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# 9/11 and the Raiders of the Lost Ark†

Gwyn Prins‡

At the anniversary of the attacks by al-Qae'da, it is clear that because of its galvanizing effect upon the Bush Jr. Administration, 9/11 has been a greater shock to the patterns of American foreign relations, and especially its relations to its closest allies, than to anything else. Stresses arising from divergent views on the nature and applicability of international law have become one of the most inflamed areas in contention. These two observations therefore prescribe the subjects of this article. First, and logically in any useful sequence, it examines what happened in fact. Then it signals the likely areas of consequential strain. But first, the reader is owed an explanation of the title of the piece.

All readers will recollect (for I assume that all readers of this journal will have seen the film, or can consult an attorney who has), that at the end of *Indiana Jones and the Raiders of the Lost Ark*,<sup>1</sup> the Ark of the Covenant is wheeled away into a vast hangar full of boxes, to be lost there, again.

I have rediscovered it for our present purposes, and retrieved some secret documents from it, which will help inform the argument.

The first retrievals from the Lost Ark:

We ought to see somewhat clearly to what purpose of real utility our effort tends. We embark in proceedings which can never be indifferent in their bearings upon the governments taking part in them

What is the role of statesmanship? The test of a statesman is his ability to recognise the *real relationship of forces* and to make this knowledge serve his ends.<sup>2</sup>

These documents remind us that there are *two* events of significance before us to be examined: the event itself and the reaction to the event; and that, as suggested above, it may be that the latter has greater significance than the former. But, since the former was the cause of the latter, one starts with it.

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1. RAIDERS OF THE LOST ARK (Paramount Pictures 1981).

2. Emphasis added.

## Part I: Technical and Political Aspect of 9/11

Why did 9/11 happen, and what did it all mean? Whence came the adamantine cruelty of imagination and the terrifying fixedness of will which conceived and executed what was undoubtedly, operationally, the perfect terrorist attack? The evidence tells that socially, a year later, things have certainly not returned to normal. 30,000 people had narrow escapes from death that day. To them must be added the effects upon their relatives and co-workers. Broadway and the restaurants are still struggling. *The New England Journal of Medicine* published statistics showing a suicide spike, and substantial increases in prescription of anti-depressants in the months immediately following.<sup>3</sup> In designing this ultimate propaganda of the deed, Osama bin Laden speared the cultural self-confidence of Americans with dreadful precision. Added to this, 9/11 abruptly altered the course and the priorities of the Bush Jr. Administration, which entered office intent upon avoidance of foreign entanglement and is now embarked upon an amorphous “war” on terrorism, worldwide. Can things ever be the same again?

At times like this, everyone has a responsibility to think coolly and clearly. Faced with any social phenomenon which disorients, or which terrifies, Professor Jim Rosenau (who has thought more useful thoughts about turbulence in world politics than most) recommends that we ask one simple question: “Of what is this an instance?”<sup>4</sup> Answering this question is a reliable and efficient way to delineate the boundaries.

In the case of 9/11, the Rosenau Test tells us, first, that this was not a new sort of terrorism. It was the culminating act of classical, but unconditional, terror rising (as mostly it has in the last thirty years) from the spiraling vortex of the Middle East. It differs in scale, not in type. But secondly, that is not true of the response. The depth of psychological injury to Americans’ self-image and sense of personal security in public spaces, has elicited a massive reaction. It will turn the U.S. intelligence community upside-down, having so savagely revealed the limitations of a bottom-up technology-driven, rather than a top-down people-focused approach.

Since the nerve gas attack in Tokyo in 1995, its telescope has been trained on the threat of mass casualties from weapons of mass destruction. However, bin Laden showed that criteria of ease and reliability of function, as well as the desired shock of turning a benign airliner into a thing of horror, meant that the lesson from Japan was misunderstood.

We have a duty to the memory of the victims to visit justice on the perpetrators and also a duty to understand: to put it in context. 11 September was peculiarly visible, occurring suddenly in the front parlor of the world’s richest and most globally wired people. It is thought that a third of those earning over \$100,000/year in the United States knew someone

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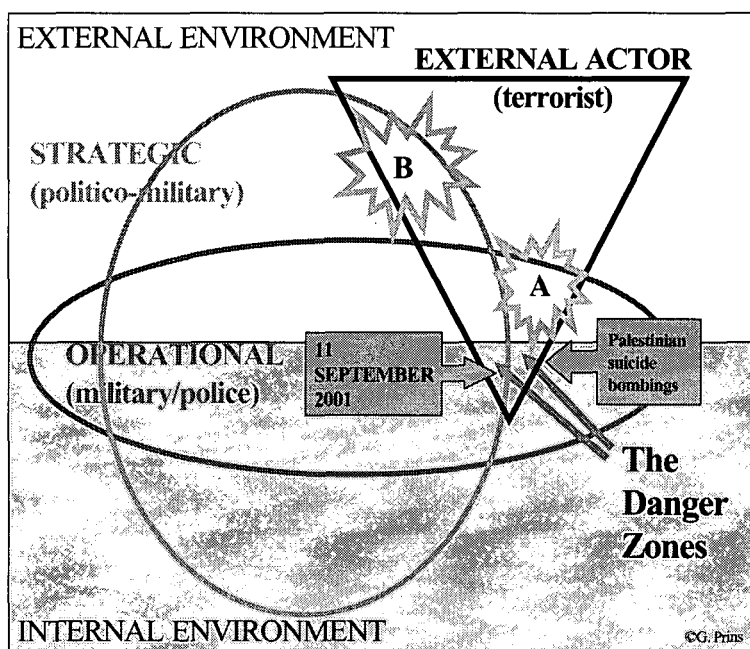
3. Sandro Galea et al., *Psychological Sequelae of the September 11 Terrorist Attacks in New York City*, 346 *NEW ENG. J. MED.* 982-87 (2002).

4. JAMES N. ROSENAU & MARY DURFEE, *THINKING THEORY THOROUGHLY: COHERENT APPROACHES TO AN INCOHERENT WORLD* 183 (1995).

killed in the twin towers either directly, or at one remove. These were not the unobtrusive deaths of thousands in the civil wars, in collapsed states, which disfigure the Poor World.

How could it happen? There are technical and political dimensions to this answer, which are taken in turn.

Terrorists do not come out the blue. Indeed, the social spaces which they inhabit can be delineated, and their scope of action indicated. These are a function of the interaction between three sets of actors in two environments. In the case of 9/11, al Qae'da successfully got "inside the loop" of both the operational and the strategic organs of the U.S. Government. To get inside the former only, permits Palestinian suicide bombers to slip through Israeli security cordons, for example. To get inside both permits 11 September (see figure).



But, the diagram also shows the reciprocal vulnerability of the terrorist. The tactical cells can be picked off at "A"; the hydra-headed leadership attacked at "B." Both these objectives are pursued as part of the "war" on terrorism. In fact "A" is (or should be) the normal business of intelligence and border police services, "B" of secret intelligence services. In addition, exceptionally, as with the war on Taliban Afghanistan, the entire external environment can be changed to become unwelcoming to the terrorist. This, then, is the technical nature of the threat. What were the political objectives of the perpetrators?

First, it must be clearly understood that the attacks on the World Trade Center and the Pentagon did *not* have the United States as their principal object. America, to be sure, is not popular with fundamentalist

Islamists; but it was the breaking of Bush Senior's promise at the Joint Session of Congress on 6 March 1991, which brought the United States into the cross-wires. On that fateful occasion, President Bush stated that the first of four 'key challenges' was "[t]o create shared security arrangements . . . now America stands ready to work with [states of the region] to secure the peace . . . ."<sup>5</sup> Crucially—and unambiguously—he then added, "[t]his does not mean stationing U.S. ground forces in the Arabian Peninsula, but it does mean American participation in joint exercises . . . ."<sup>6</sup>

That promise, of course, could not be kept. For one immediate consequence of the failure to complete the Gulf War operation by invading Iraq and overthrowing Saddam Hussein in order, as mandated by the UN, to return international peace and stability to the region,<sup>7</sup> was particularly, morally, obnoxious as well as ineffective. The Kurds in the North and the Marsh Arabs in the South, who had heeded the President's open encouragement to rise in revolt, had then been left to spin in the wind. They were now offered the half-hearted palliative of the 'no-fly-zones.' That from the South was mounted from bases in Saudi Arabia in inevitable breach of the President's promise, rather than from aircraft carriers—a decision which has always seemed to me to be exceedingly hard to understand. Now, a decade later, we experience a fairly predictable consequence.

Osama bin Laden—spoilt playboy, impressionable pupil of Abdullah Azzam (the founder of Hamas), a man possibly psychologically unbalanced at a tender age by the loss of his father in a helicopter accident—is and always has been centrally motivated by his animus against the House of Saud.<sup>8</sup> Its overthrow, and for preference that of the other—in his eyes—treacherous regimes of Egypt and Pakistan, are his prime political objective. A regional war would suit his purposes, although he will settle for a fifth Arab-Israeli war, fomented by Hamas and its like, if he must. These were and are his driving concerns.

Al-Qae'da and similar shards of fundamentalism are products of the tragedy which has overtaken Islam in the twentieth century. The civilization which saved and elaborated the legacy of Greece and Rome during the European Dark Ages, and which restored that inheritance, with interest, through Moorish Spain and the Norman Kingdom of Sicily in time to nourish the Renaissance, has become encapsulated. As the late Ernest Gellner explained, paradoxically, Islam as a belief system protected itself better from erosion by the forces of modernity than any of the other great world religions. But, that encapsulation also prevented any engagement with change.<sup>9</sup> Islam has not yet experienced its reformation, and lacking high

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5. President George Bush, *Address Before a Joint Session of the Congress on the Cessation of the Persian Gulf Conflict* (Mar. 6, 1991), available at <http://bushlibrary.tamu.edu/papers/1991/91030600.html>.

6. *Id.*

7. U.N. SCOR, 46th Sess., 2981st mtg., U.N. Doc. S/RES/687 (1991).

8. For more discussion, see Lawrence Wright, *The Man Behind Bin Laden*, NEW YORKER, Sept. 16, 2002, at 56; Mary Anne Weaver, *The Real Bin Laden*, NEW YORKER, Jan. 24, 2000, at 32.

9. See ERNEST GELLNER, *MUSLIM SOCIETY* (1981).

centers of power, cannot easily trigger one. So in al-Qae'da, we witness and suffer the furious product of that anguished struggle which convulses the Islamic world as it seeks to answer Bernard Lewis's question, simply put in the title of his recent book about the failure of the Islamic world to manage its confrontation with and conversation with modernity: "What went wrong?"<sup>10</sup>

## Part II: The Response: Initial Success and Subsequent Mistakes

The period from 12 to 28 September was a period of astonishing restraint by the United States and of competence and co-ordination among America's allies in the management of the response to the attacks. The competence was to be seen both in the individual areas of diplomatic, military and intelligence co-operation and in the way in which those areas were harmonized.

There was also a bold and dramatic political coup: the turning upside down of the Indian sub-continent from the way that its politics have been for the last 45 years, with Mr. Musharraf of Pakistan discovering quickly which side he was going to support. The implications of that are not trivial; nor can the long-term success of that first phase be taken for granted. Since 9/11, there have been two sudden detonations within the constant tensions of Kashmir—first at the turn of 2001 following the 13 December attack upon the Indian Parliament in New Delhi, and then the even larger and more bellicose mobilizations, with nuclear undertones, four months later. They remind us how constantly close the international community now stands to the threat of success in bin Laden's key objectives in that region.

But, it all began very well. As far as Europe and America's closest allies, in NATO, were concerned, the period from 12 to 28 September was one of remarkably successful diplomatic co-ordination. This produced the invocation and activation of Art. V, the central article of the NATO Washington Treaty, linked to two Security Council resolutions: that of 12 September (Resolution 1368, which was the initial response made by the SC; and a GA resolution that day also) and then that of 28 September (Resolution 1373, by far and away the most significant statement of this type that the UNSC has made in the history of the UN).<sup>11</sup> The 1373 Committee, charged to study and plan actions consequent upon recognition of terrorism as a source of threat to international peace and security, and chaired by Sir Jeremy Greenstock, the British Ambassador to the UN, has made significant progress. These efforts fashioned a workmanlike and recognized plank in international law upon which to fix subsequent actions. The only thing missing that might have been done and was not, was a formal declaration of war by NATO upon Afghanistan following the accept-

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10. See Pervez Hoodbhoy, *Islamic Failure*, PROSPECT, Feb. 2002; BERNARD LEWIS, *WHAT WENT WRONG? WESTERN IMPACT AND MIDDLE EAST RESPONSE* (2002).

11. S.C. Res. 1368, U.N. SCOR, 4370th mtg., U.N. Doc. S/RES/1368 (2001); S.C. Res. 1373, U.N. SCOR, 4385th mtg., U.N. Doc. S/RES/1373 (2001).

ance by the NATO Ambassadors of the American evidence which tied al-Qae'da to that country as the source of the attacks.

If one adds to this diplomatic feat, the competent preparation of the intelligence picture and assembly of the necessary components for the strategic raid into Afghanistan that was going to take place at the end of the year, one may conclude, that during the rest of that month the picture is of quite extensive multilateral transatlantic co-operation in many areas and at all levels.

There have inevitably been costs. The United States has incurred *three major diplomatic costs* in order to do what it has been able to do so far.

The first is the cost of romancing Mr. Putin: Mr. Putin is the politician who has probably derived the greatest all-round advantage from the terrible turn of events last September. Mr. Putin had to be romanced because he alone was in a position to re-supply the chosen foot-soldiers—the shop-worn guerrillas of the Northern Alliance—quickly (even if the west paid for the T-55s). He also had to be willing to provide access to various bits of real estate in Uzbekistan and within the Russian state itself. He was. But the cost is obvious—it was a silencing of western official voices on the conduct of the Russian armed forces in Chechnya and, indeed, a muting of commentary on internal suppression of dissent that is going on in Russia (in particular, one thinks of last year's state security legislation).

The second cost has been subsequently mitigated by the evident support for the campaign of suicide bombing in 2002 among Palestinians at large. That has greatly weakened the stature of their case to the point of its imminent extinction in respect of the territories occupied by Israel in 1967. Faced with constant terrorism, Israel requires strategic depth; so the geographical product of the 1967 battlefield victory is being, in step-by-step response to the campaign of terror, gradually reclaimed. That policy is plainly congenial to the Bush Jr. Administration, which is convenient since there has been, as a result of 9/11 and the evident desire to finish the Unfinished War of 1990/91, a serious loss of American leverage in the Middle East. Mr. Sharon has been let loose, first after the incident of the Iranian arms shipment in the Karine-A to the PLO that was intercepted in the Red Sea, and increasingly, act by act, after each new suicide bombing attack. American public opinion, understandably, feels a solidarity in affliction after 9/11 and does not criticize the Israeli response.

Furthermore, Sharon is probably needed in order to ensure that the United States has continued access both to Israeli intelligence and possibly the preparation of Israeli help in any future American action against Iraq. (The Israelis, recollect, have been there before with the lightning strike on the Osirak reactor). The cost, obviously, is that the leverage which the United States can exercise in the Middle East, is much diminished. But, the brutal fact is that the self-destructive conduct of the Palestinians has made that less important than it was. I suspect that the European Union persists in support for Mr. Arafat as much, if not more, because this is the only agreed foreign policy of the EU, than on the merits of the case. Whichever way, it throws Europeans into direct disagreement with the

United States on this issue, and thereby stresses the transatlantic ties further.

Thirdly, there is the less immediately visible, but nonetheless real cost of potential problems with India—the English-speaking demographic superpower that is increasingly a leading force in the global information technology support and development field. Indeed, we have already seen it: the sudden re-ignition of the continuously combustible Kashmir crisis is already before us. The United States is now the reluctant prime arbiter to whom both sides turn. That complicates the already ballooning multi-faceted pattern of United States commitments in and around central Asia which, as Michael Klare had earlier argued,<sup>12</sup> may be becoming rapidly a rising priority for U.S. interests, for reasons of energy politics.

A working assumption of this essay is that if the American response to 9/11 is to result in a secure victory over terrorists or Terror, it must avoid the temptation of belief that the enormity of the injury felt justifies responses unconstrained by the normal application of national and international law. To act otherwise is to concede an important victory to the terrorists, by acting in their terms: in Robert Bolt's play, *A Man for All Seasons*, Sir Thomas More famously reminded his hot-headed son-in-law Roper that if, in the ardor of your righteous anger, you cut down all the laws in order to chase the devil, then, when the devil turns to face you, where will you hide? This dilemma is one which the British state has had to face for decades in its fight with the IRA, and which it resolved by making the re-affirmation annually of the Prevention of Terrorism Act, a requirement, thereby signaling its systemic abnormality.<sup>13</sup>

In the management of the response to 9/11, after the initial successes, the U.S. Administration committed *two major strategic errors*. The first, committed in November, was President Bush's announcement that military tribunals would be set up in order to deal with al-Qae'da suspects.<sup>14</sup>

The Tribunals Order, as published, is flatly in breach of the Third Geneva Convention, an international instrument ratified by the United States Congress on 6 July 1955.<sup>15</sup> Especially this is in the Order's denial to suspects of the right of representation and of appeal, which breach Articles 105 & 107, respectively.<sup>16</sup> The failure to establish the status of the Guantanamo (and Diego Garcia) detainees by the book (through a properly

12. Michael Klare, *The New Geography of Conflict*, FOREIGN AFF., May/June, 2001.

13. Terrorism Act, 2000, c. 11 (Eng.), available online at <http://www.legislation.hmso.gov.uk/acts/acts2000/20000011.htm>.

14. Military Order of November 13, 2001—Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, 66 Fed. Reg. 57,833, at § 4 (Nov. 16, 2001) available at <http://www.whitehouse.gov/news/releases/2001/11/20011113-27.html> (Nov. 13, 2001) [hereinafter Detention Order].

15. Geneva Convention III Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949 available at <http://www.unog.ch/frames/disarm/distreat/geneva3.pdf> [hereinafter the Convention].

16. Detention Order, *supra* note 14 at § 7(b)(2). The relevant clauses of the Convention read:

Article 105. The prisoner of war shall be entitled to assistance by one of his prisoner comrades, to defence by a qualified advocate or counsel of his own choice, to the calling



established tribunal, as the Conventions prescribe), but instead for Secretary Rumsfeld to arrogate that power to himself, is also incorrect. The argument subsequently that somehow the fact that they were not detained in the continental United States justified this, was both weak and unwise. Reasonable people will understand that a prime terrorist suspect with possibly vital information must be interrogated; but that is best done in and through established criminal law procedures. Otherwise, the United States risks the same opprobrium which tainted France from its use of torture in the war against the FLN in the kasbahs of Algeria.

The president's Order is also, frankly, bizarre; for it offends against American domestic law, in particular a famous case before the Supreme Court, *The Paquete Habana* case,<sup>17</sup> which was the occasion upon which the

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of witnesses and, if he deems necessary, to the services of a competent interpreter. He shall be advised of these rights by the Detaining Power in due time before the trial.

Failing a choice by the prisoner of war, the Protecting Power shall find him an advocate or counsel, and shall have at least one week at its disposal for the purpose. The Detaining Power shall deliver to the said Power, on request, a list of persons qualified to present the defence. Failing a choice of an advocate or counsel by the prisoner of war or the Protecting Power, the Detaining Power shall appoint a competent advocate or counsel to conduct the defence.

The advocate or counsel conducting the defence on behalf of the prisoner of war shall have at his disposal a period of two weeks at least before the opening of the trial, as well as the necessary facilities to prepare the defence of the accused. He may, in particular, freely visit the accused and interview him in private. He may also confer with any witnesses for the defence, including prisoners of war. He shall have the benefit of these facilities until the term of appeal or petition has expired.

Particulars of the charge or charges on which the prisoner of war is to be arraigned, as well as the documents which are generally communicated to the accused by virtue of the laws in force in the armed forces of the Detaining Power, shall be communicated to the accused prisoner of war in a language which he understands, and in good time before the opening of the trial. The same communication in the same circumstances shall be made to the advocate or counsel conducting the defence on behalf of the prisoner of war.

The representatives of the Protecting Power shall be entitled to attend the trial of the case, unless, exceptionally, this is held in camera in the interest of State security. In such a case the Detaining Power shall advise the Protecting Power accordingly.

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Article 107. Any judgment and sentence pronounced upon a prisoner of war shall be immediately reported to the Protecting Power in the form of a summary communication, which shall also indicate whether he has the right of appeal with a view to the quashing of the sentence or the reopening of the trial. This communication shall likewise be sent to the prisoners' representative concerned. It shall also be sent to the accused prisoner of war in a language he understands, if the sentence was not pronounced in his presence. The Detaining Power shall also immediately communicate to the Protecting Power the decision of the prisoner of war to use or to waive his right of appeal.

Furthermore, if a prisoner of war is finally convicted or if a sentence pronounced on a prisoner of war in the first instance is a death sentence, the Detaining Power shall as soon as possible address to the Protecting Power a detailed communication containing:

- (1) the precise wording of the finding and sentence;
- (2) a summarized report of any preliminary investigation and of the trial, emphasizing in particular the elements of the prosecution and the defence;
- (3) notification, where applicable, of the establishment where the sentence will be served.

The communications provided for in the foregoing sub-paragraphs shall be sent to the Protecting Power at the address previously made known to the Detaining Power.

17. 175 U.S. 677, 711 (1900).

Supreme Court prescribed that the United States should respect customary international law.

The effects: of having made this Order are four:

First, it has irritated U.S. allies. The Spanish Judge Baltazar Garzon—the Judge Dredd of terrorists and dictators everywhere—who has authority over several al-Qae'da suspects, has been rather blunter. He has said that if this is the way the United States is going to deal with these people, then do not expect allies to extradite suspects to that jurisdiction.

Secondly, it has angered the U.S. armed forces. They will not say this publicly, because they are loyal, but from private knowledge, it is plain—and hardly surprising—that they wish to have the protection of the Geneva Conventions if ever they are caught in battle in the future.

Thirdly, the Order endangers the civil rights of aliens living in this country; and in all of this, the issue risks playing into bin Laden's (possibly dead, possibly living) hands. And ultimately, it is pointless.

Faced with a real case—the case is that of Zacharias Moussaoui, the twentieth hijacker—what is happening in the United States is exactly what all of us who are friends of the United States would wish. This man is being put on trial in a federal court with proper prosecutors, proper rules of evidence and he will be given the sort of trial that he should have.<sup>18</sup> So, this is an entirely self-inflicted and unnecessary wound.

Fourthly, the Bush Jr. Administration has made a huge issue of its refusal to subscribe to the jurisdiction of the International Criminal Court (ICC), to the point of threatening to veto the continuation of UN peacekeeping operations in Bosnia. As a result, it has been granted a certain exemption. In fact, the stipulated checks and balances in the framing legislation of the ICC should satisfy the United States, as it does the British or French governments, for example (whose soldiers are much more directly in harm's way). In particular, it is unequivocally resolved that reference to the ICC only occurs in circumstances where there is no possibility of proceeding through national courts. And this, in part, is why the United States is not satisfied. It is a nice paradox: the decision (encouraged by the United States) to force the extradition of Mr. Milosevic to stand trial in The Hague, in breach of the Yugoslav constitution, before visibly exhausting the possibility of arranging his trial in Yugoslavia. The ICC issue is therefore unhelpfully and confusingly muddled.

The second strategic error is less lurid, but arguably more insidious. It was the failure to use NATO in the second phase in operations in Afghanistan.

The war had three phases. The first phase was the defeat of the Taliban. It was a great success, and demonstrated an emerging new mode of U.S. military operation, in which U.S. air-power, electronic and remote sensing surveillance assets, and data fusion are coupled to human intelligence—which it does not possess—and to foot-soldiers that it does not wish

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18. See generally *U.S. v. Moussaoui*, No. 01-455-A, 2002 U.S. Dist. LEXIS 17737, 2002 WL 31051638 (E.D. Va. Sep. 4, 2002).

to provide, but is willing to command with Special Forces. Strong and specific sinews bound this military wing to the diplomatic wing, equally brilliantly coordinated by the German government through the Bonn process.<sup>19</sup> A text-book example of successful multilateral diplomacy delivered the Karsai interim government and a route-map to the holding of the *loya jirga*: the national assembly recently and successfully convened to plot the course for Afghanistan in the long term.

That war is now over. The Taliban folded. The Northern Alliance proved to be adequate foot-soldiers. So the PoWs taken to Guantanamo Bay in Cuba must be sent soon back to face whatever awaits them in the new Afghanistan. It is not up to Mr. Rumsfeld to tell people what to do with them, either.

The second phase is engaged at the time of writing. It is the provision of a constabulary military presence in the country. This stabilization force was originally under the command of a British general (John McColl), who, with some difficulty and great eventual success, stitched together an *ad hoc* presence which kept the streets of Kabul safe.

Specifically, the failure was, given that Art. V has been invoked and declared by the Alliance, not to use the Allied Rapid Reaction Corps' Ready elements which sit in Mönchengladbach on seventy-two hours notice to move, for that task.

The failure to follow through from that welcome first diplomatic action to a material consequence has materially injured—maybe even accidentally assassinated—the Alliance. I do not believe that this was the intention. This I see just as ham-fisted diplomacy by the Administration. It has, incidentally, also damaged Mr. Blair, the most loyal of the Administration's supporters who, at the time of writing, is no doubt pondering how to square the circle of his evident willingness to consider British participation in a campaign to finish the unfinished business of the Gulf war, and to unseat Saddam Hussein, with rising domestic doubts, voiced by weighty coalitions of clerics, among others.

How on earth did this accidental assassination come about? Tom Friedman in the *New York Times* wrote that the cause lay in disparities: because the U.S. armed forces are now so technically advanced and different from those of any other country, they really can't operate with anybody else.<sup>20</sup> That is an observation which is perfectly true, but in the present context, not relevant. (In fact, it doesn't matter very much whether you can land your Hercules in pitch darkness or not if you don't know *where* to land it, and *why*—a substantial British contribution to the war in Central

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19. Press Release, United Nations Security Council, Security Council Endorses Afghanistan Agreement on Interim Arrangements Signed Yesterday in Bonn, Unanimously Adopting Resolution 1383, U.N. Doc. SC/7234 (2001) available at <http://www.un.org/News/Press/docs/2001/sc7234.doc.htm> (June 12, 2001); see generally Michael P. Scharf & Paul R. Williams, *Report of the Committee of Experts on Nation Rebuilding in Afghanistan*, 36 NEW ENG. L. REV. 709 (2001).

20. Thomas Friedman, *The End of NATO?*, N.Y. TIMES, Feb. 3, 2002, §4, at 15.

Asia where Britain has played the Great Game for hundreds of years, literally).

The relevant and more insightful observation was made in an *op/ed* piece in *Die Stern* on 21 January, which pointed out that the real injury came from the failure to use NATO, having welcomed its diplomatic commitment on 12 September, through the activation of Art. V. This was a result of an American inconsistency and, frankly, said *Die Stern*, clumsy diplomacy. But furthermore, I guess that this was because of American fears of being impeded by the need for consultation, as it believed that it had been in Kosovo; yet that fear was misplaced, once it is firmly grasped that Phase II is not the same as Phase I.

However, the creeping enfeeblement of NATO was already in the system. The original Clinton enlargement decision of 1994 is inexorably working itself out and the forthcoming next enlargement, which will doubtless take place, will signal the end of NATO as a technically competent military alliance and its transformation into a diplomatic club of uncertain purpose with a very expensive entrance fee. In my view, it is another unnecessary wholly self-inflicted injury.

However, 11 September has retrieved the breakdown in relations with Russia, which was caused by the initial enlargement decision and then amplified by their perception of the Founding Act and the dismal NATO-Russia Council. But the Administration sweeping aside the Blair-Robertson initiative to try to use the new "NATO at Twenty" structure to build a basis for bilateral relations with the Russians, even before it is in place, in favor of a more robust and direct American-Russian relationship, has again served to sideline the importance of NATO as a diplomatic instrument. And we have no institutional alternative. Despite much noise, there is no operational EU alternative, nor likely to be, and there is no viable UN military modality either, as explained in the Brahimi report and in the authoritative 2001 report of the International Commission on Intervention and State Sovereignty.

In sum, in the year since 11 September 2001 the U.S. has not been as multilateral in its actions as at first might have appeared; but equally, it is not as unilateral in its actions now as some people feared. Backtracking on the tribunals issue is just one example: the Order having been made, and the damage done, they instruments have been quietly set aside for the moment. However, that volatile mixture does mean that we have a circumstance where there is a very high potential to lose friends, to compromise the coalition and to precipitate a regional risk cascade.

### Part III: Future Prospects

The places where things could get seriously out of control are in the immediate environs in Central Asia. That is why observations such as that in which, incongruously, the deadly State of the Union speech lumped Iran in an "Axis of Evil" with North Korea and also with its bitter enemy in the hugely costly Iran/Iraq war, led to millions of people becoming outraged in

Iran. That political mobilization undermined precisely the forces in that country which we should wish to nurture. This was just simply not smart.

In my view, colleagues in Europe understand perfectly well the real—but fundamentally different—types of threat associated with each of these three. The mistake was to link them. I understand from reliable sources that the sound-bite, which will hang around Mr. Bush's neck like a dead albatross, was of his own confection, and against advice.

What might the future prospects be? Three things:

It is likely that there will be future military action in this region, and given the accidental assassination, and absence of other institutional alternatives, I suggest that military forces in the future are likely to act on *ad hoc*, bilateral arrangements, principally between the United Kingdom and United States but on occasion with others as party to the coalition, with subcontracting UN mandates provided from time to time. This essay has argued stoutly for the importance of acting by the book. It will be in no-one's interests, except those of Mr. bin Laden and his like, if Sir Thomas More's apocryphal advice to his son-in-law is ignored.

The second thing that we have to watch out for is the misreading of global trends. In particular, we should watch the U.S. Administration like hawks: because the United States has just now embarking upon its period of untrammled dominance in global politics. But, we should watch everyone.

For most immediate example, it is a matter of unexceptional scholarship that unconditional terrorism is a phenomenon which has been in decline worldwide for at least a decade. Rare high impact mass casualty events emanating from the Middle East, of which 11 September was one, will frankly become much less easy for anyone to undertake.

Furthermore, the prospect of the people who want to do us harm being able to get hold of chemical and biological means in forms that can be dispensed successfully to kill widely is, on present evidence, still far from their capabilities, whatever their wish. (The key case to examine this is the career of the Aum Shinrikyo cult in Japan.) State Terror, on the other hand, is a vast and demanding threat, which is too often concealed by the analytically sloppy conflation of terrorism with Terror. Terror in the form of democide (the killing of its own citizens by pathological governments) killed more people in the twentieth than did the great wars; and an understanding of democide, not war, is the correct matrix for understanding political violence in the coming century.<sup>21</sup>

Since 9/11, the Bush Jr. Administration has presided over the largest one year drop in the value of the stock exchange since the First World War—including the collapses of the Crash and the Depression. This adjustment was not caused by the attacks. In fact, the skilful management of the markets by the central banks in the period following 9/11 was one of

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21. For an extended exposition of this much misunderstood issue, see GWYN PRINS, *THE HEART OF WAR: ON POWER, CONFLICT AND OBLIGATION IN THE TWENTY-FIRST CENTURY* (2002).

the other successes of the immediate aftermath. The source of instability was made at home. As the stain from Enron, WorldCom, Halliburton, and Harkin Oil spreads, we may hear more, more stridently, about the war on terrorism. And if that stain were to touch high quarters of the Bush Jr. Administration in ways that could not be avoided or denied, which as far as I understand at the moment it has not done, were Enron or Halliburton or Harkin Oil to become issues on the scale of the "Teapot Dome" affair in American domestic politics, then keep your heads down and watch out! And think also in passing of poor Mr. Blair who has done his level best to be helpful to Mr. Bush, but whose reward is his dose of sleaze, which may yet touch people close to him in British politics at a time when the mud seems to be sticking to his government and is producing a hard-shelled cynicism about any brand of formal politics in Britain.

The real dangers in such preoccupations are that they blind policy-makers to the central medium-term tensions.

The fact is that there is about to be serious dispute among western European states over their access to energy resources in the next ten or fifteen years.

The British squandered North Sea oil, failed to reform and modernize their infrastructure and, on Ministry of Defence published estimates, will be looking to import ninety percent of oil within 15 years.<sup>22</sup> France faces the bloc obsolescence of eighty percent of its base-load nuclear generation capacity within a decade. There is no fast-breeder programme to follow on, as had been originally intended. Doubtless, that fission nuclear capacity will be replaced; but there will be a fossil fuel shortfall, and France too will be in the market. Germany has already secured its long-term supplies by effectively cornering the Russian market—or more, specifically, current pipeline capacity. There will not be much surplus to pass on to others. France and Britain have keen interest in Iran and Iraq, but Professor Klare tells us that the United States does also:<sup>23</sup> so a further ground for unwelcome friction is preparing.

And the longer term global security threats? One example serves: the projected levels of AIDS infection in East Asia and South Africa.<sup>24</sup> If we

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22. UK Ministry of Defence, *The Future Strategic Context for Defence*, ¶ 14, HMSO (2002), available at [http://www.mod.uk/issues/strategic\\_context/physical.htm](http://www.mod.uk/issues/strategic_context/physical.htm).

23. Iraq is the world's largest unexploited but proven oil reserve (in excess of 300 billion barrels). Only a handful of the more than 70 oilfields are yet in production. Having foolishly swapped northern Iraq (including the oilfields of Mosul and Kirkuk, where oil was struck first in 1921) for Lebanon, with the British, in the 1920s, France has failed since then to gain exclusive rights in other major oil properties. The French oil company, Total, has, it is authoritatively reported, made an agreement with Saddam Hussein's regime, to gain exclusive exploitation rights in two Iraqi oilfields, which may explain the depth and long-standing of French involvement with that distasteful regime, to which it famously supplied nuclear technology for the Osirak reactor and re-processing complex destroyed by Israel. See MICHAEL T. KLARE, *RESOURCE WARS: THE NEW LANDSCAPE OF GLOBAL CONFLICT* (2001).

24. See TONY BARNETT & ALAN WHITESIDE, *AIDS IN THE TWENTY-FIRST CENTURY: DISEASE AND GLOBALIZATION* (2002).

want to get a glimpse of what we are in for on those sorts of issues look only at what is happening in Zimbabwe today.

The clique currently controlling Zimbabwe is behaving disgracefully. Mr. Mugabe behaves in an ever more erratic and dictatorial manner. The army said that it would not accept the removal of Mr. Mugabe in an election. Therefore, he stole the election, harassed the commercial farming sector, collapsed domestic food production, induced famine, and used food aid to starve the children of his opponents. Then bear in mind what we know from blood tests that were conducted secretly by a Swedish hematologist on samples from the Zimbabwean army.

This is an army that is seventy to eighty percent HIV positive.<sup>25</sup> We are dealing with a political elite, which, as individuals possibly, and as members of their families certainly, are living dead. The consequences of how politics work when you are dealing with people that know that they are themselves and in their immediate kin and colleagues, condemned to death are issues which we really ought to be thinking about rather more.

What does all of this tell us about the tasks which are prescribed for those of us who seek to understand the real relations of forces? The Rule of Three!

First, it tells us that we must push further the question which Professor Bob Jervis, reopens in his 2001 American Political Science Association presidential address. He reanimates Karl Deutsch's concept of the security community (that is the community within which it is inconceivable that people would actually come into conflict.) What constitutes a security community now in a time of a single dominant power, he asks? To which I add a further question arising from the extensive changes in security institutions that are under way: are our assumptions about the security communities which we think we have at the moment, and particularly in Europe, reliable?

Secondly, I think that we need to be looking carefully for the breakpoints which could occur, which we might foresee in the trends that I have just been suggesting we might discern. These are breakpoints which could threaten one of two things. Either a catastrophic breakdown in Euro-American relations, but equally a radical improvement because cubic curves can go in two directions.

Thirdly and finally what prospects can we draw from the strategic conclusion, which I derive from this essay? We dip into the Lost Ark for the last time.

There can be no doubt of the general danger which menaces more or less the stability of all existing governments from the principles which are afloat and from the circumstances that so many states of Europe are now employed in the difficult task of casting anew their governments. To think of reducing it

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25. Greg Mills, 'AIDS and the South African Military: Timeworn Cliché or Timebomb?', in KONRAD ADENAUER STIFTUNG OCCASIONAL PAPERS, HIV/AIDS: A THREAT TO THE AFRICAN RENAISSANCE? (2000) available at <http://www.kas.org.za/Publications/OccasionalPapers/Aids/mills.pdf>.

to a system or to impose it as an obligation is a scheme utterly impractical and objectionable.

It was never so explained to Parliament; if it had, most assuredly the sanction of Parliament would never have been given to it; and it would now be a breach of faith, were the Ministers of the Crown to acquiesce in a construction being put upon it, or were they to suffer themselves to be betrayed into a course of Measures, inconsistent with those Principles which they avowed at the time. . . .

In short: there is an accompanying danger to that of not acting “by the book,” namely, that of trying to push the existing institutional security arrangements beyond their original mandate without obtaining a fresh mandate.

At which point I can end this article by revealing where the Lost Ark is actually to be found. The correct answer is Vienna.<sup>26</sup>

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26. The second quotation came from Henry Kissinger’s book about the politics of the Congress of Vienna. See HENRY KISSINGER, *A WORLD RESTORED: METTERNICH, CASTLEREAGH AND THE PROBLEMS OF PEACE, 1812-1822* (1957). The other extracts are all taken from Viscount Castlereagh’s great State Paper of 5 May 1820 in which he reviewed Britain’s strategic position at the end of the Napoleonic wars.



