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The duty to prevent

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The ends cannot justify the means with regard to war. Just as the police need a warrant to detain and search ordinary citizens, a nation should secure the legality of an operation before intervening militarily. However, we also have a duty to prevent threats to humanity of massive proportions. The UN Security Council, in particular, has a duty to stop non-democratic regimes from acquiring and using weapons of mass destruction. The negative lessons learned in Iraq must not inhibit our duty to intervene - even militarily - for purposes of humanitarian protection.

In early 2003, when the US and Britain decided to send troops to Iraq without a second UN resolution, I argued that their action was illegal under international law, but potentially legitimate in the eyes of the international community. At that time, I set forth three criteria for determining the ultimate legitimacy of the action: 1) whether the coalition forces did in fact find weapons of mass destruction; 2) whether coalition forces were welcomed by the Iraqi people; and 3) whether the US and Britain turned back to the UN as quickly as possible after the fighting was done. A year later, I concluded that the invasion was both illegal and illegitimate. The coalition's decision to use force without a second Security Council resolution cannot stand as a precedent for future action, but rather as a mistake that should lead us back to genuine multilateralism.

None of the criteria I put forward were fully met. Above all, no weapons of mass destruction have been found. The best President Bush could do in his January 2004 State of the Union address was to claim that US inspectors had found "dozens of weapons of mass destruction-related program activities." As dangerous as Saddam Hussein may have been to the world, he

did not pose the kind of imminent threat necessary to justify pre-emptive action. Second, the vast majority of Iraqis are indeed glad to be rid of Saddam, but it was evident even before the scandal over prisoner treatment at Abu Ghraib that resistance to the coalition presence was strong and growing. In the wake of the horrific and shameful pictures of American soldiers abusing Iraqi detainees, comparisons between the occupation regime and Saddam Hussein's government became increasingly common in the Arab world. Such comparisons are false, but opinion on the Arab street, and indeed on the European street, is not shaped by logic.

And third, the US administration only really "went back to the UN" much later, when it was both forced to recognize that it could not broker a political settlement without UN assistance and when it was likely looking for someone else to blame for the chaos Iraq was descending into.

Of legality and legitimacy. But why distinguish between legality and legitimacy in the first place? After the NATO intervention in Kosovo, a distinguished international commission found that it was illegal but legitimate. It is sometimes necessary to break international law to change it; in a circumstance where the law does not permit what the international community approves, the commission argued, then the law must be updated "to close the gap between legality and legitimacy." It thus concluded that UN rules and international law generally needed to be updated to permit armed intervention for purposes of humanitarian protection under carefully specified conditions.

The lesson of the invasion of Iraq is quite different. The nations who insisted on more evidence that Iraq actually possessed weapons of mass destruction, more time for the inspectors to do their work, more time for a fully mobilized international community to exert diplomatic pressure, proved to be right. I believe that the Iraqi people are unquestionably better off without Saddam Hussein, at least for the moment, and that the prospects for creating a stable and more democratic Iraqi government are still alive, although they are going to require coordinated international effort and assistance for many years. But the ends cannot justify the means with regard to war – any more than we can authorize police to detain and search ordinary citizens on a false warrant as long as they ultimately find some evidence of criminal activity. The United States offered the world a false warrant.

Old rules, new threats. Even accepting that the coalition forces should not have gone to war without a second UN resolution, however, it is still true and equally important that the world should never have found itself in the position it was in in March 2003. The trajectory of Saddam Hussein is in many ways an object lesson in double standards, empty promises, and unenforced resolutions. Saddam could have been in-

dicted and prosecuted for genocide, crimes against humanity, and war crimes any time from the late 1980s through the early 1990s for a combination of his use of chemical weapons in his war against Iran, his Anfal campaign against the Kurds (again using chemical weapons), and his ruthless crushing of the Kurdish and Shia resistance against him in the wake of the 1991 Gulf War, not to mention his complete displacement of the Marsh Arabs and his destruction of their habitat. If we apply the standards put forward by the International Convention on Intervention and State Sovereignty, his brutal treatment of his own people would have justified international intervention for purposes of humanitarian protection.

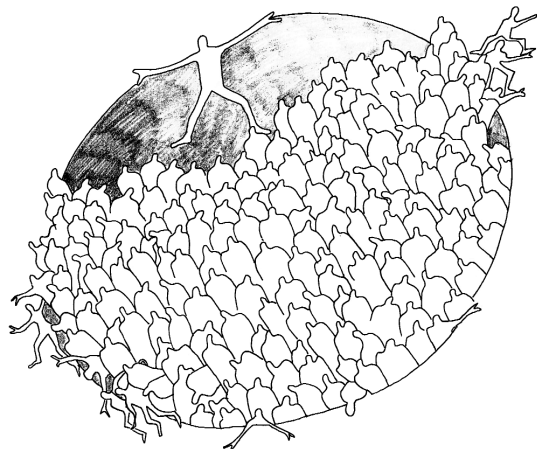
Equally provocative, he clearly sought to acquire nuclear weapons; the world is simply fortunate that he invaded Kuwait before succeeding. In retrospect, the UNSCOM inspections were far more effective than many in the West, particularly the United States, ever gave them credit for, but for many years the collective resolve of the Security Council to support UNSCOM's mandate and make it clear to Saddam Hussein that his rearmament could not be tolerated weakened steadily. Security Council members allowed him to play politics between them quite effectively, counting on non-compliance with sanctions in ways that deeply undermined trust between nations that was crucial for them to develop an effective strategy toward Iraq – even if only for the purposes of credible threat.

The US, of course, backed Saddam against Iran, supplied him

with biological and chemical agents, refused to unseat him even in 1991 for fear, in part, of destabilizing the region, and generally shifted ground repeatedly and incredibly. At this point, however, the blame game is less important than the search for lessons learned for dealing with current and future incarnations of a ruthless dictator apparently bent on acquiring weapons of mass destruction and who has ties to terrorist groups. No amount of finger-pointing, or even breast-beating, can absolve us of the need to learn those lessons and implement them.

Prevention, not pre-emption. The first lesson, somewhat paradoxically, is the need not for pre-emptive but for preventive action. Waiting until a threat has become sufficiently “imminent” to warrant pre-emption, both as traditionally defined and as expanded by the Bush administration’s National Security Strategy, almost inevitably means either threatening or using force. In cases where the threat posed could involve the deaths of hundreds or thousands or even millions of people – whether by machete or by nuclear weapon – the Security Council and/or regional institutions should be prepared to take countermeasures far in advance of a looming catastrophe. We learned a great deal about conflict prevention in the 1990s – often the hard way. We must now be prepared to put that knowledge to work, collectively. To quote Lawrence Freedman, “‘an ounce of prevention is better than a pound of cure’ is as good a motto for foreign policy as it is for medicine.”¹

Prevention is quite different from pre-emption however. “Prevention is cold-blooded: it intends to deal with a problem before it becomes a crisis, while pre-emption is a more desperate strategy employed in the heat of a crisis.” Indeed, “Prevention can be seen as pre-emption in slow motion, more anticipatory or forward-thinking, perhaps even looking beyond the target’s current intentions to those that might develop along with greatly enhanced capabilities.”² Together with Lee Feinstein of the Council on Foreign Affairs, I have proposed a collective “duty to prevent,” whereby all members



of the United Nations, preferably acting through the Security Council, have a duty to prevent states without internal checks on their power from acquiring or using weapons of mass destruction.³ This proposal responds to a direct call from Kofi Annan to the General Assembly in September 2003, asking the Security Council to consider “early authorization of coercive measures.”

As the future of Iraq grows more tenuous by the day, the use of force for pre-emptive, preventive, or virtually any other purpose is looking increasingly misguided. But even now, that is the wrong lesson to draw. Suppose Saddam Hussein had been on the verge of making nuclear weapons: the world could not have afforded to wait to act. But neither can we be put in a situation where the only option appears to be meeting the threat of a future deadly and devastating force with a present deadly and devastating force, however well-intentioned.

The prospect of the use of force must be real and on the table in dealing with dictatorships. But international institutions need an entire menu of non-forcible preventive options and the legal authority to use them.

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Human and state security. The second lesson from Iraq is the importance of taking human security as seriously as state security. The “major military action” in Iraq ended within a month. Let us try to imagine what would have happened had US combat troops been followed by forces specially trained in post-conflict capacity building: police to prevent looting and other crimes; engineers to begin rebuilding infrastructure as quickly as possible; investigators to identify and monitor extremists; teachers, doctors, lawyers, and economic and political consultants to help Iraqis take control of their lives and their society as quickly and effectively as possible. Indeed, let us imagine further that every official in a fledgling Iraqi government were immediately part of a larger network of parliamentarians, judges, or regulators of every stripe, from financial markets to utilities.

These networks would provide training and material support. Equally important, they would help formerly isolated Iraqis feel like they were quickly part of a wider world with professional norms and standards of behavior. From a global point of view, the world, or at least large parts of it, would be mobilizing all our government resources to help a fellow government get back on its feet. Such government networks would not replace the networks of non-governmental actors who currently flood into post-conflict situations; on the contrary, they would complement them and would carry the greater authority of official representation from fellow governments.

The American failure is above all a failure of planning, of anticipating, of taking the job of regime-building as seriously as the job of regime-destroying. At the deepest level, the US government thought only in terms of state security – of the Iraqi government as developing weapons that could threaten the US. It thought only of a po-

tential Iraqi democracy that would represent a strong state in the Middle East – one that would be friendly to the US and that would help dry up sources of terrorism. Nothing in this outlook took into consideration human security – the security of the Iraqi people.

In its simplest form, security means protection from violence. That is the most basic service that any government must provide its citizens; indeed, it is the complete breakdown of law and order, typically signaled by widespread violence from marauding gangs or insurgents of various kinds, that leads to the diagnosis of a failed state. The traditional difference between domestic and international security has been a matter of scale, which in turn has been assumed to be an indicator of the source of the threat – individuals versus states. A pattern of individual deaths, even if systematic, was deemed to be the result of organized crime; mass violence indicated backing by a rival state. Indeed, the apparent certainty of some policy-makers in the United States and other countries that attacks like September 11 must have been backed or even sponsored by a state rather than a network of individual terrorists reflects precisely this mindset.⁴

Well before September 11, however, Thomas Friedman wrote about the “super-empowered individual,” who could pose threats to international security of a kind that was previously the province only of states.⁵ At the same time, persistent threats to individual security within a state, previously the province only of domestic governments, merit international engagement. Part of the point of the human security movement is that omnipresent fear of the loss of life through violence feels the same whether the imagined enemy is a soldier, a terrorist, a warlord, or a gang leader. If governments fail to fulfill their most basic function, then the responsibility devolves to the international community. A revised definition of “international security” would thus drop the distinction between domestic and international as such and speak instead of “global security”: an effort at every level – local, national, regional, and global – to protect individuals from violence.

This integrated conception of security is easiest to grasp when we see the integrated nature of the response to the threats that menace both individuals and states. A large part of the strategy to address all three of the threats identified above must be to promote, build, and insist on decent and effective governments worldwide through every means possible. Part of that strategy will require restoring or building state governing capacity at the domestic level – providing a wide range of resources, training, and ongoing advice and support to enable governments to control the individuals who have disrupted social order within a particular state. This is precisely the same capacity that is necessary to identify and root out terrorist cells within a particular nation, as well as to participate in blocking such sources of support as financing and arms supply. It is also the capacity necessary to ensure that states can fulfill their in-

ternational treaty obligations, and, critically, to ensure that other states and non-state actors can monitor them in the process.

At the same time, of course, rebuilding and strengthening governing capacity is an important part of the solution for addressing non-violent threats to human welfare such as persistent poverty, illiteracy, and disease.

Humility and wisdom. The third and most important lesson from the invasion of Iraq is that the safeguards built into the requirement of the multilateral authorization of the use of force by UN members are both justified and necessary. If the nations seeking to use force cannot mount strong enough evidence of a security threat to convince a majority of the Security Council and to avoid a veto (provided that the veto is not clearly motivated by countervailing political interests), then the world should wait and try another way before sending in the troops.

The principle of multilateral authorization of the use of force reflects several distinct and important concerns. First is the simple point that using force means killing people – some intended, others not intended – and that in modern warfare it can mean killing millions with a single weapon. “Smart” weapons reduce this danger, but they also reduce the outrage and attendant scrutiny that killing normally inspires. Decisions to use force in circumstances other than in self-defense thus should be subjected to a high threshold of justification.

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Second is the need to win the peace as well as the war. Multiple decision-makers are likely to ask uncomfortable questions and posit difficult scenarios – for both war and post-war planning. With the luxury of hindsight, we can hope that submission to multilateral authority might also have forced greater planning from those UN, NATO, EU, and OSCE experts who had far more experience in post-conflict situations. If the answers don’t hold up, if the strategies for what happens when the shooting stops aren’t there, then perhaps the shooting shouldn’t start in the first place.

Third is the critical importance of legitimacy. Victory can in some cases create its own legitimacy, but the combination of globalization and the information revolution means that individuals around the world are watching the consequences of the use of force and reaching their own conclusions about the rightness of the causes. In this context, multilateral process – genuinely listening and consulting to perspectives from many different nations – may be the only refuge when things go wrong. Collective mistakes are no less in need of repair than individual mistakes, but their perpetrators are more likely to get the benefit of the doubt as they seek to repair them. More fundamentally still, valuing the legitimacy of a genuine multilateral process, in which participants learn as well as teach, is a badge of humility and wisdom that can provide its own shield.

The war in Iraq was illegal from the beginning. It now must be said to be illegitimate

as well. But still it rages, and whatever the stain on its beginning, its ending affects national, regional, and global security. The United States must acknowledge its mistakes. Other important powers must forgive but not forget. We must work together to re-forge and reform a genuinely multilateral decision-making process that can act early and decisively in the face of global threats and that can protect both the human and the state in the quest for global security.

¹ Lawrence Freedman, "Prevention, not pre-emption," *The Washington Quarterly*, vol. 26, no. 2, spring 2003.

² *Ibid.*

³ Lee Feinstein and Anne-Marie Slaughter, "A duty to prevent," *Foreign Affairs* January 2004.

⁴ See, for example, Richard A. Clarke, *Against All Enemies: Inside America's War on Terror*, Free Press, New York 2004, p. 30.

⁵ Thomas L. Friedman, *The Lexus and the Olive Tree*, Farrar, Straus, Giroux, New York 1999.

