. matters, also thought that under the Charter as it was being drafted, 'if the Security Council fails to agree on an act, then the member state reserves the right to act for the maintenance of peace, justice, etc.' 'There was certainly no statement in the text' being drafted, he said, 'under which we would give up our right of independent action.' This was not a trivial point. The British, in fact, as Pasvolsky pointed out, had been 'shocked' by how expansive the 'American concept of self-defense was.'[56]

Indeed, Vandenberg himself had been shocked. He did not dispute the Dulles-Pasvolsky interpretation. But people, he said, 'would be disillusioned beyond words' when they came to see what the plan was. He had thought that there had been 'a general renunciation of the right to use force', but this too, he was told by Senator Connally, the most important Democrat in the delegation, 'was not the case.'[57] To be sure, the wording was not as explicit as it might have been, but that was only because it was felt that more explicit phrasing might give the Russians too free a hand, not because the Americans were prepared to accept real limitations on their own freedom of action—above all, in the western hemisphere, an area when they claimed 'preclusive rights'. As Connally put it in this context: 'The United States must be able to take care of itself.'[58]

The U.N. system, moreover, was built on the assumption that the major powers would be able to act as a bloc. States might be asked to forgo the right of self-help if the larger community was able and willing to come to their aid; but if the system did not provide for their security, and if the system did not protect their rights, they could hardly be expected to abide by the rules against self-help. This rather obvious point has been made by a number of distinguished legal theorists. 'It is reasonable to restrict self-help against violations of the law', Hans Kelsen wrote, 'only insofar as self-help is replaced by effective collective security.' And Julius Stone took it for granted that it did not make sense to rule out forceful self-help by individual states when the Security Council is unable to work as a bloc and no 'effective collective measures are available for the remedy of just grievances.'[59] But what is important to note here is that this point was recognized even in 1945. The Americans took it for granted that if the U.N. system failed, the right of self-help would revert to the member states.[60] And the official British commentary on the Charter noted that 'the successful working of the United Nations depends on the preservation of the unanimity of the Great Powers', that 'if this unanimity is seriously undermined no provision of the Charter is likely to be of much avail', and that 'in such a case the Members will resume their liberty of action.'[61] Such documents show what was in the minds of the governments at the time; they show that they had by no means set out to build the sort of legal structure most international law scholars today assume had been brought into being in 1945. They by no means thought that the use of force without Security Council sanction and for purposes other than defense against actual armed attack would be legally impermissible no matter how divided the great powers were—no matter how poorly, that is, the Security Council regime functioned. The states, that is, never intended to create a legal regime that would tie their hands too tightly, a regime that would be binding no matter how poorly the U.N. system worked.

But the law is defined not simply by the intent of the drafters. It is also to be interpreted in the light of, and indeed as a product of, subsequent state behaviour. And the key point to note here is that not one of the leading powers—not one of the five permanent members of the Security Council—was prepared in practice to limit its use of force in the way the Charter seemed to imply. The examples are too well known to need repeating here, but let me talk about two cases, France and post-Soviet Russia.

France was particularly vociferous in condemning the U.S. invasion of Iraq as illegal because it was undertaken without explicit Security Council authorization.[62] And yet the French themselves had frequently intervened militarily in what they view as their sphere of influence in 'francophone' Africa without first getting U.N. sanction.[63] As for post-Soviet Russia, that country has occasionally intervened (without U.N. authorization) in what the Russians see as their sphere of influence in the 'near abroad'—in Moldova, Tajikistan and Georgia.[64] In September 2002, Russian President Putin threatened to take military action if the Georgians did not prevent their territory from being used as a base for Chechen rebels: 'Like America in Iraq, his officials claim, Russia is insisting on its right to take military action, alone if necessary, against a nation which it deems to be in breach of international law.'[65] Two years earlier, Putin had made a similar threat to the Taliban authorities in Afghanistan.[66]

I bring these examples up not because I want to point to French or Russian hypocrisy in this area. Hypocrisy of this sort is perfectly normal in international politics and needs to be taken in stride. The real point has to do with the light such examples shed on the question of what international law actually is. The international legal regime is created by states, not by judges or legal scholars. But all the major states were prepared to use force without U.N. sanction for purposes other than self-defence, narrowly defined. It is scarcely conceivable that they would have created and sustained a legal regime that would have made them all into law-breakers.

It follows that the argument that the Americans acted 'illegally' because force was used without explicit U.N. Security Council authorization is to be taken with a grain of salt. Indeed, it seems quite clear that that argument has to be interpreted in political terms.[67] A legal framework no one ever took too seriously in the past is now taken very seriously—and from the U.S. point of view, this can only be because it serves the purposes of those hostile to U.S. policy, those who seek to use whatever instrument is at hand for bringing American power under some sort of control. By pushing a particular theory of international law, the goal, it seemed, was to limit U.S. freedom of action, a tactic the Europeans pursued in other areas as well. The aim, as Michael Ignatieff put it, was to tie America down, 'like Gulliver with a thousand legal strings.'[68]

But perhaps this is going too far. Governments may be cynical, but there is a serious case to be made by those who believe in the sort of legal regime they associate with the U.N. Charter at least as an ideal that we should try to move toward, and that case has to be examined on its own terms.

There are fundamental issues here that we need to try to grapple with. And one of the most fundamental is the question of whether we really want a world in which force could be legitimately used only in response to armed attack. The answer may not be as obvious as one might think. To rule out the use of force except in the case of armed aggression is to allow states to renege on their obligations with relative impunity. Does it make sense, for example, to have a legal system in which states in effect have the right to give shelter and support to terrorists? Does it make sense to set up a legal order which shields the law-breaker (as long as his actions do not amount to an 'armed attack') and requires law-abiding states 'to submit indefinitely to admitted and persistent violations of rights'?[69] Is that what we mean by the 'rule of law'?

There is a basic problem with the idea that we should try to outlaw the use of force except in response to armed attack. The problem is not just that it is out of touch with political reality. A more fundamental problem arises from that fact that armed conflict does not, as a general rule, result from a simple decision on the part of an aggressor to start a war. It is the outcome, generally speaking, of a political process, one that often takes many years to run its course. It is that process as a whole that needs to be controlled; it is a mistake to focus excessively on just one point in that process, the point at which the decision to use force is made. To concentrate all our legal firepower on that one point is to opt in effect for a rather unsophisticated who-fired-the-first-shot approach to the problem of war causation. It is overall policy, and not just policy at one key moment, that we should seek to influence; it is overall policy that we should therefore seek to judge; the principles we develop, the norms we come up with, should thus relate to policy as a whole. And it is by no means obvious (as the case of

the 1930s shows) that policies that rule out the use of force will lead to a more stable international order. For if the goal is to influence the way an international conflict runs its course—that is, to try to make sure that it runs its course in such a way that the conflict is ultimately resolved peacefully—then it may be entirely proper, and indeed necessary, that power be brought to bear. Everything depends on circumstances. That approach, as Michael Walzer points out, 'opens a broad path for human judgment—which it is, no doubt, the purpose of the legalist paradigm to narrow or block altogether.'[70] But that fact is reason in itself to be wary of the legalist approach to these issues.

If power plays a central role in international politics—and in certain key areas of conflict, power is still clearly of fundamental importance—then the last thing that we should want is to give people the sense that they can ignore power realities with impunity—that they are sheltered by legal norms from retaliation and that they are free to act as irresponsibly as they like. We should want people to face up to realities, to accommodate to basic realities, and in that way to bring about a relatively stable international order.

For the really fundamental point to note here is that a world in which power considerations loom large is not a world of endless violence and destruction. A world based on power, in fact, has a certain stability: as the international relations theorists say, there can be 'order without an orderer'.[71] If international politics during the Cold War period was relatively stable, especially after 1963, it was not because the international legal system established in 1945 had taken the edge off of interstate violence. It is simply a mistake to assume that 'UN Charter norms' actually 'served as the framework of international relations for the past half century.'[72] The U.N. regime, in fact, counted for very little. Key elements of the international system during that period—for example, the strategy of deterrence based on the threat of retaliation on an absolutely massive scale—were in fact wildly at variance with the international legal framework as the lawyers commonly portray it. 'The lawyers', as Walzer says, 'have constructed a paper world, which fails at crucial points to correspond to the world the rest of us still live in', and one has to wonder whether that enterprise has done more harm than good.[73]

When the Europeans today embrace those legalist conceptions, that position is bound to have major political implications. The prominence of those legal arguments in the political discourse relating to the Iraq crisis is striking, and they played an important role in the politics of the crisis. But those arguments are not nearly as solid as many people believe, and a more serious analysis of the international law side of the question might lead people to rethink their positions, or at least lead them to look at things in a somewhat different light.

The Crisis in the Alliance

The showdown with Iraq, Henry Kissinger wrote about a month before the war with that country broke out, had 'produced the gravest crisis within the Atlantic Alliance since its creation five decades ago', and that view is shared by many observers on both sides of the Atlantic.[74] 'It is possible we stand before an epochal break', German foreign minister Joschka Fischer declared in early March.[75] In the Iraq crisis, many European governments supported the United States to one degree or another, but European opinion was overwhelmingly opposed to what the U.S. government was doing. The European press, and especially the French press, was full of anti-American abuse, quite unparalleled by anything one saw in the leading American journals.[76] The Iraq crisis triggered what Josef Joffe, co-editor of *Die Zeit* and an exceptionally well-informed observer of U.S.-European relations, called 'an enormous wave of hatred against the United States.'[77] The Americans, it seemed, were lawless, arrogant, and imperialistic—the French had in fact taken to referring to the United States as 'the empire'. After the war broke out, public opinion polls in France showed about a third of those questioned actually wanted Saddam to win.[78] Anti-American feeling in fact ran high throughout Europe. On April 7, 2003, for example, the *New York Times* carried an article on anti-Americanism in Greece. One well-known Greek critic of the United States was quoted there as calling the Americans 'detestable, ruthless cowards and murderers of the people of the world.'[79] Americans read this sort of

thing and say to themselves: 'and these people are supposed to be our *allies*? How can we be *allies* with people who feel that way about us?'

Some people say that what we saw in the run-up to the war with Iraq was just another crisis in the alliance, not fundamentally different from the sort of thing we have seen many times in the past. I have spent many years studying U.S.-European relations during the Cold War period, and my sense is that that view is fundamentally mistaken. This crisis *is* very different from the NATO crises of the Cold War period, even from the most serious of those crises, the crisis of early 1963. During that period, the Europeans and the Americans felt themselves basically to be on the same side. Whatever their differences, the U.S. government and the major European governments did not question each others' basic honesty. But in this case, many Americans who follow these issues have the sense that the Europeans are taking sides *against* the United States—that the goal is to balance *against* the American 'hyperpower', to use Hubert Védrine's famous phrase. They are struck by how quick the Europeans are to jump to extreme anti-American conclusions—to assume, for example, that the Americans were lying about Iraq's weapons of mass destruction—and they are struck by the fact that the charge that the U.S. government was playing fast and loose with the truth in this area is itself rooted in a very cavalier use of the evidence.

Let me give a couple of examples of this, each involving Deputy Secretary of Defense Paul Wolfowitz. The first has to do with an interview he gave on May 9, 2003, which served as one of the bases for a story called 'Bush's Brain Trust' published in the July 2003 issue of *Vanity Fair*; the story itself was released on May 29. According to that article, 'Wolfowitz admitted that from the outset, contrary to so many claims from the White House, Iraq's supposed cache of W.M.D. had never been the most compelling *casus belli*. It was simply one of several: "For bureaucratic reasons, we settled on one issue, weapons of mass destruction, because it was the one reason everyone could agree on."'[80] This gave rise to a slew of articles saying, in effect, that Wolfowitz had admitted that the WMD issue was just a 'pretext' for a war.[81] But it is quite clear from the transcript of Wolfowitz's taped interview with the *Vanity Fair* writer posted on the Pentagon website that this was a gross distortion of what Wolfowitz had said. His argument was that the WMD issue had been emphasized because it was the one issue that everyone agreed would justify military action against Iraq.[82] The other incident involving Wolfowitz had to do with his supposed admission that 'oil was the main reason for military action against Iraq'; again, it turns out that he had said nothing of the sort, a point that would not have been at all hard to discover.[83] It is not difficult to understand why incidents of this sort are seen in America as evidence of a deeply ingrained anti-U.S. bias—of an 'obsessive' attitude (to use Jean-François Revel's term), one that goes far beyond what the evidence actually warrants.[84]

The Europeans, in other words, come across as being too quick to think the worst of the United States, and in America that attitude is resented. Many Americans, for example, were struck by the reaction in Europe to Secretary Powell's February 5, 2003, speech to the United Nations laying out the U.S. case on Iraq. A good deal of evidence was presented, and although the Iraqis dismissed that evidence as fabricated, the speech struck most Americans who heard it as a serious and well-thought-out statement. But the mainstream European response was very different. 'To Saddam's lies we can probably add the administration's own lies'—that was how Yves Thérard reacted in the *Figaro*, and many Europeans reacted that same way.[85] This, as the more historically-aware American commentators noted, represented quite a change from the past. In 1962, it was pointed out in this context, when the Americans offered to show de Gaulle the evidence about the Soviet missile in Cuba, the French president said he did not need to be convinced: 'great nations such as yours', he told the American envoy, Dean Acheson, 'would not take a serious step if there were any doubt about evidence.'[86] But that is obviously not the official French attitude nowadays.

What does all this mean about the future of the western alliance? Many people think that it does not mean all that much—that these problems will blow over as other problems have in the past and that the NATO alliance will remain intact. And it is certainly true that there are very few people in the United States today who openly question the desirability of America's alliance with Europe. Even the expansion of NATO into eastern Europe was generally supported by both political parties—although

one has the sense that that support was a mile wide and an inch deep. But NATO itself is still conventionally seen as a 'cornerstone' of the international order; it has been around so long that people can scarcely imagine a world without it. If they are pushed on the issue, people will say the United States needs to work with Europe to deal with problems like international terrorism—as though cooperation would be impossible if the alliance were gone, and as though the Europeans would have less of an incentive to cooperate with America if the American security guarantee could no longer be taken for granted. The Americans, moreover, are reluctant, at least in the immediate aftermath of the war, to even bring up the question of withdrawing from the alliance for fear of embarrassing those European governments who, defying political feeling at home, sided with America in the crisis. The U.S. government, of course, does not want to betray the governments that took that position. And one can add to that the point that the U.S. government feels that it has bit off more than it can easily chew in Iraq and would like more European help to deal with the situation that has developed there.

But still one has to wonder about the future of the alliance. If even the Kennedy administration, at the height of the Cold War, was prepared to withdraw from Europe during the 1963 crisis, why would a less cosmopolitan U.S. government remain involved indefinitely—when (from the American point of view) the provocation today is far greater than it was in the time of de Gaulle and Adenauer, when the need to stay in Europe has receded with the collapse of the Soviet Union and the end of the Cold War, and when the United States is seen as getting so little benefit from its continuing commitment to the security of Europe? The Kennedy administration felt the Europeans could not have it both ways—they could not pursue an anti-American policy (very mild by today's standards) and still expect to have their security rest ultimately on a system based on American power. It is not hard to imagine that if nothing changes the U.S. government, no matter who is running it, will eventually reach much the same conclusion: if the Europeans want to go their own way politically, they have every right to do so, but if they do, they should not expect America to guarantee their security. The feeling would be (as Eisenhower once put it) that the Europeans could not be allowed to make 'a sucker out of Uncle Sam.'[87]

If American policy moves toward disengagement, that fact will have to be faced philosophically. Lord Salisbury, perhaps the greatest diplomatist of the late nineteenth century, once said that the 'commonest error in politics is sticking to the carcasses of dead policies.' The policy of maintaining the NATO alliance may indeed be a dying, if not a totally dead, policy, and if it is, it is important to begin thinking about the sort of successor regime that should be established and how the transition to that new regime should be managed. But whether the western alliance is to be saved or replaced by something else, the very fundamental issues the Iraq crisis has brought to the surface need to be analyzed seriously—certainly more seriously than they have been so far.

That analysis has to begin, I think, with the recognition that the core questions here have no easy or obvious answers—that is, with the recognition, as Bernard Brodie put it when he was referring to the complex of problems relating to nuclear weapons, that we are now dealing with issues of 'great intellectual difficulty, as well as other kinds of difficulty.' I personally have been studying international politics for over forty years now, and the whole set of problems relating to terrorism, nuclear proliferation, biological weapons, and so on, I find extremely difficult—harder to answer, harder even to deal with, than any other set of issues relating to international politics that I have ever encountered, including the nuclear issue as we understood it during the Cold War.

In fact, the main point I am trying to make in this article is that the questions that we now have to deal with are extraordinarily difficult, and the answers are not nearly as obvious as people think. And if we are to get a sense for how difficult these issues are, it seems to me that some historical perspective might be of real value. We often hear people today, for example, talking about American imperialism and about NATO as an 'instrument of American domination'. But it would help, I think, if people remembered that the U.S. government never wanted to create an American empire in Europe as a kind of end in itself. It would help if people remembered that in the early years of the alliance the U.S. government in fact wanted the Europeans to come together and provide for their own defence—that it wanted Europe to become (to use Eisenhower's phrase) a 'third great power bloc' in world affairs—

and that it was only when it became clear that a purely European security system was not viable that the Americans reluctantly accepted the idea of a more or less permanent U.S. troop presence in Europe and thus of a security system based, in the final analysis, essentially on American power.[88] There is a myth that America had imposed itself on Europe—that America from the start sought to dominate Europe, that NATO was a way of enabling America to control Europe, that America was a country whose sheer power had led it to pursue a policy of domination.[89] But the more one understands the real story, the more one is able to see how misleading and indeed how pernicious myths of that sort can be.

If the Americans come to feel that they are not being viewed fairly—if they come to the conclusion that the Europeans by and large are much too quick to engage in anti-American abuse—then it is not hard to imagine the United States disengaging from Europe. In fact, there is no question in my mind that if the current anti-American temper in Europe continues, the United States will be strongly tempted to pull out. In 1963, Kennedy said that the United States could 'take care' of itself, and the Americans still believe that in the final analysis they do not need Europe. The point is recognized by some of the more serious European commentators. Helga Haftendorn, for example, noted in a recent article that 'today the United States can easily do without NATO'.[90] For the Europeans, on the other hand, a U.S. withdrawal would open up a can of worms; a whole series of problems, relating especially to German nuclear weapons and to the relationship between Russia and the rest of Europe, would almost automatically come to the fore.

The Europeans might thus want to think a bit more carefully about whether they would really like the United States to withdraw. And that means that they might want to grapple with the very difficult problems of the new world we now live in in a more serious way. They might even want to give their most important ally the benefit of the doubt when hard choices have to be made. For the one thing that is clear is that in the long run, if the Europeans expect the United States to continue providing ultimately for their security, and at the same time think their governments can pursue the sorts of policies France and Germany pursued in the recent crisis, then, as the famous columnist James Reston put it at the peak of the January 1963 crisis, they are 'asking and expecting things that have never been and will never be.'[91]

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Notes

A more fully footnoted version of this article, with direct links to the text of many of the sources cited, is available online at: http://www.polisci.ucla.edu/faculty/trachtenberg/useur/iraqcrisis.html).

1 Press conference of January 14, 1963, in Charles de Gaulle, 1986. *Discours and Messages*. Paris: Plon, vol. 4, p. 69.

2 Notes on Remarks by President Kennedy before the National Security Council, January 22, 1963, U.S. Department of State, 1961-1963. *Foreign Relations of the United States* [FRUS], vol. 13, p. 486.

3 Kennedy-Malraux meeting, May 11, 1962, FRUS 1961-1963, vol. 13, p. 696.

4 Ibid.

5 NSC Executive Committee meeting, January 25, 1963, ibid., p. 490.

6 Ibid., p. 489.

7 NSC Executive Committee meeting, February 5, 1963, ibid., p. 178.

8 For a fuller account of this story, see Marc Trachtenberg, 1999. *A Constructed Peace: The Making of the European Settlement*. Princeton: Princeton University Press, pp. 303, 369-379.

9 Remarks by the Vice President to the Veterans of Foreign Wars 103rd National Convention, August 26, 2002 (http://www.whitehouse.gov/news/releases/2002/08/20020826.html)

10 See especially Henry Kissinger, 2002. 'The Politics of Intervention: Iraq 'Regime Change' is a Revolutionary Strategy', *Los Angeles Times*, August 9; George Shultz, 2002. 'Act Now', *Washington Post*, September 6; James A. Baker, 2002. 'The Right Way to Change Iraq's Regime', *International Herald Tribune*, August 26.

11 Steven Erlanger, 2002. 'German Leader's Warning: War Plan is a Huge Mistake', *New York Times*, September 5.

12 Steven Erlanger, 2002. 'For Now, Trading Allies for Votes', *New York Times*, September 14; and Peter Finn, 2002. 'Ruling Coalition Wins Narrowly in German Vote: Strong Anti-War Stance Helps Schroeder Defeat Conservatives', *Washington Post*, September 23.

13 Steven Weisman, 2003. 'A Long, Winding Road to a Diplomatic Dead End', *New York Times*, March 17; and Marc Champion, Charles Fleming, Ian Johnson and Carla Anne Robbins, 2003. 'Allies at Odds: Behind U.S. Rift With Europeans: Slights and Politics: Schröder and Chirac Discover How Popular Tweaking a Superpower Can Be', *Wall Street Journal*, March 27. These two articles are the best descriptions of this story that have appeared so far.

14 Chirac interview with TF1 and France 2, March 10, 2003.

15 Luc de Barochez, 2003. 'Jacques Chirac and Gerhard Schröder se prononcent pour un règlement pacifique: Front franco-allemand sur la crise irakienne', *Le Figaro*, January 23. See also the text of the joint Chirac-Schröder press conference and joint television interview, both of January 22, 2003.

16 Champion *et al.*, 'Allies at Odds.'

17 Quoted in 'More Europe', *Der Spiegel*, March 31, 2003.

18 Fischer interview with *Stern* magazine, March 5, 2003.

19 See, for example, Chirac and Schröder interview with Olivier Mazerolle and Ulrich Wickert, January 22, 2003 and Chirac-Schröder joint press conference, January 22, 2003.

20 David Sanger, 2003. 'Bush Links Europe's Ban on Bio-Crops with Hunger', *New York Times*, May 22. See also, Alexandra Stanley, 2003. 'Two Disciples Spread Word: The End is Near', *New York Times*, March 17; Elisabeth Bumiller, 2003. 'U.S., Angry at French Stance on War, Considers Punishment', *New York Times*, April 24; Elaine Sciolino, 2003. 'France Works to Limit Damage from U.S. Anger', *New York Times*, April 25; and especially Weisman, 'Long, Winding Road', and Champion et al., 'Allies at Odds' (both cited in n. 13 above).

21 Chirac's remarks were widely reported in the press. See, for example, Ian Black, 2003. 'Threat of War: Furious Chirac Hits Out at 'Infantile' Easterners', *The Guardian* (London), February 18. For the remarks themselves, see Chirac press conference, February 17, 2003.

22 James Dao, 2003. 'Powell Says to the French, Yes . . . but Not All Is Forgiven', *New York Times*, May 23.

23 To be sure, this view is not universally accepted. In France, for example, a March 2003 poll showed that only three percent of those questioned thought the main motivation of the U.S for going to war was to 'disarm Iraq'; 49 percent thought it was to 'take control of Iraq's petroleum resources' (http://www.ifop.com/europe/sondages/opinionf/jgtirak.asp). Indeed, many people have claimed, especially after no such weapons were actually found in Iraq, that the argument about Iraqi weapons of mass destruction was artificially trumped up, to serve as a pretext for a war that the Bush administration wanted to conduct for

other reasons. But the fact that an assessment turned out to be mistaken is no proof that it was simply fabricated, and there are many reasons why the argument that the Bush administration was lying on this matter is simply implausible. Henry Kissinger, for example, made one key point in a September 2003 interview: 'I attended many closed hearings in Washington, and it is impossible to imagine that representatives of the US administration constantly lied to each other at such hearings when they were talking about Iraqi weapons of mass destruction.' Y. Verlin and D. Suslov, 2003. 'Henry Kissinger: Iraq is an Exception, Not the Rule', *Nexavisimaya Gazeta*, September 17.

24 See, for example, Kenneth Pollack, 2002. *The Threatening Storm: The Case for Invading Iraq*. New York: Random House, pp. xxii, 153-158.

25 Quoted in Jeffrey Goldberg, 2002. 'The Great Terror', *The New Yorker*, March 25, (toward the end of the article). Note also the evidence from non-U.S. sources cited in Julian Borger, 2002. 'Saddam "will have nuclear weapons material by 2005,"' *The Guardian* (London), August 1. Richard Butler, the former UN chief weapons inspector, was quoted there as saying that 'there is now evidence that Saddam has reinvigorated his nuclear weapons programme in the inspection-free years.'

26 Article in the German weekly *Focus* quoted in Agence France Presse report, February 2, 2003. See also 'What Now, Mr. President?', cover story in *Der Spiegel*, February 17, 2003.

27 Chirac interview with TF1 and France 2 (excerpts), March 10, 2003.

28 The most important example is the argument Kenneth Waltz develops in the chapters he wrote in book jointly authored with Scott Sagan, 2003. *The Spread of Nuclear Weapons: A Debate Renewed*, New York: Norton. For a critique, see the review I wrote of this book published in *The National Interest* (Fall 2002); a better version of that review is available online (http://www.polisci.ucla.edu/faculty/trachtenberg/cv/prolif.doc).

29 Quoted in 'Serving Notice of a New America that is Poised to Strike First and Alone', *New York Times*, January 27, 2003.

30 Schelling Study Group Report, 'Report on Strategic Developments over the Next Decade for the Inter-Agency Panel', October 12, 1962, pp. 51-55 (pp. 54-55 for the quotations), in National Security Files, box 376, John F. Kennedy Library, Boston.

31 Avigdor Haselkorn, 1999. *The Continuing Storm: Iraq, Poisonous Weapons, and Deterrence*. New Haven: Yale University Press, p. 68.

32 Testimony before House Armed Services Committee, September 18, 2002. Available on: http://www.defenselink.mil/speeches/2002/s20020918-secdef2.html.

33 Charles Duelfer, 'Weapons of Mass Destruction Programs in Iraq', testimony before the Subcommittee on Emerging Threats and Capabilities, U.S. Senate Armed Services Committee, February 27, 2002. Available on: http://www.senate.gov/~armed_services/statemnt/2002/Duelfer.pdf.

34 See Haselkorn, *Continuing Storm*, pp. 67-68, and Lawrence Freedman and Efraim Karsh, 1993. *The Gulf Conflict, 1990-1991: Diplomacy and War in the New World Order*. Princeton: Princeton University Press, pp. 52, 344-345.

35 See Robert Gallucci's discussion of the inspection regime as it actually functioned during the UNSCOM period. The basic rule was, he points out, 'if you find it, you get to destroy it; if you don't destroy it, we get to keep it.' Quoted in Jean Krasno and James Sutterlin, 2003. *The United Nations and Iraq: Defanging the Viper*. Westport: Praeger, p. 80. Gallucci was deputy executive director of UNSCOM, and is currently dean of the School of Foreign Service at Georgetown University.

36 Robert Gallucci testimony, 107th Congress, 2nd session, U.S. Senate Foreign Relations Committee, 'Hearings to Examine Threats, Consequences and Regional Considerations Surrounding Iraq', July 31, 2002, p. 66. Available on: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_senate_hearings&docid=f:81697.pdf.

37 See, especially, Charles Duelfer, 2002. 'The Inevitable Failure of Inspections in Iraq', *Arms Control Today* (September).

38 For the U.S. view on this point, see especially Fareed Zakaria, 2002. 'Message to the Foot-Draggers', *Washington Post*, September 24: 'The dust from the Persian Gulf War had not settled when the French government began a quiet but persistent campaign to gut the sanctions against Iraq, turn inspections into a charade and send signals to Saddam Hussein that Paris was ready to do business with him again.'

39 Tom Farer, 2002. 'Beyond the Charter Frame: Unilateralism or Condominium?' *American Journal of International Law*, 96 (2), April, p. 360.

40 The allusion here is to Jürgen Habermas's reference to the 'civilizing achievement of legally domesticating the state of nature among belligerent nations' in an interview published in *The Nation*, December 16, 2002.

41 For an attempt to place this strategy in historical context, see my article 'The Bush Strategy in Historical Perspective', to be published in a volume edited by James Wirtz.

42 The phrase 'strategy of violence' is from Charles Lambroschini, in *Le Figaro*, February 21, 2002. Note also Chancellor Schröder's views, as paraphrased in a cover story, 'More Europe', published in *Der Spiegel* on March 31, 2003, and especially the reference there to how 'the law of the more powerful has replaced the law.' For the views of a very eminent French student of international affairs, see Pierre Hassner, 2002. 'Le retour aux guerres sans règles', *Les Echos*, October 17; Hassner makes many of these same points.

43 See, for example, a speech given by the State Department Legal Advisor, William Howard Taft, IV, to the National Association of Attorneys General on March 20, 2003. Available on: http://usinfo.state.gov/regional/nea/iraq/text2003/032129taft.htm.

44 See especially the text of Vice President Cheney's August 26, 2002, speech, cited in n. 9 above.

45 Excerpts from Secretary of State Powell's Davos speech of January 26, 2003, published in the *New York Times*, January 27, 2003.

46 For a strong dissenting argument, see especially the works of Michael J. Glennon: 2002. 'The Fog of Law: Self-Defense, Incoherence, and Incoherence in Article 51 of the United Nations Charter', *Harvard Journal of Law and Public Policy*, 25 (spring); 2002. 'Preempting Terrorism: The Case for Anticipatory Self-Defense', *Weekly Standard*, January 28; and 2001. *Limits of Law, Prerogatives of Power: Interventionism after Kosovo*. New York: Palgrave. See also Thomas Franck, 2001. 'Terrorism and the Right of Self-Defense', *American Journal of International Law*, 95 (October)—a reply to the charge levelled against the United States by a number of mainly German international lawyers that even the U.S. intervention in Afghanistan against al-Qaeda was unlawful.

47 See, for example, Louis Henkin, 1979. *How Nations Behave: Law and Foreign Policy*, 2nd ed. New York: Columbia University Press, pp. 137, 141, 155.

48 Ian Brownlie, 1963. *International Law and the Use of Force by States*. New York: Oxford University Press, p. 268.

49 Bruno Simma, (ed.), 2002. *The Charter of the United Nations: A Commentary*, 2nd ed., vol. 1. New York: Oxford University Press, p. 794.

50 Ibid.

51 Lasso Oppenheim, 1908 'The Science of International Law: Its Task and Method', *American Journal of International Law*, 2 (2), April, p. 322; see also pp. 332-333.

52 Hans Morgenthau, 1961. *Politics among Nations*, 3rd edition. New York: Knopf, p. 279. Morgenthau himself, one should remember, had begun his career as a student of international law.

53 Henkin, *How Nations Behave*, p. 23.

54 The historian's approach in this regard is somewhat at variance with that of legal scholars, who generally play down the importance of this kind of evidence. See, for example, Simma, (ed.), *Charter of the United Nations*, vol. 1, p. 27.

55 Meetings of the U.S. Delegation to the San Francisco Conference, May 4, May 7, and May 8, 1945, FRUS 1945, 1:637, 648; see also p. 593.

56 Meetings of U.S. Delegation to the San Francisco Conference, May 7 and 12, 1945, FRUS 1945, 1:637, 677.

57 Ibid., p. 637.

58 Meetings of the U.S. Delegation to the San Francisco, May 4 and 12, 1945, ibid., pp. 591 ('preclusive rights'), 593, 680. Note also General Embick's reference in the May 4 meeting to the need for America to maintain 'preclusive control over this hemisphere' (p. 594).

59 Hans Kelsen, 1966. *Principles of International Law*, 2nd ed. New York: Holt, Rinehart and Winston, p. 38; Julius Stone, 1958. *Aggression and World Order: A Critique of United Nations Theories of Aggression*. Berkeley and Los Angeles: University of California Press, pp. 93-98; the quotation is on p. 96. Note also the passage from Judge Sir Robert Jennings's partial dissent in the Nicaragua case, quoted in Franck, *Recourse to Force*, pp. 62-63.

60 Note Leo Pasvolsky's remarks in the May 12, 1945, meeting of the U.S. delegation to the San Francisco Conference, FRUS 1945, 1:677, which were quoted above; and also in the May 7 meeting, ibid., p. 639.

61 *A Commentary on the Charter of the United Nations*, Cmd. 6666 of 1945 (London: HMSO, 1945), p. 17.

62 Iraq Communiqué issued by the Presidency of the Republic, March 18, 2003.

63 See, for example, Howard French, 1996. 'France's Army Keeps Grip in African Ex-Colonies', *New York Times*, May 22; Louis Balmond, (ed.), 1998. *Les Interventions militaires françaises en Afrique*. Paris: Pedone ; and Claude Wauthier, 1995. *Quatre présidents et l'Afrique: De Gaulle, Pompidou, Giscard d'Estaing, Mitterand: Quarante ans de politique africaine*. Paris: Seuil. See also the revealing memoir written by the head of the French intelligence service in the 1970s: Count Alexandre de Marenches (with Christine Ockrent), 1986. *Dans le secret des princes*. Paris: Stock, and translated into English as *The Fourth World War: Diplomacy and Espionage in the Age of Terrorism* (New York: Morrow, 1992) (with David Andelman as co-author). See especially, in the translated edition, pp. 129-130, for the reference to the many actions involving the use of force, including assassinations of heads of state, undertaken by France in Africa, and pp. 191-196, for a discussion of an important operation in the Central African Empire.

64 See Andrew Bennett, 1999. *Condemned to Repetition? The Rise, Fall, and Reprise of Soviet-Russian Military Interventionism, 1973-1996*. Cambridge: MIT Press, pp. 311-321, and (for the absence of a U.N. mandate), pp. 318, 325-326.

65 'Putin's Folly', *The Economist* (U.S. edition), September 21, 2002. The U.S. government condemned the Russians for 'threatening unilateral action against Chechen targets on Georgian territory'—a foolish response, given what the

Americans would soon end up doing in Iraq. 'Echoing Bush, Putin Asks U.N. to Back Georgia Attack', *New York Times*, September 13, 2002. See also 'Putin Warns Georgia to Root Out Chechen Rebels Within Its Borders or Face Attacks', *New York Times*, September 12, 2002, and 'Putin Has His Own Candidate for Pre-emption', *New York Times*, October 6, 2002.

66 Thomas Franck, 2002. *Recourse to Force: State Action Against Threats and Armed Attacks.* New York: Cambridge University Press, p. 66.

67 To capture the idea that juridical arguments are framed with political goals in mind, the French have developed the concept of a 'foreign juridical policy.' See Guy de Lacharrière, 1983. *La politique juridique extérieure.* Paris: Economica; and Michel Debré *et al.*, (eds.), 1989. *Guy Ladreit de Lacharrière et la politique juridique extérieure de la France*, Paris: Masson. De Gaulle himself, incidentally, during the Cuban missile crisis explicitly supported the idea that American action was legal, even though the United States was not actually being attacked. 'President Kennedy wishes to react, and to react now', he told Dean Acheson, who President Kennedy had sent over to brief him on U.S. policy in this affair, 'and certainly France can have no objection to that since it is legal for a country to defend itself when it finds itself in danger.' Acheson-de Gaulle meeting, October 22, 1962, FRUS 1961-1963, 11:166.

68 Michael Ignatieff, 2003. 'The American Empire: The Burden', *New York Times Magazine*, January 5. Josef Joffe has used the same metaphor in many recent speeches and articles.

69 Stone, *Aggression and World Order*, pp. 97 (for the quotation), 101.

70 Michael Walzer, 1977. *Just and Unjust Wars: A Moral Argument with Historical Illustrations.* New York: Basic Books, p. 85.

71 This argument is developed in some detail in Marc Trachtenberg, 'The Question of Realism: An Historian's View', *Security Studies* (forthcoming)

72 Farer, 'Beyond the Charter Frame', p. 360.

73 Walzer, *Just and Unjust Wars*, p. xiii.

74 Henry Kissinger, 2003. 'NATO's Split: Atlantic Alliance is in its Gravest Crisis', *San Diego Union-Tribune*, February 16.

75 'Rumblings of War', *Der Spiegel* (English edition), March 10, 2003.

76 On April 8, 2003, for example, *Le Monde* carried an article with the title 'Bush, obscène mécanicien de l'empire.' It is inconceivable that an anti-French article with a similarly inflammatory title would have been published at the time in the New York Times.

77 Quoted in Richard Bernstein, 2003. 'Foreign Views of U.S. Darken After Sept. 11', *New York Times*, September 11.

78 Referred to Pierre Lellouche *et al.*, 2003. 'Après la guerre, renouons nos alliances', *Le Figaro*, April 8.

79 Anthee Carassava, 2003. 'Anti-Americanism in Greece is Reinvigorated by War', *New York Times*, April 7.

80 Sam Tanenhaus, 2003. 'Bush's Brain Trust', *Vanity Fair*, July, p. 169.

81 For examples of articles using the word 'pretext', see 'Rounds of Lies', *Der Spiegel*, June 27, 2003; Pierre Marcelle, 2003. 'Les menteurs', *Libération*, June 4; and Jeffrey Sachs, 2003. 'The Real Target of the War in Iraq was Saudi Arabia', *Financial Times* (London), August 13. There were articles with similar themes in *The Observer* (June 1, 2003), *The Independent* (May 30, 2003), and *The Guardian* (May 31, 2003).

82 Wolfowitz interview with Sam Tanenhaus, May 9, 2003. Available on: http://www.defenselink.mil/transcripts/2003/tr20030509-depsecdef0223.html).

83 See, for example, the story in the *Daily Mail* (London), June 5, 2003, p. 7, whose source was the German newspaper *Die Welt*. On this incident, see Sarah Baxter, 2003. 'If It Makes America Look Bad, It Must Be True, Mustn't It?' *Sunday Times* (London), June 15.

84 On this point, see especially Jean-François Revel, 2002. *L'obsession anti-américaine: son fonctionnement, ses causes, ses inconséquences.* Paris: Plon.

85 Yves Thérard, 2003. 'Powell a dit', *Le Figaro*, February 6.

86 See Fareed Zakaria, 2003. 'A Dangerous Trust Deficit', *Newsweek*, February 10. De Gaulle's remark is quoted in that piece.

87 Eisenhower-Norstad meeting, November 4, 1959, FRUS 1958-1960, 7(1):498.

88 See Trachtenberg, *Constructed Peace*, pp. 147-156.

89 Note, for example, de Gaulle's reference in passing in his memoirs to America as 'un pays que sa puissance sollicite vers la domination.' Charles de Gaulle, 1970. *Mémoires d'espoir: Le renouveau*. Paris: Plon, p. 222.

90 Helga Haftendorn, 'One Year after 9/11: A Critical Appraisal of German-American Relations'. Available on: http://www.aicgs.org/publications/PDF/haftendorn.pdf.

91 James Reston, 1963. 'What People Do They Think We Are?' *New York Times*, January 21.