MORAL BEHAVIOUR, INTERNATIONAL LAW AND INTERNATIONAL SOCIETY
THE REDUNDANCY OF WEAPONS OF MASS DESTRUCTION

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BACKGROUND

On 7 December 1997 *The Washington Post* reported that President Clinton of the United States had, during the previous month, issued a Presidential Decision Directive. This Directive contained certain principal elements which broke new ground in the development of American policy concerned with the use of, and defence against, weapons of mass destruction.[1] The Directive achieved this in a number of ways. First, it established a clear policy nexus, as distinct from an operational doctrine,[2] between threats posed to the interests of the United States by chemical and biological/toxin weapons of mass destruction, and its nuclear response to such threats.[3] Secondly, for the first time in the history of United States nuclear weapons policy,[4] it concluded that a protracted nuclear war could not be won. Further, it tacitly acknowledged that arms-reduction agreements like SALT I, START I and START II had made such a conflict no longer feasible.[5]

Broadly speaking, the United States has, by this move, adopted a policy strategy which takes pragmatic account of the rate and extent of change in

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[1] Washington Correspondents, "Nukes fight germs in post-Cold War" The Australian, 9 December 1997 at 1, 11; see also Sheridan, "US delinquent on deterrence" The Australian, 9 December 1997 at 11.

[2] JP-3-12: Joint Doctrine for Nuclear Operations, a United States Joint Chiefs of Staff document dated April 1993, describes the use of nuclear weapons in response to attacks using "weapons of mass destruction", including chemical and biological weapons: Washington Correspondents, "Nukes fight germs in post-Cold War" The Australian, 9 December 1997 at 1, 11.

[3] Ibid.

[4] This is in contrast to the Reagan Administration's 1981 policy directive.

[5] Ibid.

the character of perceived threats against its national interests. Such pragmatism has not been readily discernible in the past. In effect, America has now extended the relevance of its nuclear arsenal to include deterrence value when confronting threats involving chemical and biological/toxin weapons. This brings such weapons firmly into the nuclear domain in terms of their imputed destructive powers. Notably, this development occurred less than eighteen months after the United States, together with fellow Security Council permanent members Russia, France and the United Kingdom, felt that the World Court's *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons ("Nuclear Weapons Case")*[6] in 1966 was a positive outcome.

In the *Nuclear Weapons case,* the World Court concluded, *inter alia*, that it was not able to decide definitively whether the threat or use of nuclear weapons would be lawful or unlawful in the extreme circumstance of self-defence in which the very survival of the state would be at stake, in view of the current state of international law and of the elements of fact at its disposal.[7] Such a result may well have been hailed in Washington, Moscow, Paris and London as the satisfactory outcome of a request for an Advisory Opinion. In the United Nations General Assembly and the World Court, those states had argued forcefully to deny the lawful use of nuclear weapons.[8]

Less than two years later, United States Congressman Curt Weldon revealed that Russian presidential adviser, Alexander Lebed, had said to him that a total of 84 "compact nuclear weapons", of suitcase size, could not be accounted for in the Russian nuclear arsenal. As a result, steps have been taken by the Yeltsin Government to coordinate the identification of these weapons, to bring them under secure control and to arrange for their

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[6] (1996) 35 International Legal Materials 809. This Advisory Opinion had been sought by the United Nations General Assembly. Note that China, without comment, took no part in the proceedings.

[7] Ibid at para 105 2E of the Advisory Opinion. This part of the Court's dispositif was sanctioned on the casting vote of the President of the Court, voting having been split equally among the Court's fourteen members in this case.

[8] See Oral Submissions, Written Statements and Responses to Statements in the Nuclear Weapons Case, 8 July 1996, International Court of Justice, The Hague.

destruction.[9] At the same time, the Iraqi regime of Saddam Hussein has continued to deny unimpeded access to United Nations weapons inspectors who continue to monitor the dismantling of Iraq's weapons of mass destruction. This follows a systematic and concerted effort by Iraq since the end of the Second Gulf War to frustrate the efforts of United Nations inspectors to ensure the elimination of Iraq's weapons of mass destruction, and of its ability to replace them, in conformity with United Nations Security Council Resolution 687 (1991).[10]

INTRODUCTION

The sets of facts described above illustrate the central themes of this article. First, the article will demonstrate that the existence of nuclear and other weapons of mass destruction continues to pose serious threats to the future well-being of the human race almost a decade after the conclusion of the Cold War. Secondly, the article will argue that the declared nuclear weapon states, with the exception of China, have demonstrated their determination to retain, for an indeterminate time, a nuclear arsenal of some description that is quarantined from disarmament negotiations. Finally, in the light of these realities, the article will show that it is becoming increasingly urgent that the questions surrounding the continued existence of all weapons of mass destruction, whether nuclear, chemical or biological/toxin, be re-examined from the following perspectives:

the prospects for structural or paradigmatic development of the rule of international law;

the recent work on security theory and forms of solidarism, by theorists of international relations and society; and

the relevance to international society of morally-based theories of rights and responsibilities, and of theories on the nature and location of justice that are well developed and understood in smaller-scale domains.

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[9] "Search for 'suitcase' N-bombs" The West Australian, 3 December 1997 at 1; see "Loose nukes" [Film] (1996, Massitutsis & WGBH Educational Foundation, Boston).

[10] "Terse letters underwrite Butler's visit to Baghdad" The Australian, 5 December 1997 at 9. For an authoritative and comprehensive analysis of the implications in international law of the Second Gulf War, see Moore JN, Crisis in the Gulf: Enforcing the Rule of Law (1992, Oceana Publications, New York) 94, 274-275.

It will be argued below that these three perspectives form a dialectic lens through which to focus the evolution of alternative strategies for overcoming the inertia, apathy and dissembling evident in many parts of the world on issues involving the proliferation, development, manufacture, stockpiling, threat and use of weapons of mass destruction.

More specifically, it will be shown that the development of the rule of international law holds the key to the attainment of substantive gains in the search for solutions to the (apparently) intractable problems associated with arms control, and with disarmament. Whatever the content of the various security, solidarist, morally-based or alternative constructions of post-Cold War realities, each must recognise the primacy of international law as the only *a priori* mechanism through which real progress will occur. As the single universally acknowledged and voluntary regime which sets positive and morally based rules to moderate the behaviour of the world's state-centric system, international law must, at the very least, work to invigorate the process by which the use of force in international relations becomes increasingly unacceptable, in *all* circumstances, as a method of conflict resolution for the majority of states.

THE NATURE OF THE PROBLEM

As illustrated by President Clinton's Directive outlined above,[11] the Cold War logic of deterrence, military threats directed at perceived challenges to national interests, and declared readiness to carry out such threats, remains the fundamental currency of the foreign policies of those states able to deploy them. Today, the United States still finds itself unable to pull back, without reservation, from the habits, perceptions, rhetoric and nostrums that for 50 years drove its confrontation with the Soviet Union, a federal unit that showed signs of disintegration a decade or so ago.

This only serves to illustrate one of the most fundamental questions in international relations. Should the actions of states be guided purely by some notion of "national interest", howsoever conceived, or by a self-conscious, Kantian-inspired integration of the interests of individuals (whether as citizens of a state, or as members of the human race) with purely state-based interests? Furthermore, and in effect, what is the degree

[11] Refer note 1.

to which human rights impinge on the rights and responsibilities of states?[12]

The wider question is the ancient conundrum of the place of moral action or behaviour in relations between states. Is there still room, at the conclusion of this bloody century, for the pre-eminence of *raisons d'etat* and *force majeure* in the conduct of international relations, as Machiavelli, Hobbes and Bacon would have it?[13] Is there still room, in fact, for the economically and militarily stronger members of international society to continue to dictate the rules by which the weaker states may deal with each other, and with the dictator states? And if, on moral grounds, one were to deny this, what is the normative foundation on which international *Gemeinschaft*, by whatever definition, should mature and thrive?

More pragmatically, the determination of the declared nuclear weapons states to maintain the nuclear *status quo ante* is only one dimension of the broader threat scenario. As Bailey points out, a number of factors have contributed to the increasing proliferation of all kinds of weapons of mass destruction. She contends that important among them are their relative ease of manufacture and delivery, especially in the case of non-nuclear types, and the erosion or failure of non-proliferation measures. She argues that these have, in turn, diminished the authority and credibility of those measures. Growing potential therefore exists, in many geopolitical scenarios, for their use by unscrupulous national leaders and even terrorist organisations, as does the risk of accidental use and theft.[14]

These enduring dilemmas did not moderate in 1989 as the Cold War subsided. As the international political situation became more fragmented,

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[12] Neo-realists, such as Herman Khan, have for many years asserted that "there are no pleasant, safe, or even unambiguously moral positions for the individual, for a nation, or for civilisation": Kahn, "The arms race and some of its hazards" in Olson WC and anor (eds), The Theory and Practice of International Relations (second edition, 1966, Prentice Hall, Englewood Cliffs) 369-381.

[13] Bull, "The importance of Grotius in the Study of International Relations" in Bull H and ors (eds), Hugo Grotius and International Relations (1990, Oxford University Press, Oxford) 71.

[14] Bailey KC, Doomsday Weapons in the Hands of Many: the Arms Control Challenge of the '90s (1991, University of Illinois Press, Urbana) 1-7.

fluid and unstable, so have the basic ethical and moral questions surrounding it been increasingly called into question.[15] Paradoxically, the easing of macro-level international tensions, especially those based on nuclear deterrence strategies, has served only to increase the urgency of measures to eliminate these apocalyptic and useless devices.

Nevertheless, there exists only a limited commitment on all sides to disarmament in general, and to nuclear and other non-conventional weapons disarmament in particular. More specifically, the 1968 Treaty on Nuclear Non-Proliferation[16] has been a signal failure as a mechanism for nuclear disarmament,[17] although it had successfully frozen the discriminatory structure of nuclear weapons possession in place at its inception. With these concerns in mind, the rest of this article further examines the possible ways, canvassed above, in which the predicament of the continuing threat posed by weapons of mass destruction, and their proliferation, may be addressed. It is also possible that the solution for this complex problem may embody a prototypic road map useful for addressing the wider questions involving moral behaviour within international society.

THE ROLE OF INTERNATIONAL LAW

Whatever else may be said about the form of international society, it is unambiguously true that, for the foreseeable future, it will be substantially characterised as state-centric. There is room here, of course, for debate about the degree to which the pre-eminence of state-centrism may be challenged in the final years of this century. Huntington, for one, has notoriously raised the specter of a new world order in which ideologically and economically generated conflict between states is replaced by division and discord based on cultural difference. In other words, that an inter-*state*

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[15] Kegley CW and anor (eds), After the Cold War: Questioning the Morality of Nuclear Deterrence (1991, Westview Press, Boulder).

[16] The Treaty was signed on 1 July 1968; 729 United Nations Treaty Series 161; (1968) 7 International Legal Materials 811.

[17] Article VI merely commits States Parties to "pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective control".

system will be replaced by an inter-*civilisational* one, as exemplified by the growing animus between the Islamic and Western Judeo/Christian traditions.[18]

More convincing argument has been developed, notably by Richard Falk, around the theme of the gradual de-coupling of the policy orientation of the state away from its territory-based focus, towards extra-territorial regional and global domains, such as those traversed by transnational corporations, international capital markets and regional trading blocs.[19]

A detailed examination of the economic, social and political dynamics of globalisation trends is beyond the scope of this article. However, it is possible to assert, without equivocation, that the fundamental nature of states, and of the state-centric international system will remain for the foreseeable future substantially as it has been, in the Westphalian context, for the past 350 years. States will retain their territorial identity, will continue to assert their sovereignty (albeit with various kinds and degrees of reflexive or imposed limitation), and will behave in ways which are consistent with their perception of the "national interest". In this light, the continuity of the state-based system during an era of rapid economic, social and political change on the global scale will tend to highlight the latent potential of international law as the regime or institution most susceptible to developments which accommodate such change.

As the only global institution enjoying almost universal acknowledgment and authority, and one concerned, in the final analysis, with relations between states, international law in its present form reflects the project of the neo-realist practitioners of international relations theory. These theorists, according to Bull conflate the conceptions of international society and realism through the claim that "the focus of study should be primarily on the world of states".[20] While anarchy in international relations is, he

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[18] Huntington, "The clash of civilisations?" (1993) 72:3 Foreign Affairs 22, 22.

[19] Falk, "State of siege: will globalisation win out?" (1997) 73:1 International Affairs 123, 129.

[20] Makinda, "Hedley Bull and post-Cold War security" (1997) 2 Australian Political Studies 653, 657.

argues, unavoidable and not transformable, states nevertheless act within a system of rules, values and common interests.[21]

If a realist conception of international society supports the primary importance of the international community in relations between states, then a pluralist one can be expected to do so equally, if not more, emphatically The pluralists admit to a far greater level of adherence to pragmatic, voluntarist, legal and moral codes of cooperation. In this way, Hedley Bull's pluralist paradigm certainly promotes the notion that authoritative international law is capable of reflecting the real needs of states, and, more importantly, their peoples. His principal tenets assert that:

> states observe common rules and institutions, and are limited in their conflicts with one another by these rules;
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> states which comprise international society are bound not only by rules of prudence or expediency, but also by imperatives of morality and law; and
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> states are expected to perform duties beyond their narrow national interests, working together for the maintenance of international order and security.[22]

What, then, currently limits the ability of international law to act as the primary focus of relations between states? Further, how must it develop in order to overcome its limitations? At this point, one must return to the specific issue canvassed at the beginning of this article on the dangers posed to the world by the proliferation of weapons of mass destruction, whether nuclear, chemical or biological/toxin in nature, in an era of growing complexity and instability.[23] There is ample evidence of the limited capabilities of international law, in its present form, when confronted with the realities of such ultimate force.

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[21] Ibid.

[22] Ibid at 656.

[23] Bailey provides a comprehensive, though slightly dated, examination of the technical, strategic and ethical dimensions of the proliferation of weapons of mass destruction: Bailey note 14 at 1.

THE DEVELOPMENT OF INTERNATIONAL LAW

The clearest example in recent times of the vulnerability of international law in the use of force is the unprovoked invasion of Kuwait by a massive Iraqi ground force during the early hours of 2 August 1990, which led to Kuwait's complete occupation and subjugation.[24] The *denouement* for President Saddam Hussein's regime, which saw the total defeat of his armed forces by combined United Nations forces, and their withdrawal from Kuwait, completed on 3 March 1991,[25] involved a process in which international law was strengthened through its invocation as the authoritative mechanism by which aggressive use of force would not stand.

The litany of Iraq's egregious violations of its international obligations is well-known, extensive and grim. Generally, and at the very least, Iraq:[26]

> committed acts of aggression against three neighboring states (Kuwait, Saudi Arabia and Israel) in violation of Article 2(4) of the United Nations Charter;
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> failed to give effect to United Nations Security Council decisions and resolutions, thereby violating Articles 2(5), 24, 25, 48 and 49 of the United Nations Charter;
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> violated the basic human rights of many thousands of individuals within Iraqi borders and elsewhere, of which a striking example was the seizure and detention of about 11,000 foreign nationals trapped within Iraq and Kuwait;[27]

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[24] Moore note 10 at 3.

[25] Ibid at 254-255.

[26] Ibid note 9, second limb at 4-6.

[27] Ibid at 86-87. Apart from violating the hostages' basic human right to liberty and freedom of movement, as enshrined in the 1948 Universal Declaration of Human Rights, Iraq's actions flouted the terms of Article 1 of the 1979 International Convention Against the Taking of Hostage. Article 1 defines the offence of hostage-taking, which must now be regarded as a rule of customary international law. For the 1948 Universal Declaration see United Nations Doc A/810. For the 1979 International Convention see (1979) 18 International Legal Materials 1456.

violated its obligations concerning the conduct of hostilities and belligerent occupation, such as its treatment of protected persons and destruction of Kuwaiti civilian property;[28]

committed grave acts of environmental vandalism, such as the dumping of at least 470 million gallons of Kuwaiti crude oil into the Persian Gulf, and the torching of over 600 Kuwaiti oil wells;[29] and

violated several major arms control regimes.[30]

The sheer depth and breadth of Iraq's appalling breaches of international law ought to be sufficient evidence of the size of the risks which international society will take into its own hands should it fail, in the long term, to heed the warning this event has sounded for the health of the rule of international law.

The reaction of the Coalition of States, led by the United States, to Iraq's aggression may well have been less mindful of its duties in respect of the rules in the United Nations Charter on collective self-defence in the context of the weaker and more circumscribed regime of international law which existed until the conclusion of the Cold War. In the event, the Coalition's actions were guided, positively and in large measure, by its strictures. As Greenwood emphasizes, "[t]hroughout the Gulf conflict, the states ranged

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[28] In contravention of the provisions of the 1907 Hague Convention No IV Concerning the Laws and Customs of War on Land, and Regulations. For the provisions of this Convention see Treaty Series 539; 1 Bevans 631. For the provisions of the 1949 Fourth Geneva Convention see 75 United Nations Treaty Series 287.

[29] Ibid note 9 at 78-80. This contravenes Articles I-II of the 1977 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques which was signed (though not ratified) by Iraq, and which must, in any event, now be declarative of customary international law on intentional terror attacks against the environment which have severe and long-lasting effects: 31 United States Treaty Series 333.

[30] Such as the 1968 Treaty on the Non-Proliferation of Nuclear and the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 1015 United Nations Treaty Series 163.

against Iraq made clear their intention of conducting hostilities in strict accordance with the laws of war".[31]

The contrast between this undertaking and the actions of President Saddam Hussein could not be more stark or overwhelming. International law formed the matrix around which the Coalition states evolved their geopolitical strategies, and through which they prosecuted their intentions at the strategic and tactical military levels. It was without a shred of relevance to the behaviour of the Iraqi regime.

World order, and the rule of international law, have undoubtedly been strengthened by the modalities involved with the resolution of the Second Gulf War. The most serious challenges they have experienced, in the era of positive Charter law, have been comprehensively rebuffed and denied. To that extent, it may be confidently predicted that the form and substance of the institution of international law will continue to gain coherence and strength.

Nevertheless, the most severe challenge articulated by the 1990-91 Gulf conflict was in the sphere of weapons of mass destruction, in each of their three manifestations. Iraq, in the years preceding the conflict, worked assiduously to develop and deploy nuclear, chemical and biological/toxin weapons, and was even believed to have a *thermonuclear* (fusion, or hydrogen) weapon development programme.[32] Certainly, Iraq is known to have used chemical weapons against the Kurdish minorities within its own borders during this period.[33]

The accelerating proliferation of these instruments of mass annihilation, in an increasingly fractured and unstable world, demands a new approach to

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[31] Greenwood, "Customary international law and the First Geneva Protocol of 1977 in the Gulf conflict" in Rowe P (ed), The Gulf War 1990-91 in International and English Law (1993, Routledge, London) 63. The Coalition's compliance with conventional jus ad bellum rules was similarly complete.

[32] Moore note 10 at 4.

[33] Ibid at 137, citing the United States Department of State's 1989 Country Report for Iraq. The Report states that the Iraqi Government's efforts to crush the Kurdish rebellion between 1981 and 1989 had resulted in around 8,000 deaths, many of them civilians indiscriminately killed in northern Iraq by chemical weapons during 1988.

the ways in which international law addresses their acquisition and use. With that in mind, this article now proposes that it is necessary to take the intellectual and philosophical foundations of international law beyond their Grotian, customary and positive law roots. As the Gulf conflict amply demonstrated, reliance solely upon a traditionally-founded institution of law, however widely accepted as representative of the will of international society, will no longer be sufficient in the new millennium to guarantee individuals the security conditions, whether military, political, economic, social or cultural, which are the prerequisites of enforceable human rights.

In these circumstances, international law is in urgent need of a gloss which is capable of reinforcing its effectiveness and vigor through an enhanced ability to effect acquiescence, and voluntary compliance, with international law rules. In this context, the lack of formalized enforcement procedures, institutions and protocols need not be a fatal disability for a practically and morally defensible rule of law.

INTERNATIONAL LAW AND MORAL BEHAVIOUR

International law, as it is now formulated, exists primarily to serve the needs and interests of sovereign states. Notwithstanding the rise of individually-focused human rights and humanitarian law in customary, and now conventional law, the goods which they confer on individuals are channeled, for the most part, through the sovereignty and international personality of nation states.

This article contends that the individual person holds deontological moral precedence over all other actors in international affairs. The central concern for individual persons is that, for states, moral necessity may not coincide with prudent action, nor indeed be at all relevant to actions they consider to be in their national interest.[34] Whether analysed from a neo-realist or a liberal/pluralist perspective, a state's utilitarian calculus of overall positive or negative value will often appear to be altruism or benevolence by default. In other words, a seemingly moral action may be nothing more than the mask of morality on the face of the amoral opportunist.

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[34] Oppenheim FE, The Place of Morality in Foreign Policy (1991, Lexington Books, Lexington) 19; see also Lukes S, Moral Conflicts and Politics (1991, Clarendon Press, Oxford).

This is not to deny the pervasive appeal to principles of humanity which runs through much twentieth century diplomacy, and customary and conventional international law and practice. From the "de Martens clause" of the 1907 Fourth Hague Convention,[35] to numerous resolutions of the United Nations General Assembly and judgments of the International Court of Justice, international law has long relied on "general and well recognized principles" including "elementary considerations of humanity, even more exacting in peace than in war".[36]

Nevertheless, the clearest impediment to the efficacy of international law is the fact that it exists to serve a state-centric international society. To the extent that any society's goals and purposes, at least from a pluralist perspective, are centered around peaceful co-existence, international law has developed in ways which limit the ability of agents other than the nation-state to promote or circumvent that intention. This is the point at which international law must be encouraged to diverge from its traditional development trajectories if it is to move towards more coherent responses to the global challenges which are inevitable to its rule in the coming century, and which Iraqi President Saddam Hussein has so chillingly demonstrated to the world.

The freeing up of the log-jam inhibiting the development of international law, which became apparent as bi-polar geopolitical certainties dissolved at the end of the nineteen eighties, has only been enhanced by the subsequent general recognition that old verities are no longer what they once appeared to be. More importantly, in the context of this critique, the inevitability of hard neo-realist visions of continuing and endemic inter-state conflict can now be set aside by those who believe that the moral superiority of a Kantian, universalist individual good, over instrumentally-rational state or special interest good, is not only defensible but inescapable.

There are many signposts for this trend. One mighty advance has been the new conventional regime of the law of the sea, and its assertion of a global

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[35] See Preamble to 1907 Hague Convention IV Concerning the Laws and Customs of War on Land note 28.

[36] Corfu Channel Case (Merits) (United Kingdom v Albania) [1949] International Court of Justice Reports 4, 22.

commons, albeit limited.[37] Another has been the recent multilateral efforts of conferences, from Rio de Janeiro to Kyoto, to reconcile the conflicting requirements of economic development and ecological survival for the global, individual good, again reasserting the primary importance of the global commons to the future of the world's people. More generally, Dame Rosalyn Higgins, now a judge of the International Court of Justice, has pointed to Richard Falk's existentialist ethos in which he emphasised the spirit underlying international law rules, rather than their black letter minutiae; the "Grotian quest" in which "a special sort of creativity...blends thought and imagination without neglecting obstacles to change."[38]

That creativity and imagination must now be enlisted to create an international law regime which asserts the co-equal status of the human rights and obligations of individuals as against those of the nation-states, and which defends them with moral suasion.[39] This exegesis must, of course, be undertaken within the context of extant institutions and practices, rather than from an external, essentially combative position. The susceptibilities, behaviour and ethical imperatives of old regimes, institutions and structures must be enlisted as the catalysts of evolutionary, and not revolutionary, change.

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[37] See Articles 137(2), 140, 150(1), 153(1), 156 and 157 of the 1982 Convention on the Law of the Sea, United Nations Doc A/CONF 62/122; (1982) 21 International Legal Materials 1261. Brownlie notes that the resources of "The Area" beyond the exclusive economic zones of states will be carried out "for the benefit of mankind as a whole": see Brownlie I, Principles of Public International Law (third revised edition, 1990, Clarendon Press, Oxford) 254. See also McCleary RM (ed), Seeking Justice: Ethics and International Affairs. (1994, Westview Press, Boulder) Chapter 4 on "Sharing a global commons".

[38] Higgins, "International law in the UN period" in Bull H and ors (eds), Hugo Grotius and International Relations (1990, Oxford University Press, Oxford) 267, 279.

[39] The most important progress in this direction, in recent times, has been the proposition of the "Inter Action Council", a 29-member grouping of elder statesmen who have proposed a Universal Declaration of Human Responsibilities as a corollary and complement to the 1948 Universal Declaration of Human Rights, in order to redress the perceived Western-oriented bias inherent in the latter. The 19 articles of the proposed Declaration spell out responsibilities for individuals, governments, business and religious groups, as well as the communications media: Pang, "New charter on human obligations drawn up" The Straits Times (Malaysia), 2 September 1997 at 1, 41.

One interesting recent attempt to elaborate an ethic of world politics, focused to a large extent at the level of institutions, regimes and states, has been Rengger's analysis of the role of trust, and of "shaming" as mechanisms for generating greater stability and congruity between legal and institutional forms of international relations.[40] His hypothesis is that the growing deficit apparent in the "presumption of trust" between states themselves, and between states and other international actors, may be overcome by a process in which the actions of states and others are overseen by legitimate, publicly authorised organisations at local, regional, state, international and supranational levels.

In this way, those actors who fail to keep their promises, or act corruptly, will suffer the moral, social (and, presumably, legal) opprobrium, including the practical consequence, of their actions in a transparent system of oversight.[41] It may be that such a regime would work equally well when the rights and obligations of individual persons conflict with those of any discrete group or polity, whether it be the family, the state or the United Nations Organisation.

The relevance of such a system to the threats posed to each individual member of the human race by weapons of mass destruction should not be underestimated, although caution is advisable in light of the myriad of practical impediments facing all such utopian schemes. Nevertheless, the reconciliation of conflicting rights and obligations comes about, from this perspective, within the context of the legal, constitutional and political structures and norms which most agents accept, and with which they have a "propensity to comply".[42] In other words, as mentioned above, through evolution rather than revolution. This is an essential characteristic of Hedley Bull's pluralist paradigm of international relations, as described above, which forms the second limb of the dialectic pointing to strategies for change. However, this view of the dynamics of the process requires further examination.

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[40] Rengger, "The ethics of trust in world politics" (1997) 73:3 International Affairs 469.

[41] Ibid at 486.

[42] Ibid at 469.

SECURITY, JUSTICE AND WEAPONS OF MASS DESTRUCTION

The answer to the primary political question, "What is good governance?"[43] is as relevant to the global arena of international relations as it is to domestic political arrangements. As is often the case, the most useful replies to questions of this sort will be formulated by those thinkers who, unlike many with pre-determined agendas, are willing to undertake a balanced appreciation of the various factors comprising the contending alternatives. What those with extreme positions gain in clarity and force of argument, they lose in vision, percipience and judgment, while those on the high ground of compromise can command the closed domains of the zealots.

One of the most distinguished thinkers of the latter type, in the arena of international relations, is Hedley Bull, whose works in the area of critical and collective security theory, and forms of solidarism, have helped to clarify the nature of international society in the post-Cold War era.[44] This, in turn, allows us the possibility of elaborating this formulation to fit within the context of the overarching, *a priori*, stature of international law as the essential core of coherent international relationships in the coming century.

The thrust of Bull's project in his later years was, according to Makinda,[45] the need to explain international society in terms of a broad understanding of "security", developed through the framework of "solidarism", or the collective modulation of force by international society as a whole, and as pursued through the United Nations mechanism. Bull, and the so-called critical security theorists, have broadened the definition of security from its traditional domain of state-based political independence and territorial integrity to include the "values, norms, rules and institutions"[46] of any society, and in this case, of the state-centric international society as well.

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[43] Lukes note 34 at ix.

[44] Makinda is responsible for formulating Bull's relevance to the questions surrounding post-Cold War security issues: Makinda note 20 at 657.

[45] Ibid.

[46] Ibid at 655.

In a similar way, Bull took account of broad, cosmopolitan, Third World views on the nature of justice in international relations, including within it notions of "political independence and self-determination, economic equity, racial equality and cultural liberation".[47] These ideals, it should be noted, have as their object the individual person, and his or her human rights, rather than the state. Such rights, among others, form the nucleus, along with their reciprocal obligations or duties, of a Kantian legal identity. This incorporates Kant's seminal imperative on the intrinsic self-worth of the individual, which can endure in the form of enhanced human rights, humanitarian and other individually focused international law, and alongside the traditionally understood Grotian international society and law. In other words, there is room for two equal, complementary but differentiated paradigms of law, each with its own foundations, imperatives and objects, within the single house of the rule of law.

It is at this point that international law, distributive justice, human rights, moral action, and the balance of rights and responsibilities between states and individuals come together. This is the dialectic of contested ground, the location of the ebb and flow of influence and power as the world learns to live within its new age of uncertainty. As with most contests, the outcome is unclear, and many hurdles remain before conclusions can be reached. However, in the final analysis, the *raison d'etre* of international society and law is the well-being of individual persons, people who must and will continue to come together in many forms in order to cooperate and produce collective benefits. But the present arrangements enabling them to do so in the global arena are showing signs that they will increasingly fail to allow for the full realisation of human potential for cooperation.

More than that, there is a growing awareness that international society and law may prove unable to provide sufficient security, in the extensive sense that has been discussed above, to establish a realistic chance of resisting the kinds of challenges thrown out by those, such as President Saddam Hussein, who, brandishing threats of annihilation, would deny their very existence. Unsurprisingly, the greatest test of the regime of international law remains unresolved.

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[47] Ibid at 656.

CONCLUSION

As President Clinton's Directive illustrates, those states with weapons of mass destruction have no intention of laying them down on the altars of peace, disarmament, a more secure world or any other imperative. Within the structure of international law as it exists today, there are few grounds for hope that they will eventually do so. By the same token, there is reason for optimism about the scope and strength of the forces for effective change, especially in light of the rapid and largely unforeseen break-up of Soviet hegemony from 1989. Much of the impetus for that cataclysmic event was provided by the convergence, in spontaneous political action, of large numbers of self-empowered individuals, albeit with little appreciation of the potential consequences of their actions.

It seems credible to hold that a similar dynamic of social convergence and action could recur in the form of overwhelming demands for the development of an international law for individuals, of human rights, of human obligations, and of moral action, which could complement and eventually supplant, even at the state level, the traditional, Grotian alternative. In order to do so, such law must have the moral energy necessary to enable it to cross the borders of nation-states, of regions, of geopolitical aggregations, and of cultural and religious divides, to engage with the agent in the world bearing moral primacy, namely, the individual person. Although the moral energy is present and active, the political response appears to be mute.

In response to those realists who would reject any such possibility, perhaps it is timely here to reiterate the magnitude of the threat which weapons of mass destruction continue to pose to each individual member of the human race. As Bailey reminds us, "[t]he probability is increasing daily that the lives of people in any country on this earth could be drastically affected - even ended - by a weapon of mass destruction".[48] At least twenty states are known to have or to be developing chemical weapons, while more than a dozen continued, at least in 1991, to work on biological and/or toxin weapons. Of these, several states have attempted to buy or develop missile delivery systems, and most are located in regions of conflict.[49]

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[48] Bailey note 14 at 1.

[49] Ibid.

The political will necessary to confront the test of entrenched orthodoxy in the fields of international law and international relations ultimately resides in the humanity within each one of us. To that extent, it is incumbent on political and social leaders to focus the popular, though latent, energy of innovation and humanism towards acceptance of change which defies and defeats the *status quo*. Citizens of states, and of the wider *imperium*, should accept nothing less.