Redefining Sovereignty:

The Use of Force after the Cold War

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A. INTRODUCTION

In the wake of the Cold War, the developed nations have an opportunity to deal with the two chief remaining sources of unnatural death: civil war and vicious regimes. For a number of reasons it seems unlikely they will be able to do so with any sort of consistency or reliability. There does seem to be a general movement toward competent and effective domestic governments, however, and this could prove to be a viable long-term solution to the problem.

B. THE DECLINE OF INTERNATIONAL WAR

Throughout history international wars have often been immediately motivated by ideology, religion, pique, aggressive impulse, military rivalry, nationalism, revenge, economic deprivation or exuberance and the lust for battle. But such impelling motives and passions have generally been expressed in a quest to conquer and to possess territory: “I came, I saw, I conquered,” Julius Caesar pronounced self-importantly. That sort of impetus is, in various ways, very frequently found at the core of war. Thus, notes John Vasquez, territory is “a general underlying cause of war,” and he stresses that “of all the possible issues states can fight over, the evidence overwhelmingly indicates that issues involving territory . . . are the main ones prone to collective violence.” And “Few interstate wars are fought without any territorial issue being involved in one way or another.”

Therefore, it would appear that a potential cure for international war would be to disallow territorial expansion by states.

The effort to do so was begun with determination in the wake of World War I. For the most part, war there ceased to be embraced as it

often had been before 1914—as supreme theater, redemptive turmoil, a cleansing thunderstorm or an uplifting affirmation of manhood. Now, people who had often praised war and eagerly anticipated its terrible, determining convulsions found themselves appalled by it. Within half a decade, war opponents, once a derided minority, became a decided majority: everyone now seemed to be a peace advocate.²

The peacemakers of 1918, substantially convinced now that the institution of war must be controlled or eradicated, adapted several of the devices peace advocates had long been promoting, at least in part. A sort of world government, the League of Nations, was fabricated to speak for the world community and to apply moral and physical pressure on potential peacebreakers. Aggression—the expansion of international boundaries by military force—was ceremoniously outlawed, and in the League Covenant signatory states solemnly undertook for the first time in history “to respect and preserve . . . the territorial integrity and existing political independence” of all League members.³

World War II, none too surprisingly, embellished this perspective. For somewhat differing reasons, the three countries that started the war had done so to conquer territory: Hitler sought living space to the east, Mussolini domination in Africa and the Balkans, the Japanese, glorious empire in East and Southeast Asia.

Accordingly, building on efforts conducted after World War I, the peacemakers of 1945 declared international boundaries to be fixed, no matter how illogical or unjust some of them might seem to interested observers. And the peoples residing in the chunks of territory contained within them would be expected to establish governments that, no matter how disgusting or reprehensible, would then be dutifully admitted to a special club of “sovereign” states known as the United Nations. Efforts to change international frontiers by force or the threat of force were sternly declared to be unacceptable.⁴

⁴ See id. Mary Kaldor, New and Old Wars: Organized Violence in a
Rather amazingly, this process has, for various reasons and for the most part, worked. Despite the fact that many international frontiers were in dispute, despite the fact that there remained vast colonial empires in which certain countries possessed certain other countries or proto-countries and despite the fact that some of the largest states quickly became increasingly enmeshed in a profound ideological and military rivalry known as the Cold War, the prohibition against territorial aggression has been astoundingly successful. In the decades since 1945, reversing the experience and patterns of all recorded history, there have been very few alterations of international boundaries through force. Indeed, the only time one U.N. member tried to conquer another and to incorporate it into its own territory was when Iraq invaded Kuwait in 1990, an act that inspired almost total condemnation in the world and one that was reversed in 1991 by military force.

It took exactly 100 years to extinguish slavery as a major institution in human affairs: the first notable anti-slavery protests erupted in 1788 and the last substantial slave system, that of Brazil, was dismantled in 1888. An organized political movement agitating for the elimination of war really began, or at any rate took off, in 1889 with the publication of Bertha von Suttner’s potboiler, Die Waffen Nieder! When the Cold War ended, 100 years later, war—at least the kind of war von Suttner was concerned about—had slumped, if not into obsolescence, at least into considerable and most notable disuse. Shattering centuries of bloody practice, the developed countries of Europe and elsewhere had substantially abandoned it as a method for dealing with their disagreements, and, as Figure 1 makes clear, international war had become quite rare anywhere in the world.

C. THE NEW WORLD

In his farewell address, upon leaving the Presidency in January 1953, Harry Truman looked forward to the post-Cold War period, or, as he put it, “the world we hope to have when the Communist threat is overcome.”

GLOBAL ERA 5 (1999); CHRISTINE GRAY, INTERNATIONAL LAW AND THE USE OF FORCE 51 (2000).


It would be a “new era,” he suggested, “a wonderful golden age—an age when we can use the peaceful tools that science has forged for us to do away with poverty and human misery everywhere on the earth.”

After 1989, the world entered that “new era” or, as some were given to calling it, “a new world order.” Over the course of a couple of years, virtually all the major problems that had plagued big-country (sometimes known as Great Power) international relations for nearly half a century were resolved with scarcely a shot being fired, a person being executed or a rock being thrown. Among them: the unpopular and often brutal Soviet occupation of East Europe; the artificial and deeply troubling division of Germany; the expensive, virulent, crisis-prone and apparently dangerous military contest between East and West; the often-resented hegemonic hold of Russia over various non-Russian neighbors; and the ideological struggle between authoritarian, expansionist, violence-encouraging Communism and reactive, sometimes panicky, capitalist democracy.

For many, however, the post-Cold War era does not really feel too much like “a wonderful golden age.” The developed countries may basically see the world in much the same way, and there may be little or no fear of war between them. But notable problems remain. High among these, certainly, is managing the entry of Russia and China, the main losers of the Cold War, into the world community—a process that generally seems to be going rather well.

Another central problem, more ambiguous and tentative, is the establishment of mechanisms for dealing with residual disorder in the new world order.

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8 Thus, over a period of less than three years the world underwent something like the functional equivalent of World War III. As with World Wars I and II, a major empire was dismembered, important political boundaries in Europe were reorganized and several nations were politically transformed. And, as the ancient institution of monarchy met its effective demise in Europe in World War I and as the newer, but dangerous and seemingly virile, ideologies of Nazism and Fascism were destroyed by World War II, so a major political philosophy, Communism, over which a tremendous amount of ink and blood had been spilled, was discredited and apparently expunged in World War III.
Since 1918, developed countries have engaged in four kinds of warfare. For differing reasons, three of these are now firmly in the past. One was the cluster of wars known as World War II, and the other two were colonial war and warfare emerging from the Cold War contest. The fourth application, or potential application, of warfare is being developed in the wake of the Cold War. In their new era of essential consensus, the developed countries have been free to explore various devices for managing the world. Some of these devices are diplomatic, social or economic, but the judicious application of military force is also potentially available.

It may, therefore, be time to go back to first principles. The problem with war, of course, is not the institution in the abstract (it often does resolve international disputes), but rather in its consequences: the death and destruction that inevitably ensues. Although there are places where international war could erupt, this once-perennial problem has been substantially brought under control. Nonetheless, there remain two very notable sources of artificial death and destruction.

One of these is civil war. As Figure 1 makes clear, this is the chief remaining form of war. And many of these wars are of very long duration and highly destructive. In the late 1990s, for example, a complicated civil war—or set of civil wars—in the Congo resulted in the deaths, by some estimates, of three million people, mostly from the starvation and disease it caused. If this number is accurate, that little noticed war would be the most costly since World War II.

The second is government. In fact, over the course of the bloody 20th century, far more people were killed by their own governments than were killed by all wars put together.9 During the 1990s, for example, the government of Rwanda systematically tried to kill off a minority group resulting in perhaps more than half a million deaths in less than 100 days; and in North Korea, at the same time, the regime so mismanaged and exacerbated famine conditions that hundreds of thousands of people died—with some careful estimates putting the number at over two million.10

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In principle, the international community is ill-prepared to deal with civil conflict and with vicious domestic governments because it is chiefly set up to confront problems that transcend international borders, not ones that lurk within them. However, having substantially abandoned war and armed conflict among themselves, the developed countries can, if they so desire, expand their efforts and collaborate on international police work to deal with civil war and with brutal or destructively incompetent domestic regimes.

The opportunities are considerable. Most civil warfare, though certainly not all, is readily policable because it is chiefly perpetrated by poorly coordinated, if often savage, thugs. Moreover, many of the most vicious governments that exist are substantially of the criminal variety, enjoy little popular support and could be readily toppled by coordinated forces sent from outside. This is because criminal or near-criminal forces tend to be cowardly and incompetent when confronted by effective disciplined forces. The intimidating, opportunistic thugs have been successful mainly because they are the biggest bullies on the block. However, like most bullies (and sadists and torturers), they tend not to be particularly interested in engaging a formidable opponent. Moreover, they substantially lack organization, discipline, coherent tactics or strategy, deep motivation, broad popular support, ideological commitment, and, essentially, courage.

D. POLICING BY THE INTERNATIONAL COMMUNITY

In fact, since the end of the Cold War, there have been a number of instances in which developed countries have applied military force in other countries to seek to correct conditions they consider sufficiently unsuitable (see Table 1). Most of these military ventures have either been led by the United States or have been conducted as solo enterprises by that country in its self-proclaimed (and perhaps self-infatuated) post-Cold War role as “the world’s only remaining superpower” or as “the indispensable nation.”

The developed countries were able to engage in most of these ventures at remarkably little cost to themselves, particularly in casualties, though

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12 However, conventional definitions of superpower status generally stressed the possession of stocks of nuclear weapons. If that criterion were continued to be embraced, Russia should still probably be considered a super power.
they often seem at the same time to have had little concern about the casualties they might themselves have been inflicting in the process (in the case of Somalia, however, the peacekeepers found its casualties to be insufficiently low given the value of the stakes and something similar evolved in the Iraq War). This experience suggests that a sufficiently large, impressively armed and well-disciplined policing force can often be effective in pacifying thug-dominated conflicts and in removing thuggish regimes.

1. Impediments to International Policing

However, despite contemporary, triumphal pronouncements about potential further developments of the “Bush Doctrine” or the new “American Empire,” the prospects that the developed states will be able systematically to respond to this opportunity and create mechanisms for policing civil warfare and for dealing with vicious domestic regimes appear to be limited. There seem to be several reasons for this.

a. Lack of Interest

The dynamic of the Cold War contest caused the two sides to believe that their interests were importantly engaged almost everywhere. A central tenet of Communist ideology was that violent revolutionary conflict was pretty much inevitable and that the Communist states were duty-bound to help out wherever it cropped up. Meanwhile, the Western policy of containment was based on the notion that any gain anywhere for Communism would lead to further Western losses elsewhere and thus that just about all Communist thrusts must be actively opposed. Although few wars were directly initiated by the major belligerents during the Cold War, quite a few local wars were exacerbated by interfering Cold War contestants.\(^\text{13}\)

Once this elemental contest evaporated, however, most areas of the world became substantially less important to developed countries. In the

\(^{13}\) At times they restrained—or tried to restrain—their smaller clients, but more often they jumped in. In addition to Korea, Vietnam, the Dominican Republic, Lebanon (1958), India, Afghanistan and Grenada where troops from the United States, the Soviet Union and/or China became directly involved, the Cold War can be said to have exacerbated violent conflict within Thailand, Burma, Guatemala, Nicaragua, El Salvador, Venezuela, Cuba, Greece, Peru, Uruguay, Argentina, Bolivia, Cambodia, Laos, Angola, India, Mozambique, Chile, Congo, Brazil, Ethiopia, Algeria, Iraq, various Yemens, Hungary, Zanzibar, South Africa, Guyana, French Indochina, Malaya, Iran, Indonesia and the Philippines.
1960s, civil war in the Congo inspired dedicated meddling by both sides; in the 1990s no one wanted to become involved very much in the complicated and hugely destructive civil war, or sets of civil wars, that ravaged that country.

Thus, in the wake of the Cold War, two contradictory, even paradoxical, developments took place. On the one hand, East-West and major country cooperation became far easier to arrange than before. On the other, the major countries found few trouble spots worthy of their efforts. That is, although developed countries have an interest in peace and stability, they probably will be stirred to significant action—sending their troops into harm’s way—only in those few remaining areas where they feel their interests to be importantly engaged.

When active, militarized interest is stirred as in the cases in Table 1, it is generally because developed countries have concluded that their own concerns have become involved. Iraq and North Korea may sport regimes that are contemptible in the extreme and disastrous to their own people, but the interest of the developed states has almost entirely been bound up with the fear that those countries might develop weapons that could threaten the outside world. The United States was impelled into the Haitian morass substantially because of the politically embarrassing flow of refugees that was being created (partly by the economic sanctions it had imposed). The Australians sent policing forces to East Timor in large part because they want to live in a stable neighborhood. In several cases—Panama, Haiti, North Korea, Bosnia, Kosovo, East Timor and Iraq—developed nations became enmeshed, or self-entrapped, in part by their own previous rhetoric.

Increased fears of international terrorism could modify this conclusion in the future because, like threatening Communist revolutionaries, terrorists can be based just about anywhere. This is, of course, what impelled the United States into military action in Afghanistan in 2001 to aid one side in an ongoing civil war and to topple the terrorist-harboring Taliban regime. It had not previously shown much concern about the destruction that regime was visiting upon its own people.

It is doubtful, however, that the campaign against terrorism will lead to very many similar episodes. In the future, regimes that harbor terrorists are unlikely to be so open about it while, insofar as they need bases
at all, international terrorists are likely to concentrate even less than they do now.

Moreover, terrorism is much more like crime than it is like warfare in its essential dynamics. Military measures may sometimes be useful in the campaign against terrorism, but what is mostly required is police work: intelligence gathering, staking out suspects, gathering evidence, checking and rechecking, guarding potential targets, etc. And, like all good police work, it should be carried out selectively and with discrimination since overreaction can be counter-productive, doing more to create terrorists and terrorism than to snuff them out.

b. The Convenient Ancient Hatreds Image

Leaders and publics in developed states have concluded that many civil wars are essentially inexplicable all-against-all conflicts, rooted in old hatreds that could hardly be ameliorated by well-meaning, but innocent and naive, outsiders. It follows, therefore, that intervention would, at best, be simply a short-term palliative and, thus, a pointless exertion.

This convenient excuse for inaction seems to have emerged in the early 1990s when civil war shockingly broke out in Yugoslavia, on a continent that had been free from civil war for over 40 years. The need for explanation, preferably a simple one, was handily supplied by pundits like the fashionable travel writer and congenital pessimist, Robert Kaplan. In a book and, probably much more importantly, in a front page article in the Sunday New York Times Book Review in 1993, he portentously proclaimed the Balkans to be “a region of pure memory” where “each individual sensation and memory affects the grand movement of clashing peoples.” These processes of history and memory had been “kept on hold” by Communism for 45 years “thereby creating a kind of multiplier effect for violence.”¹⁴ With the demise of that suppressing force, he argued, ancient, seething national and ethnic hatreds were allowed spontaneously to explode into nationalist violence. Later in 1993, the perspective was elaborated into a cosmic world view by Harvard’s Samuel Huntington under the snappy label, “clash of civilizations.”¹⁵ Although Huntington acknowl-

¹⁴ Robert Kaplan, A Reader’s Guide to the Balkans, N.Y. TIMES, Apr. 18, 1993, Sec. 7 (Book Review), at 1.

edged that there had been little or no ethnic violence in Yugoslavia before World War II, he still prominently designated the Bosnian war as one of those crucial clashes of civilization or fault line wars that “rarely ends permanently” because “when one side sees the opportunity for gain, the war is renewed,” and he argued that if the United States were to withdraw from Bosnia, the war there will very likely erupt again.

This perspective informed some of the reluctance of the Bush administration to become involved in Bosnia in the early 1990s and also, initially, in Somalia, and it was soon also embraced by the Clinton administration. As Brian Hall observes, “Literary clichés do not die easily, especially when informed by superficialities.”

c. Low Tolerance for Casualties

The international community has had an extremely low tolerance for casualties in military missions that are essentially humanitarian—that is, for ventures in which clear national interests do not appear to be at stake.

The American experience in Somalia demonstrated this, and it can also be seen in the general reluctance to become involved in the fighting in Bosnia in the early 1990s despite years of the supposedly action-impelling “CNN effect” and despite the fact that Europe is generally held to be closer to American interests than impoverished areas of Africa.

The phenomenon seems to be general. By 1997, Spanish troops had suffered 17 deaths in the Bosnian war, and, in policing the deeply troubled situation in post-war Mostar, the government indicated that this was enough for them, and they withdrew from further confrontation, some-

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16 Id. at 259.
17 See id. at 291.
18 See id.
19 See id. at 294
20 Jon Western, Sources of Humanitarian Intervention; Beliefs, Information, and Advocacy in the U.S. Decisions on Somalia and Bosnia, INTERNATIONAL SECURITY, at 112, 113, 119–21, 131–33 (Spring 2002).
thing that greatly encouraged the Croat gangs in the city. 23 Similarly, Belgium abruptly withdrew from Rwanda—and, to save face, urged others to do so as well—when ten of its policing troops were massacred and mutilated early in the genocide. 24

It seems clear that policing efforts in ventures considered humanitarian in nature will be politically tolerable only as long as the cost in lives for the policing forces remains extremely low—and perhaps not even then. Such intolerance led to the pulling out of peacekeepers and potential hostages in Bosnia in 1995, in Iraq in 1998 and in Kosovo in 1999 before bombing was commenced. In order to avoid casualties further, bombing was done from some 15,000 feet, where it was far less likely to be effective.

It is sometimes argued that effective Presidential cheerleading can induce a reluctant public to accept dangerous peace-keeping missions. However, President Bill Clinton tried that at the end of 1995 as he was about to send policing troops to Bosnia, and poll data demonstrate that (in part because he confronted vocal Republican opposition on the issue) he was never able to increase the numbers of Americans who saw wisdom or value in sending the troops there, even though it was expected that there would be few casualties.

This reluctance should not be seen as some sort of new isolationist impulse. Americans were willing, at least at the outset, to send troops to die in Korea and Vietnam, but that was because they subscribed to the containment notion holding Communism to be a genuine threat to the United States that needed to be stopped wherever it was advancing. Polls from the time make it clear they had little interest in losing American lives simply to help out the South Koreans or South Vietnamese. 25 Thus, an unwillingness to send Americans to die for purposes that are essentially humanitarian is hardly new. Nor is it unusual for humanitarian ventures: if Red Cross or other workers are killed while carrying out humanitarian

missions, their organizations frequently threaten to withdraw no matter how much good they may be doing, essentially saying that the saving of lives is not worth the deaths of even a few of their service personnel.

I have argued that policing thug-dominated conflicts probably would be neither terribly difficult nor terribly costly—as Table 1 suggests. In Yugoslavia, for example, it might have taken a fair number of troops, perhaps over a hundred thousand, but there would likely have been very little real fighting and most of the troops would probably not have had to stay long. And in estimates that seem to be regarded as militarily sound, the local U.N. commander and other experts have suggested that 5,000 well-equipped and determined soldiers with a free hand to fight could probably have brought the genocide perpetrated by murderous, rampaging thugs in Rwanda rapidly to a halt.26

It would be impossible, however, to guarantee that such operations could be carried off with extremely few—or no—casualties. Thugs may be cowardly, but a few might fight, especially if cornered, and some might lob shells or snipe at the policing forces. And even the most criminalized forces may contain among their membership a cadre of dedicated, even fanatical, combatants who are willing to die for the cause as the United States discovered in Iraq after its successful invasion.

d. Aversion to Long-Term Policing

Even though they may be successful, developed countries often have an aversion to long-term policing, and a realistic concern about the long, unpleasant aftermath often inspires a reluctance to intervene in the first place. A contrast of the edgy tedium of Cyprus and Northern Ireland with the dramatic catastrophe of Bosnia suggests that the patient police work carried out in Nicosia and Belfast probably saved thousands of lives over the years. But it tends to be a profoundly thankless job because the people whose lives have been saved do not know who they are, and they are often critical or even contemptuous of their unappreciated saviours. Such probable ingratitude further deflates the policing enthusiasm of the inter-

national community, and the costly experience in Iraq and, to a lesser extent, Afghanistan, will further embellish this process.

e. Lack of Political Gain from Success

Leaders probably sense that there is not much to be gained politically from ventures taken to be humanitarian. If George Bush achieved little lasting electoral advantage from his dramatic victory in the Gulf War of 1991, where important interests were, or seemed to be, at stake, lesser accomplishments have been, at least, as unrewarding. Clinton found that the more purely humanitarian (and costless) intervention in Bosnia of 1995 scarcely helped in his re-election efforts a year later—by the time the election came around, people could scarcely remember the venture. Similarly, at the time of the Kosovo bombings of 1999, press accounts argued that the presidential ambitions and political future of Clinton’s Vice President, Al Gore, hung in the balance. From the standpoint of public opinion, the Kosovo venture seems to have been a success, but when he launched his campaign for the presidency a few months later, Gore scarcely thought it important or memorable enough to bring up.

On the other hand, this lack of attention also means that, if things go wrong—at least in low-valued ventures—troops can be readily removed with little concern about saving face or about longer political consequences. That is, if a venture is seen to be of little importance, leaders can, precisely because of that, cut and run without fear of inordinate electoral costs—though it will hardly be something to brag about, of course. For example, the abrupt combat deaths of U.S. soldiers in Somalia in 1993 enhanced demands for withdrawal, not calls to revenge the humiliation, and by the time the 1996 election rolled around, the public had substantially forgotten about the fiasco. However, the fact that failure does not bring politicians disaster hardly compensates for the fact that there is no political gain from success.

2. Sovereignty and the Bias Against War and Aggression

For effective international policing to become the norm, it would be necessary for the international community explicitly, clearly and systematically to abandon or reinterpret the concept of sovereignty.

As noted earlier, the idea that international boundaries should be sacrosanct was established by war-averse countries after the World War I
and then much enhanced after the World War II. Effectively it requires that the international community stand aloof when governments devastate their own populations and when countries become enmeshed in catastrophic civil wars that governments either create or find themselves incapable of controlling.

However, the Security Council of the United Nations does appear, in recent years, to have developed the legal ability to intervene in civil wars or to declare a state government too incompetent or too venal to be allowed to continue to exist, and it can accordingly authorize military intervention.27

In practice, however, it seems unlikely that the biases against aggression and war and in favor of sovereignty so carefully and deeply cultivated in the developed world and elsewhere over the last century can be adequately overcome except in special cases. In arguing for a war of aggression to topple Saddam Hussein’s regime in Iraq, the American administration emphasized (unsuccessfully in the United Nations) the regime’s disobedience of U.N. orders and its threat or potential threat to its neighbors and to other outsiders. The humanitarian value of liberating the victimized citizens of Iraq from Saddam’s vicious tyranny was far less stressed. Moreover, some members with vetoes on that body are wary of the precedent. Thus, Russia, with its civil war in Chechnya, and China, with several secessionist movements in its West, were notably unenthusiastic about sanctifying the NATO venture to aid secessionist Kosovo in 1999.

3. Overcoming the Impediments

At least in principal, there exist methods for eliminating or significantly reducing the problems developed countries find in international policing. One of these would be to establish a competent standing U.N. military force. Another would be through the hiring of private military companies. And a third would be for individual developed countries, or coalitions of willing ones, to fabricate policing forces on an ad hoc basis. On closer examination, however, none of these approaches seems especially promising.

The prospects for U.N. peace-keeping rose considerably after the Cold War. There are problems with the way peace-keeping forces of the United Nations (as well as those of other such bodies) are presently formulated, however. They are composed of essentially independent military and policing units contributed by individual countries that maintain their separate identities. Thus, the U.S. force in Somalia was operating as part of a U.N. peace-keeping force, but it was entirely made up of U.S. units culled from the country’s regular forces. Consequently, when Americans were killed in the 1993 firefight, they were taken to be direct American loses. Moreover, in some cases, military units have been thrown into peace-keeping operations simply because their impoverished home countries are being well paid to hire them out. Many of these units have been underpaid and poorly equipped and trained, and they have often simply compounded the problem, becoming as corrupt and as ill-disciplined as the marauders they were sent to police. When a participating country does happen to have fairly competent forces, these are often kept at home to protect political leaders or for domestic defense.28

An alternative would be for the United Nations to fabricate a well-paid, well-equipped, well-trained and risk-acceptant standing military force for peace-keeping, something that was envisioned in the U.N. Charter but that never materialized due to profound political differences among the permanent members of the Security Council who would ultimately be in charge of the body.29 Americans and other nationals might volunteer, on their own, to be part of such a force, but if they died in the line of duty in conflagrations of little national interest to their home country, they would be doing so as comparatively faceless international civil servants, not as members of identifiable national units. Presumably, therefore, the domestic political impact of such casualties would be quite limited.

The establishment of such a force has often been proposed in the wake of the Cold War.30 Some countries object because they fear that such a force could be used against their national interests, or even against them-

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29 GRAY, *supra* note 4, at 144.

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selves. There have also been objections to the probable costs: it is likely that a standing force would be fairly expensive, and increasingly so as it was deployed to more and more trouble spots and as its peace-keeping duties stretched on for years—or even decades, as seems entirely possible in some cases. These concerns have been heightened sometimes by the fact that the United Nations has often proven to be a remarkably incompetent organization with a much bloated payroll where, as it is often charged, 20 percent of the employees do 80 percent of the work: it is not at all clear the organization can be trusted to put together a policing force that is both competent and cost-effective. In addition, experience, particularly in Bosnia, suggests that the Security Council can be racked with, or even paralyzed by, political uncertainty and disagreement even in the post-Cold War era, particularly when specifics are required and when financial costs begin to mount, and the result can be directives and initiatives (or the lack thereof) that are confusing, debilitating, contradictory, or even impossible. Finally, although a well-crafted international police force would presumably be far more tolerant of casualties than national forces, it is likely that there are casualty levels—and probably fairly low ones—that could still force it from the field, no matter how much good it may be doing.

Another possibility would be for international bodies to employ private military companies to do the policing work. Quite a few of these enterprises, often run by and employing former military personnel from developed counties, have gone into business after the Cold War. Although they have been disparaged as “mercenary,” they differ from the kinds of mercenaries, often criminal or semi-criminal, that have formerly gone under, and often besmirched, that label. To begin with, as David Shearer notes, private military companies advertise their services and are legally registered; their personnel are “employed with a defined structure, with established terms and conditions, and work with a degree of organization and accountability to the company;” and the company “is answerable to its client, often under a legally binding contract.”

Moreover, they seem to be cost effective. Executive Outcomes, the firm, now disbanded, that successfully pacified Sierra Leone for 21 months before the government foolishly declined to renew its contract, charged $35 million for its services. By contrast, the cost for the U.N. force

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that eventually replaced it came to $47 million for merely eight months. Month-for-month, the United Nations cost more than three times as much to do much the same job.\textsuperscript{32} And judging from the problems the U.N. force experienced until the British sent in a disciplined contingent of troops,\textsuperscript{33} Executive Outcomes was far more effective.

There are objections, of course, including quite legitimate ones about accountability. Because of that, and because the label, “mercenary,” sticks in the craw of many, the use of private military companies seems likely to remain a minor or ancillary (training supply, logistic) contribution to any solution to the problem.

Several of the cases in Table 1, particularly those concerning Panama, Haiti, North Korea, Bosnia, Kosovo, Sierra Leone, Afghanistan, Ivory Coast, Iraq, and, to a degree, East Timor and the Gulf War and area were substantially carried out by developed countries acting on their own, or although, in most instances, the perpetrators were able to fabricate legalistic justifications for their acts.\textsuperscript{34} In most instances, the perpetrators were able to fabricate legalistic justifications for their acts. But any such efforts are likely to be constrained by the impediments listed above, and they are very unlikely to comprise a general solution to the problems of civil war and of vicious regimes. For example, no one seriously considered toppling the Taliban regime in Afghanistan until it became crucially linked to a direct threat to the United States. Tolerance of ongoing human disasters within Zimbabwe, Zambia, Congo, Sudan, Burma and North Korea (unless that country becomes threatening to outsiders) continues.

4. Policing by Effective Government

It seems, then, that developed states are likely to intervene with any sort of reliability either by themselves or through international bodies only where their interests seem importantly engaged or where they manage to

\textsuperscript{32} Id. at 51.


\textsuperscript{34} For the argument that international law should evolve to legitimate such actions, \textit{see} Anne-Marie Slaughter, \textit{Good Reasons for Going Around the U.N.}, N.Y. \textit{Times}, Mar. 18, 2003, at A33.
become self-entrapped. And even then, they are likely to do so with enormous concern about suffering too many casualties of their own.\(^{35}\) Their attention may be arrested from time to time by international terrorism, the dispersion of weapons of mass destruction to what are sometimes called “rogue states,” the flow of illegal drugs to their own populations and refugee flows that cause them trouble and cost them money. But, for the most part, they are more likely to see most civil conflicts and vicious regimes as essentially irrelevant to their interests and thus to remain aloof. They are not very good at risky missions that are purely humanitarian. Their hearts simply are not in it.

International bodies and consortia of developed countries can often be useful to broker cease fires and peace settlements, and they can sometimes assist with humanitarian aid and economic and political development once peace has been achieved. Although, as suggested above, international policy has often proved misguided and even counter-productive, a number of ventures seem to have been effective, albeit often rather messily or clumsily so. “People have been fed,” as Mary Kaldor notes, “and fragile ceasefires have been agreed.”\(^{36}\) Thus, for example, violent conflict in Cyprus has probably been averted by the international community’s very long-term intervention there; Bosnia and Kosovo seem

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\(^{35}\) Actually, in their desire to deal with problems in other countries, while avoiding the direct and potentially costly application of military force, the developed countries, usually led by the United States, have adopted policies that, by their very nature, have often rewarded, inspired or facilitated criminality and, ultimately, some criminal warfare. One of these is the application of economic sanctions, which not only cause great human harm but also almost inevitably favor criminality in the sanctioned societies. By artificially restricting the supply of various commodities they automatically benefit those who can service that demand. This process inevitably rewards those with criminal skills, and it has led to, or notably enhanced, the criminalization of entire regimes. Criminality and criminal warfare has also been enhanced by the various drug “wars” waged by developed countries. Much criminal activity, some of which often looks a lot like warfare, particularly in Latin America and in Asia, would be greatly reduced if the developed countries spent all their efforts on reducing demand in their own countries. However politically incorrect, it might also be worth considering whether the decolonization process of the post-World War II era was too hasty. In many cases, it led to conditions that were vastly worse in human terms as thugs and ideologues rose to authority and viciously destroyed or looted the new countries. Moreover, developed countries continue to be by far the largest suppliers of arms in the world.

\(^{36}\) KALDOR, supra note 4, at 113.
to be settling down under international tutelage; Cambodia is better off thanks, in considerable part, to missions from the outside.

However, it seems clear that a truly effective solution to the problems presented by civil warfare and vicious regimes lies in the establishment of competent domestic military and policing forces, tracing a process Europe went through in the middle of the last millennium.

To a very substantial degree, much of the civil warfare that persists in the world today is a function of the extent to which inadequate governments exist. As one study finds, civil wars are least likely to occur in stable democracies and in stable autocracies—that is, in countries with effective governments and policing forces. Stable democracies, almost by definition, have effective policing forces, and they deal with grievance by bringing the aggrieved into the process (as long as it is expressed peacefully) and by listening to the grievance. Stable autocracies also have capable policing forces—in fact, they are often called “police states.” They rule through the selective, but persistent, application of terror—through vigilant domestic spying and through effective, if often brutal, suppression. North Korea and Cuba provide contemporary examples. In fact, in an important sense, many civil wars have effectively been caused by inept governments. Because of closed political systems and because of policing methods in which excessive and indiscriminate force is employed to try to deal with relatively small bands of troublemakers, inept governments can turn friendly or indifferent people into hostile ones and vastly increase the size of the problems they are trying to deal with. As David Keen has observed, “the aggression of counter-insurgency forces has repeatedly alienated their potential civilian supporters, and this has often continued even when evidently counter-productive from a military point of view.”

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It appears that trends in warfare track rather well with the existence of weak governments (see Figure 1). With the decolonization of the late 1950s and 1960s, a group of poorly governed societies came into being, and many found themselves having to deal with civil warfare. Moreover, as civil wars become criminal enterprises, they tended to become longer and to accumulate in number. This pattern may have been embellished by another phenomenon, democratization, which often is accompanied by a period in which governments become weak. Most of the data sets document a notable rise—or acceleration in the upward trend—in civil war after 1975, a pattern that coincides rather closely with the rise in democracy that began at that time. Then, in the aftermath of the Cold War in the early 1990s there was a further increase in the number of incompetent governments as weak, confused, ill-directed and sometimes criminal governments emerged in many of the post-Communist countries replacing comparatively competent police states. In addition, with the end of the Cold War, the developed countries no longer had nearly as much interest in financially propping up some third world governments and in helping them police themselves—an effect particularly noticeable in Africa. By the mid-1990s, however, a large number of countries had managed to get through the rough period and had achieved a considerable degree of democratic stability—especially in Latin America, post-Communist Europe and East and Southeast Asia—and relatively effective governments had emerged in most of them. Moreover, lingering ideological civil wars inspired or exacerbated by the Cold War contest died out (or became transmogrified into criminal ones) with its demise.

40 See also Nils Petter Gleditsch et al., Armed Conflict 1946–2001: A New Dataset, 39 J. PEACE RES. 615 (2002); MARSHALL & GURR, supra note 38, at 12–14; Fearon & Laitin, supra note 38, at 77–78.

41 KEEN, supra note 39, at 23–44; Fearon & Laitin, supra note 38, at 77–78.


Experience suggests, then, that the essential solution—and a long-term one—to the problems of civil warfare lies not in ministrations by the international community—so often half-hearted, half-vast and half-coherent—but rather in the establishment of competent domestic governments in the many places that do not now have them. As it happens, the world is not a teeming mass of frustrated, angry, hate-filled fanatics seeking to express their ethnic, religious, cultural or civilizational angst in cataclysmic violence against each other in a Hobbesian state of nature. There are small numbers of people, it is true, who are drawn to violence and yearn to experience its exhilarations and its potential profits. Some of these are, indeed, fanatics and true believers, but most are criminals and thugs, and small, unpoliced or badly policed bands of these people can cause vastly more devastation than their numbers would seem to imply. What is needed to keep them in check is effective government, following the path the developed world fell upon in the middle of the last millennium.

But for the most part, this needs to be accomplished by people within the countries themselves. Sometimes international authorities, working out of or under the direction of, the developed countries, have been able to aid or speed the process. And they can certainly be of assistance when a country sincerely desires to develop the kind of competent military and police forces that have helped bring peace and prosperity to the developed world. Moreover, the example of the developed societies—civil, prosperous, flexible, productive and free from organized violent conflict—can be most attractive, as indicated by the masses of people from the developing world who are trying to immigrate there, abandoning in fear and disgust the turmoil and violence of their home countries. However, unless the developed world wants once again to engage in a form of colonialism, it is likely that exercises in nation-building that are productive of peace and order will have to be accomplished—and, ultimately, with results that are most likely to be lasting—by forces that are domestic.

Over the course of the last few decades there seems to have been a decline of tyranny and an increase in the number of countries led by effective people who, instead of looting and dissipating their country’s resources, like Zaire’s Mobutu, seem to be dedicated to adopting policies

that will further its orderly development. This has happened in almost all of Latin America as well as in many places in Asia—areas that, not coincidentally, have also experienced a considerable decline of warfare. Whether Africa will follow that pattern is yet to be determined, but there are at least some hopeful signs. Quite remarkable has been what happened in South Africa, which managed to move to coherent, responsive democracy from a condition that was part democracy and part police state—although huge problems remain. Central to that remarkable accomplishment was the judicious leadership of the country’s first elected post-Apartheid president, Nelson Mandela. And the Mandela approach may be gradually replacing the Mobutu one in Africa and elsewhere.45

It is possible, thus, that there is a widespread decline in regimes that are vicious and/or criminal. Not that long ago, a huge proportion of the countries of the world were led by regimes that were tyrannical and predatory—in almost all of Africa, for example, and in much of the Middle East, Asia and Latin America. There remain plenty of examples of such regimes, but they are becoming increasingly rare. The experience in Latin America is most impressive. Over a remarkably small number of years, military leaders became increasingly convinced that military dictatorship was a thing of the past, and country after country became democratic. Something similar happened in East Asia and, as suggested above, may now be underway in Africa. It may also be underway in the Middle East where Qatar, Kuwait, Jordan, Turkey, Iran and perhaps even Saudi Arabia and Syria have shown signs of liberalization.

Criminality and criminal predation will still exist, and so will terrorism which, like crime, can be carried out by individuals or very small groups. And there will certainly be plenty of other problems to worry about—famine, disease, malnutrition, pollution, corruption, poverty, politics and economic travail. However, while far from certain, a further (or continuing) decline in civil warfare and in the number of countries with vicious governments does seem to be an entirely reasonable prospect.

Table 1: Applications and Notable Threatened Applications of Military Force by Developed Countries Since the Cold War

<table>
<thead>
<tr>
<th>Country</th>
<th>Year(s)</th>
<th>Anticipated battle deaths</th>
<th>Actual battle deaths</th>
<th>Other deaths</th>
<th>Reason for intervention</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>United States</td>
<td>Other developed countries</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Panama</td>
<td>1989</td>
<td>10s</td>
<td>26</td>
<td>na</td>
<td>hundreds</td>
</tr>
<tr>
<td>Gulf War</td>
<td>1991</td>
<td>500–1000</td>
<td>148</td>
<td>63</td>
<td>thousands</td>
</tr>
<tr>
<td>Gulf area</td>
<td>1991–2003</td>
<td>near 0</td>
<td>near 0</td>
<td>0</td>
<td>hundreds*</td>
</tr>
<tr>
<td>Somalia</td>
<td>1992–4</td>
<td>near 0</td>
<td>26</td>
<td>na</td>
<td>hundreds</td>
</tr>
<tr>
<td>Haiti</td>
<td>1994–6</td>
<td>near 0</td>
<td>0</td>
<td>na</td>
<td>few</td>
</tr>
<tr>
<td>North Korea</td>
<td>1994</td>
<td>tens of thousands</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Bosnia</td>
<td>1995–</td>
<td>near 0</td>
<td>near 0</td>
<td>near 0</td>
<td>low hundreds</td>
</tr>
<tr>
<td>Kosovo</td>
<td>1999–</td>
<td>near 0</td>
<td>0</td>
<td>0</td>
<td>low thousands</td>
</tr>
<tr>
<td>East Timor</td>
<td>1999</td>
<td>near 0</td>
<td>na</td>
<td>0</td>
<td>few</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>2000–01</td>
<td>near 0</td>
<td>na</td>
<td>near 0</td>
<td>dozens</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>2001–03</td>
<td>hundreds, thousands</td>
<td>27+</td>
<td>near 0</td>
<td>hundreds</td>
</tr>
<tr>
<td>Ivory Coast</td>
<td>2002–03</td>
<td>near 0</td>
<td>na</td>
<td>near 0</td>
<td>few</td>
</tr>
<tr>
<td>Iraq</td>
<td>2003–</td>
<td>scores, low hundreds</td>
<td>over 1000</td>
<td>scores</td>
<td>thousands</td>
</tr>
</tbody>
</table>

* In addition, sanctions imposed as part of the policy were a necessary cause of tens, probably hundreds, of thousands of deaths.

na: not applicable.

Does not include cases in which troops were sent to rescue or extricate nationals.
The data are for “wars,” organized violence between armed forces in which at least one side is composed of regular governmental troops. Both sides must have some degree of central direction, and there must be some continuity to armed operations. No casualty counts are included and some of the wars tabulated have resulted in only a handful of deaths.