# The Persian Gulf Crisis of 1990-91 and the Future of Morally Constrained War

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The rise, climax, and resolution of the Gulf War have impinged on the rules of war in at least five significant ways. First, the opening move in the war—President Saddam Hussein's use of force to relocate an existing international boundary, conquer territory, and abolish a sovereign state—itself constituted a violation of the Western concept of *jus ad bellum*. Second, adding insult to injury, the Iraqi government then announced that in case war broke out it would resort to a weapon prohibited by formal international treaty, i.e. poison gas. Third, foreign citizens belonging to many different nationalities were rounded up, taken hostage, and sent to various strategic installations so that they might serve as human shields against attack. Fourth, in what many saw as a justified response to these Iraqi moves, the US government dropped hints that if hostilities broke out—and possibly even if they did not break out—Saddam Hussein would be among the first targets. Finally, perhaps most remarkable of all, the United States and its allies avoided responding to the Iraqi invasion of Kuwait by declaring war unilaterally and launching a campaign in pursuit of their interests, but rather asked for and obtained a Security Council mandate for turning the Iraqis out. Only then did they resort to military action.

Whatever one may think of these various deeds and misdeeds—including both those that were actually carried out and those that were quietly abandoned—there is no question that much new ground has been broken. Though Saddam and Iraq were eventually defeated, the war has shown that some rules are holding up well, whereas others seem on their way out.

In modern works on the conduct of war, its rules—by which I mean those conventions, written or unwritten, which define who may do what to whom, under what circumstances, for what ends, and by what means—are

scarcely ever mentioned. In this respect modern works contrast sharply with medieval ones, which have scarcely anything to say about *how* to fight, but a lot on what is and is not permitted in the process.[1] Not so the "makers of modern strategy" such as Antoine Jomini, Helmut von Moltke, Basil Liddell Hart, Thomas Schelling, Henry Kissinger, and Edward Luttwak. All have in common that they hardly address the morality and legality of war, except perhaps to acknowledge that too gross a violation of the norms may lead to a negative public reaction and thus to adverse political effects. This also applies to the greatest of them all, Carl von Clausewitz, who has laid down the parameters within which the rest operate. In his definition, war is "an act of violence carried to the utmost bounds" in which "mistakes made out of misguided kindness are the worst." Hence, all the 863 pages in the modern German edition of *Vom Kriege* contain only a single sentence on the rules of war. They are described as "self imposed restraints," which "do not belong to the nature of the thing" and are "so weak as to be hardly worth mentioning."

Such is the indifference of contemporary strategic thought to the rules of war that works on the two subjects are usually kept entirely separate; at the Library of Congress, they are even housed in different buildings. Behind this separation, three factors can be seen at work. First comes simple ignorance. There exists a built-in tendency to take the existing rules for granted, an assumption which even a superficial scrutiny of events that took place more than a few centuries ago will show is totally unwarranted. To put it in another way, the reason we are not preoccupied with rules is that we are so familiar with existing ones as to scarcely notice their existence. When they change, however, the resulting ruckus can be expected to rise—in fact, often does rise—to the high heavens.

The second reason why the rules of war are frequently ignored is that moderns tend to view war simply as an instrument in the hands of policy.[2] Being a mere instrument, it is morally neutral, like a rope used either to save someone from a burning house or to hang him from a tree. In the case of a hanging, morality obviously depends not on the rope but rather on the history of the person hanged and the quality of the proceedings that led to his condemnation. This utilitarian standpoint[3] leaves no room either for the

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Christian view of war as wicked and evil or for the typically classical one of war as heroic, elevating, and good. Under the modern strategic view, war and morality simply do not mix.

The third reason for our silence on the rules of war is that war is almost universally understood as an instrument in the hands of the *state*, a type of political organization characteristic of the modern age and differing from many of its predecessors precisely in that it both possesses absolute power to make the law and recognizes no law above itself. A state thus defined need not concern itself with rules of war except those to which it has explicitly subscribed. Even then, what has been signed and ratified by men can also be abrogated by them. The state, in brief, is perceived as capable of doing no wrong in pursuing its interests against other states. This doctrine, dating from the 16th century, has since been known variously as *raison d'état*, *Realpolitik*, or, more recently, neo-realism.

In this essay I shall try to make two main points. The first is that the Gulf War may well represent a milestone in our approach to the rules of war. The second point is that in ignoring thus far the implications of the Gulf conflict for the rules of war, contemporary military strategy—and the kind of value-free historiography from which it claims to derive its lessons—has declared its own intellectual bankruptcy. Far from being merely a feeble "philanthropist" attempt (Clausewitz's phrase) to mitigate the worst horrors, the rules define what armed conflict is all about, even to the point that without them regulated war may become impossible. In addition to the foregoing two points which I develop explicitly, a related but more general point is implicit in the discussion at large, namely, that the things considered permissible or impermissible in war are neither self-evident nor immutable, but evolve with the unfolding of history, being dependent at a given moment on the way in which an entire society is configured. This suggests that the rules are made by man, not simply inherited by man, and that through the exercise of their own vigilant free will men have it within their means to maintain rules reflecting the leavening of a civilized conscience.

## *The Gulf War vis-à-vis the Rules of War*

In examining whether the Gulf War represents a milestone in our approach to the rules of war, let us recur in turn to each of the five signal developments outlined at the beginning of this essay, treating each in its historical context.

*Territorial Integrity*

During the last half-century, the single applicable document most subscribed to by mankind has been represented by the United Nations Charter. Article 2 of that Charter expressly forbids the use of force for altering

international boundaries, a prohibition stemming from the original Allies' experience in overcoming Nazi and Fascist aggression which sought to do precisely that. However, during much of history no such prohibition existed. Between about 1500 and 1789 in particular, altering frontiers and adding to one's territory by conquest represented popularly regarded reasons par excellence for which rulers went to war. So strongly held was this idea that authors who wanted to caricature the state of international relations in their time would sometimes draw a picture of a world where rulers had suddenly become content with their existing possessions.[4]

Then as now, provinces derived their importance from the human and material resources they contained as well as the strategic position they occupied. True, some kind of legal justification was usually called for if one sought to take over one's neighbor's property; often it was couched in terms of ancient feudal rights to this or that province. Such similarities notwithstanding, the idea that territory was inalienable—in other words, that it formed an integral part of the state or that it could not be formally conceded under any circumstances—had not yet been born. In this age of mercantilism, absolute monarchs, ruling by divine right, were in many ways simply the greatest and most successful entrepreneurs of all. Provinces, even entire countries, were regarded almost as pieces of real estate, larger than others but not essentially different from them. They were pieces that kings could exchange among themselves by much the same methods as lesser mortals acquired or renounced ordinary property, i.e. inheritance, marriage, agreement, or—that ultimate arbiter of kings—force. "My generals have lost a war; I pay with a province," Austrian Emperor Franz Josef is quoted as saying after defeat at the hands of Prussia and Italy forced him to sign away Venetia in 1866. Even as late as 1915, the Treaty of London by which the British and French democracies sought to bring Italy into World War I assumed that governments were fully entitled to dispose of territories conquered by their armies. Nor were the proposed exchanges at all dependent on the inhabitants' wishes.

To put it in another way, existing frontiers were regarded as the fruit of a historical struggle between contending owners. Indeed, it was precisely for this reason that monarchs such as Prussia's Frederick William IV subsidized historians—in this case, Leopold von Ranke—who recorded that history. Insofar as they were the product not of right but of might there could be no question of regarding frontiers as either sacrosanct or final. On the contrary, throughout the 19th century it was considered almost a law of nature that states should attempt to consolidate and expand.

The modern idea that borders are inviolable—and hence that they could not be altered by war, let alone by some dynastic accident such as death or marriage—has a curious, somewhat twisted history. Following a line of thought which can be traced to Rousseau, the French in 1793-95 were the first

to make the annexation of new territories dependent on popular approval. In the fervor of revolutionary enthusiasm, every time they entered some town or district they drove out the local "tyrant" and held a plebiscite. In elections suitably rigged to guarantee the result, the inhabitants would express their burning desire to join the glorious republic; next, their desire would be acknowledged by the *assemblee nationale* and the act of union itself formally accomplished amidst much rejoicing. Now it is true that most of the territorial changes were later undone and the revolution itself ultimately defeated. However, the new doctrine of self-determination acquired a life of its own, refusing to die even when reaction set in. Having originated in the womb of democracy, toward the middle of the 19th century it became allied with nationalism, thereby acquiring a new and strident quality that was often anything but democratic. As the nationalist gospel told the story, it was not the fact that certain people lived between River X and Mountain Y which made them into a nation; on the contrary, it was alleged—if only as a historical fiction—that they had originally *chosen* to live between River X and Mountain Y because they constituted a nation.

The enlightenment of the 17th and 18th centuries had started from the individual, proceeding toward the group and emphasizing those things—reason above all—which all people were supposed to have in common. The new doctrine of nationalism, to the contrary, worked from the group down, interesting itself mainly in the differences which separated one people from another. Beginning with Johann Gottfried von Herder in the 1780s, there arose an important school of thought which perceived these differences as bound up with the country, its climate, its physical characteristics, and its history. From this it was but a short step to the idea that a people's material and spiritual life, the very things that made it unique, were intimately connected with its territory, hence that every inch of the land comprised part of the sacred patrimony linking past generations with future ones. The most visible outcome of these developments was to change the status of territory, which came to be seen as inalienable. Even when military misfortune compelled a state to sign away a province, as in the case of France in 1871, there was no question of its being surrendered by the nation permanently. Instead the people were exhorted to treasure its memory in their hearts, forever looking for an opportunity to restore ownership.

The principle of nationalism achieved its greatest triumph at the Conference of Versailles in 1919. As the old multinational empires collapsed, America's President Woodrow Wilson spearheaded an attempt to reconcile might with right by redividing the world in accordance with the principle of self-determination. Though the redistribution could not be regarded as perfect, once it had been completed the victors in particular displayed a growing tendency to look at borders as fixed and unalterable. Conversely, any attempt to alter them by force—however good or bad the reasons on which it

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rested—was itself defined as aggression. The first to suggest that the non-admissibility of territorial gain by conquest should be written into formal international law was none other than the American statesman Henry Stimson. At the time (the mid-1930s) it was considered too radical a departure and was not taken up; still, countries which refused to accept the new logic of things, including in particular Germany, Italy, and Japan, came to be known as revisionist. Much like Iraq after them, they cast themselves in the role of disturbers of the peace. The very success with which Hitler, Mussolini, and Tojo used armed force to overrun existing frontiers was one factor which finally brought their confrontation by a coalition consisting of virtually the entire remaining world.

Defeat of the Axis nations was followed by the war crimes trials, themselves a legal innovation which confirmed the principle that aggressive war should not be allowed to succeed. An attempt to overturn the territorial status quo was formally defined as a transgression of international norms, and thus potentially punishable. It is said that General Alfred Jodl, Hitler's deputy chief of the *Wehrmacht* high command, lamented in his death-cell the passing of the good old days when wars ended with the exchange of a province or two after which everybody could be friends again.

Since 1945 there have been numerous wars, overtly aggressive and otherwise. Particularly in the Third World, where most of these wars took place, the borders separating the countries in question had often been drawn by the old colonial powers in the form of a line on a blank map. Despite the frequent irrationality of these frontiers, to date there has been almost a total absence of cases when a sovereign state succeeded in having an existing frontier moved or in securing recognition of the move by the international community. Though it is possible to point to a few marginal cases (such as the creation of Bangladesh out of the eastern half of Pakistan), on only one occasion was an entirely new frontier carved out by means of interstate war, i.e that of Israel following the War of Liberation in 1948-49. The very idea of conquest, let alone the so-called "right of conquest," seems to have vanished from the international vocabulary, leaving only the act of "occupation," which is temporary by definition. The allied victory in Southwest Asia has merely confirmed the rule. Whatever else Saddam Hussein might have done, even in victory, he almost certainly would

*never* have succeeded in getting his annexation of Kuwait recognized by any other state, save possibly Jordan and Libya.

*Proscription Against Poison Gas*

Despite the manifest unacceptability of Saddam's territorial aggression, in the eyes of many people the most flagrant violation of international law surrounding the Persian Gulf crisis constituted his use of gas in his war against Iran and his threat to use it again against other countries should hostilities break out. Our abhorrence is certainly justified, yet it ignores the fact that during most of history the employment of asphyxiating agents was considered perfectly normal and hardly deserving of comment.

Before the modern age, the most common situation in which asphyxiating agents, in the form of smoke, were used was in siege warfare. All through ancient and medieval times, mining—digging tunnels under the opponents' walls with the objective of bringing them down—was one of the most important means available to a besieging army. Mining would be followed by countermining. This often led to subterranean encounters, considered the most dangerous of all forms of war. Both sides would bring in combustibles, the idea being to generate smoke in order to try to drive the other out of their respective galleries.

There were also occasional attempts to employ smoke in other situations. Military handbooks dating to the period 1500-1700 displayed uncommon inventiveness in devising smoke-inducing substances, some of them involving strange components such as snakes' skins, birds' droppings, and menstrual blood. The substances, suitably mixed and sometimes with benefit of particular spells—the distinction between science and magic being, as yet, fuzzy—were to be put in barrels or on carts. Next they would be set alight and pushed or rolled toward the enemy with the aim of blinding, asphyxiating, or driving him away by the sheer bad smell generated. If, in practice, such contraptions were rarely used, this was due less to humanitarian sentiment than to the fact that the primitive technological means available were capable of producing the agents only in limited quantities. The fuzes to ignite the agents were unreliable. Finally, even if the fuzes worked, the manner in which wind and weather caused the agents to spread was uneven and unpredictable. Hence the reason they were most commonly used in siege warfare, where spaces were constricted and considerable concentrations could be achieved.

The first half of the 19th century witnessed the rise of the modern chemical industry. It changed the situation whereby noxious substances were available only on a small scale. Now they could be made to rigid specifications and in any quantity desired. From the middle of that century on, various authors were led to discuss the new possibilities. Either they made suggestions to the military—most of which were examined and found impractical—or they incorporated the gas weapon into tales of imaginary wars, as H. G. Wells and

others did. On the whole, serving soldiers, accustomed to fighting each other in the field, did not welcome the new possibilities being created by science. To them, it appeared as if chemical weapons, literally rising out of the dark tunnels to which their use had previously been limited, were about to turn war into something new, unprecedented, and monstrous. Accordingly, when in 1899 on Tsar Nicholas II's instigation the First Hague Conference assembled to consider the question of poison gas (among others), all countries felt obliged to attend. Admiral Alfred Thayer Mahan, who represented the United States, put forward a minority view in stating he could see no logical difference between blowing up people in a ship whence they could scarcely escape and choking them by gas on land. The majority voted, however, to ban gas, a decision reaffirmed eight years later at the Second Hague Conference.

The use of gas in World War I—itself, not accidentally, a stationary war revolving about subterranean and fixed fortifications—is well known and need not detain us here. Suffice it to say that though its initial employment by the Germans in May 1915 was denounced as a particular form of Teutonic wickedness, within a few months its use came to be regarded as normal. The armed forces of all major nations set up chemical warfare branches and distributed gas masks to their troops. The best available data have recently been published by Fritz Haber, son of the German chemist by the same name. His work indicates that gas was responsible for only about three percent of all casualties. Moreover, compared to those hit by conventional weapons, a much greater percentage of those exposed to gas suffered minor injuries and recovered. Nevertheless, the prohibition on its employment was formally reaffirmed at a League of Nations Conference in 1925. Forty countries, including all the Great Powers of Europe, put their signatures to the agreement which remains in force to the present day. While the ban has been violated on a few occasions since then—the Egyptians' reliance on gas in Yemen during the 1960s comes to mind—by and large it has succeeded in achieving its purpose. What is more, it has both reflected and helped create a situation whereby the use of gas is regarded with universal horror.

All the same, an objective observer will have to admit that Mahan had a point insofar as our selective horror of gas among the horrors of war has neither logic nor history to support it. Saddam Hussein may have been the first Third-World ruler who, lacking access to nuclear weapons, openly used gas in one war and threatened its use in another; however, he will almost certainly not be the last. The attraction of gas stems from the ease with which it is manufactured and, paradoxically, the special horror in which it is held. Further, since it does not destroy property, it is well suited for governments to punish their own rebellious subjects without causing widespread internal damage. In the face of these considerations, the rule which prohibits its use—particularly in conflicts inside and between Third World countries—is likely to prove fragile.

*Foreign Citizens as Hostages*

When Saddam Hussein announced that Western citizens would not be allowed to leave Iraq but would be held hostage instead, much of the world was shocked by this outrage against the laws of war and, indeed, against civilized behavior in general. Such outrage is certainly justified; however, it overlooks the fact that during most of history taking hostages as a guarantee against attack was a normal method of war and diplomacy, even to the point where hostage-taking was frequently more important than military operations. Such practices having been common in the past, there is no guarantee that they will not return.[5] Moreover, it seems quite possible that future historians may one day remember the Gulf War precisely because, along with events in places such as Iran, Lebanon, Kashmir, Turkey, and half a dozen others, it marked a resurrection of this historical practice.

The factor that in Europe finally caused the abandonment of hostage-taking was not so much growing humanitarian sentiment as the rise of the modern state. Before the middle of the 17th century, the state as an abstract entity, in other words an organization possessing an independent legal personality embracing both rulers and ruled, hardly existed. In most cases the rulers were essentially identical with the political structure. Under such circumstances the policy of the community could be, and very often was, influenced by personal considerations. Taking hostages from among the ruler's close relatives was thus one way in which pressure could be brought to bear on him.

As the state became the dominant type of war-making organization from the Treaty of Westphalia (1648) on, there appeared the idea of government as an institution separate from the people who exercised it. With that development, the rationale for holding rulers' relatives hostage disappeared. Even the most absolute of rulers, such as Louis XIV who prided himself on being the state, in practice were increasingly guided by *raison d'état*, not their personal inclinations or their family connections. Frederick II on the eve of Leuthen (1757) gave express orders that in case he should become a prisoner, no consideration should be given to his person and the war should be pursued exactly as if he were dead. The time was to come when for rulers to behave otherwise was itself regarded as corruption, treason, or both. This consideration came to be applied to their subordinates as well, who in theory at any rate received their salaries precisely in order that they might forfeit any consideration except those pertaining to the good of the state.

The 17th century, particularly the latter part, also saw the rise of standing armies clearly separate from the government on one hand and the civilian population on the other. Intended as instruments of royal absolutism, the very professionalism of these armies was one factor which caused them to claim and increasingly obtain a monopoly over the legal use of armed violence. As the process took hold, rulers began concluding bilateral agreements obliging

them to refrain from involving each other's citizens in war by taking them hostage or, as far as possible, otherwise harming them. From these agreements modern international law, as codified by such men as Emerich de Vattel around the middle of the 17th century, grew. Thus arrived the idea that taking hostages constituted a contravention of the law of war.

This is not to say that hostage-taking disappeared from the face of the earth, but where it occurred it was confined mainly to contexts where an aggrieved government had no opposing governments to deal with.[6] In Europe itself it happened, for example, in cases when a civilian population refused to give up the struggle even though their country had been overrun and their government formally surrendered. Between 1870 and 1945 it was mostly the Germans who did the conquering, with the result they more than any others were confronted with partisan opposition. They reacted by taking hostages, and took lively interest in the history of the custom. By 1870-71, the expedient of making local dignitaries ride railway locomotives to protect their trains from partisan attack (a method later followed by the British in South Africa) was widely condemned. In World War I the Germans sometimes shot hostages in reprisal for attacks on their troops, leading to Allied talk about holding those responsible to account. After World War II several high-ranking German officers were in fact indicted on this charge, tried, convicted, and executed. Chief among them was the head of the *Wehrmacht* high command, Field Marshal Wilhelm Keitel, who in September 1940 had signed the fundamental directive authorizing the practice.

But such cases of hostage-taking, despite the fact that they were generally not conceived to pressure other governments, did register an effect on the world's conscience. For just as the UN Charter prohibition on the use of armed force for the purpose of conquest grew out of World War II, so this war led to a formal convention against hostage-taking, signed at Geneva in 1949. However, the two conventions have by no means been equally successful. During the last few years, the convention against hostage-taking—which as we saw originated in Europe and has commanded the greatest respect there—has clearly been eroded. There seem to be two principal reasons behind this development. First, more and more armed conflicts are being waged by organizations which are not states and which do not recognize the distinction between armies and civilian populations, organizations that see no reason to adhere to conventions which states have established for their own convenience and that of their rulers. Second, when the aim of policy is not warfighting but deterrence, taking hostages, however uncivilized it may seem, makes perfect sense. Saddam Hussein never in a truly serious way carried out his threat to use hostages (or prisoners of war, which is a different but related story) to protect his strategic installations. Nevertheless it is likely that a precedent has been set, one that will increasingly be followed in the future.

*Targeting Heads of State*

The Gulf War was remarkable in that first President Bush, and later Saddam Hussein as well, publicly announced their intention of waging the struggle ad hominem, either by encouraging subversion against the ruler's person or by threatening resort to assassination. Both courses of action run in the face of the modern law of war, at the root of which is the fiction that wars are waged by states, not men. The fiction has it that the members of the government have no personal interest in the matter and are merely acting on behalf of their states. The principle was clearly formulated for the first time by Hugo Grotius in his *On the Law of War and Peace* (1625). For some 300 years since, waging war by assassination has been outlawed and rarely practiced, whereas those cases when it *was* used (e.g Napoleon's kidnapping and subsequent execution of the Duc d'Enghien) were met with widespread condemnation.

However, we have seen that states represent a comparatively recent invention. During most of history before the advent of states, rulers waged war, and were supposed to wage war, in order to advance their own personal interests. As a result, waging war ad hominem was not the exception but the rule. The biblical book of *Joshua* describes how the Israelites first stepped on the necks of the enemy kings whose cities they had conquered and then put them to death. Sun Tzu's recommendation to those who cannot solve disputes by diplomacy is to use what can only be translated as dirty tricks. Alexander during his Persian campaign pursued Darius relentlessly, and indeed it was not until the Emperor was dead that his work of conquest was really accomplished. His entire subsequent career indicates that it was less against the Persians as a nation than against Darius himself that he fought, even to the point where this issue became a bone of contention between him and his own Macedonian troops. A similar practice was followed by the Romans; Roman soldiers who killed the enemy commander (who in many cases was also the ruler) were rewarded by the first spoils. Furthermore, enemy leaders so unfortunate as to be captured would be displayed and reviled in a formal victory march. Unless the victor chose to exercise clemency, at the end of the day the victims would be killed in public and their bodies desecrated to secure punishment both in this world and the next.

Medieval warfare differed from ancient (and modern) ideas in that it was largely a question of class. Conflicts among persons other than those belonging to the knightly elite were scarcely entered under the rubric of war at all; hence most feudal princes did not approve of common soldiers killing enemy commanders, and on occasion reacted sharply to prevent such acts or to punish them. However, acting among themselves they waged war very much ad hominem, killing, taking prisoner, holding out for ransom, and ravaging each other's possessions as a matter of course. Given the structure of medieval society and the absence—so characteristic of feudalism—of any

clear distinction between the private and public domains, it is not easy to see what other course they could have taken.

As even a quick reading of Machiavelli's *The Prince* testifies, renaissance rulers still regarded war as a personal matter. Differences of scale apart, their methods of waging war bore an uncanny resemblance to those of modern mafiosi, including even the treacherous banquet in which a high-ranking guest would be befuddled with drink, set upon by armed men, and murdered. The government continued to be embodied in the person of the ruler himself. Hence rulers routinely imprisoned, tortured, maimed, blinded, and executed their rivals when the opportunity presented itself. If Lucretia Borgia gains somewhat of an evil reputation as a poisoner, this presumably was less because her methods were exceptional than because she was a woman.

As we have seen, beginning in the second half of the 16th century, the idea of the state as an abstract organization caused an increasingly sharp line to be drawn between the rulers' private persons and their public functions. The latter represented legitimate targets; the former were supposed to remain inviolate. By the middle of the 18th century, Vattel noted with some pride that civilized European princes were addressing each other as *monsieur mon frere* even as they went to war. Their families (including also valets, secretaries, priests, and other persons in their personal service) were respected. So by and large was the private property of enemy commanders. Frederick the Great in a fit of pique on one occasion ordered a hunting lodge belonging to an Austrian general to be burnt down, only to rebuffed by his own generals who, perhaps in the fear of eventual retaliation, refused to obey. When Napoleon besieged Vienna in 1809, he directed his artillery fire away from Schonbrunn Palace where Princess Marie Louise—the future Empress—was known to be lying ill. When the United States in 1865 refrained from punishing the Confederate leaders this merely reflected the official Federal Code (the Lieber Code) which, from beginning to end, had sought to treat the conflict *as if* it were international and not a rebellion. By 1914, so strongly entrenched had the convention against ad hominem attacks become that the state-assisted assassination of a Habsburg Archduke served as the catalyst of a world war. Neither of the world wars, as far as we know, witnessed attempts to wage war by murdering enemy rulers; even attempts on the lives of enemy generals were surprisingly few and far between.

Since 1945, however, a growing percentage of wars—some three-quarters of the total—has been waged not by states but by various quasi-states, movements, and organizations. The leaders of such entities, far from enjoying recognition and the immunity that normally goes with it, were considered criminals. They were hunted by every imaginable overt and covert means. Conversely, they themselves saw no reason to grant immunity to their persecutors, though truth to say in many cases it would be hard to decide who

first broke the rules of the game. Be this as it may, the results are evident to the most casual tourist. From the White House to Number 10 Downing Street, the most important personages have increasingly taken to turning their residences into fortresses.

To judge by the declarations of both sides in connection with events in the Gulf, the idea that rulers should not enjoy immunity but be held personally accountable for their actions and liquidated if necessary is spreading. Growing out of the dark recesses where terrorists and counterterrorists meet each other, it has begun to extend to interstate conflict. A foreglimpse of such a state of affairs was provided not only by the Gulf War but also by the American attempt to bomb Libya's Gadhafi in his bed and the rather more successful kidnapping of Panamanian dictator Noriega. Whether these tendencies will be contained, or whether we are heading toward a return to the standards of an earlier time when there was no distinction between ruler and state and the waging of war ad hominem was the rule—only time will tell.

*Response by the United Nations*

In Southwest Asia it was neither a single state nor a simple alliance of states that ordered Iraq out of Kuwait, imposed economic sanctions, and threatened the use of armed force in case of noncompliance. These actions were reserved to the United Nations, an organization that has thus gone some way toward assuming the war-making function formerly belonging exclusively to the state. Although this is not the state's only prerogative—two others being the right to exercise justice and to levy taxes—it is easy to see why it is commonly considered the most important. To speak with political theorist Carl Schmitt, it is war-making that more than anything else distinguishes the state from all other human organizations. By reserving the right to make war, the state can overturn the prohibitions which, in all societies at all times and places, exist to prevent the wanton spilling of the most precious of all commodities—human blood. In this way, acts that are normally forbidden suddenly become not only permitted but desired, encouraged, and even consecrated.

Again, it cannot be emphasized too strongly that the concentration of the monopoly over war in the hands of the state and its authorized organs is of comparatively recent origin. In Europe until well into early modern times, and everywhere else until much more recently, the right to resort to organized bloodshed has often resided with other kinds of organization. One need only think of the clans, tribes, free cities, feudal princes, ecclesiastical organizations (the Church had its own armies of monks), religious leagues, territorial warlords, and even independent robber barons who throughout history went to war against each other, fought each other, and made peace with each other. Even in Europe the state took several centuries before it could crush rival contenders and establish its monopoly over legal violence. Nor was its victory, achieved through bloodshed on a colossal scale—beginning

in the English Wars of the Roses (1455-85) and ending in the Thirty Years' War (1618-48)—a foregone conclusion by any means.

The triumph of the sovereign state went a considerable way toward putting an end to one kind of anarchy—internal; at the same time its very sovereignty also gave rise to another kind—international. Hence, even as sovereign states struggled to assert themselves, the dream of taking war out of their hands and entrusting it to a supranational organization made its appearance. The ill-fated League of Nations following World War I is the most celebrated effort, but by no means the earliest.[7]

Some of the schemes foreshadowed the structure of 20th-century organizations in some detail, including even the rotating presidency of today's UN Security Council. All had in common the idea that member-states were to renounce the right to make war against each other and submit their disputes to arbitration. The supranational organization, in turn, would be authorized to pass judgment, lay down the law, and use force against those who disobeyed its decisions.

Insofar as the rise of the sovereign state is perhaps the most important single political characteristic of our modern age, these "world government" proposals ran counter to the spirit of the times and were doomed to failure. Throughout the 19th century international law continued to follow Grotius and Vattel, upholding the state's unlimited right to declare war in order to extend or defend its interests. However, by the time of the Conference of Versailles in 1919 the idea of the sovereign, autonomous state was already to some extent on the defensive. Just as the Thirty Years' War finally made clear the folly of fighting for religion, so World War I revealed the terrible consequences that could ensue from the untrammelled sovereignty of states.

As noted, these early ideas eventually found organizational expression in the form of the League of Nations. However weak and ineffective it might have been in practice, it represented at any rate the first time in modern history when an organized attempt, going beyond mere proposals, was made to take the absolute right to make war out of the hands of individual states. The same point was made by the Kellogg-Briand Pact of 1928. Signed by 60 countries, including all the great powers, technically it remains in force today. The signatories "renounced war" as an instrument of national policy, except in self-defense. At the same time they envisaged its use "as a measure of collective action for the enforcement of international obligations." Since the definition of "self-defense" was left to the signatories themselves, the practical significance of the treaty was close to zero. Still, it represented the first formal instrument set up specifically to give expression to the idea that war had become too important a business to be left to the whims of sovereign states.

Events leading to the outbreak of World War II, dashing the idealistic hopes of the 1920s, do not need recounting here. But this unprecedented

disaster, involving the deaths of some 40 million people and culminating in the introduction of nuclear weapons, had the salutary effect of resurrecting those hopes. The idea of a supranational organization that could curb the resort to interstate war re-arose, phoenix-like, and was soon embodied in the United Nations Charter. The United Nations can be seen as the most determined attempt to date at taking the absolute right to make war out of the state's hands and transferring it to an international organization. Its ability to put restrictions on a state's right to go to war and punish it if necessary was put to the test for the first time in 1950. As North Korean forces entered South Korea, a Security Council resolution of 25 June called on members to extend "every assistance" to the UN in its efforts to bring about a cease-fire and the withdrawal of the invaders. Two days later the same Council passed a resolution which called on member-states "to furnish such assistance to the Republic of South Korea as may be necessary to repel the armed attack and to restore international peace and security in the area." Finally, on 7 July the Council authorized an international force to operate under a UN flag, and General Douglas MacArthur was officially appointed United Nations Commander.

The factor that made the UN response possible was the absence of the Soviet Union, which had walked out over the issue of the UN's refusal to recognize and admit Communist China. Previous to the UN, the reigning orthodoxy entailed an international order based on the balance of power among several states of roughly equal strength. But adherents had failed to envisage a situation where the world would be divided among two rival blocs and where, consequently, global politics would reduce essentially to a zero-sum game. As it was, the return of the Soviet delegation on 31 July 1950 marked the end of the period in which interventionist resolutions could be passed. For 40 years the right of veto enjoyed by the permanent members of the Security Council, the United States and the USSR in particular, ensured that there should be no repetition of such a UN initiative. Still, there were many occasions when the Council condemned aggression in general terms, ordered cease-fires (often with success), and sent armed forces operating under its auspices to observe and, as far as possible, enforce those cease-fires.

The rise to power in the Soviet Union of Mikhail Gorbachev, followed by the end of the Cold War, changed this situation once again. Paradoxically, the emergence of a multipolar world may have made it more likely that agreement would be reached, except perhaps on issues going directly against one major power's vital interests. It also meant that since what was good for one superpower was no longer automatically considered bad for the other, the number of such agreements might undergo modest growth. But for the new configuration of the international arena, the role played by the United Nations in the Gulf War would have been inconceivable. The war saw the age-old dream of an international council acting as the supreme arbiter realized to a

considerable extent. The world community as represented in the Council determined the guilty party. It imposed sanctions, mandated the use of armed force, and as of this writing was still acting to prevent Iraq from repeating its aggression.

In this respect, a precedent has almost certainly been set. That which had been wished-for during almost four centuries, that which the League of Nations tried to achieve but failed, has now been accomplished for the second time and, what is more, with all member-states present and voting. It cannot be realistically expected that the precedent will suffice to prevent the recurrence of interstate war, let alone that the United States will always be similarly restrained. It is not even clear whether the cause of objective justice has been served, given that there is only one Third World country among the permanent members of the Security Council. However that may be, in the future few if any large-scale military operations launched by one state against another will be regarded as acceptable which have not first been authorized by the United Nations. Conversely there is a good chance that any operation which does not meet this criterion will at least be followed by international calls to reverse its effects. Some such calls will undoubtedly be heeded and translated into practice. Taking a very long view, it is possible that the right to declare international war is indeed beginning to pass out of the hands of the state and into those of a higher organization.

### *The Bankruptcy of Modern Strategy*

Thus far, we have attempted to discuss the Gulf War as it impinged on five different aspects of the rules of war. The time to assess the full impact of the Gulf War may not yet have arrived, nor are events in Southwest Asia the only factor involved. Still, it is likely that those events will one day be regarded, if not as a critical turning point, at any rate as a modest milestone on the highway of change. Some of the rules—notably the one that prohibits states from resorting to armed force to change international borders and take over their neighbors' territory—appear to be more firmly established than ever. Others are almost certainly on their way out; for example, in October 1990 President François Mitterand said that France did not take hostages, and in the next sentence placed restrictions on the movements of Iraqi diplomats. During the highly publicized splurge of hostage-releasing in Lebanon toward the end of 1991, both the UN and the US government were negotiating with terrorist organizations and the countries that support them for the release of the Western captives. To this extent, the terrorists and their methods have been granted at least a limited measure of recognition.

Of course, the five problems here discussed represent only a fraction of a much larger body of conventions and usages. Contrary to the self-styled realist school, which considers war solely from the point of view of power

and self-interest, far from discarding all restraint and considering only utility when they went to war, men from the dawn of history have sought to regulate war and subject it to limitations as regards to both purpose and modus operandi. Even some of the most primitive societies known to us have fettered armed conflict by rules that defined the way it should be declared and terminated. These same societies also tried to establish procedures by which the two sides could communicate (parleys), ways in which the fighting could be temporarily halted (truces), places that would be exempt from fighting (sanctuaries), procedures that would allow for the worst consequences of defeat to be mitigated (surrenders), and so on. The fact that much of this body of rules was not codified does not necessarily mean that it possessed less binding force than does modern international law. On the contrary, the power of god, custom, or nature to impose restraints on the behavior of individuals and societies is quite as great as that of the printed word and even of formal, internationally signed conventions.

What is more, the acts that are and are not permitted in war are not just a weak appendage of strategy. Instead, they themselves *are* strategy, in the sense of that body of theory which both describes and prescribes the conduct of armed conflict between two independent, mutually interacting opponents. Since war is a social activity (Clausewitz), at any given time and place the most important factor establishing the nature of the rules is the nature of the war-making political entities themselves. Even the realists of this world will admit that expedients appropriate for the conduct of conflict by and against one type of political organization may not be appropriate to another. Hence, changing historical circumstances may actually turn the rules of war into strategy and strategy into the rules of war, thereby determining the acts that at a particular time and place will be both permissible and effective in achieving the aims of the war-making organization.

It has now been over three centuries since, first in Europe and then elsewhere, the state has taken it upon itself to act as the sole legitimate war-making political entity. More than any other, this fact has been responsible for the customary configuration of strategy and of international law, including the latter's very name as opposed to previous concepts such as custom, god's commands, or international law. However, since 1945 we have seen two cardinal developments. First, almost all wars have involved at least one non-European belligerent, and the majority were fought between non-Europeans. Second, the European state has been slowly losing its monopoly over armed violence, and indeed the fact that it is no longer permitted to take over its neighbor's territory may itself be one reason behind this process. As the war-making function was taken over by organizations that are neither European nor states, those organizations began introducing their own conceptions of the permissible that are at odds with the traditional rules. Thus, the Gulf War seems to show that certain acts

previously considered as uncivilized and falling within the realm of terrorism are now beginning to spread to major interstate conflict.

Like any traditional rules, those which pertain to war have sometimes been broken, even by those who professed adherence to them. But this does not mean the rules do not exist or do not matter. The purpose of the traditional rules of war is not, as Clausewitz and most modern strategists seem to think, simply to assuage the conscience of a few tender-hearted people. Their real function is to protect the armed forces themselves. War, the most confused and confusing of all human activities, is for that very reason also among the most highly organized. Armed conflict can be successfully waged only if it involves the disciplined cooperation of many men. Men cannot cooperate to the extent demanded unless they subject themselves to a common code. If it is to be clear to all and capable of being enforced, that code must be in accord with the prevailing cultural climate. A body of men unclear in its own mind about whom they are (and are not) allowed to kill, for what ends, under what circumstances, and by what means is not an army but a mob.

The need for the traditional rules of war does, however, go further than this. War by definition consists of killing, of deliberately going out and shedding the blood of one's fellow creatures. Shedding blood and killing are activities that no society can tolerate unless they are carefully circumscribed by rules defining what is, and is not, allowed. Always and everywhere, only that kind of killing which takes place by authorized persons, for specified ends, under approved circumstances, and in accordance with prescribed rules is saved from blame and is regarded as praiseworthy. Conversely, bloodshed which ignores the rules or violates them usually attracts punishment, atonement, or both. It is true that different societies have differed greatly as to the precise way in which they draw the line between war and murder. Still, the line itself is absolutely essential; some deserve to be decorated, others hanged. Where this distinction is not preserved, as in the new "rules" that seem to be coalescing, the line between war and crime becomes blurred, and society begins to unravel. Traditional war—that is to say war regulated by rules having moral force—will become impossible in the long run. In its place will be mere indiscriminate violence directed by everybody against everybody else of their choosing.[8]

Though the rules of previous ages differed from our own, then as today those who broke them were sometimes apprehended and brought to justice. Nor was fate necessarily kinder to those, probably the great majority, who never stood trial. Western literature as represented by the *Iliad* begins at the point where Agamemnon, the mighty king, was punished by Apollo for violating the rules and rejecting the ransom of a young woman he had captured. In later Greek mythology warriors who desecrated temples or committed other excesses were overtaken by Nemesis and persecuted by the Erinyes, the revengeful furies who made one's very food inedible. During the

Christian Middle Ages, knights who did not respect the rights of monks, nuns, and innocent people in general were destined to be hounded by the devil while they lived and carried off to hell after they had died. Collectively, a society that goes against its own traditional rules on a large scale and during a long period will end up by losing its capacity to wage war and may even disintegrate. Even as the consequences of the Gulf War continue to unfold, the possibility still exists that Saddam Hussein and his associates will one day be made to account for their crimes. Meanwhile, however, it is already clear that the traditional rules of war, established by European or European-derived states to mitigate and impose civilized restraint on the excesses of armed conflict, are being weakened and bastardized. A strategy that fails to recognize and attempt to arrest this development is no longer worthy of the name.

**NOTES**

1. E.g. Honoré Bovet's *L'arbre des battailles* (1386-87) and Christine de Pisan's *L'art de chevalerie* (1410).
2. This approach actually dates to Niccolo Machiavelli, around 1500.
3. Max Weber uses the term "rational."
4. E.g. Thomas More in the introduction to *Utopia* (1513).
5. Greek city states routinely gave and took hostages from among their most prominent citizens, given that this practice was regarded as far and away the best way to guarantee that treaties would be kept and that subject peoples would not revolt against their conquerors. The same applied to their successors, the Hellenistic monarchs; not only did the giving and taking of hostages selected among the prince's close relatives follow every major victory, but the system by which kings married each other's sisters or daughters can itself be regarded as an exercise in mutual hostage-giving. Rome, too, followed the practice. To cite but a single example, the Greek historian Polybius was the most famous among a group of hostages who, after the destruction of Macedonia in 168 B.C., spent 20 years in Rome. Later during Imperial times the Romans (and, after them, the Byzantines) routinely had the sons of client kings and neighboring princes educated in Rome, as Herod's son Agrippa was. This method supposedly imbued the heirs to the throne with pro-Roman sentiments. At the same time, it permitted their use as hostages should the need arise.

The barbarian chieftains who ruled much of medieval Europe after the fall of the Roman Empire often gave and took each other's sons, relatives, and principal retainers hostage; many such incidents appear in the *Heimskringla*, the great saga that records the lives of the Norwegian kings during the two centuries after 1000 A.D. Their example was followed by the feudal barons. Indeed, the higher the status of any particular prince the more likely that hostage-taking would be used by or against him. In 1193 the English king Richard I, when returning from his Crusade, was taken hostage while passing through present-day Austria and set free only after a huge ransom had been paid. In 1356 the Battle of Poitiers led to the capture of John the Good, King of France. To secure his release he had to leave or give his brother (Philip of Orleans), two younger sons (Louis of Anjou and John of Berry), cousin (Pierre of Alençon) and the Dauphin's brother-in-law (Louis II of Bourbon) hostage. They were detained at Warwick Castle, England, pending the payment of ransom, the surrender of contested territories, and the handing over of certain castles designated as pledges for the execution of the peace treaty. Throughout this period the system by which the sons of vassals were educated in the lords' households also continued in force, ending only late in the 16th century. It permitted those sons—daughters hardly counted—to seek advancement and make useful connections; at the same time, it helped guarantee their fathers' good behavior.

6. Most such situations arose outside Europe, where, for example, there were only oriental monarchs or tribal chieftains to deal with. The practice of taking those potentates' sons hostage—in the form, needless to say, of providing them education—became a normal method of exercising control during the early days of colonialism in particular.

7. The Duc de Sully, who was minister of war to France's Henry IV (reigned 1589-1610), claims in his memoirs to have discussed such a plan with his king in 1593 and may also have raised the idea with England's James I (reigned 1603-25). It was directed at the Habsburg Emperor, the idea being to dismantle the Holy Roman Empire and divide Europe into 15 legally equal, fully sovereign states. Those states were to be linked into a "universal most Christian Republic," with an itinerant General Council consisting of Commissioners deputed by

the member-rulers as its highest organ. Twenty years later a somewhat similar scheme was put forward by a French Abbot, Émeric Crucé. His proposed Union differed from Sully's in that it would include not just Christian rulers but all rulers then existing. The Union was to have as its highest organ a General Council with its seat in Venice. Its purpose was to secure peace—if necessary, by using armed force—against "disturbers of the peace."

For some two and a half centuries after Crucé similar proposals continued to be made, the most famous ones being those of the Abbee Saint Pierre (1643), William Penn (1693), Jean Jacques Rousseau (1760), Emmanuel Kant (1795), and Johann Caspar Bluntschli (1878). What had originally been envisaged as a congress of sovereign princes was gradually turned into a union of peoples, or nations, as embodied by their respective sovereign states. It was early realized that no such union could hope to succeed against the wishes of the more powerful among its members, hence various methods were proposed to insure that the strong would be represented in proportion to their strength.

8. So far removed is such uncontrolled violence from war proper that Greek mythology had two different deities to represent the two. The patroness of orderly, regular, law-abiding war was the virgin goddess Pallas Athene. A powerful warrior, she was also the goddess of wisdom and all kinds of skilled crafts; she is often represented leaning on her spear, her helmet pulled back, lost in thought. The patron of unrestrained violence was Ares, "mad fulminating Ares," to quote Homer. Athene, rising directly out of Zeus's brow, was a benign goddess, having the most important city in Greece named after her. Ares, born to the same father in the ordinary way, was a minor deity with few worshippers and fewer temples. No people, except for the mythical Amazons, traced its ancestry back to him. A slightly ridiculous character, on one occasion he was shut up in a bronze pot and had to be rescued by Heracles. The *Iliad* tells how Ares met Athene on the battlefield and was soundly trounced. Bleeding and trumpeting his pain, he ran from the field, ascended to Olympus and complained to Zeus, from whom, however, he received scant sympathy.

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