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## Rehabilitation or Retribution?

### Cultures of Control and Policies towards “Rogue States”<sup>1</sup>

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The end of the Cold War has not brought perpetual peace to international relations. The number and intensity of wars have decreased. But wars are still fought. However, only rarely do we see state armies clash on a battlefield. More typically, we see armed forces fighting insurgents, rebels or terrorists, often in the name of cosmopolitan norms, often mandated by the United Nations. Thus, like a chameleon, war has changed in response to developments in technology, society, the economy, politics and law.<sup>2</sup>

As a consequence, no academic discipline on its own can provide a comprehensive study of war or security politics more broadly. Instead, an interdisciplinary approach is required that includes international law and political science in particular. This of course is also the basic *credo* of the ‘LLM Law and Politics of International Security’ that brought me to the VU three years ago. By bringing together international law and International Relations, the LLM aims at providing our students with a broad understanding of the forces that are enabling and constraining actors to use force.

A close look at the decision-making processes on the use of armed force and the public debates surrounding them makes clear that law and politics have become closely intertwined – especially in liberal democracies:<sup>3</sup> Political considerations such as alliance solidarity have played an important role when deciding whether or not to join the United States in bombing targets in Serbia or in invading Iraq. At the same time, legal arguments have risen to previously unknown prominence in these debates, and legal advisers have become part of the decision-making during the military campaigns. Interestingly, though, very similar legal arguments have had very different effects in different countries. Thus, to fully understand their role, one has to examine these countries’ political culture and institutions.<sup>4</sup> One will then

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<sup>1</sup> I would like to thank Ben Crum and Wouter Werner for helpful comments and suggestions and Michal Onderco for research assistance.

<sup>2</sup> The metaphor of a chameleon is borrowed from Clausewitz 2006 [1832]: 23. For a more recent discussion on the changing nature of war cf. Kaldor 1999, Münkler 2004, Neff 2006.

<sup>3</sup> Cf. Wheeler 2004; Reus-Smit 2004.

<sup>4</sup> Cf. Geis/Müller/Schörnig 2010.

find, for example, that arguments about the constraining effects of international law resonate much stronger in Germany or Scandinavian countries than in the United States or the United Kingdom. Moreover, comprehensive parliamentary oversight over military missions gives advocates of legal arguments much better access to decision-making in Germany or the Netherlands than, for example, in France or Belgium.

In this talk I will explore yet another form of interaction between law and politics: I will examine how a criminological perspective (that is by itself an interdisciplinary one) can help to (better) understand the *problematique* of so-called rogue states.

I am aware that the term “rogue state” is problematic because it has been invented to stigmatize some states and escalate the conflicts with them. “Renegade regime” would be a more neutral term. But in preparing this lecture I kept lapsing back into using the term “rogue state” simply because everyone immediately knows to what it refers. It is important to note that, throughout this lecture, the term comes in inverted commas to signal that it is taken as a quote from a particular discourse not as an accurate description of the states to which this label has been applied.

I will argue that a criminological perspective can be helpful in at least three ways:

First, a criminological perspective helps to understand how some states come to be regarded as “rogue states” in the first place. Labeling theories in particular highlight that “rogue” is a label that is assigned to certain actors in a social process.

Second, a criminological perspective sheds new light on the significance of rogue states to the international community. The nature of a community can be examined by studying what is criminalized and what is punished. This insight can be applied to the international community as well.

Third, a criminological perspective can enhance our understanding of why states adopt different policies towards rogue states. I will argue that policies towards rogue states are inspired by different philosophies of punishment. Societies that aim at rehabilitation of criminals domestically are also inclined to adopt an accommodationist policy towards rogue states. In contrast, societies that emphasize retribution over rehabilitation also tend to be confrontationist towards states that violate norms.

But let us start with the first issue: How do we know a rogue state when we see one?

## What is a rogue state?

We all have a pretty clear idea who is meant by the term “rogue state”. Of course, membership to this category is disputed in some cases, for example with a view to Cuba. At the same time, however, few would not think of Iran and North Korea or Iraq under Saddam Hussein’s rule.<sup>5</sup>

Nevertheless, rogue states are more easily recognized than properly defined. In search of precise definitions, legal texts are often helpful. Unfortunately, however, in this case, the law and its commentators have remained silent. “Rogue state” simply is not a category in international law.<sup>6</sup>

This does not mean that international law has no role to play in the definition of rogue states. Quite the opposite, it is the violation of international law that is most commonly evoked when rogues are set apart from the other members of the international community. If Iran or North Korea would fully comply with the resolutions of the UN Security Council as well as with the various treaties they signed and ratified, they could hardly be considered rogue states. Indeed, the violation of international norms is considered a defining feature of rogue states.

The conceptual problem, however, is that rogues are not the *only* states that violate norms. Indeed, whenever I mention my new passion for rogue states, some colleagues smilingly reply that I should certainly include the United States:<sup>7</sup> it frequently violates international law; it not only possesses Weapons of Mass Destruction but it is the only country to ever have dropped an atomic bomb on another state. This alerts us to an important point: there is no objective standard that distinguishes rogue states from other states.

What then makes a state a rogue state if it is neither a legal category nor a result from objective behavior? Miroslav Nincic (2005) has pioneered the study of renegade regimes by drawing on criminological theories of deviant behavior. Indeed, criminologists have a similar problem when they have to define their core categories: what is a crime and who should be

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<sup>5</sup> In a quantitative analysis of public statements of U.S. foreign policy makers between 1993 and 2004, Kelly O’Reilly found that the label ‘rogue state’ was attached mostly to Iraq (32%), Iran (29%), North Korea (20%) and Libya (13%). Interestingly, the label was also, if only rarely so, attached to Syria, China, Cuba, Burma, Zimbabwe and Pakistan (2007: 305). Since late 2003, Libya is no longer labelled a ‘rogue state’ after it negotiated an agreement with the United States and the United Kingdom that included obligations to dismantle all facilities to produce Weapons of Mass Destruction, to destroy existing stockpiles, to allow verification for these activities and to renounce any support for international terrorism (Müller 2006).

<sup>6</sup> Minnerop 2004. That is not to say that legal scholars with an interest in the philosophy of law have not addressed the question of rogue states. For a discussion of how international law facilitates and limits the labeling and subsequent treatment of states as renegades or rogues reveals see Simpson 2001 and Werner 2010.

<sup>7</sup> This argument is also made by Chomsky 2000.

considered a criminal? As with rogue states, the violation of community norms seems to be an obvious defining feature. However, as with rogue states, there are many more people violating norms than criminals. Just think of people riding their bike at night without proper lights or driving mopeds on bike paths (to use two examples from Amsterdam life). Edwin Lemert (1951), Howard Becker (1963) and other proponents of the so-called “labeling theory” have pointed out that it is not the deviant act as such but the reaction of the community that makes a criminal (or outsider, as Becker called it). It is worth quoting Howard Becker at length to illustrate how well the core argument proposed with a view to domestic society fits the conceptual problem of defining renegade regimes. Becker argued that

“social groups create deviance by making the rules whose infraction constitutes deviance, and by applying those rules to particular people and labeling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an ‘offender’. The deviant is one to whom the label has successfully been applied; deviant behavior is behavior that people so label.” (1963: 9)<sup>8</sup>

Applied to international affairs, this perspective makes clear that it is the international community that defines what norms are considered core community norms whose violation should not be tolerated. Even more important, it is the international community that defines what constitutes a severe breach of them (as opposed to a tolerable transgression). This perspective also alerts us to the fact that the members of the community occupy different power positions. Especially in the international community, the most powerful states have a greater say on what constitutes a severe violation of core community norms. It is for that simple reason that the United States – or any other permanent member of the UN Security Council - will not be considered a rogue state.

The Bush administration understood very well that the key to defining rogue states is not any objective standard of norm violations but the position of the state in the international community. In the US National Security Strategy of 2002, rogue states are defined as states that violate international law and aim at the acquisition of Weapons of Mass Destruction. In addition and without the slightest irony, however, rogues are defined as states that “hate the United States and everything for which it stands”.<sup>9</sup>

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<sup>8</sup> Becker’s labeling theory also helps to grasp another important feature of renegade regimes: just as outsiders in domestic society do not form a homogenous group (because they do not commit the same acts but society attaches the same label to what they do), so do renegade regimes in international politics. As pointed out by critics of concepts like “axis of evil”, the regimes subsumed under such label differ in many respects. In fact, treating them as alike is sometimes seen as a source of policy failure.

<sup>9</sup> The National Security Strategy of the USA, 2002.

As Nincic demonstrated, the contribution of labeling theory is not exhausted by defining renegade regimes properly. In addition, it highlights important policy consequences for dealing with renegades. Edwin Lemert’s distinction between primary and secondary deviance is particularly important in this respect. According to Lemert, primary deviance is a transgression of a social norm for which there are many possible causes. Once society responded to this transgression by labeling the transgressor a

## **The significance of rogue states for understanding international relations**

The criminological perspective just outlined has some further implications for our understanding of international relations. If “rogue states” are states that the international community so labels, then there is a strong underlying assumption: that the various states have formed an international community in the first place!

To be sure, there has been a lot of research examining interactions, communication, or the extent to which the populations around the world share certain core values in order to establish whether there is indeed an international community. The criminological perspective taken here suggests an additional way to approach this question. Instead of examining the core of an alleged international community, one could approach this question from the fringes of the community: Studying rogue states helps to understand to what extent there is such a thing as an international community.

During the Cold War, the conflict between two blocs with entirely opposed ideologies and of roughly equal power prevented the adoption of sanctions with very few exceptions (Rhodesia in 1966 and South Africa in 1977). In contrast, since the end of the East-West conflict, the UN Security Council has been very active in imposing sanctions on regimes that were regarded as constantly violating core community norms.<sup>10</sup>

A criminological perspective helps us to (better) understand the significance of sanctions for the community imposing them. Emile Durkheim (1984 [1893]) in particular has argued that the main function of criminal law is not to prevent harm from society<sup>11</sup> and to deter potential wrong-doers. Rather, an important function of criminal law is to make society aware of the norms and values it shares. Punishing wrong-doers means to express the contempt for the act committed. Because we abhor what they do, Durkheim argues, we want to see murderers

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criminal, the situation of the transgressor changes dramatically. Most importantly, the motives for future, i.e. secondary transgressions are entirely different from those responsible for the initial, primary transgression. Secondary deviance is first of all a reaction to society’s labeling. Nincic (2005: 27) convincingly applies this conceptual distinction to the example of revolutionary Iran. During the Islamic revolution, violations of international norms were largely motivated by domestic politics. Subsequent challenges to the international community, however, derive from a different set of motives that is by and large shaped by the international community’s reaction to the initial transgressions.

Along similar lines, Akan Malici (2009) has argued that rogue states are of our own making. Treating states as if they were rogues may well be self-fulfilling. States may become rogue states because they have been treated like one. This perspective has obvious consequences for policy: If rogue states are made by treating them like rogues, they can also be turned into decent members of international society by treating them like that. As we shall see later on, this notion can be found in the accommodationist policies of some states towards Iran, North Korea and other states.

<sup>10</sup> Cf. Cortright/Lopez/Gerber-Stellingwerf 2007. Wilhelmine Germany during WW I is another predecessor of today’s Iran and North Korea. The Kaiserreich’s submarine warfare made it a pariah state of the time (Werner 2004: 165).

<sup>11</sup> If the aim of criminal law was to prevent harm to society, Durkheim argues, then causing the stock market to crash instead of murder would have to be punished most severely.

punished even if that punishment would not deter any other person from committing the same crime. From this perspective, crime even has a social function because it makes society aware of the norms and values it shares. Criminal law is thus a perfect indicator of the norms and values of a society. If one wants to know the character of a given society, one should study what acts are criminalized and what punishments are attached to them.<sup>12</sup>

It is difficult to see anything useful in Iran or North Korea developing nuclear weapons and violating human rights. However, a Durkheimian perspective highlights that renegades may indeed contribute to the building of an international community. In imposing sanctions on renegade regimes, the United Nations gives a vivid expression of the degree to which various norms and values have become shared.<sup>13</sup>

### **How to deal with rogue states? Two approaches**

How should the international community respond to the challenge posed by rogue states? This has probably been the most divisive question in post-Cold War security politics. It has repeatedly pitted the US against China and Russia in the UN Security Council. Moreover, it has revealed deep cleavages within NATO and the EU which have become the norm-setting centre of gravity of today's international community. These divisions have emerged already in 1993 when North Korea resigned from the Nonproliferation Treaty. They have been discernible in 2002 when the nuclear facilities were discovered in Natanz and Iran was suspected of violating the Nuclear Non-proliferation Treaty. They escalated to unprecedented levels when the US government confronted the regime of Saddam Hussein in 2002/03. Although the tone of that debate changed with the taking office of US President Obama, disagreement over Iran simmers along and may well put Western solidarity to another test.

Whereas China's and Russia's opposition to US policies do not come as a surprise, the division within NATO and the EU is more puzzling. After all, the countries forming these institutions consider themselves to share the same values of democracy, human rights and the rule of law. Moreover, they share perceptions of what constitutes a threat to international peace and security. In fact there is no disagreement over Iran, North Korea and other rogue states posing one of the most troubling security threats to the international community. Notwithstanding consensus on the nature of the threat, there have been significant differences as to the appropriate answer to this challenge.

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<sup>12</sup> Cf. Durkheim 1984 [1893], especially chapter 2 ("Mechanical Solidarity, or Solidarity by Similarities"), pp. 31-67.

<sup>13</sup> Thus, if we want to understand what kind of international society there is, studying its policy vis-à-vis rogue states will be very helpful. In his analysis of the rogue state-discourse, Jorg Kustermans (2010) has detected a "republican legacy" in international society" (2010: 17). In order to be a "good international citizen", it does not suffice to be no threat to neighboring countries. The rogue state discourse rather indicates that democracy and human rights have become widely accepted standards in international society. In a similar vein, Wouter Werner has argued that the emergence of the rogue state as the paradigmatic public enemy indicates the emergence of a cosmopolitan, liberal legal order that replaces a legal order based on sovereign equality in which the public enemy appears as a "justus hostis" (Werner 2004).

For the sake of the argument I will simplify and contrast a hawkish US policy with a more conciliatory, “dovish” European one. To be sure, both the US and its European partners prefer a diplomatic solution. Moreover, there are certainly differences among the EU as well as within the US.<sup>14</sup> At the same time, though, there seem to be characteristic differences between the US and the European states.

The American policy is characterized by stigmatizing renegade regimes (Rudolf 1999). In fact, it was the Clinton administration that coined the term “rogue state” to express its contempt for the regimes in Iran, North Korea and, at the time, Iraq (Litwak 2000).

US President George Bush has emphasized the need to put pressure on renegade regimes and to send clear signals. Take, for example his statement of April 2004:

“the Iranians need to feel the pressure from the world that any nuclear weapons program will be uniformly condemned. It’s essential that they hear that message. [...]. The foreign ministers of Great Britain, France, and Germany have interceded on behalf of the civilized world to talk plainly to the Iranians. One of my jobs is to make sure they speak as plainly as possible to the Iranians and make it absolutely clear that the development of a nuclear weapon in Iran is intolerable, and a program is intolerable. Otherwise they will be dealt with starting through the United Nations.”<sup>15</sup>

In contrast, Xavier Solana, then the European Union’s High Representative for Foreign and Security Policy stated with a view to Iran:

There are two alternative courses ahead of us. If we can achieve a lasting understanding on the nuclear question, there is potential for a reciprocal and mutually beneficial relationship between Europe and Iran. [...] it is possible to imagine Iran as one of the important pillars not just of the Middle East but of the wider Eurasian community. With a modern economy, Iran would be a respected and constructive partner in security, an exporter of stability and energy - not just oil and gas but of human energy and ideas.

The other course takes us into a downward spiral of suspicion, isolation, poverty - perhaps even danger. It would be bad for us, bad for the Middle East, and bad for Iran.

We are absolutely committed to the first course and to a diplomatic solution. We are in the early stages, but together we have already made a small breakthrough. Now we need to widen this breach so that we both gain more confidence and more mutual advantages. One day, it might even become a door that others could go through too.

Why are US governments almost always more inclined to respond with sanctions and even military force whereas many European states shy away from such drastic measures? Why are Germany and the Scandinavian countries more favorable to talks with alleged rogues than the United Kingdom and many East European States? Political scientists have referred to the importance of economic interests and the lobbying of so-called ethnic identity groups.<sup>16</sup> I do

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<sup>14</sup> On the EU see Sauer 2008.

<sup>15</sup> Remarks and a Question-and-Answer Session at the Newspaper Association of America Convention, April 21, 2004 (Public Papers of the Presidents of the United States: George W. Bush, 2004, Book I, p.645).

<sup>16</sup> For the argument that states’ policies towards rogue states are driven by economic interests see Onderco 2010; for the claim that ethnic identity groups have been influential see Litwak 2000: 63 and

not want to suggest that these influences are insignificant. However, I would like to show how a criminological perspective can add important insights to the analysis.

### **Cultures of Control**

The challenge posed to the *international* community by Kim Jong-il or Achmadineshad has a lot of similarities with the challenge posed to a *national* community by criminals. In both cases, the community has to deal with the violation of community norms. This parallel is often captured by cartoonists as the following example demonstrates.

Because of the analogy between rogue states and criminals, I argue that different approaches to domestic crime will also result in different policies towards rogue states.<sup>17</sup> Every society has defined what constitutes a crime and how it should be punished. Moreover, every modern society has established institutions such as criminal courts, prisons, jails etc that are specialized in dealing with norm violations. These institutions are accompanied by specific discourses and practices. Taken together, they amount to a “culture of control”<sup>18</sup> that characterizes a society’s approach to domestic crime. I expect that culture of control to have an influence on society’s approach towards rogue states as well.

Again it seems appropriate to distinguish two ideal typical cultures of control that correspond with the ideal-typical policies towards rogue states mentioned before. These two ideal types can be termed “rehabilitative” and “retributionist”.

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Vanderbush 2009. Moreover, whether a state is prepared to engage in negotiations with a rogue states depends, first of all, on the rogue’s response to a respective initiative. For example, current the US policy on Iran results in large part from Iran’s response to Obama’s overtures. Thus, the strategic interaction has an important influence on state policy. In the course of such interactions, states may also build up a reputation that impacts on how its action will be perceived. Important as these strategic dimension certainly is, it can hardly account for differences among state policies. Thus, if the US and various European states differ over how to react to Iran’s refusal to resume negotiations, such differences cannot be attributed to strategic interactions.

<sup>17</sup> The argument that norms and values that have been institutionalized domestically are externalized and thus applied to international politics as well has been put forward most famously by scholars of the Democratic peace. According to Bruce Russett (1993) and others, democracies are inclined towards peaceful conflict resolution internationally because their domestic political culture is characterized by peaceful conflict resolution as well. A similar argument has been made by Alain Noël and Philippe Thérien (1995) with a view to development aid policies: When the developing world called on the rich states for developing aid, people viewed that as a problem analogous to the welfare state at home. As a consequence, people in Scandinavia where the state has played a central role in redistributing income from the wealthy to the poor, expected the government to do the same vis-à-vis the developing world. By contrast, Anglo-Saxon countries where the state provides less social security benefits and a lot is left to individual responsibility and the private sector, ideas for international redistribution simply did not resonate. Thus, different levels of development aid can be explained by different cultures of responding to poverty.

<sup>18</sup> The term “culture of control” is borrowed from David Garland (2001). Whereas Garland reserves the term for the particular set of institutions and practices that have emerged in the US and the United Kingdom since the 1970s, I use the term in a more general way to denote any set of institutions and practices designed to minimize crime.



The rehabilitative culture of control has dominated all liberal democracies until the 1970s and its core features have remained unchallenged in many European democracies. “Rehabilitation” has been “the hegemonic, organizing principle” (Garland 2001: 35). Thus, institutions, discourses and practices all center around the notion of rehabilitating and re-integrating wrong-doers. The main approach towards crime is to address “directly the factors – economic, social, or personal – believed to be the cause of crime” (Hollin 2001: 241). In this culture, punishment only seems legitimate to the extent that it contributes to rehabilitation. As the 1972 edition of the Model Sentencing Act puts it:

„Persons convicted of crime shall be dealt with in accordance with their potential for rehabilitation, considering their individual characteristics, circumstances and needs”<sup>19</sup>

Punishment, therefore, is seen as one of many possible treatments. If the individual characteristics, circumstances and needs are unlikely to be advanced by harsh penalties, an alternative treatment seems appropriate. The key is to understand the offender’s individual needs and to find measures that enhance his or her self-esteem that forms the basis of re-integration.

In many respects, the retributive culture of control is the total opposite of the rehabilitative culture of control.<sup>20</sup> Indeed, its ascent has been based on a critique of the dominant rehabilitative culture. The retributive culture does not put offender’s needs centre stage. Instead, it is the protection of the public and the concern for victims of crime that drives scholars and politicians in the retributive paradigm. The retributive paradigm does not share the rehabilitative paradigm’s optimism that offenders can change and be re-integrated into society. Typically, the retributive culture comes with a “criminology of the other” (Garland 2001: 184): certain criminals are seen as simply evil and therefore intrinsically different from the rest of community. From this perspective, attempts to understand deviant behavior are both futile and morally dubious. What seems appropriate and morally justified instead is social defense, i.e. the deterrence, punishment and incapacitation of deviant delinquency (Garland 2001: 186). It is important to note that punishment is regarded as appropriate not because it contributes to the re-socialization of the offender. Instead, punishment serves a moral purpose because it expresses that someone’s conduct was wrong and that he or she is blameworthy for having committed it (von Hirsch 1986 [1976]: 48; Bennett/Dilulio/Walters 1996: 14). Put simply, penalties are imposed because they are just; wrong-doers simply deserve them for what they have done.<sup>21</sup>

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<sup>19</sup> Quoted from von Hirsch 1986: 9.

<sup>20</sup> One of the key thinkers in this tradition, Andrew von Hirsch, prefers the term “desert” over “retribution” (1986:45f.).

<sup>21</sup> In the words of Bennett/Dilulio/Walters (1996), “virtually all of those in prison in this country [the USA, W.W.] are just what most average Americans suppose them to be – not victims of unfettered capitalism, rampant racism, a reactionary citizenry, or Reagan-era budget cuts, but duly tried and convicted violent and repeat criminals who are either dangerous enough, or deserving enough (or both), to merit secure confinement” (91). When discussing the question of “who really goes to

## **Cultures of Control and policies towards rogue states**

Because rogue states pose a similar challenge to the international community as criminals do to the national community, we should not be surprised if governments apply the same rationale to rogue states as they have done to rogue citizens. Thus, someone who has grown up in a retributive culture of control is unlikely to be a strong believer in diplomacy and negotiations with states that have persistently refused to respect international norms and are viewed as a threat to international security. Quite the opposite: Someone who believes in the retributive rationale of punishment might be inclined to regard sanctions as an appropriate foreign policy tool. Likewise, someone who believes that the root causes of crime is not a lack of self-confidence and self-respect is unlikely to consider security guarantees and reassurances as a promising way to accommodate rogue states.

In a similar way, someone who strongly believes that many crimes humans commit result from the harm they suffered and the misery they live in should be inclined to apply the same line of reasoning to rogue states: Does not Iran have all reasons to feel threatened itself? Is Iran not encircled by neighbors with hostile intentions? Isn't North Korea's nuclear program an understandable reaction to the end of Chinese security guarantees? And isn't the acquisition of nuclear weapons not a reasonable lesson learnt from the US intervention in Iraq? After all, had Saddam really had nuclear weapons, his regime might still be in place.

A closer look at key policy statements (the discourse) on rogue states indeed demonstrates that they are imbued with criminological arguments (and penological ones in particular).

A "rehabilitative reasoning" can frequently be found in statements justifying an accommodationist policy towards rogue states. Typically, proponents of such an approach subscribe to the notion that states – just like juvenile delinquents – are malleable. The key to changing delinquents for the better lies in addressing the root causes of their delinquency which are typically seen in an unfavorable environment, a deficit in socialization and low self-esteem. Thus, in its strategy against the proliferation of Weapons of Mass Destruction, the European Union states that

The best solution to the problem of proliferation of WMD is that countries should no longer feel they need them. If possible, political solutions should be found to the problems, which lead them to seek WMD. The more secure countries feel, the more likely they are to abandon programs; disarmament measures can lead to a virtuous circle just as weapons programs can lead to an arms race.<sup>22</sup>

This strategy resonates well with the measures proposed by proponents of a rehabilitative paradigm: Because crime is seen to result from a lack of self-esteem, special measures are designed to compensate for deficits. Just like liberal judges dealing with juvenile crime, the EU states empathize with the norm-breaker and point out how an unfriendly environment has

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prison?", their answer is "for the most part, really bad guys" (101).

<sup>22</sup> Council of the European Union: Fight against the proliferation of weapons of mass destruction - EU strategy against proliferation of Weapons of Mass Destruction (10.12.2003; 15708/03).

been in the way of some states to become normal, rule-abiding members of the international community. From this perspective, understanding the norm-breaker's motivation not to respect international obligations becomes the key to changing its future course of action and to re-integration it into the international community. Thus, High Representative Xavier Solana reasoned that

“All countries are difficult to understand. Iran is one of the most difficult. [...] Its more recent history has in many ways been tragic. It is therefore not surprising that, in the light of that history, many Iranians have a profound suspicion of the outside world. And it is not surprising either that many other countries have a profound suspicion of Iran. Iran is a sophisticated but complicated country and it is not easy for others to deal with.”<sup>23</sup>

Interestingly, Solana adds:

“No doubt they think the same about us.”<sup>24</sup>

In a similar vein, German Chancellor Schröder told the Munich Security Conference that

“Iran will only abandon its nuclear ambitions for good if not only its economic but also its legitimate security interests are safeguarded”<sup>25</sup>

A key strategy to re-integrate a rogue state is to re-socialize it. In Schröder's word:

“We must overcome Iran's massive isolation”<sup>26</sup>

Overcoming isolation creates opportunities for dialogue, or more specifically: „critical dialogue“ as the European Union dubbed its policy towards Iran in the period between 1992 and 1997 (Reissner 2000; Taylor 2000).<sup>27</sup>

Motives from a retributive paradigm can be found in statements by proponents of a more confrontational policy. One striking difference to the rehabilitative paradigm is the refusal to empathize with the states of concern. In a characteristic episode, a journalist referred to

<sup>23</sup> Speech at the 41th Munich Conference on Security Policy 12 February 2005, available at [http://www.securityconference.de/archive/konferenzen/rede.php?menu\\_2005=&menu\\_konferenzen=&sprache=en&id=147&](http://www.securityconference.de/archive/konferenzen/rede.php?menu_2005=&menu_konferenzen=&sprache=en&id=147&) (last accessed August 2010)

<sup>24</sup> Ibid.

<sup>25</sup> Speech at the 41th Munich Conference on Security Policy 12 February 2005, available at [http://www.securityconference.de/archive/konferenzen/rede.php?menu\\_2005=&menu\\_konferenzen=&id=143&sprache=en&](http://www.securityconference.de/archive/konferenzen/rede.php?menu_2005=&menu_konferenzen=&id=143&sprache=en&) (last accessed August 2010)

<sup>26</sup> Ibid.

<sup>27</sup> Proponents of an accommodationist policy also consider positive incentives to be important. In the words of Angela Merkel, then leader of the opposition in the German Parliament (and soon to become Chancellor):

“If one wants to persuade Iran to change its behavior one will need the entire spectrum of diplomatic options. The necessary dialogue between the EU and the USA must yield an agreement about how not only the Europeans, but also the US can foster the process of persuasion with respective incentives.”(Speech at the 41th Munich Conference on Security Policy 12 February 2005, available at [http://www.securityconference.de/archive/konferenzen/rede.php?menu\\_2005=&menu\\_konferenzen=&id=145&sprache=en&](http://www.securityconference.de/archive/konferenzen/rede.php?menu_2005=&menu_konferenzen=&id=145&sprache=en&) (last accessed July 2010), my translation.)

Gerhard Schröder's statement quoted above and posed the following question to U.S. President George W. Bush:

Chancellor Schroeder has said that Iran will abandon its nuclear ambitions only after knowing that its economic and legitimate security concerns have been addressed. First of all, do you agree with that assessment, and can that happen without the United States joining the talks with Iran?

President Bush replied:

Yes, I appreciate that. Look, first, let me just make this very clear: The party that has caused these discussions to occur in the first place are the Iranians. And the reason we're having these discussions is because they were caught enriching uranium after they had signed a treaty saying they wouldn't enrich uranium. [...] these discussions are occurring because they have breached a contract with the international community. They're the party that needs to be held to account, not any of us.<sup>28</sup>

It is interesting to see that Bush does little more than paying lip-service to the head of government of an allied country but in fact refuses to empathize with Iran. Just as a retributive penology finds empathizing with criminals morally dubious President Bush prefers to draw a clear line between the norm-breaker and the international community. To quote from another statements just a few weeks later:

The guilty party is Iran. They're the ones who are not living up to international accords. They're the people that the whole world is saying, "Don't develop a weapon."<sup>29</sup>

Whereas the rehabilitative paradigm emphasizes the need to overcome the norm-breaker's isolation, the retributive paradigm aims at a united front vis-à-vis the norm breaker. This motive of "the whole world" being united and sending a common message can be found all over the statements by President Bush.

"the Iranians need to feel the pressure from the world that any nuclear weapons program will be uniformly condemned. It's essential that they hear that message."<sup>30</sup>

These quotes from decision-makers from both sides of the Atlantic demonstrate that different policies toward renegade regimes result from different views about the underlying motives for violating international norms and about the concomitant potential to induce a change in behavior. These views correspond with different cultures of control that have been institutionalized in domestic criminal law. Different policies towards renegade regimes may in part result from economic considerations and the pressure from ethnic identity groups. As

<sup>28</sup> Public Papers of the Presidents of the United States of America (<http://www.gpoaccess.gov/pubpapers/gwbush.html>): George W. Bush, 2005 I, p.299.

<sup>29</sup> *ibid.*, 2005 I, p. 355.

<sup>30</sup> *ibid.*, 2004 I, p.645. The emphasis on sending "clear messages" to offenders also resonates well with neo-conservative criminology. For example, Bennett/Dilulio/Walters (1996) argue that the public (as well as families) should not be shy to draw clear lines between right and wrong (with the difference assumed to be obvious) and to stigmatize morally unacceptable behavior. From this perspective, America's high crime rate results from "moral poverty", i.e. the "unwillingness to judge", "the removal of social sanctions in the name of 'tolerance' and 'open-mindedness' and the devaluing of the idea of personal responsibility" (197).

the quotes above demonstrate, however, different views about the causes of norm breaking and the potential to rehabilitate norm-breakers are also influential.

Because the defining feature of rogue states is the constant violation of core community norms, they make an obvious candidate for studying the significance of domestic cultures of control on foreign policy. However, different cultures of control were already discernible during the Cold War when many Western European governments were alienated by Ronald Reagan's talk about the Soviet Union as an "evil empire". In general, Europeans seemed to be much more comfortable with the confidence-building measures and security reassurances provided by the Conference for Security and Cooperation in Europe (CSCE).<sup>31</sup> The détente policy of the Europeans resonated well with the rehabilitative paradigm that dominated criminal justice systems in Western Europe. In contrast, the more confrontational stance of the USA (and its conservative governments in particular) reflected the retributionist paradigm which rose to dominance in American Criminal justice at that time.

Today, questions about how to deal with offenders are not limited to rogue states but can also be raised with a view to terrorists or insurgents: Can Taliban or members of Al Quaida be re-socialized? Does their recourse to violence result from the particular social or economic situation they are in (which would imply that improving their condition would discourage them from using force)? Or are terrorists and insurgents simply evil people who are intrinsically different from the rest of us? Isn't any attempt at understanding them morally questionable? Are we betraying the victims of terrorist attacks if we empathize with terrorists and their motivation to use force? Questions like this have resurfaced whenever the challenge posed by terrorism and insurgency has been discussed.

My point here is not to suggest any specific answer. Rather, my point is that the way we tend to answer these questions of international security is heavily influenced by notions of crime and punishment in domestic society. Thus, if we aim at better understanding any society's policy towards rogues, terrorists and insurgents, we should not only look for ethnic identity groups and business interests but also at different cultures of control.

## **Conclusion**

Like many other issues in international security, rogue states have been studied and discussed by scholars of both international law and international relations. Legal scholars, however, face the difficulty that international law does not have a distinct category for states that constantly violate core community norms. Without an understanding of the social and political processes that make rogue states in the first place, any legal analysis will miss an important point. In a

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<sup>31</sup> The CSCE was based on a package deal in which the Western countries gave reassurances to the Warsaw Pact states that their territorial integrity would not be questioned and the Warsaw Pact states in turn accepted obligations to honor human and civil rights.

similar vein, political science scholars have a rich tool kit for studying different strategies vis-à-vis renegade states and for explaining differences in state responses. However, power positions, ethnic identity groups and economic interests will only account for a part of the story. A comprehensive analysis of the challenges renegades pose and the reactions to them requires a discussion of the underlying criminological (and in particular: penological) issues: Should the international community aim at re-socializing renegades? Should – and can – it address the root causes of the threats they pose? Should the powerful Western democracies in particular increase their efforts to empathize with renegade regimes and try to understand how threatening they are necessarily perceived themselves? Or would empathizing with rogue states detract from the threat rogue states really pose? Should the international community instead focus on the protection against the threats posed by rogue states, for example by investing into missile defense systems? What function can sanctions have?

### **Thanks**

[...]

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