Pre-emptive Action in Iraq: Muddling Sovereignty and Intervention?

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The main purpose of this article is to use the theoretical framework offered by Cynthia Weber to interpret the discourse of the American administration relating to pre-emptive action in Iraq. According to Cynthia Weber, sovereignty has always been an arena for the contestation of its meanings as its significance is intrinsically linked to the practices of intervention in international relations, the way that action is legitimised and in the name of whom. The discourses on intervention utilised by the Bush-Cheney Administration will be analysed on this conceptual basis in order to grasp the meaning of sovereignty that flows from them.

The second part of the paper is devoted to an issue that is more speculative and theoretical. One of the hypotheses is that in order to neutralise the chronic instability of the American discourse, the notion of ‘responsibility’ is more and more used as a substitute for sovereignty. As a result, legitimacy shifts from a legal and political level to an ‘ethical’ mode of discourse.

Introduction

The issues of sovereignty and intervention are often discussed in international relations in conjunction with theoretical debates. Confrontations between realist and idealist or liberal paradigms, empiricist and post-positivist methods, rational-choice and constructivist orientations, can sometimes lead to a kind of radical methodological scepticism for young researchers. Cynthia Weber’s book Simulating sovereignty offers a way out.1 Her analysis uses a radical post-modern framework (inspired by Foucault and Baudrillard) but, at the same time, draws on serious empirical research that, to some extent, neutralises the main criticisms to such a methodological stance generally proffered by realists. For realists, this epistemological approach often leads to dissertation without content, mainly because it tends not to address questions of power relations and interests in international relations. Cynthia Weber’s analysis represents another way to deal with this question of power. It is moreover, to some extent, more compelling in its grasp of actual trends in international politics than many realist accounts of international politics.

My purpose is to use the theoretical framework offered by C. Weber to interpret the discourse of the American administration relating to pre-emptive action in Iraq. C. Weber poses the following questions on this issue: “How is the meaning of sovereignty fixed or stabilized historically via discourses of international relations theorists and practices of political intervention? In other words, how do practices of theorists and diplomats stabilize the meanings of sovereignty and, by default, write the state?”.2 Sovereignty has always been an arena for contestation of meanings; its significance is intrinsically linked to the practices of intervention in international relations, the way they are legitimised and in the name of whom. Therefore, the new discourses and practices of intervention utilised by the Bush-Cheney Administration could be analysed by resorting to the same kind of conceptual framework.

The second part of the paper will be devoted to an issue that could not properly be addressed through a post-modern analysis à la Weber insofar that it is a more speculative and theoretical one, but which arises from it. In a way it will highlight the great instability of the US discourse as well. Some suppositions based on contemporary debates surrounding the Iraq Crisis are made. One hypothesis is that in order to neutralise this chronic instability of the American discourse, some people inside the American administration use the notion of responsibility as a substitute for sovereignty which moves the category of legitimacy from a legal and political level to an ethical one. Then, I will try to assess the consequences, on both political and legal levels, of such a posture and its consequences on the doctrinal foundations of sovereignty and intervention.

Pre-emptive Action in Iraq: A Weberian Perspective

Cynthia Weber’s main assumptions regarding sovereignty and intervention will be briefly explained and then applied to the specific case of U.S. intervention in Iraq.

Theoretical Features of a Post-positivist Analysis

How do meanings of sovereignty and intervention take shape and how are they put to work, by whom and on whose behalf? These are the core questions the book addresses. For Cynthia Weber, “Intervention activity brings to the fore the importance of casting meanings in particular ways which enable specific forms of practice to take place legitimately in the eyes of a supposed interpretive community”.3 The meaning of sovereignty is fixed through practices of intervention. Therefore, the justification for the intervention settles the question about the location of authority and the boundaries between “domestic” and “international communities”. By the same token, the community is not “naturally” given, but “produced” and constituted in the act of speech.4

2. Ibid., p. 3.
3. Ibid., p. 13 (emphasis added).
4. Ibid., p. 7.
After having criticised behavioural and legal approaches to the question of sovereignty and intervention in the international field, C. Weber opens the door to interpretive approaches founded on Foucault’s and Baudrillard’s most famous books. Thanks to the former, one can answer the following questions:

How are sovereign foundations represented?
Through which strategies are power and knowledge organised so that sovereign foundations are discursively constructed?
How in particular do justifications for intervention participate in the construction of sovereign foundations, be they domestic (citizenries) or international (interpretive communities)?

Thanks to Baudrillard, it is also possible to tackle the following issue:

What happens when it is no longer possible to represent foundations?

In a proper Foucauldian-style analysis, sovereignty and disciplinary mechanisms are two absolutely integral constituents of the general mechanism of power. Sovereign foundations are produced as signs that make representational projects possible and allow sovereignty and the state to refer to some original source of truth. The two main referents of sovereignty proposed throughout history have been god and the people. This is a fundamental way in which power and knowledge function in a logic of representation. These signs do not exist naturally; they must be produced. Being a state depends not only upon a political representation but also upon a symbolic representation: the foundations of sovereign authority and the communities, which judge them to be legitimate, must be constituted (symbolically represented) before they can be politically represented.

In using this kind of theoretical framework, Weber argues that in the case of the interventions by the Concert of Europe (Naples, Spain), the Wilson Administration (Mexico, USSR), and the Reagan-Bush Administration (Grenada, Panama), each intervening power was constituted as one community of judgement about the true meaning of sovereignty and intervention and the true location of sovereign authority.

Weber underlines a paradox in the practice of intervention: while this kind of act often destabilises international politics, intervention discourses claim to be producing or re-stabilising concepts like the state and sovereignty.

"Intervening states offer justifications for their actions to a supposed international community and couch their justifications in terms of acting on behalf of the sovereign authority in the target state. This has three effects. It produces an international community of judgment. It produces a

5. Cynthia Weber considers that these conventional patterns tend to fix a meaning that is somehow artificial and not consistent with most practices and discourses relating to sovereignty and intervention, ibid., pp. 20–21.
sovereign authority in the target state. Finally and most importantly, it participates in drawing the sovereignty/intervention boundary that represents or “writes” the state.”

These effects can be observed as well in the current crisis in Iraq.

Intervention in Iraq through the Lenses of Weber

At first sight, the most striking feature of the US discourse regarding the intervention in Iraq is the absence of reference to the droit d’ingérence (right to intervention) so famous and popular in France. In cases of great human suffering such as that caused by the regime of Saddam Hussein (which have been copiously denounced by governments and NGOs) one might have expected such a reference. On this point, the analysis of Cynthia Weber is very useful in explaining this apparently paradoxical situation and, more generally, to understand the process by which Iraqi freedom is legitimated.

In the Name of Self-determination

The US argument for intervening in Iraq in 2003 is similar to President Wilson’s justification of the US intervention in Mexico in 1917. Cynthia Weber argues that, in fighting for self-determination, the Wilson administration could not possibly have promoted a right to intervention precisely because it entailed political interference from the outside and thus contravened the sovereign authority of the people in the “target state”. Thus, in order to legitimise the US involvement in Mexican domestic affairs, President Wilson argued that the Mexican government ruled by Huerta was not representative of the Mexican people. Such a distinction between the people and its government enabled the administration to speak for and act on behalf of the Mexican people without resorting to a right to interfere precisely because it was not presented as an intervention or a violation of the sovereignty principle.

The Bush administration has used a typical Wilsonian-style discourse in saying that US military action in Iraq was justified to defend the sovereignty of the Iraqi people. According to the Bush administration, the Iraqi people’s sovereignty could not be freely expressed under a government headed by Saddam Hussein. Until now, the Iraqi people could not act as a community of judgment. Thanks to Operation Freedom in Iraq, partially launched in the name of the right of Iraqi people to self-determination, representative democracy in Iraq became an

9. Ibid., pp. 63–64.
attainable objective. Donald Rumsfeld had already underlined this goal a few weeks before the intervention:

There are even some doubts that democracy could ever take root in the Arab world. Here’s my response to the critics: look at the people of northern Iraq. Beyond the reach of Saddam Hussein and his regime for a decade, they’ve shown an impressive ability to manage longstanding differences and develop relatively free and prospering societies. Look at the Iraqi-Americans here today and throughout this country and see how quickly they have adapted to a democratic system. And, finally, I would say to these doubters, look at the Iraqi people’s long yearning for representative government and their long suffering under one of the most oppressive dictatorships the world has known. Perhaps more than any people, they have been inoculated against tyranny. As you know, the values of freedom and democracy are not just Western values or European values. They are Muslim and Asian values as well. Indeed, they are universal values. They are the bridge that spans civilization.\textsuperscript{11}

In the aftermath of the intervention, Wolfowitz dismissed the possibility of an Iranian-style theocracy: “Democratic tyranny is not something that we could support...and I frankly don’t think that most of the Shia want a clerical tyranny over them”.\textsuperscript{12} Marc Grossman, Under-Secretary of State for Political Affairs told Al-Arabiyya: “Obviously, we did not liberate Iraqis just to have another kind of dictatorship come, and so what we want is a democratic Iraq that is a multi-ethnic Iraq and multi-religious Iraq as well, that’s got everybody involved in it”.\textsuperscript{13}

Who are the People of Iraq?

As demonstrated by C. Weber, Wilson’s foreign policy can be interpreted as devoted to the principle of self-determination but, at the same time avoiding the following question: “how is the identity of the people decided? How are the people produced so they can be represented?”;\textsuperscript{14} or to put it in a non-post-modern fashion: who decides who are the people? Some 50 years ago, a famous international lawyer, Sir Jennings, had already raised the question:

Nearly forty years ago, a Professor of Political Science, who was also President of the United States, President Wilson, enunciated a doctrine, which was ridiculous, but was widely accepted as a sensible proposition,
the doctrine of self-determination. On the surface, it seemed reasonable: let the people decide. It was in fact ridiculous, because people cannot decide until someone decides who are the people.¹⁵

It is not sufficient to say: “Iraqi leaders met in An Nasariyah to begin discussing the process that will lead to a new government that will represent and serve the true interests of the Iraqi people. A government of the Iraqi people, by the Iraqi people and for the Iraqi people”.¹⁶ Because in most cases intervention operations occurred in divided societies (such as Bosnia-Herzegovina), “the convenient practice of pointing to a government (signifier) as the representative of a people (signified) often was not an option because governments were falling and populations were dividing into opposing political factions”.¹⁷ Consequently, the intervening state has to invent a people in some form which could serve to legitimise the operation in the eyes of the international community. In the context of the Russian revolution (1917), some parties were identified by the Wilson Administration as truly ‘liberal-democrats’ and so were entitled to ‘represent’ the people against the class-minded communist government.¹⁸ In comparison, R. Reagan’s and G. W. Bush’s discourses on Panama and Grenada no longer used the justification of an ‘emerging liberal-capitalist group’ but instead produced opinion polls expressing approval of the invasion, thus reducing the people to statistical abstracts.¹⁹

The ‘invention’ of the Iraqi people seems to be more complex insofar that it has resorted to several methods from the beginning of the crisis until now (December 2003). Before the intervention, it was mainly the Iraqi Diaspora in US and the Kurdish community – as they were experiencing democracy – who were considered as the true voice expressing the interests of Iraqi people.²⁰ The situation became more confused after the fall of Baghdad. During the first week, the Iraqi people were generally depicted as a whole community who welcomed the coalition forces for having liberated them from tyranny.²¹ There was no public


¹⁶. Paul Wolfowitz on 15 April (emphasis added), see also the 13 principles laid down to guide the conversation among Iraqis, available: [http://www.defenselink.mil/speeches/2003/sp20030425]


¹⁸. In his remarks at the 20th Anniversary on the National Endowment for Democracy, President Bush reminded the audience that “In June of 1982, President Ronald Reagan spoke at Westminster Palace and declared the turning point had arrived in history. He argued that Soviet communism had failed, precisely because it did not respect its own people – their creativity, their genius and their rights”, “President Bush Discusses Freedom in Iraq and the Middle East”, 6 November 2003, available: [http://www.whitehouse.gov]

¹⁹. Cynthia WEBER, Simulating Sovereignty. Intervention, the State and the Symbolic Exchange, op. cit., p. 15.

²⁰. Town Hall Meeting with Iraqi-American Community, 23 February 2003, available: [http://www.defenselink.mil]. Despite its enduring support of Kurdish minority in Iraq, the US administration has never supported a right to independence (as being a consequence of a general right to self-determination). The right to self-determination is only considered for the entire population of the Iraqi state. In this way, the American position may be judged as being consistent with the current legal doctrine on self-determination and minority rights, see Barbara Delcourt, Droit et souverainetés . . . , op. cit., pp. 259–264.

opinion poll and the INC (Iraqi National Congress) officially supported by the Americans was an unlikely representative of all Iraqi communities; even the American authorities do not make such a claim. Moreover, the US Administration was still engaged in persuading us that the Iraqi Freedom operation had been launched for the benefit of the Iraqi people as a whole. In surfing the Pentagon or White House official Internet sites, one can get a relatively good idea of the social profiles of the ‘Voices of freedom’ that permitted Grossman’s assertion that the “U.S. is Liberator not Occupier of Iraq.” Many enthusiastic testimonies were given by exiles in London or in the USA or by Iraqis expressing themselves through American and British media or Abu Dhabi TV. When mentioned, their professional activities are notably ‘liberal’ or ‘cultural’ ones (authors, producers of T.V. programmes, teachers and students, café proprietors, sellers of books and satellite dishes, even “women wearing bright dresses and new lipstick”.

Some were more innocuous like an old man saying, “It does not matter whether Saddam is dead or in Paris” (sic), or people regretting the hostile attitude of some American artists towards the war in Iraq. A large number of the opinions focused on their happiness at the rediscovery of religious freedom for the Shi’a community. Taking into account the fact that it is the largest community in Iraq (around 60%), this is certainly a way to suggest that American policy is supported at least by a majority of its people.

The challenge faced by the occupying powers was to get a government that would have the appearance of a truly representative one when the purpose was mainly “to bolster the INC’s bid for the country’s leadership”. Once again, the intervening states are participating in the allocation of power and authority in a target state by selecting those who will represent the sovereign people of Iraq:

Demonstrators outside the conference [On April 15, 2003, the U.S. military convened a meeting of Iraqi opposition groups to select a leader to work alongside the occupation regime] expressed concern that the Nasiriyah meeting was not representative of the Iraqi population. Many Iraqi leaders who travelled to the venue to participate in the conference were denied entry by the United States. A member of the outlawed communist


23. April 2003, available: < http://www.uspolicy.be>; Robert Fisk (a journalist from The Independent) reminds us that in a address to the population of Baghdad issued in March 1917, General Stanley Maude also denied any intention of conquering the country. On the contrary, he assured the people of the good intention of the British army which aimed at liberating the people from tyranny, Courrier International, No. 645, 13–19 March 2003, p. 14.


25. Ibid.

26. But this sudden concern for the Shi’a community may also be explained by the fact that most recent terrorist activities have been carried out by Sunni Arabs. This is certainly a move from the previous attitudes of American administrations in the Gulf region. For Eugene Rogan, Director of the Middle East Centre at St Anthony’s College Oxford, the US led coalition is facing the same dilemma as in 1991, when the US encouraged Iraqi Shi’ites and Kurds to rise up against Saddam Hussein but finally decided instead the these groups were the wrong Iraqis to overthrow the dictator, Antoine Blua, Radio Free Europe.28 April 2003.

party who was turned away at the gates of the conference by U.S. soldiers said ‘It can’t represent the political and social parties and movements inside the country, and I can prove it because nobody from the inside opposition is attending the conference’. The U.S. refusal to divulge the names of those who attended the event, another example of the Pentagon’s secretive approach to the reconstruction process, has done little to assuage the fears of Iraqis. The U.S. ‘announced that all opposition parties could attend the conference, but only those supported by them attended’ one Shi’a leader complained.  

Some changes have occurred since the removal of Jay Garner, a retired General sent to Iraq as civil administrator. With the designation of Paul Bremer and the constitution of the Iraqi Governing Council (IGC), the diversity of Iraqi society seemed likely to be taken into account. This move enabled G.W. Bush to consider the governing Council to be “the first truly representative institution” in Iraq. For many observers, the ethnic profile of the people in the IGC is illustrative of the way the American administration understands Iraqi society. Some editorials from the new Iraqi press were clearly suspicious of this move and have accused the US of “aiming to divide Iraq along ethnic and sectarian lines”. At the same token, public opinion polls taken in some parts of the country supported the Coalition Provisional Authority (CPA) moving forward despite the violence.  

Which Interpretive Community?  

The process by which intervention practices can be legitimised by others may be regarded as another issue. According to Weber’s analysis, interpretive communities are deemed to judge the legitimacy of intervention. Traditionally, and to be considered as a genuine interpretive community that could function as a legitimating institution as well, the community of judgment must lie outside the internal sphere of the intervening state. But most of the time, the intervening state will try to define the type of community most fitted for such a purpose. Reassessing the previous experiences of US interventionism, Weber pinpoints different scenarios. For instance, in the Grenada case, the Reagan-Bush Administration chose to use the green light given by the Organisation of Eastern Caribbean
States as legitimisation for their intervention rather than paying heed to the declarations and positions issued by the UN or the OAS, which were more critical of US policy. The same kind of scenario operated during the Kosovo War when NATO was presented as the regional organisation which best expressed the interests and the values of the international community, whereas the UN was depicted as a bureaucratic institution unable to stop a genocide occurring in Europe.

In Iraq Allies and Friends, that is the Coalition of the Willing, are playing the role of the interpretive community. On the White House site dedicated to operation Iraqi Freedom, one can see the list of the 49 countries that are committed, one way or the other, to the operation in Iraq. It does not claim to be the international community but this coalition presents similar features: “every major race, religion, ethnicity in the world is represented. The coalition includes nations from every continent on the globe”. The argument is reinforced by the statement that the operation has been launched “in order to enforce 17 UN resolutions” the UN was unable to enforce.

The US as a Substitute for the UN?

The joint Senate and the House of Representatives resolution authorising the use of United States Armed Forces against Iraq, recalled that in 1990, the US had forged a coalition of states to liberate Kuwait and its people in order to defend the national security of the United States and enforce United Nations Security Council resolutions relating to Iraq. In 1998, Congress concluded that Iraq’s continuing weapons of mass destruction programmes threatened vital United States interests and international peace and security. On the one hand, the legal argumentation developed by US diplomats in this case was based on previous UN resolutions, in particular the one which authorised the use of force in 1990. On the other hand, their legitimate political goal was to remove from power the current Iraqi regime and promote the emergence of a democratic government. The powers of the President of the USA were also recited: he has the authority under the Constitution to take action in order to deter and prevent acts of international terrorism.

against the United States, as Congress recognised in the joint resolution on ‘Authorization for use of Military Force’ (Public Law 107–40). Many of the discourses produced by American institutions refer to this kind of natural convergence between US interests and UN resolutions and goals. As far back as 1968, Wolfgang Friedmann had explained that:

Where an intervening power becomes the self-appointed executant of a global policy, the universalism of [...] the UN Charter becomes a pale shadow. The only conceivable justification for such dichotomy of attitudes is the assertion that the United States stands, globally and regionally, as a defender of self-determination and freedom, a guardian of the principles of the Charter which the United Nations itself is unable to enforce.

The Domestication of Iraqi Sovereignty

In the case of the invasion of Panama, the US administration seemed to be the only interpretive community. Subsequently, US foreign policy was almost designated as US domestic policy. Their link between the operation in Iraq and American security (before and after the battle) was quite well-established, as outlined above. Nevertheless, with the domestication of Iraq through the discourse on the war on terrorism it becomes difficult to distinguish between Iraqi sovereignty and US sovereignty.

A second complication arose from the domestication of Iraq: if the invasion of Iraq is transformed into a domestic matter, no international community can judge where the sovereignty-intervention boundary lies: sovereignty and intervention cease to function as dichotomous terms. It is no longer possible to oppose sovereignty and intervention. In other words they are interchangeable. Distinctions between the domestic and international spheres are blurring. Therefore if the Bush administration could not represent the sovereign will of Iraqi people then it had to enable a simulation of that sovereignty which could be distinguished from US sovereignty. The fact that the US administration had to rely mainly on the Iraqi Diaspora (most of them being US citizens) clearly exposes


42. By the 1910’s, the United States officially viewed revolutions as domestic issues only so long as they were liberal revolutions with the goal of putting in place liberal, democratic government. The domestic-international boundary became less distinct during the invasions of Grenada and Panama in the 1980’s. Like the Wilson Administration, the Reagan-Bush Administrations viewed revolutions and civil unrest as domestic issues because they concerned the US people., Cynthia Weber, Simulating Sovereignty. Intervention, the State and the Symbolic Exchange, op. cit., p. 13.

43. Ibid., pp. 120–121.

the enduring difficulties of constructing a people into a format that could lead to fulfilling self-determination in the way suggested by Woodrow Wilson.

According to the Wilsonian principle of democracy based on self-determination, three conditions must be fulfilled. A ‘self’ (a domestic political citizenry) must be produced and distinguished from others (foreigners). A clear boundary must exist between the domestic and international spheres in order to enable the definition of the domestic citizenry. Once identified, a citizenry must be invested with sovereign authority, that is to say, that it is capable of exercising the supreme authority inside the territory on all traditional matters that pertain to the state.45 Clearly, those criteria are not currently being met in Iraq.46

From a Logic of Representation to a Logic of Simulation?

Cynthia Weber argues that, “In a logic of representation, a boundary ‘truly’ exists between sovereignty and intervention, and this boundary ensures the distinction between these two terms. It allows them to perform as opposites. Because sovereignty defines the domain of a state’s legitimate authority and intervention marks the outer limit of this authority, the sovereignty/intervention boundary is the location of the state”.47 In a logic of simulation, because sovereignty and intervention are interchangeable terms which respect no boundary, a boundary between them must be simulated in order to offer the state recourse to what Baudrillard calls an “alibi function”.48 As there are no traditional underpinnings of sovereignty in this situation, that is god or the people, the state must find an alternative foundation for its authority. Sovereignty has no natural or use value in simulation. What sovereignty does retain is sign value but it is no longer a foundational term. In simulation, sovereignty and intervention cease to function as opposing labels. They become two signifiers, which are interchangeable. In so doing, simulation is fatal to the system of representation, which requires some value (sovereignty) to insure the value of its terms within the system.

The following extract from a press conference exemplifies this complex issue. It is related to the mentioned earlier sentence: “We are not an occupying power but a liberating force”...

Question to Ambassador Moley after the Secretary-General’s statement to the Commission on Human Rights: You said earlier that you have made it clear from day one that you would respect Geneva Conventions, The Hague etc. but a couple of weeks ago when [asking] questions at

46. International Crisis Group, Governing Iraq, op. cit., pp. 10–12. In June 2004, some competencies were transferred to an Iraqi political body. But it does not mean that sovereignty was restored as such, see the interview between a journalist and the Deputy Secretary of State Richard Armitage ... “Q: But, in other words, in terms of rebuilding, in terms of oil industry, in terms of everything, say, non military, the Iraqis will be running the show? A: “Well, clearly, it’ll be our money, but by that time the $18,7 billion which Congress was kind enough to appropriate should be moving well into Iraqi infrastructure projects, and the Iraqis will, indeed, be running their own show”, “Armitage Says U.S. Committed to Plan Iraqi Sovereignty by 2004”, available: <http://www.uspolicy.be>
48. Ibid., p. 126.
Central Command in Doha about the issue of occupying power, the response was, well we are not at that stage yet, it’s a liberating force.

Answer: You have mixed metaphors there. You asked me about Geneva Conventions and The Hague and I would reply as I did earlier, we have been fully, fully in conformity and intend to be since day one, not only by virtue of our words, but also by virtue of our actions on the ground that demonstrate that.

Q: So there is no separate occupying or liberating force category?
A: We are simply saying that the issue of an occupying power has not yet been dealt with. Once again the situation is quite fluid.49

According to Baudrillard, the notion of simulation (instead of representation) is more relevant in such cases because there is no referent: it is all a matter of substituting signs of reality for the reality itself.50 On this point, Colin Powell brandishing before the Security Council a small phial of what was purportedly meant to be evidence of Iraqi WMD resembles more a conjuring trick than a truly rational demonstration.51 Subsequently, we learnt that the issue of WMD was used mainly because it was the only way of gaining consensus among all the segments of the American administration for the project of invading Iraq.52 This element is certainly one reason that helps to explain the great confusion in the arguments. In the end, the argument appears to be quite slippery – or fluid – encompassing the need to fight terrorism, to stop the spread of WMD,53 to enforce UN resolutions and to overthrow tyrannical regimes and so forth.54 This simulation process could also be seen in the aftermath of the fall of Baghdad when, for instance, the use of mobile phones, the spread of satellite dishes and internet coffee shops and the 160 Iraqi newspapers were used as “signs” of the establishment of democracy following the military occupation of the country.55


55. See Dr Nimrod Raphaeli, “Iraq: Moving forward Despite Violence”, op. cit.; Discussions with White House officials, “Ask the White House”, available: <http://www.whitehouse.gov>
From Sovereignty to Responsibility?

The instability of discourses surrounding pre-emptive action flows from the fact that this concept has been used to sustain offensive strategies rather than defensive ones. Preventive wars have indeed occurred or had been envisaged by Germany and Japan before the Second World War. The Austro-Hungarian Empire announced a preventive war against Serbia after the assassination of Franz-Ferdinand. When he made a stand against the German imperial policy in 1914, Karl Liebknecht argued against preventive wars considering instead that they were in fact offensive ones. Ironically, this is precisely the kind of argument Kissinger used in the 1970's in order to undermine some proposals to change the US doctrine on the no-first use of nuclear weapons. According to Robert Kagan the doctrine is a liberal one, but a lot of texts and documents found on the web (with the help of a search engine like google) supporting pre-emptive or preventive wars are clearly linked to sites expressing anti-liberal ideologies or even fascist ones. Once again, it testifies to a complete confusion between aggression and self-defence paralleling the one that occurred between sovereignty and intervention.

From a legal point of view, preventive wars (or pre-emptive actions) run counter to the UN Charter and contradict the rules pertaining to the use of force in international relations. Only a few states acknowledge a right to preventive self-defence. Even in this case, the expression seems a contradiction in terms in so far as self-defence implies a reaction to an aggression that must be based on an ‘imminent attack’ and then tangible evidence, conditions the US Secretary for Defense, Donald Rumsfeld, would certainly find much too ‘Cartesian’ in a world threatened by fanatical terrorists because ... “There are things we know that we know. There are known unknowns. That is to say, there are things we know that we don’t know. But there are also unknown unknowns. There are things we don’t know we don’t know ... each year, we discover a few more of the unknown unknowns”.

In any case, pre-emptive action as proposed by the National Security Council in order to protect the security of US citizens and interests could hardly be justified by this quite old doctrine of preventive self-defence. The situation is actually paradoxical. The new threats and the unprecedented character of the challenge faced by...
US power are being used today to push aside the rules enshrined in the UN Charter. In spite of the claims of unprecedented threats, the US draws its justification for attempting to legalise pre-emptive action from the founding fathers of the *jus gentium* (Grotius, Vattel) or from anti-modern doctrines (Leo Strauss, Edmund Burke).

**Which Conception of Sovereignty?**

The American discourse developed in the aftermath of September 11, 2001 has been constructed with reference to self-help doctrines and very classical views of what sovereignty entails at the international level. It encompasses very traditional views of what the international system should be: “We must defeat these threats to our nation, allies and friends […] We will preserve peace by building good relations among the great powers”. However, this is not as traditional as it seems to be at first glance. The Holy Alliance’s telos, which had also been based on a legitimacy principle, was more a balance of power than seeking primacy. The American discourse, since the end of the cold war, has as its main objective for US security strategy a position of *primus inter pares*. As President Bush states: “In exercising our leadership, we will respect the values, judgment, and interests of our friends and partners. Still, we will be prepared to act apart when our interests and unique responsibilities require”.

What are the potential consequences of this posture on the sovereignty principle? Kissinger has clear views on this issue:

Bush’s pre-emption doctrine is ‘revolutionary’. It challenges a system of international sovereignty established by the Treaty of Westphalia in 1648. The Treaty elicited the principle of non-intervention in domestic affairs by foreign states. Even seemingly justified pre-emption runs counter themodern international law, which sanctions the use of force in self-defence only against actual, not potential, threats.

As we have seen, the most striking consequence of muddling sovereignty and intervention in this case is the manifest incapacity, for the moment, to ‘write’ the state of Iraq because the location of authority is almost entirely lying inside the US domestic sphere. For a few years, the increase in foreign military interventions in order to restore a legitimate order has led to new forms of protectorates based on some form of coercive multilateral diplomacy. Actually, Kosovo and Bosnia…
came under a form of international administration due to such a “vacuum of sovereignty”. Operation *Iraqi Freedom* and the war against terrorism goes perhaps a step beyond that in so far as the sovereignty principle seems to be impaired, not only for the target states, but also for the other members of the international community: “[t]he assertion that ‘you’re either with us or against us’ obviates a central aspect of state sovereignty – the right not to be involved – and recasts the US as the ultimate arbiter of right and wrong”.

But, at the same time, the US has strongly denied that it is attempting to annex foreign territories or to behave like a colonial power. On several occasions, the American authorities have underlined the necessity of sticking to some of the basic rules of the international legal order stemming from the principle of sovereignty, mainly the right to self-determination and the respect of territorial integrity and non-interference:

[... ] United States and other coalition countries have no interest in governing or occupying Iraq. Our intention has always been to stay as long as necessary, but not a day longer – and to leave behind an Iraqi government that preserves territorial integrity, uses its resources for the benefit of all Iraqi people, and poses no threat to its neighbours.

Rumsfeld also emphasised that the United States was not dividing Iraq up in three sections, as some reporters have suggested. ‘We are not’, he emphasised: ‘it is a whole’.

How to ensure the unity and territorial integrity of Iraq while providing the appropriate level of self-government? This an issue the United States confronted in the framing of our Constitution? While our answers have worked well for us, Iraqis have to find their own answers suited to Iraq’s unique circumstances.

However the USA is not prepared for other actors to intervene likewise, Paul Wolfowitz warning Turkey that the US “can’t any longer have unilateral action on Turkey’s part”. In the long run: “Turkish military forces should not be needed in Northern Iraq”, ...

“The White House said it has made clear to...
Iran it would oppose any outside organization’s interference in Iraq as that country embarks on its road to democracy”. Moreover, fighting terrorism in the eyes of the American administration encompasses a reactivation of security policies by the state apparatus under a very traditional meaning of the sovereignty principle: “We will disrupt and destroy terrorist organizations by [...] denying further sponsorship, support, and sanctuary to terrorists by convincing or compelling states to accept their sovereign responsibilities”.78

Towards a Conditional Sovereignty?

This is not to say that nothing has changed for the collective security system and the international legal order. The pre-emptive doctrine entails several changes in the sovereignty-intervention discourse, which are more striking at the legal level. As pointed out above, the two main referents of sovereignty proposed throughout history have been god and the people. During the classical age, the law of nature was deemed to regulate different communities. In the modern age, natural law was dropped in favour of the law of equivalences (the law of nations) that expressed the idea of sovereign equality of states (and peoples within states). The reciprocity principle was the corollary of the coexistence system composed by different sovereign units but based on different cultures, religions and political systems.79 The UN Charter system is qualified as ‘liberal’ in so far as it organises (for better or for worse) the coexistence between them without imposing a legitimacy principle (liberal capitalist regime for instance).80 Coercive policies or measures are justified by threats to peace and security and decided upon collectively by the Security Council members. From a theoretical (and very formal) point of view, this sort of procedural mechanism does not endanger the sovereignty principle by the mere fact that almost all member-states of the UN have freely subscribed to this collective security system.81 These are the legal limits of the sovereignty principle formally recognised by all states including the USA.

With the ‘securitization’ of international politics after September 11 2001, we have entered into a world in which emergency regulations are increasingly replacing normal rules. The pre-emptive doctrine announces the end of this reciprocity for

the sake of American security and in the name of their special responsibility concerning world affairs.\textsuperscript{82}

International law is for the most part reciprocal – if you have any respect for international law, you’ve got to think of just how this might change the rights and obligations of others. And we might well trust the United States, but do we trust India or Pakistan or Rwanda or China? Do we trust Iraq – because they would have a right of pre-emptive self-defence too? I don’t think that calculation is taking place in the White House, as if the Bush administration thinks that the US has a special position in international law, which seems to be a sort of underlying assumption that they have when they articulate these claims. Sort of like argument with regard to international Criminal Court, that the US has \textit{special responsibilities and therefore it deserves a special exemption}.\textsuperscript{83}

States are no longer equal as they were (formally) under the traditional system based on sovereignty. The US and its allies have a duty to translate their nominal sovereignty into effective governance. But until failing states or states that harbour terrorist and drug traffickers assume their sovereign duties, the “world community may need to assume many of the sovereign responsibilities of a sovereign government.”\textsuperscript{84} This is precisely the kind of mission Robert Cooper advocated in his essay in favour of a “New Liberal Imperialism”.\textsuperscript{85}

Are we going back to an international system governed by the law of nature instead of the law of nations? It is a quite complex question but “What is perhaps most striking about the grand strategy outlined by the President is that it is conceived in terms of moral imperative: ‘responsibility’ and ‘obligation’ figure alongside with ‘opportunity’”.\textsuperscript{86} It is not certain that pragmatism and opportunity are consistent with this model of legal thinking.\textsuperscript{87}

While ostensibly a discourse of inclusion and universalism, the American discourse nonetheless contains its inner limitation.\textsuperscript{88} Derrida suggests that the

\begin{itemize}
\item \textsuperscript{82} “Existing Rights, Evolving Responsibilities’, by Ambassador Richard Haass. State official explores rights, responsibilities of nation states”, \textit{op. cit.}
\item \textsuperscript{83} Michael Byers, Crimes of war project. Iraq and the ‘Bush Doctrine’ of Pre-emptive Self-Defence. Expert Analysis, August 20, 2002, (emphasis added)
\item \textsuperscript{84} “Existing Rights, Evolving Responsibilities’, by Ambassador Richard Haass. State official explores rights, responsibilities of nation states”, \textit{op. cit.}, p. 2.
\item \textsuperscript{85} Robert Cooper, “The New Liberal Imperialism”, Observer Worldview, April 7, 2002.
\item \textsuperscript{87} Olivier Corten, “Les ambiguïtés de la référence au droit international comme facteur de légitimation. Portée et signification d’une déformalisation du discours légaliste”, in O. Corten et B. Delcourt (eds.), Droit, légitimation et politique extérieure. L’Europe et la guerre du Kosovo, \textit{op.cit.}, pp. 226 and ff.; See also the notion of “pragmatic solidarity” as developed by Alex J. Bellamy,, “Humanitarian Intervention and the Three Traditions”, Global Society, Vol. 17, No 1 (2003)
\item \textsuperscript{88} Armitage, Richard L., Deputy Secretary of State, “Allies, Friends and Partners on every page: international cooperation in the national security strategy”, available: <http://www.whitehouse.gov>
value of universality is always “linked to the value of exemplarity that inscribes the universal in the proper body of a singularity, of an idiom or a culture, whether this singularity be individual, social, national . . . .” 89 In the American discourse, the USA itself is the embodiment of exemplarity. Like some UK discourses on the Commonwealth, it is marked by a form of moralistic paternalism. 90 The Powell rhetoric is a good example of this trend: “We have the military power but we also have the economic power, we have political power, we have diplomatic power, we have the power of example. We are using all these elements of national power not to find nations to invade, but to find nations who need our help”. 91 G.W. Bush is not backward at paternalism: “We are not only in Iraq to defend our security, we are also showing that we value the lives and the liberty of the Iraqi people”. 92

The neo-conservative ideology inspired by Leo Strauss is perfectly in keeping with this trend, 93 but democrats also shared some of these assumptions, in particular in making sovereignty conditional 94:

“There was always an idealist strain in American Cold War thinking. Bush’s ‘Axis of Evil’ echoes Ronald Reagan’s ‘Evil Empire’. The Bushites believe, or appear to believe, that America is a cause, not a nation, with a mission to convert the rest of the world to the American dream and the rid the world of terrorists and tyrants. For them, sovereignty is conditional for other states, but unconditional for the United States because United States represents ‘good’. Hence the United States can act unilaterally [. . . ]. This view was expressed by Assistant Secretary of State Richard Haass: ‘What you are seeing in this administration is the emergence of a new principle or body of ideas . . . about what you might call the limits of sovereignty. Sovereignty entails obligations. One is not to massacre your own people. Another is not to support terrorism in any way. If a government fails to meet these obligations, then, it forfeits some of advantages of sovereignty, including the right to be left alone inside your own territory. Other governments, including the United States, gain the right to intervene. In the case of terrorism, this can even lead to a right of preventive . . . self-defence. You essentially can act in anticipation, if you have grounds to think it’s a question of when and not if you’re going to be attacked’”. 95

90. Ibid., p. 136.
95. Mary Kaldor, “American power: from ’compellance’ to cosmopolitanism?”, op. cit., p. 12. Quoted from Ikenberry, p. 52; See “Powell Says Iraq poses Threat to Peace and Security of All Nations”, 26 January 2003, p. 4: “We continue to reserve our sovereign right to take military action against Iraq alone or in coalition of the willing”, available: <http://www.uspolicy.be>
In brief, “It is a vision in which sovereignty becomes more absolute for America even as it becomes more conditional for countries that challenge Washington’s standards of internal and external behaviour”. Likewise, in his pledge for a “new liberal imperialism”, Robert Cooper states, “The challenge to the post-modern world is to get used to the idea of double standards. Among ourselves, we operate on the basis of laws and open cooperative security. But when dealing with more old-fashioned kind of states outside post-modern continent of Europe, we need to revert to the rougher methods of an earlier era-force, pre-emptive attack, deception, whatever is necessary to deal with those who still live in the nineteenth century world of every state for itself”. But is it that new? John Ikenberry considers that since the norm of sovereignty has existed, great powers have willfully transgressed it, particularly within their traditional spheres of influence. “What is new and provocative in this notion today, however, is the Bush administration’s inclination to apply in on a global basis, leaving to itself the authority to determine when sovereignty rights have been forfeited, and doing so on a anticipatory basis”.

This is perhaps a feature that distinguishes neo-conservatives from cosmopolitans: “Thus the cosmopolitans share the Bushites’ assumption that sovereignty is conditional; but in their view conditionality applies to all states and, moreover, the conditions cannot be determined unilaterally but only through a set of multilateral agreed procedures”. ‘Just wars’ in a modern era cannot be decided unilaterally:

[ . . . ] the just war doctrine can be ‘stood on its head’, if it is realized that to do so would be the most effective way of converting the desire to do justice for oneself into the desire to do justice for mankind (which is the only true justice, objectively speaking) [ . . . ] The need is for action upon the basis [ . . . ] that the security of mankind demands justice for oneself be sought only through multilateral, rather than unilateral judgment.

Conclusion

If procedures and international institutions are not used to regulate international relations, what should be the limits to the American power? Can we imagine a redrawing of the sovereignty-intervention boundary that could be legitimated by an interpretive community and then able to produce a new order for the international system?

The first limit is a factual one: the material impossibility of assuming global governance activities on a purely unilateral basis. Pierre Hassner speaks

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about the “paradox of hegemon”. The _hegemon_ has the means and the power to engage in unilateral actions for the defence of its interests but, at the same time, it is compelled to abide, to a greater or lesser extent, by the rules of international institutions in order to guarantee in the long term the stability of precisely the system that enables the maintenance of its leadership. In this respect, the attempt to legalise the occupation of Iraq by the UN (resolutions 1483 and 1511), to push ahead with a resolution of the Security Council dealing with the freezing terrorist assets is symptomatic of the utility of international institutions for American policies.

Second, pre-emptive actions increase negative attitudes and fears all over the world. Even the most willing states do not share all the views embedded in the national security strategy document. The United States needs more than ever the help of its partners, allies and friends, if not the EU, NATO, UN or OSCE to control social, political and economic activities beyond their borders. A global project needs a global mode of governance to regulate anarchy and to prevent a total collapse of the system.

The third limit is inherent to the basic values American authorities are fighting for, be they democrat or republican, liberal or conservative. This is part of the _soft power_ American authorities can rely on to sustain their primacy at the international stage. Most of the critics and concerns raised inside the American sphere or by pro-American intellectuals refer to the liberal doctrine that inspired the Fathers of the American Constitution.

The doctrine that power needs restraint, and that overbearing and unbounded power constitutes a danger both for order and liberty… The one great work of political theory produced in the United States – the _Federalist_ – essays written at the time of the ratification of the constitution – is a brilliant and relentless demonstration of the perversity failing to provide such checks among human beings… in thought and experience, resistance to universal empire is coeval with the history of civil liberty… Eighteenth-century Americans were not alone in treating universal empire as inconsistent with the preservation of the international system and of the liberties of states. Montesquieu, Vattel, Hume, Robertson, Burke, and Gibbon had all considered the theme, and were as, in Alexander Hamilton’s words, a ‘hideous project’.

In giving publicity to the new strategic concept the US administration has opened up a public debate and thus contributed to the vitality of the democratic system. In contrast Vladimir Nikitin, “... underlined the Russian reluctance to ‘doctrinalise’ prevention/pre-emption, with Moscow preferring to use it de facto without formalising it since formalisation could reduce strategic freedom of manoeuvre”. At least, the Bush-Cheney Administration is making a rod for its own back.

The last question to answer is: do other countries or international organisations have the capacity to curb this evolution? Or will the internal balance of forces inside the USA be decisive for the future of an international system based on the sovereignty principle? This hypothesis certainly goes against another cosmopolitan or liberal assumption, as it would mean that the international order would rest on the American interpretation of the *raison d’Etat* instead of on multilateral approaches of collective security.

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