



## Peace, Security and the Role of Justice<sup>1</sup>

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Issues of international legality are very much in the air in Britain. The May 2005 General Election was dominated by Iraq, and in particular the circumstances in which the British Prime Minister took Britain to war. My book *Lawless World* was published shortly before the election, and describes the way in which the British Government misled Parliament and the public on the intelligence relating to weapons of mass destruction and on the presentation of the British Attorney General's legal advice on the legality of the Iraq war. Earlier this week the British Secretary of Defence – Mr Reid – gave a lecture in which he asked whether the rules of international law were adequate to deal with new threats.

Last week I was in the US, and the issue of the circumstances in which President Bush took this country to war, and the reasonableness of his Administration's belief that Saddam Hussein's Iraq had weapons of mass destruction, is now firmly on the agenda. The door is open to a comprehensive examination of that issue. I believe that the road to war in Iraq is one that is tainted with international illegality. The conduct of the so-called – and in my view wholly misconceived – 'war on terror' has caused the Bush Administration to abandon the rules of international law. It has done so deliberately and systematically. It has done so in its efforts to create a legal black whole at Guantanamo and to deny the applicability of the Geneva Conventions on the treatment of prisoners of war to Taleban and Al-Qaeda detainees. It has done so in a deliberate policy of detainee interrogations that has sought to avoid the constraints of the 1984 Convention on the prohibition of torture. It has done so in waging an illegal war against Iraq which was not authorized by the UN Security Council and was not justified – or even claimed to be justified – as self-defence. And it has done so in its failure to meet its international obligations in pursuing a policy of extraordinary rendition from Iraq and elsewhere.

All of this undermines peace, justice and security. We expect more from the country that has done so much to create the modern system of international rules. Facing a real threat, the systematic dismemberment of international rules has undermined the morale of American troops and others involved in promoting American security, undermined relations with allies and friends, and exposed a great number of individuals to criminal liability. How has this happened, and what is to be done?

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<sup>1</sup> This is a (slightly) adapted text of a speech given on 6th April 2006 in The Hague at the opening of the 3rd Annual From Peace to Justice Conference



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Before turning to those issues, let me provide some background. This story begins in August 1941, on a warship off the coast of Newfoundland, at a meeting between US President Franklin Delano Roosevelt and British Prime Minister Winston Churchill. It is a time of great challenge for Britain and the United States, yet these two men decide that what they need to do is draw up a blueprint for the new international order once the Nazis have been vanquished. What is needed is a new rules-based system, to replace the then-existing arrangements that allowed a state do whatever was not expressly prohibited by international law. And since not much was prohibited, there was a great deal states could do. They could wage war without restriction. They could commit genocide against their own populations. They could torture detainees. That was the world of the 1930's.

Roosevelt and Churchill set out to change that. They drafted a one page document – the Atlantic Charter – by which they intended to make known, as they put it, “certain common principles in the national policies of their respective countries on which they base their hopes for a better future for the world”.<sup>2</sup> The Atlantic Charter was short and visionary and identified eight principles, revolving around three key pillars reflected in the UN Charter: a general obligation on states to refrain from the use of force, except in self-defence or where the UN Security Council or a regional body has authorised them to use force; a commitment to human rights, to maintain the ‘inherent dignity’ and the ‘equal and inalienable rights’ of all members of the human family; and an undertaking to promote economic liberalisation through the adoption of free trade rules and related international obligations in the fields of foreign investment and intellectual property.

These are the three pillars that have remained in place for the last sixty years. Overarching them was a commitment to the international rule of law. Roosevelt and Churchill committed themselves to recasting the eight principles of the Atlantic Charter into binding legal instruments. And this they did, with later assistance from Truman and Attlee. In a remarkable period between 1941 and 1949 the modern system of international law was put in place through a series of far-reaching treaties which have now received very broad acceptance. In the spring of 1945 fifty-one states agreed on the creation of the United Nations at San Francisco, crystallising in law the modern rules governing the use of force and promoting human rights. That was followed by the UN General Assembly’s Universal Declaration of Human Rights - Eleanor Roosevelt’s baby - which in turn led to the covenants on civil and political rights and on economic and social rights, to regional treaties like the European Convention on Human Rights, and to the Human Rights Act 1998, a singular achievement of the Prime Minister’s first government.

The day after the Universal Declaration was adopted, the General Assembly agreed on the world’s first human rights treaty, the 1948 Convention on the prohibition of genocide. It was followed by other specialised human rights treaties, such as the 1984 Torture Convention, which obliged its parties to prosecute or extradite torturers and which did away with Senator Pinochet’s right to claim immunity before the English courts (also in 1998, it turns out that was a big year for international law). By then also the Allies had agreed on other new rules to stop individuals doing

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<sup>2</sup> 14 August 1941, reproduced in *Lawless World: America and the making and Breaking of Global Rules* (Allen Lane, 2005), p. 240. The latest edition was published in paperback by Penguin in February 2006, and is available at: [http://www.amazon.co.uk/exec/obidos/ASIN/0141017996/ref=pd\\_rnr\\_fr\\_gw\\_nr\\_2/026-4535517-1557245](http://www.amazon.co.uk/exec/obidos/ASIN/0141017996/ref=pd_rnr_fr_gw_nr_2/026-4535517-1557245)



nasty things in the name of the state: the Statute of the Nuremberg Military Tribunal gave birth to a new field of international criminal law. This would eventually lead to the Yugoslav and Rwanda tribunals and then (again in 1998) to the Rome Statute of the International Criminal Court. There is a direct line from Nuremberg to the indictment and arrest of Charles Taylor, former President of Liberia, and his transfer to the Special Court for Sierra Leone and his trial in The Hague. In the same post-war period, the US and Britain led international efforts to negotiate the four Geneva Conventions on the law of armed conflict, including Geneva Convention III on the treatment of prisoners of war. This is the same instrument that was to become the centre of so much attention in relation to events at Guantanamo, Afghanistan and Abu Ghraib.

Developments in international law were no less far-reaching in the economic field: the Bretton Woods Agreement created the World Bank and the International Monetary Fund, in 1944. And in 1948 agreement was reached on the General Agreement on Tariffs and Trade – the GATT – the world’s first global free trade rules and the parent of today’s World Trade organisation, the WTO. By any standard, these were remarkable achievements in a very short period of time.

The new rules-based system initiated by the Atlantic Charter was not altruism at play. It reflected a view that international rules would promote Anglo-American interests, serve as a bulwark against the Soviet model, and emphasise values to be marshalled against Nazi and fascist threats. But the simple point is that international rules were seen as creating opportunities, not imposing constraints. The Atlantic Charter had an immediate and far-reaching impact. Writing in his autobiography, Nelson Mandela describes the Atlantic Charter as reaffirming his faith in human dignity: “some in the west saw the Charter as empty promises”, he wrote, “but not those of us in Africa. Inspired by the Atlantic Charter and the fight of the Allies against tyranny and aggression, the ANC created its own charter ... which called for full citizenship for all Africans, the right to buy land and the repeal of all discriminating legislation.”

Over the next 60 years the principles set forth in the Atlantic Charter defined a new international order. A great number of international agreements have been adopted since then, touching on issues that affect each and every one of us very directly. Agreements were concluded on trade, investment, commerce, air transport, oceans, boundaries, and human rights. The great majority of these rules are not controversial. They work efficiently and well. They establish the minimum standards necessary for cooperation in an increasingly interdependent world. The emergence of this great body of rules reflects a silent global revolution, and most people are blissfully unaware quite how much international law there is. This does raise serious issues about accountability and legitimacy in international law-making – it is, e.g., a matter of real concern that in the UK treaties are generally not debated by Parliament, unless they address an issue of EC law. By all accounts there was for instance no parliamentary debate about the WTO agreements.

I would not leave you with the impression that I am starry-eyed about international rules, to suggest that global rules can sort out all the wrongs of the world, or create an era of peace and security. Plainly they cannot. Events over the last sixty years demonstrate that. There are a great number of rules which require attention. And certainly the world has changed greatly in the period since the UN was created. The number of states has grown from around 50 to around 200, a result of decolonisation. The range of issues requiring international cooperation – and hence international legislation – has also grown, to include issues like the environment, tourism and consumer safety. New international actors have emerged: the monopoly of states has diminished and international organisations, NGOs, corporations, individuals are demanding a role in ways that present profound



challenges for an international legal order constructed on the assumption that the global order revolved around states alone. Failed states, peripatetic travellers, permeable national borders, malign non-governmental actors like Al Qaeda and other terrorist groups, and the proliferation of weapons of mass destruction, are but some of the issues that pose very real challenges to the established international legal order. Do they require us to revisit the basis of the post World War II legal settlement? President Bush has made the argument, and so has Prime Minister Blair, most recently at a speech he gave in Sedgefield in March 2004, which some have seen as an endorsement of Bush's call for a right to pre-emptive strike.

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Are the existing rules adequate? That question has been asked with increasing frequency since 9/11. It is said by some that the international legal order is no longer up to the task it was designed to address in the period after WWII, in the face of current challenges. It is said that the rules governing terrorism, wars and rogue states are inadequate. And it is said that the international rules threaten American security and sovereignty. To be sure, those who make this claim most frequently and loudly are often associated with the neo-conservative elements that dominated the agenda of George W. Bush's first Administration. In the months before 9/11 it was clear that the Bush Administration was committed to remaking the international rules, to limiting or killing off the rules that were seen to be too constraining. Many members of this group had been in office in the first Bush Presidency, and they regrouped during the Clinton Administration. Plans were set out in various manifestos. I commend to you in particular the Statement of Principles of the Project for a New American Century, to get a flavour of what was being proposed in the late 1990s (although you may also want to take a look at [www.bushcountry.org](http://www.bushcountry.org)). Tapping on a rich vein of American exceptionalism, the key targets include international law and the rules which had allowed the detention of Senator Pinochet, the Statute of the new International Criminal Court, the Kyoto Protocol on global warming (1997), and various arms control treaties. Each of these treaties would, it was argued, constrain America, undermine sovereignty, and threaten US national security.

Within weeks of taking office in January 2001 President Bush had set a new agenda: the Kyoto Protocol and the ICC statute were "unsigned", a protocol on biological weapons scuppered, and a new policy of 'a la carte multilateralism' put in place: you pick and choose the bits of international law you like and get rid of the rest. John Bolton was appointed as one of President Bush's senior foreign policy advisers as Under Secretary for Arms Control and International Security at the US Department of State. He would oversee Iran's compliance with its nuclear obligations under the Non Proliferation Treaty. This is the same John Bolton who had, a little earlier, declared that treaties were only political and "not legally binding". And very early on a small group of neo-con lawyers were parachuted into key positions at the US Justice Department and the Pentagon. Although their views were not widely shared, particularly among career civil servants and the military, they would come to dominate decision-making.

The point I make is a simple one: even before 9/11 the conditions were in place for an assault on Roosevelt's vision of international order based on new rules. From this perspective, 9/11 presented a terrific opportunity to promote the "anti-international law" project. Little time was lost. Within days of the attacks on the World Trade Centre and the Pentagon, lawyers in the Bush administration had been charged with putting in place the new legal rules which were necessary to



prosecute the response. On the key legal issues there was no consultation with allies, not even Britain. An early decision was taken to characterise the response to Al-Qaeda and international terrorism as a “war on terrorism”. This had the effect of taking it outside the scope of the ordinary criminal law and into the rules of armed conflict. It turned criminals into warriors. But these rules placed limits on what you could do to detainees. POWs could not be questioned. Acting unilaterally in a manner that was wholly inconsistent with the requirements of the Geneva Conventions, the Administration determined that individual detainees would be placed outside the constraints of the law. The Guantanamo detention facility on land, once leased from Cuba, was chosen because Administration lawyers had advised that its location outside US territory would provide a means of redress under US constitutional law and international law. Guantanamo was created as a “legal black hole”, as the English Court of Appeal later described it.

It is striking that those lawyers in the Administration who conjured up this scheme were conscious that international rules placed constraints on what could be done, not least in relation to conditions of detention and interrogation. The legal advices that have come into the public domain recognise the existence of the international rules but not their well-established consequences. The country that had done more than any other to put in place a new rules-based system was using 9/11 to ditch some of those rules. International law was now part of the problem, not the solution. 2002 was not a good year for international law, although quite how bad it was did not become clear until much later, when the legal advice started leaking out into the public domain.

The neo-con lawyers who ventured to speak publicly did not pull their punches. White House General Counsel Alberto Gonzales determined that the Geneva Convention on the treatment of POWs simply did not apply to Al-Qaeda or Taliban because their members were unlawful combatants. The ICRC – guardian of the rules – has consistently refused to accept this claim. The Administration’s view is novel and ditches past US practice, generating a sharp response from US military lawyers who saw straight away that abandoning the rules would leave the US military highly exposed. The new US view was based on the belief that international terrorism had created a new paradigm. Gonzales famously declared that this new paradigm “renders obsolete Geneva’s strict limitations on questioning of enemy prisoners and renders quaint some of its provisions”.<sup>3</sup> Over at the Justice Department, Jay Bybee, a political appointee as Assistant Attorney General, was asked to advise on the standards of conduct required by the 1984 Convention against Torture, as implemented by US federal law. His memorandum of 1 October 2002 is probably the very worst piece of legal advice (if it can be called that) that I have ever seen. It was apparently prompted by CIA questions about what to do with captives alleged to be top-ranking al-Qaeda terrorists who had turned “uncooperative”. Dispensing with all known canons of treaty interpretation, Mr. Bybee concluded that the concept of “torture” covers only the most extreme acts, limited to severe pain which is difficult for the victim to endure: “Where the pain is physical”, he writes in his legal memorandum, “it must be of an intensity akin to that which accompanies serious physical injury such as death or organ failure”. Anything less will not be torture. It is therefore allowed. Where the pain is mental, then it “requires suffering not just at the moment of infliction but it also requires lasting psychological harm, such as seen in mental disorders like posttraumatic stress disorder”.<sup>4</sup> There is no support whatsoever in international law for such an interpretation. John Yoo was a US Deputy Assistant Attorney General to Attorney General John Ashcroft, charged with advising on

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<sup>3</sup> Ibid., p. 154.

<sup>4</sup> Ibid., p. 213.



the effect of rules such as the Geneva Conventions, the 1984 Convention prohibiting torture, and the ICC Statute. He could not have been clearer in May 2002: “What the Administration is trying to do is create a new legal regime”.<sup>5</sup> But it was doing so unilaterally, without consultation, and without regard to what the treaties required. It goes against the very essence of the collective, rules-based arrangements that the US and Britain wanted to put in place in the 1940’s. The period between 9/11 and the summer of 2004 will, I expect, come to be seen as a low-point for America’s engagement with international law. Within the US the media went to sleep, so did the Democrats, so did most international lawyers. Anyone who was willing to speak out could not find a platform. Anyone within Government – and there were many – who tried to speak up for the established rules was overridden. The argument that the rules served American interests got short shrift.

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Against that background the President also decided very early on to get rid of Saddam Hussein. The indictment of Scooter Libby seems to have opened the door to a proper examination of the road to war in Iraq. Issues that had long been aired in the UK have only now come onto the US agenda. In March this year, the New York Times ran a front page story on the revelation in the new edition of my book, published in the UK several weeks earlier. Why the wait? With time the details will be fleshed out. But enough has already emerged from insider accounts and from leaked documents to allow a clear image.

Within days of 9/11 President Bush had been persuaded to address Iraq as part of a military response to the attacks on America, even if no credible information pointed to any Iraqi link. America needed to be seen to act decisively, and evidence-based decisions went out of the window. The legitimacy of force required an ally or two, since there was never any real probability that the US would actually go it alone. Tony Blair was convenient and he was amenable. By April 2002 he had been persuaded to join in, without even extracting much of a price. In the summer of 2002 evidence of Iraqi weapons of mass destruction (WMD) was “thin”, as the ‘Downing Street Memo’ confirmed, and the facts were being fixed around the policy of removing Saddam. Blair’s price? Since the war could not be sold as regime change (plainly illegal under international law) it would have to be justified on the grounds of the threat posed by Saddam’s possession of WMD.

The autumn of 2002 was dedicated to proving the WMD case, and to getting a green light from the UN Security Council. No smoking gun was found. The Security Council adopted resolution 1441, which left ambiguous the question of whether a further Security Council resolution was needed. But 1441 at least confirmed that war would be arguable if it could be shown that Iraq was in material breach of its disarmament obligation. UN inspectors were dispatched to Iraq. January 2003 was a difficult month. Colin Powell told Jack Straw, his British counterpart, that if the case was too weak for a second resolution then there would be no justification for the US to act unilaterally. George W. Bush and Tony Blair worried that Hans Blix would not find a smoking gun, or worse still might even report that Saddam was cooperating. The two leaders discussed ways of provoking a ‘material breach’ by Saddam. Bush told Blair he would use force without a further resolution. The starting date for the war was ‘pencilled in’ for 10 March. The note of the meeting of 31 January 2003 is important because it confirms that the decision to go to war was decided before

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<sup>5</sup> Ibid., p. 153.



the end of January and because it indicates that the two leaders recognised that they had no real evidence as to Iraq's possession of WMD.

Matters did not improve in February 2003. No smoking gun emerged. Colin Powell's Security Council presentation bombed. The Niger uranium claim was disputed. Blix reported greater Iraqi cooperation. The lesser members of the Security Council proved to be too independent, and could not be bought or budged. And, contrary to claims that now seek to rewrite history, contemporaneous accounts of individuals who had seen the intelligence disputed the claim that Saddam had – or was about to get – WMD. The sceptical reader need look no further than the resignation speech made in the House of Commons on 18 March 2003 by British Cabinet Minister Robin Cook for a devastating rebuttal of the case based on WMD.

We now know that the decision to go to war was taken on the false claim that Saddam had WMD. It has been established beyond any reasonable doubt that there were no WMD. All that is left to the Bush Administration is the plaintive claim that its belief that Saddam had WMD was a reasonable one. With that claim punctured the whole house of cards collapses. Hence the significance of Joseph Wilson, and why he had to be dealt with. Hence the significance of establishing the role played by the White House in undermining Mr Wilson, his independence, and his credibility. And hence now the indictment of Lewis Libby. This is positive. That audience is looking to the United States for a credible strategy to extricate Iraq, the region and the world from the mess that is now unfolding. That requires less hauteur and hubris, more honesty, and more cooperation with other nations. We face a real threat from forces that seek to destabilize America and who will benefit from a long-term Iraqi quagmire that makes America less likely to act when real threats exist. Let us not gloat but rather hope that the indictment allows the Administration a moment of reflection, and permit the nation to return to reason, decency and lawfulness in its foreign policy decision-making.

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In the US the tide of media and public interest only began to turn in the spring of 2004, after a diligent group of journalists uncovered pictures of abuse at Abu Ghraib. With those discoveries there emerged into daylight a series of legal opinions – including the Bybee memorandum – which showed how far some of the lawyers in the Administration – at the very highest levels – were willing to go to override US and international rules. A quiescent Congress began a series of hearings, grilling Paul Wolfowitz, who after much dissembling accepted that putting a bag over someone's head for 72 hours was not humane. And later on that summer the US Supreme Court stepped in to open the door to legal rights for the detainees at Guantanamo. Guantanamo Bay was, wrote Justice Scalia, “a foolish place to have housed alien wartime detainees”. By the autumn of 2004 it had become apparent that ignoring international law was not a cost-free exercise. US authority had been undermined. Other States were beginning to rely on US arguments. Is the damage irreversible?

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Allow me to park that question for a moment, and say something about the effect on Britain of the new American thinking on international law. I say this because it now appears that it



was American legal arguments that helped to convince the Attorney General to conclude that a reasonable case could be made to proceed to war in Iraq without an explicit resolution by the Security Council.

Whereas the United States media were largely silent about international legal issues in the period between 9/11 and the summer of 2004, the British media had given a great deal of attention to international law issues. As early as January 2002 – as soon as it was known that a number of the Guantanamo detainees were British nationals – media attention focused on the interplay of rights under the Geneva Conventions and human rights law. Further attention was generated by the Abbassi case brought by some of the British detainees to the English courts, challenging the failure of the British Government to take sufficient steps to ensure that the US respected the detainees' rights under international law. The English Court of Appeal rejected the Government's argument that these issues were not justiciable. Although the Court was not willing to order the British Government to take any particular steps, its invocation of international law and criticism of the US actions were direct and unambiguous:

“What appears to us objectionable is that Mr Abbassi should be subject to indefinite detention in territory over which the United States has exclusive control with no opportunity to challenge the legitimacy of his detention before any court or tribunal.”<sup>6</sup>

The Court concluded that Mr Abbassi was being detained arbitrarily in a ‘legal black hole’ in breach of fundamental human rights and basic principles recognised in English law and international law. The judgment added to political pressure. It reaffirmed the central importance of international law. And it gave a green light to those who considered that the British Government should be held to account by reference to the very standards of international law which it had done so much to put in place. Two years later, of course, the House of Lords gave judgment on the Government's derogation from the Human Rights Act, adopted shortly after 9/11. The UK was the only one of 44 Council of Europe members to enter a derogation, a matter for which it has been criticised in some quarters. But at least it did so, unlike the US which simply ignored the requirement of the Inter-American Convention on Human Rights and the ICCPR in relation to Guantanamo and did not bother putting in a derogation. In the Belmarsh case the Law Lords relied on a number of principles of international law in ruling that the indefinite detention without charge of non-UK nationals at Belmarsh was discriminatory and unlawful. And last December the House of Lords gave a similarly powerful judgment in ruling that evidence obtained by torture could never be invoked before the English courts: the common law and Article 15 of the 1984 Torture Convention were the basis for that judgment.

The judicial decision in the Guantanamo and Belmarsh cases signalled the courts' commitment to ensure that Britain respected its international obligations, and a recognition of the central role that the international rule of law plays in responding to new threats. Abandon the law at your peril, the court seemed to be saying. They also reflected a rejection of the threat that Al Qaeda and 9/11 had given rise to a new paradigm.

The British Government did not adopt the position that international law was irrelevant in deciding whether to go to war. In the US, the general view was that if war was legal under the US Constitution then that was good enough. “International law? ... I don't know what you're talking

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<sup>6</sup> Ibid., p.166.



about by international law”, President Bush said in December 2003. From the earliest days, however, the British Prime Minister was plainly concerned to ensure that any actions taken against Iraq would have to be consistent with the United Kingdom’s international obligations. Nevertheless, as was shown in *Lawless World*, the Attorney General’s secret legal advice of 7 March 2003 was rather different from the public answer he gave to a Parliamentary question on 17 March 2003: in the space of just ten days an advice that the war could well be found to be illegal by a court became an unequivocal view as to the legality of the war.

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So why does all this matter, and where does it leave us and international law, for now and for the future? It is time to move on, many will say. Others will say that I am a hopeless European overly concerned with legal niceties.

The events of the last three years matter, first and foremost, because they have significant consequences for international governance. We live in a complex, interdependent world in which social, political, economic and religious values and interests collide with increasing frequency over an ever greater set of issues. International law sets minimum standards of behaviour. Outside of bullying and force it is all we have to provide a framework for resolving those differences. Without international law we are back to the law of the jungle, the very world which Roosevelt and Churchill committed to change when they met off the coast of Newfoundland in August 1941. I want Britain and the US battling for international law, not against it.

There will be occasions where the international rules are wholly inadequate, occasions when States may justifiably feel the need to dispense with the rules and go it alone. 9/11 and the threat posed by Al Qaeda is not, for the time being at least, such an occasion. Nor was the situation in Iraq in March 2003 such an occasion. The rules set forth in the Geneva Convention, in human rights treaties and in the UN Charter in relation to the use of force did not need the treatment they have received.

It is dangerous indeed to begin to imagine a system of international governance in which some States – the large and powerful ones - feel that they can pick and choose the international rules they like and discard those which they don’t. Yet that has been the approach adopted by the Bush Administration, reflected in the notion of *à la carte* multilateralism. And it is an approach for which the British Government has provided considerable support, generally maintaining a public silence on the excesses of Guantanamo and buying into a legal argument for war in Iraq which was denuded of any international support.

The approach degrades international law, and it makes it more difficult to rely on rules when others violate them. If you begin to tinker unilaterally with the international rules you don’t like – on human rights, on the Geneva Conventions, on the use of force – then others may begin to tinker with the rules they don’t like – on trade, on intellectual property, on the rights of foreign investors. If you send out a message that you consider the rules to be obsolete and incapable of meeting new paradigms, you prevent yourself from challenging others who then act in the same way. That is a serious problem right now in many areas, for example nuclear proliferation. Imagine how easy it is for those in Teheran to respond to allegations from the US and Britain that they are not complying with the requirements of the Non-Proliferation Treaty.



The British and American Governments would do well to bear in mind the words of George Kennan, the great American diplomat (and not known for a strong attachment to international rules), in his famous telegram from Moscow in 1947, anonymously signed X. He ended his warning of the Soviet threat with these words:

“[W]e must have courage and self-confidence to cling to our own methods and conceptions of human society. [T]he greatest danger that can befall us in coping with this problem of Soviet communism, is that we shall allow ourselves to become like those with whom we are coping.”

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This brings me to my concluding remarks. It may be thought that you might divine that I would be pessimistic about what is to come as well as about the future of international law. But I do not feel that way. Why not? Because the rules of international law which have been the subject of so unremitting an assault in the aftermath of 9/11 have shown themselves to be remarkably robust. They have not crumbled or been washed away. They have their detractors, but in far larger numbers they have their supporters. It is right that governments should re-examine the adequacy of rules. But they are not in need of change. The Geneva Conventions are adequate. The UN Charter is adequate (as the outcome document of the UN Summit in September 2005 confirmed). The Torture Convention is adequate. Iraq has caused untold damage to those who support an expanded concept of humanitarian intervention.

In the US, there remains much which is of serious concern. But it is striking that the Bush Administration has not succeeded in killing off Kyoto or the ICC, or rewriting the Geneva Conventions or the Torture Convention, or building any sort of consensus to support its revised approach to the international rules governing the use of force. Quite the contrary: There are signs that the Bush Administration is rethinking its strategies and its policies. It has reversed its position and dropped its outright opposition to the ICC, deciding not to veto a Security Council resolution referring the situation in Darfur to the ICC. Senator McCain has caused new legislation to be adopted which will commit the US to its obligations under the Convention Against Torture. And privately, a number of senior Administration officials have recognised that the Administration may have made serious mistakes in its so-called “war on terrorism”: Guantanamo is a terrible stain on America’s reputation and has undermined the right arguments it makes to promote the rule of law. A more consensual and rules-based approach is needed if necessary cooperation from other states is going to be engaged. There is a broader recognition that peace, justice and security require cooperation, and cooperation requires rules.

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