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# Stopping Wars and Making Peace: Reflections on the Ideology and Practice of Conflict Termination in Contemporary World Politics

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\* © W. Michael Reisman, 1998. Wesley Newcomb Hohfeld Professor of Jurisprudence, Yale Law School. This Article was delivered as the Eberhard Deutsch Lecture at Tulane Law School on November 13, 1997. The critical comments and suggestions of Andrew Willard and Edward Amley are gratefully acknowledged. This Article is part of a longer work in progress.

## I. THE INTERNATIONALIZATION AND POPULARIZATION OF CONFLICT TERMINATION

During the long period of our history in which war—the purposive application of violence through the military instrument for specific political ends—was a lawful, honorable, and even laudable international pursuit, peacemaking was a marginal and indeed incongruous international activity. War was the belligerents' concern that would end when it ended. Indeed, unsolicited peacemaking amounted to doubtfully lawful meddling. It was never assumed to be altruistic and probably never was. However pure the intentions might be, the effort could still embroil the would-be peacemaker in the war it sought to end. If there was peacemaking, it depended on the consent of the belligerents. Even then, the peacemaker waited patiently for "*l'instant propice*." For the most part, wars ended when one side was defeated or anticipated defeat, when both sides were exhausted, when, in seasonal and serial warfare, it was time to suspend the battles and harvest the crops, or when the war simply burned itself out. In this century, the great exercises in "peacemaking" after each of the World Wars, in fact, followed capitulation by one side. Part of the exercise was dividing the spoils among the victors. As a subject for inquiry, the techniques of stopping war and making peace were of secondary importance and theoretical interest precisely because making war was lawful and indeed honorable.

Much of this has changed. The formal termination of war has modulated from an essentially bilateral transaction between belligerents upon the defeat of one—or when both decide that the war is no longer a useful instrument for securing their specific objectives—to an authoritative multilateral international transaction. This assumes an urgent international interest in terminating a conflict, often before the warring parties are ready or willing to put down their arms and henceforth pursue their several objectives exclusively by nonmilitary means. After a war has been stopped, the international community, with a similar urgent sense of mission, seeks to proceed to the fashioning of a peace.

The ideological change has been radical. General von Moltke, a German hero in the First World War, enthused:

Eternal peace is a dream, and not even a good dream, for war is a part of God's world ordinance. In war, the noblest virtues flourish that otherwise would slumber and decay—courage and renunciation, the sense of duty and of sacrifice, even to the giving of one's life. The experience of war stays with a man, and steels him all his life.<sup>1</sup>

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1. HERMANN FOERTSCH, *THE ART OF MODERN WARFARE* 3 (Knauth trans., 1940).

Such sentiments were not limited to the military. John Ruskin, the aesthetic critic, gushed:

All the pure and noble arts of peace are founded on war; no great art ever rose on earth, but among a nation of soldiers. There is no art among a shepherd people if it remains at peace. . . . There is no great art possible but that which is based on battle.<sup>2</sup>

Perhaps Orson Welles, in his inimitable way, stated this position most memorably: "In Italy for thirty years under the Borgias they had warfare, terror, murder, bloodshed—they produced Michelangelo, Leonardo da Vinci, and the Renaissance. In Switzerland they had brotherly love, five hundred years of democracy and peace, and what did that produce . . . ? The cuckoo clock."<sup>3</sup> Such sentiments are now generally considered psychopathic. Undoubtedly some people still entertain them, but they are usually careful about expressing them in public. In part, this is because of a wide-spread appreciation of the ineluctable horrors of modern warfare. In addition, this is because with the advent of nuclear and other weapons of mass destruction, there is the fear that even small and apparently geographically contained wars can set off others and, like a string of firecrackers, ultimately ignite the big terminal bang. There are other reasons for the attitudinal transformation, some with deep and complex historical roots.

The old wars were usually fought by professional soldiers. Rape and rapine were the common soldier's perks, but so were many war injuries. In contrast, the great wars of this century have been fought by universal conscription, the *levée en masse*, with the result that the direct costs of the war have been far more democratically shared. As democracy has spread and become more effective, elected politicians and their governments have had to become ever more responsive to the demands of the politically relevant sectors of the population. These demands, when allowed full expression, have rarely included a lemming-like desire to become cannon fodder.

The costs of wars are shared even more democratically. The wondrous technology of our science-based civilization has made armed conflict more and more encompassingly destructive. Armament makers' assurances notwithstanding, the expanded radius of injury has blurred the distinction between combatants and noncombatants and has made war an ever more efficient equal-opportunity destroyer. The same technology has rendered much of the planet highly interdependent. In the past, as

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2. See *id.* at 4.

3. GRAHAM GREENE & CAROL REED, *THE THIRD MAN* 100 n.78 (Lorrimer Pub. ed., 1984) (referring to speech inserted by Orson Welles during filming, as seen in film 1949).

Goethe put it, we could talk about foreign wars as a Sunday diversion, but they otherwise did not concern us.<sup>4</sup> No longer. No matter how distant they may be, they now can affect us, sometimes significantly. Foreign wars affect us, for example, by forcing refugee outflows, by disrupting productive economic relations, and by irradiating or otherwise polluting our environment. At the very least, foreign wars impinge on our consciousness—a consequence that may be the most important and enduring.

This psychological or cognitive component must not be underestimated. Interdependence notwithstanding, the fact is that not all wars are likely to export significant costs to nonbelligerents. The global community is as much a state of mind as it is networks of more tangible interactions. At any moment, more than thirty major military conflicts are being conducted in various parts of our planet, while more than one hundred minor wars may grind on intermittently.<sup>5</sup> Most of them are low-level and largely internal conflicts, and many are conducted in areas that are remote from the major transit routes of the world community. They may produce massive internal refugee displacements but few refugee outflows, and their economic and environmental consequences are also likely to be contained. Public hand-wringing notwithstanding, many of these wars may prove economically and politically beneficial, as they are waged and after they are concluded, to some states that are not involved as belligerents. Yet, even conflicts such as these are viewed increasingly

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4. GOETHE, *THE FIRST PART OF FAUST*, Lines 860-67 (Walter Kaufman trans., Anchor Books 1963).

Second Burgher

What's better, on a Sunday or a holiday,  
Than talking war or rumors of it  
While far off somewhere, back in Turkey,  
The nations are hammering each other?

You stand beside the window, drain your glass,  
and watch the bright ships gliding down the stream,  
And then at last, at twilight, go home happy  
And thank your God for peace and peaceful days.

Third Burgher

What's right, neighbor, that's what I say!  
Those foreigners can beat each other's brains out,  
They can turn the whole world topsy-turvey  
As long as, here at home, things stay the same.

GOTHE, *FAUST PART I* 44 (Randall Jarrell trans., Farrar, Straus & Giroux 1976).

5. See Demographic, Environmental, and Security Issues Project DESIP: Ongoing Wars, Children as Casualties of War (Ronald Bleit ed., 1996) (visited Mar. 13, 1998) <<http://www.iqc.apc.org/desip/desip1.html#children>>.

as intolerable. Frequently, they become objects of intense international efforts to stop them and then to effect peace arrangements.

Indeed, we are not permitted to ignore wars. There are now inter-governmental bureaucracies whose manifest purpose is to stop wars and make peace. They will not be seen as earning their budgets if they do not present wars as major threats to world order and major charges on the world's conscience no matter how marginal they may actually be to world politics. In the private sector, there are institutions and individuals who thrive on bringing wars "into" your living rooms: from nongovernmental organizations that raise money for war relief and coincidentally keep themselves employed,<sup>6</sup> to journalists who cover wars to advance their careers or for the sheer thrill of the danger and violence, to networks that seek the formula that will give them a larger share of the audience and a bigger slice of advertising revenue.

Efforts such as these, whatever their motivation, impact us because we are predisposed to the message. It is not only that many features of world politics have changed. Many of us have changed, too. If the reasons why even wars, whose index of disturbance for the rest of the world is relatively low and whose index of benefits for selected states may be very high, are also deemed intolerable do not arise from the material costs of the war on us, then the reasons must arise from the way we have come to look at wars. Indeed, the reason can be found in what we may call the structure of the consciousness of politically relevant strata in critical states in the world community: the way people, whose views have to be taken into account by those who make decisions, see and react to things, often at levels of consciousness so deep they themselves are unaware of them.

The hideous destructiveness of war is now beamed to us in graphic multi-colored detail and in a virtual electronic simultaneity. This is a very critical and perhaps insufficiently appreciated point in our inquiry. We owe our knowledge of the world around us, and especially the worlds beyond our national boundaries, to the electronic media. The media are our "mediators," both for information and for entertainment. They are mediators in one particularly decisive sense: information must be processed, organized, made coherent, and interpreted so that it can be absorbed by the consumer. In this respect, there must be a "slant," but not the intentional slanting of totalitarian propaganda or the manipulative spin of democratic politics.

Rather, in a context of intense competition, the modern electronic mass media have been driven into a "no-man's land" between the

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6. See JEAN-CHRISTOPHER RUPIN, *LE PIÈGE HUMANITAIRE* 200 et seq. (1986).

presentation of "news" and the presentation of entertainment. Because news must compete with entertainment for the fickle and finite attention span of the undifferentiated viewing public, the quest for a common denominator frequently impels those presenting the news to seek ever more vivid depictions of what is transpiring, with ever more simplified explanations of the often very complex and historically rooted factors involved. Presented without an editorial gloss, these vivid depictions would be seen as a pornographic presentation of violence, even as "snuff films." To avoid this, the wars that are presented most graphically are also presented—often with inane apologies for the "graphic material," as if the media had no alternative but to present the war—in terms of a modern moral drama, almost always with simplified glosses as to who are the righteous and who are the villains. The greater the graphic content, the greater the moral content.

The introduction of superficial characterizations of conflicts in moral terms, "good guys" and "bad guys" or "white hats" and "black hats," justifies the pleasure of watching violence and also generates a demand for a triumph of justice and not simply a morally neutral conclusion of the war. The intellectual revival and application of Natural Law, long eclipsed by Positivism, to appraise armed conflict and atrocities and to distinguish *our* violence from *theirs*, *good* violence from *bad* violence, converges here with the electronic media format. In curious ways, the result has been not the prohibition of war, but the legitimization of certain types of war. There are good wars. Wars of national liberation (and, later, wars of "freedom fighters") are just *and* lawful. Indeed, as we will see, fundamental international legal instruments established an obligation for other states to assist national liberation wars.

This moralization of conflict puts great pressure on the members of the audience to "stop the carnage" in a particular conflict in which the innocent victims are suffering and losing. The audience responds to these stimuli with an active demand for intervention rather than merely with a passive aesthetic pleasure. Many of its members have a compulsion to exercise private judgment and, moreover, believe that their judgments can be effectively implemented. This aspect requires us to consider briefly certain distinguishing features of modern consciousness.

The compulsion and necessity to exercise private judgment—formerly the specific domain of only the highly sensitized conscience and of those individuals whose social and economic positions entitled them to choose and prepared them for such choices—has become more generalized. This should be no surprise as one of the primary features of industrial mass society is the rise of the consumer. The consumer's role is distributed more democratically than any other, which regularly demands

that individuals exercise private judgment in a wide range of mundane choices. Exercise of private judgment presupposes and is built upon a personality that includes a sufficient definition of ego to want to make choices and a sufficient sense of self-worth to believe in and rely upon one's own judgment. Not surprisingly, personality dynamics such as these increase the predisposition of many to choose in the political arena as well. Where a social system endorses self-interest or licit greed whether by economic or religious doctrine, the constant validation of exercising private judgment renders invocation of judgment and action even more compelling.

This unique acculturation synergizes with the conscious cultivation of a *civic sense*, indispensable to modern mass democracy in which the government must frequently call upon broad strata of the population to modulate behavior in ways useful to government policy. Each such call confirms and reinforces the belief that individual personal behavior is critical to the working of one's government and concretizes the sense of importance of personal choice to the operation of the "State" or whatever other large symbolic entity calls for it. At the same time, the constant framing by those who claim some temporal or spiritual authority of appeals, for which conscience is supposed to temper one's self-interest, reinforces the individual code of rectitude or morality to which such appeals are ultimately made.

In these characteristically modern circumstances, the visual media, in addition to being an authoritative source of information as well as a form of popular culture and entertainment, also play a major role in shaping fundamental conceptions of reality. One of the key features of media presentation, particularly the visual, is the truncation and simplification of cause and effect through space and time. As a result, the viewer perceives events presented as "cause," and events presented as their "effect" in an unusual physical and temporal proximity. This foreshortening of cause and consequence has been called the "cinematographic effect."<sup>7</sup> Sergei Eisenstein was among the first to use it for esthetic and propaganda purposes. Recall "Potemkin": in one frame, you see the battleship Potemkin's great guns billowing smoke and fire, in the next frame, miles away, you see the walls of a palace crumbling as the shell explodes.

"Cinematographication" has become a fundamental part of the epistemology of the modern human being. We are able to operate in an

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7. See RUDOLPH ARNHEIM, *FILM ESSAYS AND CRITICISM* 23-28 (Brenda Bentheim trans., Univ. of Wisconsin Press 1997) (discussing the absence of space-time continuum in film). For further discussion of this point, see also W.M. REISMAN, *The Tormented Conscience: Applying and Appraising Unauthorized Coercion*, 32 EMORY L.J. 499 (1983).



extraordinarily complex world by having a simplified artifact of reality in which cinematographic cuts through complexity to establish illusions of highly simplified cause and effect. Cinematographic underlines, even exaggerates, the contribution of individual acts to collective efforts and to their consequences. The industrial democracy is characterized by a widely shared sense of the appropriateness of personal choice, by the capacity to make informed judgments, and by hypertrophic demands of conscience. In this context, the cinematographic effect reinforces a belief in the effectiveness of individual action and the sense of responsibility for it. That belief also feeds on the perception of accelerated change in this century, inflated expectations, social and geographical mobility, the extravagant sense of possibility, and the unwillingness to wait or defer gratification.

Where people attribute political effects to their behavior (including their acquiescence in the actions of others) and where those effects are inconsistent with the rectitude values or morality of the civil conscience, anguish is generated. Privatization, one economical way for individuals to escape from this discomfort, ceases to be an acceptable alternative because it is condemned by the civic culture that depends on consumer participation. Hence, protest, in one form or another, such as teach-ins, speak-outs, and other settings for public "I-feel-your-pain" affirmations, become outlets for internal tensions. However, precisely because of the epistemic effect of cinematographic on the modern consciousness, the ordinary cathartic potential of words, thinking, and other symbolic action is reduced and depreciated. One of the consequences of the cinematographic of reality is a reduction of the capacity to defer gratification, heretofore a key aspect of an individual's maturation and transformation into a basic component of the complex organization of contemporary civilization. In modern society, the more traditional outlets do not yield the rapid effects that cinematographic reality has conditioned people to expect. The wars grind on. The killing continues. Hence, there is additional pressure for actions that have immediate, perceivable consequences.

Yet, paradoxically, there is no corresponding demand to stop war. For wars to achieve socially desirable objectives, the so-called "just wars" have their own moral imperatives. Wars must be stopped in a certain way. Moreover, as we shall see, moralization makes it more difficult to proceed from stopping wars to making peace. If stopping a war can be accomplished in a comparatively nonjudgmental fashion, the final peace can hardly ignore equities and iniquities, including those effected in the war itself, without making a mockery of the moralization.

All this has made more urgent the work of those charged with stopping wars but has also severely limited the range of operation of those who wish or are called upon to make peace. A curious conjunction of trends has produced new imperatives and new obstacles: the greater the destruction, the greater the pressure to stop the war, yet the greater the difficulty in making peace.

## II. INTERNATIONAL LAW AND CONFLICT TERMINATION

The increasingly popular demand to stop particular wars and the central place that conflict termination has assumed in international law and in key international organizations is reflected in the major constitutive international instruments. The United Nations Charter's Preamble opens with the words: "We the Peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our life-time has brought untold sorrow to mankind . . . do hereby establish an international organization to be known as the United Nations."<sup>8</sup> At the San Francisco conference that established the organization, there was considerable contention over the introduction of the words "the People" rather than "the Governments." However, the objective of avoiding war was universally accepted. The purpose of the Organization was to suppress war.<sup>9</sup>

Curiously, the word "war" does not recur in the UN Charter. Article 2(4) refers to uses of "force" and Chapters VI and VII that deal, in effect, with the outbreak of war, scrupulously avoid that term.<sup>10</sup> Rather, article 2(4) utilizes terms such as the "maintenance of international peace and security" or "threat to the peace, breach of the peace, or act of aggression."<sup>11</sup> Subsequent authoritative illuminations of the broadly phrased prohibition in article 2(4) have preferred the term "force" or "military force." Thus, the Declaration on Friendly Relations, which was adopted by the General Assembly on October 24, 1970,<sup>12</sup> deals with military force. Similarly, the General Assembly's Definition of Aggression, adopted on December 14, 1974, states, in article 1, "Aggression is the use of armed force by a State against the sovereignty,

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8. U.N. CHARTER Preamble, art. X, para. X.

9. See U.N. Doc. 785, I/1/28, 6 U.N.C.I.O. Doc. 359 (1946).

10. See U.N. CHARTER, art. 2, para. 4.

11. U.N. CHARTER, art. 33, para. 1, & art. 39.

12. See *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations*, G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 18, U.N. Doc. 1/8018 (1970).

territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.”<sup>13</sup>

The Declaration on Principles of International Law Concerning Friendly Relations (1970), a document that the United States supported, also has frequently been presented by states and the International Court of Justice as a codification of contemporary international law. The Declaration provides in pertinent part:

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.<sup>14</sup>

The operational implications of this right are quite remarkable:

Every State has the duty to refrain from any forcible action which deprives peoples . . . of their right to self-determination and freedom and independence. *In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.*<sup>15</sup>

Note here that “peoples” have the right to “resist” when a state forcibly impedes their right to “self-determination” and “freedom and independence.” The state against which peoples are struggling must refrain from any action that impedes the struggle. Third states are obliged to help the struggling peoples, but cannot be held legally responsible by the targeted state for helping the peoples struggling against them. This “inversion” is not limited to a few historical atavisms. While decolonization may have had a historically specific reference for some drafters and may have been limited to South Africa, Portuguese territories, and Israel, terms such as “self-determination” and “freedom and independence,” are open-ended and could be applied to any group that a majority of the General Assembly wished to indulge.

The Convention against the Taking of Hostages of 1979 is even more explicit in setting out the implication of the inversion. Article 1(1) defines the offense prohibited by the Convention as follows:

Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the “hostage”)

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13. G.A. Res. 3314, U.N. GAOR, 29th Sess., Supp. No. 19, art. 1, U.N. Doc. A/9619 (1974).

14. G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 18, U.N. Doc. 1/8018 (1970).

15. *See id.* art. 12(b) (emphasis added).

in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage taking") within the meaning of this Convention.<sup>16</sup>

But article 12 of the same Convention provides in pertinent part:

[T]he present Convention shall not apply to an act of hostage-taking committed in the course of armed conflicts as defined in the Geneva Conventions of 1949 and the Protocols thereto, including armed conflicts mentioned in article 1, paragraph 4, of Additional Protocol I of 1977, in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.<sup>17</sup>

Instruments such as these indicate that a conception of international law as it relates to the use of the military instrument was emerging from the institutions of formal international law-making over a period of time. A new type of *just war* was being created. A parallel development can be found with regard to the way just wars are to be fought: the law of conflict, the *jus in bello*.

### III. THE DIFFERENCE BETWEEN STOPPING WARS AND MAKING PEACE

The contemporary international legal and political system has tried to internationalize and appropriate the authority to stop wars and make peace, taking it from the hands of the belligerents.<sup>18</sup> As part of this concern, it has also undertaken to prevent wars. These activities, the so-called "quiet diplomacy," are often conducted below the threshold of public visibility. As a result, public demands are not excited, and the diplomats who engage in stopping the wars can operate nonideologically and pragmatically. Because of this and, in part, because overt and violent conflict has not yet erupted, the activities do not manifest many of the contradictions of stopping wars and making peace. These pragmatic

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16. International Convention Against the Taking of Hostages, Dec. 17, 1979, T.I.A.S. No. 11,081 at 4.

17. *Id.* at 10.

18. Although the binding powers of the United Nations, exercised by the Security Council, are contingent on a finding of a threat or actual use of force, there is no question that the assignment of the Council is to stop the military violence and restore the peace. Indeed, as we shall see, a major focus of the Secretariat of the United Nations, especially during the long period of the Cold War in which the Security Council was effectively blocked, was to develop techniques, often called "Quiet Diplomacy," to stop wars or nip them in the bud.

exercises are certainly worth studying, but our focus is on the termination of conflict *after* it has become violent and nasty *and* has acquired a clear image in public consciousness.

Termination of conflict involves two distinct though interstimulating operations. The first operation is stopping a war. Belligerents put down their weapons. There is a "cease-fire," a "cesser le feu," a "waffenstillstand." They stop hacking and firing at each other. They may separate physically. There is, however, an expectation, of varying probability, that the war may or will resume. This expectation is the distinguishing characteristic of a war that has only been stopped. The second distinct operation, making peace, involves permanently stopping the war by changing that critical expectation. Once that expectation has changed, perceptions of insiders and outsiders change as well. Hence, the breakdown of a cease fire and the resumption of a stopped war will excite considerably less legal dissonance than will the breakdown of a real peace treaty. Stopping a war is a useful, if not indispensable, step toward making peace, but it does not lead ineluctably to peace. Making peace is a separate operation, often applying many parts of the same armamentarium but in very different ways.

#### A. *Stopping War*

Stopping wars is no easy matter. To be sure, there are "irrational," even tragic wars. For example, one can look to conflicts that are driven by deep cultural imperatives and that, rather than the expectation of gain, foreseeably promise only net losses to belligerents. However, there are also rational wars. The nostrum that in war everyone loses is simply not correct. The fact is that in war one side (and some outsiders) may do quite well indeed. In most modern armed conflict, whether international or internal, and whether conventional or terroristic, at least one of the belligerents commences the conflict with the not necessarily irrational (and not necessarily enthusiastic) expectation that the application of violence, its projected costs notwithstanding, will still leave it net better off than would the use of some other available nonviolent mode. Thus, the prospect of stopping a war, whether on an interim or permanent basis, before the initial or now evolved objectives have been achieved, may look quite different to each of the protagonists. Moreover, at any moment in armed conflict, one of the belligerents (and not necessarily the initiator) is likely to believe that this military method of resolving disputes now favors it more than its adversary.

This pattern of expectations has major implications for efforts at stopping wars. In the nature of armed conflict, a pause in the battle that is

unaccompanied by the expectation that the battle will not resume will often be significantly more favorable to one side than the other. Pauses allow the party that is beleaguered to regroup, rearm, and resupply, while snatching from the party that is prevailing the consummation of the victory it believes it has earned through its expenditure of blood and treasure. Because victory ends conflict, pauses may actually extend or exacerbate the conflict. Parties who believe the field is in their favor are hardly interested in stopping, indeed, even pausing. Hence, diplomatic initiatives to stop wars, even when undertaken by or under the auspices of the most authoritative international organizations, are often resisted by one of the parties.

Given the popular ideological ambivalence to war, which we considered above, there is a tendency to assume that the party accommodating the external actor that is trying to arrange a stop to the fighting demonstrates, by this alone, that it is the virtuous and peace-loving side, while the party that wants to press the battle to a clear conclusion is the perfidious warmonger. A moment's reflection should make clear that if this were true, Saddam Hussein would have become virtuous and the international coalition ranged against him the warmonger, the moment Saddam urged a stop. It is important to decouple the shifting willingness of belligerents to stop a war from outsiders' judgments about the morality of the cause of either side. In serial wars, different parties will alternately press for stopping or continuing, depending on how each projects the fortunes of battle for itself at that moment.

Diplomacy is always more likely to succeed when the entity on whose behalf the diplomatic initiative is being conducted is authoritative and controlling—the entity has the lawful and credibly disposable capacity to compel the parties to stop. Theoretical capacity or power to compel a stop is not, however, the exclusive ingredient for success. Credibility about the willingness to use that capacity is critical. That credibility must continue through time. A belligerent that does not wish to stop will discount the theoretically preponderant political power of the diplomatic agent's principal—huffing and puffing and other threats notwithstanding—if the belligerent assumes that the principal's interest does not extend to the point where it, itself, is willing to absorb the losses that may be necessary to stop the conflict. This is why we often see the apparent anomaly of the seasoned and respected diplomat of a stronger state, even a superpower, who has been dispatched to try to stop an international or internal war, being, in effect, ignored by at least one of the combatants.

The lesson to be drawn from this is that stopping wars, always a daunting task for diplomacy, is especially difficult if the diplomatic initiative can promise nothing but the approbation of virtue. Diplomacy is, of course, never just a matter of skillful words and logical arguments. The *unterbau* of diplomacy is the promise of indulgence and the threat of deprivation. But this standard arsenal of diplomacy can prove to be insufficient when the assigned task is to stop a war. Even if the diplomat seeking to stop a war can credibly promise real political or economic indulgences of the sort that might under different circumstances prove attractive inducements to changing behavior, such inducements become less and less compelling when warring parties perceive that their political independence or existence is at stake.

Nonetheless, diplomacy, even without the coordination of other compelling instruments of policy, may succeed in stopping violence when both parties are militarily in equipoise, and each, perhaps for different reasons, assumes that, at least momentarily, a pause is better than a continuation. In these circumstances, even a quite powerless entity, like the Secretary-General of the United Nations, may stop a war. Diplomacy may also succeed when each of the combating parties is dependent on other states for material or critical political support. This was often the situation during the Cold War and led many commentators to speak of "proxy wars." The term was not entirely apt, for the proxies usually had their own objectives and were not acting simply as tools of the outside powers supplying and supporting them. However, because the outsider could turn the switch off when it served its own purposes and thereby bring its proxy to heel, the real effort to stop the war would take place in a foreign capitol and not in the theater of conflict. In proxy wars, diplomacy must direct itself to the superordinated states or the principals who may cut their own deals without necessarily taking account of the interests of "their" belligerent. They will, then, signal "their" belligerent to stop because it serves their own purposes.

Once a war has commenced, the minimum concern of each belligerent is its own security. Wars cannot be stopped unless the diplomatic agent credibly promises the combatants that their minimum security interests will be protected. Yet, it is difficult to make such promises credible. As we noted, it is often clear that a pause may benefit one side more than the other and within the differing sides may also have differential costs and benefits for competing factions. Thus, credibility may frequently require chiasitic and inconsistent covert promises to each of the combatants or to factions within them. Deceit ranges from carefully crafted ambiguity to outright lying.

Deceit is, of course, a ubiquitous and sometimes ineluctable feature of purposive behavior at every level of social life. In the short term, it often seems like the most economical and sometimes the only feasible method for achieving an objective. However, deceit always has costs. A measure of deceit on the part of the would-be mediator may work in the short-run if the war in question is a single occurrence. However, in serial wars, the use of deceit progressively erodes the diplomatic credibility and effectiveness of an agent each time it is applied. Most of the wars that have been stopped proved to be serial. Where the mediator reports to a political process that must endorse the promises that have been made for them to be credible, the ambit of what can be legally binding, credibly promised, and promised covertly is further contracted.

Wars can be stopped by outsiders with authority or control when their threats or innuendoes are credible or are actually applied. Many examples attest to this possibility. In 1956, the United States stopped the Suez War merely through the issuance of strong statements that were, in their context, taken as credible. In the Yom Kippur War in 1973, the United States communicated its intention not to allow Israel to lose and its intention to massively resupply Israel's depleted resources; when Israel had gained the upper hand, the United States effectively stopped the war by stopping Israel. In the former Yugoslavia, the United States, by then the sole and unchallenged superpower, encountered a credibility gap that it filled by the application of violence. It stopped the first phase of the Bosnian War by arranging, through the security alliance it dominates, to bomb one of the combatants on a massive scale.

Such demonstrations of the capacity and willingness to change facts on the ground may greatly enhance the credibility of an authoritative and controlling diplomatic agent. However, like all threats, these complex and critical communications are constantly tested by adversaries and decay unless periodically and credibly renewed. This is why, short of a terminally crushing military blow, stopping wars is not going to be a single event. Indeed, no complex event is finite or final in politics. Every purposive action is perforce a continuum, requiring continuing investments to maintain it. Since a stopped war must continue to be stopped, national political systems in which key politically relevant strata become bored or fatigued with programs are not effective at stopping wars.

In the best of circumstances, merely stopping a war will set in motion, or allow the operation of, local dynamics that may themselves change the expectations of belligerents in positive ways. Mutually beneficial economic exchanges may begin, creating constituencies that, hopefully, will appreciate that the resumption of war will injure their



interests. The benefits will radiate, the constituencies will broaden, and the "people" will stop their leaders from resuming the battle.

That is the best of circumstances. Most initially successful efforts to stop wars ultimately fail because the diplomatic and nondiplomatic processes that stopped them did not continue to stop them long enough for these indigenous counter-war dynamics to work these changes. Yet, there are good reasons why an outside party that has stopped a war may be unwilling to invest the resources necessary to keep that war stopped. One quite rational reason is the real possibility of failure. Continuing to stop a war involves ever more investments. It also can draw the outside party into a quagmire, from which it may only be able to extricate itself at great cost. The outside party will be left wiser for the experience and wary of getting involved in war-stopping adventures in the future.

Wars may continue to be stopped in a number of ways. A "peace agreement" may be concluded. Its content and its distribution of benefits will be either symmetrical or asymmetrical. The relative symmetry will depend on the balance of force among the belligerents as supplemented by the peacemaker and the international system. In other circumstances, combatants may decide that it is in their own interests to continue a "cease fire" or truce without creating a peace agreement, particularly when one party is unwilling or unable to take this step. This type of stopping depends on the continuing interest of the parties in the conflict. In another scenario, the war may be physically stopped by the interposition of a third force whose function is akin to a referee intervening in a boxing match, ordering "Break it up, break it up," while holding the combatants apart. Unless the intervener in these circumstances is prepared to "enforce" peace at a potentially high cost to itself, this form of stopping is, like the previous, essentially dependent on the continuing shared will of the combatants, with the addition of one new but inherently uncertain factor: the willingness of the intervener to stay and pay (and, if need be, to exact) whatever price may be necessary to keep stopped what has been stopped.

Nonetheless, there is no free lunch. If the intervener's price is high, it may feel it is entitled to something in return. In the most extreme circumstance, it may not leave. This may benefit some groups within one or more of the belligerents, but is generally viewed as a calamity for the community as a whole. For this reason, there is great attraction in the notion of the disinterested war-stopper (for example, an international or regional organization). Alas, such entities have little power of their own; enduring power must be supplied by other states. As long as the power demands are low and may be supplied by weak or distant states, the war-stopper may be relatively neutral. However, the more violent the war and

the higher the stakes, the more the war-stopper will require military power. This can only be provided by more powerful states. The bigger the creature, the bigger its appetite.

Thus, a stopped war, as we understand it, is a precarious arrangement; it is dangerous for the combatants under all circumstances *and* full of peril for the outside actor trying to stop it. Montesquieu referred to the pauses this interim phase produces as among the most perilous in war.<sup>19</sup> It appears he was right.

### B. *Making Peace*

Stopping war is a short-term and provisional action. Those who stop the war, whether the belligerents or outsiders, may prolong the cessation or, in other words, keep stopping the war. However, unless stopping is followed by a qualitative change in the objectives and expectations of the belligerents, whether induced from outside or occurring autonomously within, the war will resume whenever one of the parties wishes. A war may be stopped terminally by the decisive defeat of one of the parties, or it may be stopped by what we call "peace."

"Peace," the popular word for the termination as opposed to suspension of war, is an imprecise term, especially in cross-cultural contexts and languages, in some of which words that we translate into our own language as "peace" may only mean stopping war. In Arabic, for example, *salaam*, often translated as "peace," actually means a cease-fire or truce, while *sulh*, importing fundamental changes in basic perspectives of the antagonists, means "peace." Though we will employ the word "peace," it will be useful to be quite precise as to what we will mean by it.

Peace is sometimes sought for reasons that are neither edifying nor inspiring. If each side has bled the other, each may seek a termination of the conflict, if only to fend off defeat. Sometimes a probability of victory by one side will be suspended, and a "peace process" then ratifies the victory without using the term. Even after outright military defeat, there may be a political utility to calling what is, in effect, a ratification of victory a "peace." Analytically, however, these means of terminating a conflict, despite their denomination, are quite different from what we mean by peacemaking. The distinctive and challenging task of peacemaking arises only when one or more of the belligerents has a meaningful and not unattractive option of continuing to pursue or to resume its pursuit of its particular objectives by means of war.

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19. See BARON DE MONTESQUIEU, *THE SPIRIT OF THE LAWS* 131-53 (Anne M. Cohler et al. eds. & trans., 1989) (1878).

Now obviously, as long as the prospects for peace or war are uncertain, all sides and especially the weaker side will insist that each retains a real military option and will trumpet its confidence in achieving victory. The weaker side may even undertake certain costly military initiatives whose actual purpose is only to demonstrate this. Such militarily pyrrhic actions may be required because major internal and external costs can be incurred in suing for peace too soon or before the other party calls for it. The burden is on the peacemaker to demonstrate to the belligerent with a real and comparatively superior military option that it will be net better off by making peace rather than war. Unlike stopping wars, which can be imposed, this demonstration must be persuasive on its own terms. We will consider how the peacemaker goes about his task below. But first let us be more precise about what peacemaking is not.

The notion that peacemaking can identify *the* problem causing a war and solve it is attractively tidy: simply satisfy the grievance and peace will break out. But consider. When Paris kidnapped Menelaus' wife, Helen, and the Trojan War commenced, could peace have been arranged if Paris had simply returned Helen and said, "Uh, sorry." The *status quo ante* is a lawyer's and diplomat's construct, a fiction in which the parties may choose to believe, but social reality is cumulative. The events that may appear to have caused a war cannot be separated from the conduct of the war. Stedman has observed:

Conflict emerges from tangible interests, but as soon as the conflict turns overtly violent, concerns about security and survival coexist with the issues that caused the conflict. Resolution of conflict necessarily becomes more difficult, since problem solving must work on two distinct levels: the issues that prompted the conflict in the first place, and the ending of the violent expression of the conflict.<sup>20</sup>

As wars continue, they reconfigure reality to accommodate themselves. There is often an escalating hyperbole: adversaries become "enemies," war with them becomes the *only* possible relationship, wars themselves become ineluctable parts of reality, and international politics itself becomes a "war system." In some cases, the origin of the war is forgotten or mythologized, and war against a particular other becomes the keystone vertebrae of individual and group identification. Thus, Evans-Pritchard, the great English anthropologist, in his classic study of the Nuer, wrote:

The Dinka people are the immemorial enemies of the Nuer. . . . Almost always the Nuer have been the aggressors, and raiding of the Dinka is

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20. Stephen J. Stedman, *Conflict and Conflict Resolution in Africa*, in CONFLICT RESOLUTION IN AFRICA 367, 388-89 (Francis M. Deng & I. William Zartman eds., 1991).

conceived by them to be a normal state of affairs and a duty, for they have a myth, like that of Esau and Jacob, which explains it and justifies it.<sup>21</sup>

In other cases, war systems may have an economic substructure. Arnold Toynbee, in commenting on the recurring inter-tribal clashes in the Arabian peninsula until the early part of this century, observed that:

One of these deeper causes may be economic; for it is undoubtedly true that certain necessary economic readjustments were roughly but readily effected through that Ishamelitish state of anarchy which prevailed over the great Arabian steppe and its northern borders under the lax Ottoman régime, before the Badu were brought under stricter governmental control by the rise of Ibn Sa'ūd's power in the Peninsula and by the establishment of new Arab Governments in 'Irāq and Transjordan. Some method of readjustment is indispensable in a region whose inhabitants live so near to the margin of subsistence that a slight drought or other disturbance of normal economic conditions may confront them with an imminent prospect of starvation. The only resource for a nomadic tribe thus stricken is to obtain prompt relief from its neighbours; and the quickest and easiest means to this end is the traditional raid. Indeed, these raids, in which there was little bloodshed, were not so much a form of warfare as a wasteful redistribution of stock conducted with the amenities of a sport; and besides roughly equalising the distribution of stock on the Arabian steppe, as between tribe and tribe, according to the local economic vicissitudes of any given year, the raiding often had the effect of adding to the aggregate means of subsistence of the nomadic population, since some of the raiders penetrated into "The Fertile Crescent" which encloses the Arabian steppe on the north, and thus brought into circulation among the needy Badu some fraction of the goods of the neighbouring peasantry and townspeople.<sup>22</sup>

When relationships, such as those among groups, tribes, nations, or members of religious or belief systems that are locked in immemorial serial wars, are writ large in social organizations, we encounter the formation and sustenance of an englobing war system. "By war system we refer to a social system conditioned by high expectations of violence, experiencing enough violence, directly or vicariously to sustain that expectation, and incorporating within its myth and folklore a cosmology of war."<sup>23</sup> Thus, making peace, as opposed to stopping war, will require the would-be peacemaker to engage in a fundamental restructuring of the aggregate relationship between the parties or, where the parties are

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21. E.E. EVANS-PRITCHARD, *THE NUER: A DESCRIPTION OF THE MODES OF LIVELIHOOD AND POLITICAL INSTITUTIONS OF A NILOTIC PEOPLE* 125 (1940).

22. Arnold J. Toynbee, *A Problem of Arabian Statesmanship*, VIII, *J. ROYAL INST. OF INT'L AFF.* 367, 368 (1929).

23. W.M. REISMAN, *Private Armies in a Global War System*, in *INT'L L. ESSAYS* 142, 148 (Myres S. McDougal & W. Michael Reisman eds., 1981).

integrated in a more comprehensive war-system, to transform the war-system itself into a peace system. In this vein, former Secretary-General Boutros-Ghali in his report, "An Agenda for Peace," surely the most ambitious statement of the international community's aspirations in peacemaking, wrote:

Peacemaking and peace-keeping operations, to be truly successful, must come to include comprehensive efforts to identify and support structures which will tend to consolidate peace and advance a sense of confidence and well-being among people. Through agreements ending civil strife, these may include disarming the previously warring parties and the restoration of order, the custody and possible destruction of weapons, repatriating refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming or strengthening governmental institutions and promoting formal and informal processes of political participation.<sup>24</sup>

This program is extraordinarily ambitious but is, in essence, what is required from would-be peacemakers.

The point bears emphasis. While many think of peace as a treaty or contract, that document is only one ritual phase in the process of peacemaking. What is critical is the qualitative change in the objectives and expectations of the erstwhile belligerents. We may speak of a transformation to peace when two inter-stimulating changes occur:

- (1) the level and intensity of the expectation of violence are radically reduced; and
- (2) contextual changes are introduced that sustain the new pattern of expectation by replacing incentives for the use of violence, with its diverse promises, risks and costs, with incentives for the use of more persuasive means, with their own diverse promises, risks and costs.

Without that change in expectations among politically relevant strata in each of the erstwhile belligerents, a nominal "peace treaty" will be, in fact, an "armed peace" (i.e., a cease-fire, a stopped war). It will be rational for each party to begin, as quickly as possible, to gear up for the next phase of the conflict. Since the basic, self-evident and repeatedly validated moral postulate and practical guide of a war system is "Do unto others before they do unto you," it will always be prudent to ensure that one starts the next phase of the conflict at a moment maximally convenient to oneself rather than to allow one's adversary to select the moment at its convenience. When the actors in a war-system are

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24. *An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peace-Keeping: Report of the Secretary General*, U.N. SCOR, 47th Sess., at 22, U.N. Doc. S/24111 (1992).

“rational” and, hence, this particular expectation is reciprocal, the war will resume after each pause all the sooner.

Transforming fundamental perspectives about security for the nuclear and extended self under any circumstances is difficult, *a fortiori* when it must be accomplished simultaneously in the politically relevant strata of at least two groups that are already in conflict. Securing the change is even more difficult when factions *within* one or more of the belligerents depend on the war system for their internal political position. For example, while peace might register net gains for their states and for most of the people within them, it means net losses for them, in terms of power, wealth, respect, and sometimes life itself. No territorial community is homogenous, of course, so challenges of this sort are faced daily by diplomats when they try to secure any type of agreement, because every agreement has differential costs and benefits for different factions within the agreeing states. However, the challenges are more formidable in peacemaking when many members of the groups in conflict sense that, for each of them, key values are at stake.

Another complicating factor in peacemaking is that effective changes are subject to a law of “approximate simultaneity.” Whatever changes in fundamental perspectives can be brought about will be meaningful for peacemaking only if they are accomplished in each contending group at about the same time, such that increasingly amiable perspectives in one of the groups then stimulate and reinforce comparable changes in other groups. Those risking even moderate adjustments in militant views and positions will be looking for comparable adjustments in the other side as a positive reinforcement. If those reciprocal adjustments are not quickly and unequivocally forthcoming in other groups, those espousing the new views will find their internal political position weakened. At the same time, those who opposed peace will be able to point triumphantly to one more demonstration of the perfidy of the enemy.

These reciprocal and simultaneous changes are the so-called “confidence-building measures” in the peacemaker’s tool chest: small steps by which the peacemaker, once the war has been stopped, seeks to change the psychological and emotional climate on all sides. These techniques may be useful when the real problem is a reciprocal lack of confidence in the *bona fides* of the other. Where the problem is not psychological, but a struggle over territory or resources, the utility of confidence-building measures is far less certain and may often be pursued by would-be peacemakers because there is simply nothing else to do. Also, would-be peacemakers or their constituencies may prefer the illusion of purposive movement to a more accurate but dispiriting picture

of baffled inaction. Even when the critical differences between the parties are psychological rather than based on material issues, changing perspectives simultaneously will be a formidable challenge. The difficulties of accomplishing the necessary transformation of attitudes, by the use of confidence-building measures in all groups, are simultaneously further increased when the change has to be secured in periods of crisis. During such periods, the shared perception is one of the high probability of great loss or destruction of the group. Under those conditions, the virtually spasmodic tendency of ego-defense is to contract to ever narrower and more exclusive identities. This reaction reinforces a key part of the syndrome of war.

The transformations in the psychological and social processes of each of the combatants must be autochthonous and self-sustaining if they are to be effective *and* credible. Within systems in which authority is intensely concentrated, an elite decision may, in some circumstances, accomplish such changes rapidly. Consider, for example, the now defunct Soviet communist system: a ukase from the dictator that the Nazis or, *mutatis mutandis*, the Americans were henceforth to be viewed as friends and allies could be rapidly disseminated through the various levels of the party such that they could be then diffused through the population at large by the Cominform. With the ruthless efficiency characteristic of totalitarian dictatorship, the system could signal and quickly effect a complete *volte face* in popular attitudes. This efficiency, however, would be ineffective for making peace, as the term is understood here, because existing or potential adversaries would appreciate that the suddenly amiable attitudinal changes could be reversed just as quickly and efficiently when some new counter-caprice of the dictator might jerk the mind of the captive public onto a different tack.

Thus, ending wars between nondemocratic systems has idiosyncratic and intractable difficulties. The credibility, and hence durability, of the commitment of two or more authoritarian states to peace may be reinforced by elaborate religious and international legal rituals. It is hoped that these rituals will make it more costly for the elites to change their policies and the minds of their followers. In this respect, democracies that can make a decision are better placed to make a credible peace, assuming that there is an internal consensus for peace. Durable consensus in democracies is often difficult to secure.

In order for reciprocal changes in expectations to contribute to transformation to peace, the changes must be seen to be popular, widely shared, deeply rooted, and, over time, self-sustaining, such that a demagogue cannot reverse them at his or her caprice. In other words,

designing peace is ultimately an exercise in directed social and psycho-social change.

Now, rapid *individual* attitudinal change can certainly be accomplished, as Robert Lifton's accounts of brain-washing in communist China amply demonstrate.<sup>25</sup> In our country, the gray industry of "deprogramming" cult members undertakes, for profit, to change deeply-held attitudes. Whatever its effectiveness, deprogramming is usually illegal in liberal political systems precisely because no matter how noble some may deem the end sought, its mode of accomplishment is nonconsensual and violates the self of the quite literal "target" of change.

Short-term rapid *collective* attitudinal change is also feasible, as the American advertising industry demonstrates daily and, in the political sphere, quadrennially. There are a number of examples of externally-induced collective attitudinal change as part of peacemaking programs. When Nazi Germany capitulated and was completely subject to the Allied forces, some of the Allies rather spontaneously tried to secure popular attitudinal change by compelling German citizens to observe pictures of death camps and then by conducting the Nuremberg trials with very wide coverage. For a short time, such bold programs in Germany and comparable programs in Japan,<sup>26</sup> along with fundamental structural changes in the political systems in each country, could be pursued. The victors were in complete control in their sectors, and there was no significant internal opposition. Soon, however, the Cold War began to take shape, and its strategic imperatives quickly redirected the processes of peace reconstruction. The question of how enduring the reconstruction has been remains open. More than fifty years after the war, Germany's unfinished process of *Vergangenheitsbewältigung* indicates just how difficult it is to accomplish a durable collective attitudinal change, even under comparatively propitious circumstances.

Consider how formidable the challenge is when the peacemaker, unlike the Allied forces in post-war Germany and Japan, is *not* in complete control. Changing the perspectives of various groups in the Federation of Bosnia-Herzegovina is the condition *sine qua non* for the success of the Dayton Agreement. However, powerful forces within each of the components have mobilized themselves to block the Agreement. In the Serbian component, the Republika Serbska, nationalists disseminate misinformation designed to undermine the implementation of

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25. See generally R. J. LIFTON, *THOUGHT REFORM AND THE PSYCHOLOGY OF TOTALISM: A STUDY OF "BRAINWASHING" IN CHINA* (1961).

26. In Japan, the transformation was achieved by retaining the Emperor, who validated the imposed change. However, since the Emperor was inseparable from the crimes committed, this economical approach generated contradictions and "antinomies" that are considered below.



Dayton; thanks to the diffusion of advanced communications technology, they can do it in a very sophisticated way. Here is a statement from the Slavjanskji Mir Information Bulletin of September 1997, taken, rather at random, from the Internet:

Today in the Serbska Republic people are executed in the light of day. Executed are those who fought under the leadership of the General Mladic and President Karadzic, Serbian patriots and Russian volunteers, who for some reasons remained in the Serbska Republic. Lists of suspects are entered into the computer data banks and if these people are found, the peacekeepers shoot them next to the closest ditch or bushes. "These facts must be known to all,"—decided the members of the Russian orthodox delegation. In particular, in the city Banja-Luka they took part in the funeral of colonel Simo Dralc, killed by the Americans while his small son was watching. The executioners came to his house as representatives of an organization which administers humanitarian aid. They took Simo Dralc into the yard. His son followed him. Then the child was told: "Look at the ground." With a few shots his father was killed. Practically the whole city came to the funeral of Simo Dralch. As the result of the actions of the executioners the situation is heated up not only in Banja-Luka but in the whole of Serbska Republic. Nobody doubts any longer that the republic lives under the conditions of a brazen and cynical occupation. The question is only, when will a just counterblow follow from the side of the Serbs.<sup>27</sup>

Would-be peacemakers, despite all of their military power, have limited resources to counteract canards such as these that have been cunningly designed to reinforce hostile perspectives.

If peacemakers in such a situation cannot incorporate the use of military force, their counter-efforts may sometimes seem quixotic and inadequate. Consider an article that appeared on October 28, 1997, under the title "SFOR 'recruits' Cicero":

American NATO helicopters have dropped thousands of leaflets on key Bosnian Serb towns urging support for leaders who cooperate with the international community, said the NATO-led Stabilisation Force (SFOR) Thursday.

The 43,000 leaflets which were dropped Tuesday also had an educational content, quoting philosophers including Cicero, Thomas Jefferson, Kant, John Locke and Voltaire on freedom and justice.

Part of one leaflet, printed over the SFOR logo, reads: "Stability begins when each person decides to do their best to avoid violence. . . ."

SFOR spokesman Lieutenant Colonel Jim Cronin said the helicopter drop was organised as part of efforts by civil affairs SFOR teams to encourage democracy.

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27. Chris Stephen, *SFOR 'Recruits' Cicero*, FIN. TIMES, Oct. 17, 1997, at 2:7.

He said dropping the leaflets from the air would mean getting to people who might not want to be seen talking to SFOR troops. "A lot of people are afraid to take things from civil affairs teams . . . in case their neighbours see," he said.

In the towns . . . targeted by the drops, many Serbs say they regard the SFOR as an occupation force.<sup>28</sup>

Where the peacemaker does not have, or is precluded from, exercising absolute control, and elements in the target are themselves mobilized to counter peacemaking efforts and to resist the sought changes, SFOR-type "educational" programs are unlikely to be successful.

#### IV. WHO STOPS WARS AND MAKES PEACE?

In Greek drama, impossible situations in the plot were resolved by the advent of a *theos ek mechanēs*, literally a "god from a machine." In drama, and in fantasy, a *deus ex machina*, the Latin translation that has entered into the English language, refers to a person or thing that appears providentially and unexpectedly at a moment of crisis and provides an artificial or contrived solution to an otherwise insoluble difficulty.<sup>29</sup> The concept has an ironic application to our subject. Modern peacemaking often requires a third force, separate from the combating parties. It must be so committed to the common values of the international legal system that it can consistently distinguish itself from the particular objectives and passionate sense of equities of the combatants and can focus unshakably on the systemic interest in establishing a peace relationship.

Modern peacemaking needs a *deus ex machina*. No blasphemy is intended, but it is useful to refer to the requisite third force in stopping wars and making peace in contemporary politics as a *deus*, because like its counterpart in drama, the providential intervener is assumed to be untainted by the political objectives of the belligerents. The peacemaker does not harbor longer-term objectives of its own other than the selfless, altruistic one of securing a peace agreement. These traits do indeed approach the divine.

Now, in drama, as in life, the *deus ex machina* is, of course, a fantasy. Yet, its utility, if not indispensability, is incontestable. So, it is no surprise that efforts are made to achieve its effect through political design. The conception of the United Nations Charter was that the five Permanent Members of the Security Council, the United States, the United Kingdom, France, China and the Russian Federation,<sup>30</sup> would together use the ample

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28. Nalini Lasiewicz, *Russian Orthodox Claim SFOR Are Executioners*, TRIBUNAL WATCH LIST (visited Sept. 28, 1997) <<http://listserv.acsu.buffalo.edu>>.

29. AMERICAN HERITAGE DICTIONARY 510 (3d ed. 1992).

30. The Russian Federation has taken the place of the former Soviet Union.

powers assigned them under Chapter VII of the Charter to stop wars and make peace. When set in motion, the structure of the Security Council might have approximated a *deus ex machina*. The five Permanent Members, each with its own objectives, could have balanced each other out, creating, in effect, a consequential neutrality. It was hardly a streamlined or efficient design. However, the possibility of the Council sometimes acting as a *deus ex machina* seemed politically possible in 1945 because of the apparent convergence of interests among the allied forces that had been victorious in the Second World War.

The Cold War froze the machinery of the United Nations. That great conflict concluded with the disintegration of the Soviet Union, leaving a single superpower with ample military capacity to perform the *deus ex machina* functions, whether through the Security Council or acting unilaterally. The traits of disinterestedness and neutrality did not attain *deus ex machina* status, however, because the vigor of the balancing dynamic was reduced.

For the moment and the foreseeable future, the only entity approximating a *deus ex machina* for stopping wars and making peace in international politics is the United States. As the only superpower and the only state that disposes of the economic and military capacities to project force anywhere on the planet, it is an indispensable actor in international efforts to terminate conflicts. Whether it operates on its own, through the expansive definition of self-defense that it has developed in its idiosyncratic interpretation of the Charter, or through the Security Council operating under Chapter VII, where it requires the acquiescence of two other industrial democracies, one unstable transitional democracy and one dictatorship, the United States is alone able to perform the role of the *deus ex machina* in big wars. In marginal conflicts, other states may perform this function, where either the United States permits it or where inaction, inattention, or fecklessness of the United States allows a vacuum to form.

The point may be impolite or impolitic, but it bears emphasis. The United Nations has no military forces of its own. In order for it to mount a military operation under current and reasonably projected conditions, it requires, in addition to the unanimous decision of the Permanent Members of the Security Council, the willingness of other states to contribute soldiers, material of varying levels of sophistication, and money. Complex operations, which require advanced military techniques in a degree and on a scale available only to a small number of industrial and science-based states, cannot be undertaken without the active participation of the great democracies.

Boutros Boutros-Ghali is an able diplomat and seasoned Egyptian government official who spent his entire governmental career in a highly

centralized and authoritarian system. In his remarkable *Agenda for Peace*, issued when he was Secretary-General of the United Nations, he took a rather elitist posture in assuming that the willingness to use military force on behalf of the United Nations depended on acts of political will of national leaders.<sup>31</sup> In that document and other statements of that period, the Secretary-General urged those leaders to rise to the responsibility, as if the issue was entirely one of personal courage and spleen. What the *Agenda for Peace* overlooked was that the Charter cannot be read merely as an organizational chart of the United Nations with some contingently assigned roles for individuals who happen to be the executives of large democracies. The Charter must be understood, for both predictive and manipulative purposes, as a process that incorporates the domestic political systems of the major states and, preeminently, those of the Permanent Members of the Council, who are critical to Council enforcement action. The leaders he was exhorting to political will were not authoritarian but presided over democratic states. In such systems, in contrast to authoritarian governments, neither the political will nor the courage of the leadership is enough.

Security Council decisions notwithstanding, the great democracies cannot mobilize their populations to make the very real sacrifices of blood and treasure that are involved in any serious military action unless those populations are persuaded that the benefits to be gained justify the costs likely to be incurred. It is an irony that democratic peoples are likely to be ardent supporters of the United Nations and to be passionately caught up in the ideology of conflict termination, but that working democracies, especially federated ones at the national and sub-national levels, are among the most difficult political units to activate *for military action* in support of the United Nations. If anything, their activation is more complex and difficult now than it was in 1945.<sup>32</sup>

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31. See *Agenda for Peace*, *supra* note 24.

32. See 50 U.S.C. §§ 1541-1548 (1994) (regarding the multinational force in Lebanon resolution); Basic Law, article 26, Const. (stating that acts undertaken with the intent to disturb "peaceful relations among nations, especially to prepare war or aggression," are unconstitutional under the German Constitution); KENPO CONST. Art. 9 (Japan) (stating in part that "the Japanese people forever renounce war . . . and the threat or use of force as a means of settling international disputes . . . land, sea and air force will never be maintained"); see also W. Michael Reisman, *War Powers: The Operational Code of Competence*, 83 AMER. J. INT'L L. 777 (1989). But see S. KULL ET AL., *THE FOREIGN POLICY GAP: HOW POLICYMAKERS MISREAD THE PUBLIC* (1997) (whose polling results persuade them that a majority of the American public would support UN enforcement actions, even those that might involve loss of U.S. lives). Plainly, policymakers and politicians read their constituents' perspectives differently. See generally W. Michael Reisman, *Toward a Normative Theory of Differential Responsibility for International Security Functions: Responsibilities of Major Powers*, CENTENARY SYMPOSIUM OF THE JAPANESE ASS'N OF INT'L L. (forthcoming 1998).

The moral premise of democracy is that those who are affected by decisions should participate in the making of such decisions. The political and possibly empirical premise of democracy is that people, with (or despite) their mix of abilities, education, and experience, will more often decide what is best for them than will aristocrats, autocrats, *soi-disant* philosopher kings, and sundry experts. There may have been a time in the past when the principle did not apply with full force to foreign affairs. Now, however, politicians in democracies are bound in a sometimes unstated but nonetheless clearly understood compact with their constituents: the leaders will not engage the people in conflicts that threaten significant consumption of blood and treasure unless a compelling case can be made that urgent national interests need to be protected, and no less costly method is feasible. A persuasive case for elective military action can indeed be made to a democratic public, as recent history demonstrates. However, given the democratizing effects of modern electronic communications and the heterogeneity of bodies politic, it is not an easy case to make, nor is it easy to sustain.

Terms such as "threats to the peace," "breaches of the peace," or "acts of aggression," the contingencies for military response by the Security Council, may have an objective meaning, in the sense that a disengaged observer could conclude that violent and/or ugly activities in, let us say, Tajikistan, Afghanistan, Algeria, Peru, Sri Lanka, or Burundi, threaten world order. Some threats to smaller states may not look earth-shaking to the bigger actors. However, the expectations of smaller states that the words in the Charter ensuring their security will be applied fairly and resolutely, if the occasion arises, are an important strut of the United Nations. In this sense, at least, uncorrected violations smaller states have suffered may, indeed, constitute major and objective threats to world order. However, it is ultimately the permanent cast of the Security Council that will have to determine whether particular events warrant United Nations bombs or bombast. Because three of the five Permanent Members of the Security Council are operating democracies, elite perceptions in their governments that particular actions do pose major threats to world order will not necessarily persuade their rank-and-file.

Recent experience demonstrates that, for the folks back home, there are no magical talismanic international words that change a democratic public's perception of events. The United Nations characterized the arguably internal civil wars in former Yugoslavia as "international," a formulation that transformed the actions of Serbia, Montenegro, and the rump Serbian state into aggression. However, the addition of the word "aggression" alone did not change the public's perception. The populations and political elites of the great western democracies were still

loath to undertake actions and bear the corresponding sacrifices on a scale sufficient to repel the actions that had been characterized as aggression. A much smaller and ambiguously mandated UN force was placed in various parts of the theater of conflict.

The lesson of this phase of the Balkan conflict is that a Security Council condemnation of an action or event, as a "threat to the peace, breach of the peace or act of aggression,"<sup>33</sup> does not, by itself, galvanize public opinion in the critical states. It is not, in itself, a compelling argument for mobilizing skeptical people any more than is the solemn iteration and reiteration of the word "Munich." In many cases, political leaders may indeed have a better fix on the unyielding reality of world politics and their national community's interest in it. In these circumstances, democratic governments may be willing to vote for, and possibly even to support, military actions under Chapter VII of the Charter. That does not mean, however, that they will be able to contribute forces. In addition, more often than not, it will be their forces that will be required. The situation was bitterly but accurately summed up by a French diplomat in one phase of the Bosnia-Herzegovina conflict: "In Bosnia, the United States is willing to fight to the last European soldier."<sup>34</sup>

The point can be demonstrated by comparing two United Nations responses to international events within a single decade. When Iraq invaded Kuwait, the United States, perceiving the aggression as a major threat to world order, mobilized the Security Council to pronounce the trigger words of article 39, and the United Nations proceeded to expel Iraq from Kuwait. But even though the proper trigger words were used to characterize the events in Bosnia-Herzegovina, no Permanent Member of the Security Council was prepared to mount an operation comparable to Desert Storm. Plainly, United States participation was necessary, but the domestic support was not there. As a result, a reduced, anemic, and

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33. Numerous Security Council Directives pertaining to Bosnia refer to provisions of the Geneva Conventions that are applicable in situations of international armed conflict. See, e.g., S. Res. 711, U.N. SCOR, 47th Sess., 3106th mtg., U.N. Doc. S/RES/771 (1992) (reaffirming "that all parties to the conflict are bound to comply with their obligations under international humanitarian law and in particular the Geneva Conventions of 12 August 1949, and that persons who commit or order the Commission of grave breaches of the Conventions are individually responsible in respect for such breaches"); S. Res. 808, U.N. SCOR, 48th Sess., 3175th mtg. U.N. Doc. S/RES/808 (1993).

(Recalling paragraph 10 of its resolution 764 (1992) of 13 July 1992, in which it reaffirmed that all parties are bound to comply with the obligations under international humanitarian law and in particular the Geneva Convention . . . [whereby] persons who commit or order the commission of grave breaches of the Conventions are individually responsible in respect of such breaches.).

34. See Michael Dobbs, *Shifting the Burden No Longer; an Option for U.S. in Bosnia*, WASH. POST, July 16, 1995, at A1.

ambiguous operation was set in place. The varied outcomes in these cases draw our attention to certain inherent limits on international efforts at stopping wars and peacemaking that derive from inhibiting factors within the *deus ex machina*.

What constitutes and will constitute a "threat to world order" in the practice of the Security Council is not to be found in a literary exegesis of the words, but, case-by-case, in the *popular domestic* perception of the political interests of the democratic Permanent Members of the Security Council. It may be useful in this regard to distinguish among the "terrible things that occur" or, to simplify, among "T<sup>3</sup>OCs" and "threats to the peace." From the popular perspective of the Permanent Members, there are "terrible things that occur" (T<sup>3</sup>COs) that are threats to world order as they understand it. These T<sup>3</sup>OCs simply require an inclusive response, whatever the cost. There are also T<sup>3</sup>OCs that do not.

T<sup>3</sup>OCs, threatening or disrupting the processes of production and distribution within and between the components of the industrial and science-based civilization that serve as the infrastructure of the world community, are widely and quickly perceived as requiring an unmistakably firm international response; without it, the world order will end or be transformed in ways that are deemed to be unacceptable to those who have assumed responsibility for it. A superpower and major powers, by their very nature, have global interests and quickly respond to these types of threats to the peace, unilaterally, indeed covertly, if necessary. In democratic polities, popular support for such action can often be mobilized quickly. It may be morally discouraging that most people do not respond in exactly the same way to every T<sup>3</sup>OC, but react much more forcefully and indignantly when the T<sup>3</sup>OC also threatens their existence or livelihood. Nevertheless, it is a factor that conditions behavior, and it cannot be ignored in our discussion.

In real time, of course, events do not come with neat labels attached, indicating whether or not they constitute a threat to the peace. Not all violence qualifies as a T<sup>3</sup>OC. After each T<sup>3</sup>OC, advocates of action use their skill to persuade others that *this* T<sup>3</sup>OC requires forceful, inclusive action. Thus, those concerned with human rights will insist that genocidal massacres in Rwanda are threats to world order and require a response by the Security Council that can end the atrocities and reconstruct public order in that state. Advocates for intervention will try to show that refugee outflows may destabilize nearby states and that the constant viewing, through the mass media, of those atrocities that the world condemns but is unable or unwilling to stop will erode the expectation of the effectiveness of law everywhere and, in this sense, undermine public order.

These contentions may be correct, but they do not succeed in conveying the urgent and overwhelming sense of a threat to the order of a global industrial and science-based civilization that still relies on petroleum as its major source of energy. However, it is easily conveyed by the seizure of a principal petroleum-supplier by a state controlled by a dictator with his own megalomaniac global ambitions and the military machinery, including nuclear, chemical, and biological weapons, and ruthlessness to try to achieve them. Incessant graphic reporting of human rights disasters by journalists who feel that part of their role is to influence the course of political events in ways they think appropriate will sting consciences in the great democracies. For reasons we considered earlier, some people will agitate for their governments to do something, whether unilaterally or through the United Nations. Because politicians must be responsive to their constituents, *something* will be done. The effort that will be made will be insufficient, precisely because the same politicians and constituents know that the events taking place are not widely and passionately viewed at home as a genuine threat to world order that will justify, in the minds of the majority of their constituents, a real sacrifice of treasure and the lives of parents, spouses, and children.

In these circumstances, the *deus ex machina* has a potential power but is blocked from using it. Yet, it is still obliged to do, or appear to be doing, something. At this point, symbolic actions may be pursued. Symbols are always a part of any effective and integrated political program. When used alone, however, they are a counterfeit for action. The net result will be that, for many cases, international war-stopping or peacemaking efforts, whether by the United Nations or coalitions of states, will fail, be humiliated, be weakened, or, in extreme instances, prove unable to protect the very soldiers that they put in place. The entire operation and those associated with it may emerge from the venture politically and morally diminished.

## V. THE TECHNIQUES OF STOPPING WARS AND MAKING PEACE

Stopping wars alone does not, as we have seen, involve a substantial transformation of the belligerent relationship between the parties. Indeed, at least one of the parties that must be persuaded to stop will insist that the situation *not* be transformed. Stopping is, as the technical terms for it in many languages indicate, no more than a cessation, a "cease-fire." Peacemaking, as the selection from Boutros-Ghali's *Agenda for Peace* indicated, requires a profound transformation of the relationship of the parties and often (even in war between states) of the structures of power and economics *within* the parties, for the real pathogens of the war may



be embedded there.<sup>35</sup> The techniques of war stopping and peacemaking vary somewhat in international or cross-boundary conflicts and noninternational or civil wars. Let us consider them briefly.

### A. *International Conflicts*

#### 1. Military Victory

The three words, "*Carthago delinda est*," for all the violence and utter finality they imported, did mean peace. The classic technique for making peace involves the investment of whatever amount of blood and treasure is required in order to secure total victory over one of the adversaries. Anything from the political obliteration to the complete subjection of the adversary may result in peace. If this is the preferred technique, the would-be international peacemaker may contribute to its outcome by throwing its weight on the side of one of the belligerents who is characterized (not always plausibly, even when it is in strictly comparative terms) as the victim or the moral or the lawful side. The outside actor can indirectly help one belligerent party win by supplying material and possibly tactical and strategic guidance to one of the parties or by blockading one of the adversaries to prevent it from replenishing itself. Outside assistance becomes more direct when it involves the provision of "volunteers" and is characterized as "intervention" (a normatively ambiguous term in international law) when it involves direct entry on the side of one of the adversaries, whether as ally or commander of the operation.

Military victory may allow for the types of social reconstruction that can transform war systems to peace systems, especially if the outside intervener emerges as the dominant force and is committed to and willing to invest in fashioning a peace. However, victories disturb erstwhile internal power balances and may, in the most extreme circumstances, allow the internal victor to annihilate its opponent. Short of this, it may allow the victor to engage in punitive actions that sow the seeds for future conflicts, as some historians argue occurred in the peace settlement after the First World War. While the demands for punishment may derive from the human costs suffered in a particularly nasty conflict, they may also be nourished by the moral outrage of the intervener's population, especially if it had been stirred by its own leadership as a means for mobilizing its public to bear the costs of intervention. Precisely because military victory eliminates the internal power balances that precluded internal peace but also restrained wide-spread group violence, this technique of

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35. See generally *Agenda for Peace*, *supra* note 24.

peacemaking may set loose types of internal violence that are inconsistent with contemporary legal and moral codes. So, ironically, attempting to achieve military victory may often be an unacceptable, indeed prohibited, technique for contemporary peacemaking.

When the cause of war is a psychopathic dictator, his removal by an internal opposition or by an externally-induced assassination may clear the way for negotiated peace.<sup>36</sup> Military victory may be the only technique allowing for the development of a meaningful peace when the cause of war is a political system whose ideology and structure is ineluctably oriented toward the prosecution of external war. If, as is generally believed, Saddam Hussein and the Baath Party are the pathogens that impel Iraq to war, any settlement that leaves Saddam and the Party in place may be called “peace” but will only be a stopped war. In cases where diverse political reasons require that such a dictator be left in place, external techniques such as adjustments in regional and global power balances (considered below) may have to be incorporated if the termination of the conflict is to endure. Even then, the popular moral imperatives that were necessary to excite a willingness in the populations of peacemaking states to intervene may still require a symbolic transformation of the dictator into someone who is both “peaceworthy” and a credible signatory to a peace agreement.

## 2. Redressing Power Balances

Another technique for transforming a stopped war into a peace is to establish new power balances through the formation of alliances or so-called “mutual-defense” treaties. These treaties are supposed to be credible political communications that forewarn those bent on military action that, upon certain contingencies, the peacemaker, who is more powerful than the belligerents, will enter or re-enter the fray on one of the sides if the other recommences military conflict. Insofar as it restrains the party *against* whom it is directed, the deterrent may work. However, power balances that are achieved by alliances inevitably stimulate quests for counter-alliances and reinforce the expectations of violence that undergird the war system. Hence, peace agreements that are based upon such mutual defense arrangements should be viewed as war-stopping rather than peacemaking.

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36. See Michael N. Schmitt, *State-Sponsored Assassination in International and Domestic Law*, 17 YALE J. INT'L L. 609 (1992). But cf. W. Michael Reisman, *Some Reflections on International Law and Assassination under the Schmitt Formula*, 17 YALE J. INT'L L. 687 (1992).

Defense treaties may stabilize situations by redressing power balances, but they also create certain hazards for the now contingently engaged peacemaker: the beneficiary of the alignment with an external power now has an incentive to see the war reignited in order to compel its powerful friend to enter and accomplish a task that had been beyond its own capacities and resources. There may be myriad opportunities to provoke renewal of the conflict without appearing directly responsible for it. Hence, there is an unstable foundation of defense treaties.

This particular problem can be controlled, to some extent, by "reverse" alliances, in which the peacemaker concludes an alliance with the erstwhile aggressor. The alliance effectively incorporates the military of the aggressor into the peacemaker's own command structure, thus preventing it from doing anything the peacemaker does not approve. For reverse alliances to work, significant numbers of the ally's population must believe that the alliance is indispensable to their own defense. Reverse alliances are also properly characterized as war-stopping rather than peacemaking techniques.

### 3. Distributional Arrangements

When the gravamen of the dispute is divisible in ways that may minimally satisfy the contending parties, a distributional solution may be used in making peace. Where a war is fought over a territory that may be divided or maritime zones that must, by their nature, be allocated, distributional settlements seem like neat peacemaking mechanisms. However, not all resource wars are susceptible to distributional peace solutions. Consider the Middle East conflict: the quantity of water resources in the hydrological system shared by Israel, Lebanon, Jordan, Palestine, and Syria is insufficient to satisfy the demands of each of these entities, especially if each proceeds to develop itself industrially. A distributional settlement of water resources is, thus, unlikely to solve or contribute to the solution of the conflict dividing these states. In some circumstances, as will be explained below, resources that resist distributional solutions may be susceptible to integrative solutions.

Other conflicts, by their nature, resist distributional arrangements. If the subject-matter in dispute, though theoretically distributional, is assigned a sacred character by one or more of the parties, a distributional solution is unlikely to be accepted by at least one of the protagonists. Where the cause of war is systemic, an apparent distributional solution is also unlikely to do more than stop a conflict. Thus, in an early phase of the conflict between Iran and Iraq, ostensibly over access to the Shatt al-

Arab, an apparently distributional solution enshrined in a treaty<sup>37</sup> suspended conflict, but it resumed because the deeper reasons undergirding the conflict had not been addressed (and perhaps could not have been addressed) in the earlier agreement.

#### 4. Integrative Settlements

In some circumstances, the war system that incorporates and embroils warring parties may be transformed by designing integrative arrangements; these are arrangements that so intermesh key parts of the social and economic processes of the erstwhile belligerent parties that a resumption of conflict becomes, for each, too destructive of self-interest to be contemplated. Integrative arrangements may work in a number of ways. They may forge new identifications among politically relevant strata in each of the erstwhile belligerents such that conflict between them becomes less probable. Integrative settlements may also merge or intermesh key socio-economic processes such that conflict would be so reciprocally destructive of economic activity in each party that it becomes less attractive, conceivable, and probable. The most successful example of an integrative solution in this century is the European Coal and Steel Community (ECSC), designed by Jean Monnet and his lawyer, Paul Reuter. Along with a number of other coordinated integrative arrangements, the ECSC substantially reduced the probability of war between the historic enemies, France and Germany.

The peace settlement did not rely on economic integration alone. Though the coal and steel of the ECSC were inherently subject to a distributional solution, such a solution, alone, would have failed to forge identifications. The victor in the previous war also did not withdraw to its continent, but remained as a dominant force in a regional reverse defense system that encompassed the German army. Still, integration increased the costs of renewed conflict between two erstwhile antagonists. In the current Middle East conflict, a distributional solution to water seems unlikely to provide an effective strut in a peace agreement. On the other hand, integrative solutions that redefine the way that water is used in each of the national communities, such that scarcity ceases to be a current critical problem, might prove a more enduring basis for peace. That would, of course, involve a much more ambitious experiment than the ECSC.

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37. See 1975 Iran-Iraq Treaty on International Borders and Good Neighborly Relations, reprinted in 14 I.L.M. 133 (1975); Elihu Lauterpacht, *River Boundaries: Legal Aspects of the Shatt al Arab Frontier*, 9 INT'L & COMP. L.Q. 208 (1960).

## 5. Peace Treaties

Many of the practices we have just considered need not be incorporated into a formal agreement between combatants. They may be concluded between one of the combatants and third parties who have an interest in bringing the war to an end or even expressed unilaterally. But, ultimately, some agreement, whether formal or informal, between the combatants is a concomitant of peacemaking and must be considered briefly.

In circumstances in which total victory has been achieved by one of the belligerents, the peace agreement does no more than ratify that event and articulate the details of the new relationship that has been defined by military force. Conversely, in wars that have ended without establishing a decisive power superiority, the peace agreement becomes a complex extension of the conflict. Relative dominance is certainly reflected in its terms, but if that dominance was not established unequivocally on the field, critical issues that could tip power balances even more for or against one of the parties will now be resisted. Indeed, a peace treaty that overreaches on such matters may self-destruct because one party is then likely to conclude that, on balance, it is better to bolt from the peace process and resume the war.

To avoid this eventuality, the drafter of the peace treaty must have a keen sense of the "break" issues for each of the parties and must sometimes intentionally incorporate "gray" areas, in which textual ambiguity papers over continuing disagreements for which agreement cannot be negotiated or imposed. Yet, such imperfect peace agreements are not necessarily only stopped wars. If the aggregate balance of the agreement is such that neither party contemplates or wishes resumption of the war, then the imperfect agreement will either persist in that form or be perfected in some nonviolent procedure. Hence, the incorporation of dispute resolution mechanisms in peace treaties would be implemented.

A dispute resolution mechanism may be designed to deal with outstanding issues, whether they are trivial or break issues. If the underlying power balance has not been clarified to the point where it is possible to resolve some of the break issues, the dispute resolution mechanism itself can do little more than defer final decision even further into the future. A current example of this phenomenon may be found in the arbitral award with respect to Brcko, under a procedure established by the Dayton Peace Agreement.<sup>38</sup> The assignment of Brcko could have easily reignited military conflict. In other recent peace agreements, the

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38. See *General Framework Agreement for Peace in Bosnia and Herzegovina*, U.N. GAOR, 50th Sess., Annex 5, Agenda Item 28, at 81, U.N. Doc. A/50/790 (1995).

incorporation of third-party decision mechanisms has been used to permit the peace agreement to be concluded. Concurrently, final decisions are deferred on difficult but severable matters that hopefully will become less important just by putting them off. Consider, in this regard, the arbitration between Egypt and Israel over the tiny enclave of Taba in the Sinai Peninsula.<sup>39</sup> Once the prospect of a meaningful agreement became real, both parties appreciated that the issue was strategically meaningless and that under no circumstances could it be permitted to disrupt the peace relationship that was, by then, seen as serving their common interests.

Because the international community now frequently presses for a peace before one or more of the belligerents may be prepared for it or battle has determined the outcome, the modern peace treaty is frequently not self-executing (*i.e.*, a process that can sustain itself without outside support). Hence, there arose the new phenomenon of peace treaties with long-term, if not permanent, outside commitments of military forces, observers, or guarantees of varying degrees of clarity. The United States now acts as the "guarantor" of some peace agreements, a legal role that is quite ambiguous in international law and whose rights and obligations are uncertain. Under the Egypt-Israel Peace Agreement,<sup>40</sup> a permanent observer force composed of nationals of neither of the erstwhile belligerents is implanted between them and financed by outside states.

### B. *Noninternational Conflict*

Although the technologies of violence deployed may be the same in international and noninternational wars, there may be important differences in the techniques available for stopping wars and making peace in noninternational or civil conflicts.

#### 1. Military Victory

As with international conflicts, the triumph of one side seems to be an effective way to end a military conflict. The American Civil War culminated in the victory of the Union, and the Russian Civil War culminated in the victory of the Bolshevik faction. Whether victory in a noninternational conflict produces real peace or only pseudo-peace, to be followed by a resumption of war, depends on the way the victor constructs it. Physical elimination, substantial reduction, or banishment of the erstwhile adversary was a technique used in the past to establish peace, but it now excites international indignation. Indeed, the

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39. See *Boundary Dispute Concerning the Taba Area (Egypt v. Israel)*, Sept. 29, 1988, 27 I.L.M. 1421.

40. See Treaty of Peace, Mar. 26, 1979, Egypt-Isr., 1138 U.N.T.S. 59.

international community has gone in quite the other direction. Part of the normative structure that has been established by the international community for peacemaking in internal conflicts now calls for comprehensive amnesties in order to re-establish internal order.<sup>41</sup>

As in international conflict, outside actors may participate in shaping a military victory as a technique of peacemaking in noninternational conflict through the provision of economic or military support or through active intervention. International law, however, tends to treat internal conflicts differently. While a state may (and perhaps must) assist in the defense of a state that has been attacked from outside its border, comparable foreign assistance to one faction in an authentic internal or civil war is quite controversial. Because a recharacterization of the war as "international" permits expanded overt participation by outsiders, an ironic consequence of international law's effort to deal with conflict is often to expand it.

## 2. Creating or Importing a Caesar

Where order has broken down within a state, the challenge to the war-stopper or peacemaker is essentially Hobbesian: to re-establish minimum order. This may be accomplished by selecting the least repugnant of the contending groups or the group that is most likely to be susceptible, after peace, to international pressure to reform, and then by supporting that group until it prevails. Since all the candidates for power may well be vicious criminals, this technique may excite moral repugnance. Hence, its appliers may have to design public relations methods that will transform the image of the designated Caesar from that of a thug into an apparently warm and cuddly international personality.

In earlier times, a royal pretender or a member of an impecunious but otherwise-qualified wing of a royal family could be selected by the outsiders and then installed and promptly recognized as the new legitimate government. This was a form of recognition that was truly "constitutive." If that new government could not marshal a base of political power within its territory, it could be supported through alliances or the continuous presence of a foreign garrison that it would duly invite in. The practice is hardly obsolete. In this century, the United States placed Sygman Rhee in Korea and the Diems in Vietnam. French planes brought David Dacko from Paris after French paratroopers overthrew Jean Bedel Bokassa.

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41. See Geneva Conventions of 1949, June 10, 1977, Protocol II, art. 6(5), Sen. Treaty Doc. 100-2, at 11 (1987), 1125 U.N.T.S. 614.

Direct imposition requires a heavy military investment that may need to continue until the nominee establishes his own local base of power. In some cases, the investment may need to continue indefinitely lest, as soon as it is withdrawn, the imported Caesar be overthrown. This is one reason for the contemporary preference for selecting the strongest and/or least offensive of the local rivals and backing him, while he "consolidates" his own power base. Moreover, an indigenous pedigree, no matter how modest, seems to accord more legitimacy nowadays than foreign royal blood.

### 3. Partition

In some circumstances, noninternational conflicts may be concluded by a division of the territory between the belligerents. Where the groups in conflict are already physically separated, a partition may recommend itself. However, where, though ethnically or linguistically distinct, they are intermingled through the territory, partitions will require mass population transfers. Such movements are often not voluntary and are almost always effected with and accompanied by violence. As the violence escalates, the costs for the would-be peacemaker who initiates or endorses the technique of partition increase because the would-be peacemaker's own population may recoil from the bloodshed, for which it now feels in part responsible.

Where the groups in conflict are physically separated, a less disruptive form of partition may involve the establishment of relatively autonomous components within the existing state. However, if these arrangements are not sustained by continuous external investments, the dominant group that has yielded autonomy is prey to a continuing temptation to reverse the arrangements when the opportunity presents itself. The United Nations-sponsored autonomy regime for Eritrea was reversed by the imperial government of Ethiopia.<sup>42</sup> The Ethiopian action ignited a long war that ultimately concluded in secession of Eritrea from Ethiopia.<sup>43</sup> Similarly, the Addis Agreement of 1972 ended the war between the Muslim Arab North and the Christian and Animist South in Sudan by establishing an autonomous region in the South.<sup>44</sup> When the

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42. See G.A. Res. 390(v), U.N. GAOR, 5th Sess., 187th mtg., U.N. Doc. 38 (1950); see also EDMOND J. KELLER, *REVOLUTIONARY ETHIOPIA* 153 (1988).

43. See KELLER, *supra* note 42; Angela M. Lloyd, Note, *The Southern Sudan: A Compelling Case for Secession*, 32 COLUM. J. TRANSNAT'L L. 419, 435-38 (1994).

44. See Lino J. Lauro & Peter A. Samuelson, *Toward Pluralism in Sudan: A Traditionalist Approach*, HARV. INT'L L.J. 65, 104 (1996)

(In a striking example of the tendency for Sudan's "democratic" governments to violate basic democratic principles, President Memeiri sacrificed his greatest



autonomy regime was later terminated by the dominant North, elements in the South recommenced the war. The lesson of these examples is that autonomy regimes as a technique of peacemaking are not likely to be self-sustaining if they do not create an internal power balance to sustain them, but will require, for their viability, a continuing external commitment to support them.

#### 4. Integration

Internal war is, by definition, a process of violent disintegration. After the war has been stopped, peacemaking involves integration or reintegration, often through the use of force. Since the war may have disrupted large parts of the social and economic process, re-integrative solutions may have to be comprehensive in their scope.

Though peacemakers almost always talk about integration, there are very few examples of consciously engineered successful re-integrations. Success stories often prove to have defects. In the sector of Somalia that had been assigned to Australian soldiers, for example, a reconstruction and integration that was a model for international peacemaking was accomplished. However, because the program was not national and comprehensive, warlords from the Mogadishu region intervened shortly after the Australians had withdrawn thinking their mission was accomplished. Because it was taken for granted that the indispensable step in integration is to disarm the local population, the Australians actually left the people in their sector vulnerable. Currently, in Bosnia, the presence of SFOR units has permitted the emergence of patterns of commerce that transcend ethnic boundaries and may begin to erode the grip that Serb nationalist elites hold over the economic life in the territory they control.

#### 5. Plebiscites

The idea of conducting internationally organized and supervised elections in states in which political order has broken down is particularly enchanting for the democratic states within the international community. Aside from the fact that a free and fair election confirms democratic conceptions of political legitimacy and does not require a military investment, it also recommends itself in internal war situations as a distinctively peaceful way of determining which of the contending forces has majority popular support. This technique, however, presupposes a

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achievement—peace with the South—in a futile attempt to maintain power. The 1972 Addis Ababa Agreement ended a seventeen-year-old civil war and gave the South regional autonomy in a federal system.).

context in which an internationally-confirmed expression of the majority choice (assuming there is one) will be accepted by all the contending parties as the *grundnorm* for resolving conflict: the “majority decides.” The problem is that internal war often signals the rejection of this norm. Force has become the technique of constitutive decision and the fact that a majority of the “other” wishes a particular outcome may no longer have any authoritative implication for the minority.

This is not a criticism of free and fair elections. Where an internationally-supervised and endorsed expression of the *vox populi* is likely to acquire compulsory force and gain prompt acceptance by the warring factions, it is a technique that recommends itself for its economy and democratic morality. When elections will, with a high degree of probability, bring to the fore a popular government that will command the support of all, they should certainly be conducted. However, in many internal war situations, elections will not have that happy result. Rather, they will only serve to confirm or further exacerbate the polarization of the situation. In such circumstances, the use of the internationally supervised plebiscite will be counter-productive and, therefore, should be eschewed.

## 6. Governments of National Unity

In circumstances in which the contending forces in an internal or civil war are in rough equipoise, a confirmation of the power situation and an allocation of governmental perquisites, among the contenders commensurate with the relative power of each, may recommend itself as a means of arresting overt military violence. This technique, now called euphemistically “the government of national unity,” is often presented as a technique of peace. However, it is a pseudo-peace and should properly be considered a method for stopping war.

A government of national unity is no more than a division of official power, and the benefits thereunto appertaining to different, reciprocally hostile factions—the division effected commensurate with the actual power that each exercises. It is not democratic nor are the elites who participate in it necessarily animated by genuine concerns for the human rights and the welfare of the inhabitants whom they will, between themselves, divide and control. It “divvies” up the political loot and the other values that go with it. It is hardly a desirable solution, but there are times when it is the only practical thing to do.

A government of national unity is a quintessential Hobbesian solution to the breakdown of internal order. Unless it is accompanied by the dissolution of the various private armies or their incorporation into a

single national force (which rarely happens), it is no more than a cessation of the conflict that will be resumed as soon as one or more of the parties concludes that military force is more likely to achieve its objectives or preserve its existence.

C. *The Paradoxical Use of International Criminal Tribunals in Stopping Wars and Making Peace*

A particularly intriguing technique in the modern armamentarium of stopping wars and peacemaking is the diplomatic and ideological use of the *ad hoc* international criminal tribunal. There are, of course, many difficulties with transposing the institutions of domestic criminal justice to the radically different terrain of international politics. Yet, the strong desire for a vivid moral condemnation of wrongdoers and a reaffirmation of the moral values, impelling many in the international community to engage in war-stopping or peacemaking, render the notion of an international criminal court particularly appealing.

Courts or their functional equivalent are, of course, indispensable institutions in the criminal justice and civil liability areas in functioning domestic systems. Any successful polity, no matter how structured, must have arrangements of varying degrees of institutionalization to apply the law to concrete cases with predictable fairness and dispatch. However, it is important to understand what comes first. Courts or their equivalents are epiphenomena of stability. There is no evidence that courts, by their mere existence and operation, *create* the minimum political order that is necessary for their operation.

The wars in former Yugoslavia provide acutely painful examples of the limited utility of war crimes tribunals for stopping wars and making peace. Relations between the ethnic, language, and religious groups in that part of the Balkans have periodically been nasty. In the twentieth century, for almost forty-five years, the highly authoritarian Yugoslav federation subordinated many of the exclusive identifications and brought to the forefront a composite secular, trans-ethnic "Yugoslav" identity. This has permitted the members of the different groups to live together and to move about the territory in search of jobs and opportunities. The reality and expectation of Yugoslavia minimized the strategic importance of who people were and where they lived.

The critical implication of the break-up of Yugoslavia was psychopolitical. As the plausibility of the Yugoslav identity decayed, the plausibility of older identities increased. More and more erstwhile "Yugoslavs" began to reidentify themselves and others as Serbs, Croats, Roman Catholics, Orthodox, Muslims, or Bosnians. Those who tried to

resist in favor of retaining a trans-ethnic secular identity found it less and less plausible, for the contextual predicate of that identity was the Yugoslav federation that no longer existed. In this new situation, the spatial intermingling of peoples that had been a beneficent consequence of the Yugoslav federation began to take on a new and grim meaning. As parts of the federation seceded in the name of ethnic nationalism, nonethnics suddenly found themselves redefined, *in situ*, as minorities and irridenta, facing, in the case of Croatia, a majority government that revived and adopted the symbols of an earlier regime remembered for its intense racial and ethnic violence.

In this rapidly evolving new reality, security for the politically revived ethnic and language groups acquired urgent importance. Territorial contiguity for each group became the obsession of its security specialists. Hence, the forced population transfers were accomplished and accelerated by pogroms, massacres, and systematic rape. Such atrocities were carried out on all sides, but according to most reliable reports, were most attributable to the Serbian regular and irregular forces.

As efforts at stopping the war failed, the United Nations began to speak of prosecution for war crimes. The manifest purpose of the establishment, by the Security Council, of the former Yugoslav criminal tribunal was not to punish serious violators or to secure peace *per se*, but to stop the war by securing compliance with obligations under international law and to press the parties to a peace agreement. In other words, the tribunal was viewed (whether credulously or cynically) as a Security Council enforcement technique for stopping the war. It would be far more economical than the military action that seemed necessary but was then impossible to achieve. Consider the sequence of resolutions that culminated in the establishment of the Tribunal. In resolution 764 (1992) of July 13, 1992, the Security Council affirmed that "all parties [to the conflict] are bound to comply with the obligations under international humanitarian law and in particular the Geneva Conventions. . . ."<sup>45</sup> In resolution 771 (1992) of August 13, 1992, the Council acknowledged that its previous resolution had gone unheeded and expressed alarm at the continuing reports of wide-spread violations. At that time, the Council, acting under Chapter VII of the Charter, decided that all parties and others concerned in the former Yugoslavia and all military forces in Bosnia-Herzegovina should comply with the terms of the resolution. If they did not, the Council would take further action.<sup>46</sup>

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45. S. Res. 764, U.N. SCOR, 3093d mtg., para. 10, U.N. Doc. S/PV.3093 (1992).

46. See S. Res. 771, U.N. SCOR, 3106th mtg., para. 3, U.N. Doc. S/PV.3106 (1992).

The parties whose cooperation was necessary did not cooperate. In resolution 780 (1992) of October 6, 1992, the Council requested the Secretary-General to establish an impartial commission of experts to examine and analyze the information that had been requested in resolution 771.<sup>47</sup> The results of that Commission's inquiry were submitted by the Secretary-General to the Security Council in a letter on February 9, 1993. The Commission concluded that grave breaches and other violations of international humanitarian law had been committed.<sup>48</sup> That was hardly surprising: thanks to the media and nongovernmental organization (NGO) efforts, such information was already public and was the predicate of the existence of the Commission. Otherwise, the report did not change the objectives and tactics of the parties it implicitly condemned.

Following the Commission's report, the Council resolved in resolution 808 (1993) that the wide-spread violations of humanitarian law constituted a "threat to the peace" within the meaning of article 39 of the Charter, and determined to put an end to such crimes.<sup>49</sup> However, rather than proceeding to design a program to repel the threat it had just declared, the Council side-stepped it. Instead, the Council stated that it would establish an international tribunal to prosecute persons responsible for serious violations of international humanitarian law.<sup>50</sup>

The real purpose of the Tribunal was never to function as such but rather to stop the war. The Secretary-General's Report stated, with remarkable candor, "As an enforcement measure under Chapter VII, however, the life span of the international tribunal would be linked to the restoration and maintenance of international peace and security in the territory of the former Yugoslavia, and Security Council decisions related thereto."<sup>51</sup> Thus, the moment peace was restored, the life of the Tribunal would most likely end. While a treaty would not have ordinarily required enforcement, the Chapter VII mode was selected precisely because of an enforcement problem caused by noncompliant parties *and* the unwillingness of the major powers to enforce.

In the ordinary course of events, it is precisely at the end of a conflict that the operation of an international criminal tribunal kicks into operation. However, the purpose and essential design of the former

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47. See S. Res. 780, U.N. SCOR, 3119th mtg., para. 2, U.N. Doc. S/PV.3119 (1992).

48. See *Letter from the Secretary-General to the President of the Security Council*, U.N. SCOR, 42d Sess., para. (1), U.N. Doc. S/25274 (1993).

49. See S. Res. 808, U.N. SCOR, 3175th mtg. at 1, U.N. Doc. S/PV.3175 (1993).

50. See *id.*

51. *Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808*, U.N. SCOR, 42d Sess., para. 28, U.N. Doc. S/25704 (1993).

Yugoslav Tribunal was to use it to accomplish other goals; it was to be terminated as soon as those goals were secured. Meanwhile, efforts at securing a political settlement had to continue, for no outsider was then willing to invest what was militarily necessary to force one of the parties to relent. However, the same people who should have been agreeing to a political solution were also the individuals who were assumed to be the prime candidates for indictment and trial. With two contradictory political strategies being pursued, the possibility of contribution by the Tribunal was not auspicious.

Many of the people who supported the establishment of the Yugoslav War Crimes Tribunal, and certainly its inspired staff, believed that the Tribunal would make a difference. By reaffirming the principle of individual responsibility for war crimes, peace was to be vouchsafed and future war crimes, they believed, would be deterred. In an important interview granted to a Geneva newspaper, the first prosecutor, Richard Goldstone, said, "My personal convictions lead me to believe that the interest in a durable peace requires the verdict of justice."<sup>52</sup>

Judge Goldstone's concern was with more than merely making an authoritative record; there were other more economical and efficient methods for such an accomplishment. For example, the Commission for Peace and Reconciliation, then underway in Judge Goldstone's own South Africa, was considered an effective method. The political transformation that was to have taken place, *pace* this theory of an international criminal tribunal, would occur because of the criminal convictions. That is why, in this theory, the experience of Nuremberg is cited so often. This view of Nuremberg, however, is astigmatic. The Nuremberg Tribunal's dozen convictions were not the key reason, the *causa causans*, for the creation of the robust democracy that flourishes in contemporary Germany. Nuremberg may have been an important component, but the key reason for the transformation was the extended Allied occupation, during which complete control was exercised, and a new political system was set in place. Given the character of internal wars, of which, UN characterizations notwithstanding, Yugoslavia is an example, and the general international unwillingness to invest in a military victory, the belief in war crimes tribunals as a "magic-bullet" technique for deterring and stopping wars and making peace is unfounded. Stopping wars and making peace require major investments in political capital, treasure, and life. There are no shortcuts and no substitutes.

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52. *Le Tribunal international sur les crimes de guerre peut très dissuasif*, LE NOUVEAU QUOTIDIEN, June 23, 1995, at 20, col. 2 (author's translation).

## VI. ANTINOMIES IN MODERN WAR-STOPPING AND PEACEMAKING

It is apparent from this brief review that, given the nature of the international political system, there are a number of ineluctable and fundamental contradictions in contemporary efforts to stop wars and to make peace. Both activities have become international concerns of the highest, most urgent, and sometimes most frantic order. With respect to stopping wars, the moral dimension that has been introduced into the characterization of all belligerency as just or unjust is part of the stimulus that justifies violence, yet also excites the demand to stop unjust violence. Ironically, it also makes war-stopping, by itself, difficult to justify in some conflicts. Were all conflict viewed as an unfortunate and irrational passion, a psychopathology to be treated psychotherapeutically but for which legal judgment is inapposite, war-stopping could proceed more easily. With the exception of the International Committee of the Red Cross, however, that condemns war and consistently tries to practice a strict and scrupulous neutrality without regard to the relative iniquities of the combatants, the contemporary moralization of conflict that we considered earlier makes it difficult to view all international and civil conflicts in these terms. The ambivalence with respect to the use of military force for just reasons would be manageable if there were a simple calculus capable of systematic and neutral application. Under such a framework, at least, everyone could agree on the identity of the villain. However, the range of perspectives in international politics is so wide that different people in different states will view the equities of different conflicts with equal conviction and passion, but otherwise quite differently and will accordingly support one or another party.

Once a conflict has been cast in moral terms, the actor who contemplates stopping it, on ethical grounds, is likely to find that it has become impossible to persuasively justify that action in those terms. Thus, President Clinton, in trying to stop the Balkan War in one of its serial phases, expressed concern that such an action, no matter how well-intentioned, would ratify the immoral deeds of one of the parties. In this respect, stopping wars in contemporary international politics must frequently misrepresent itself as an exercise in peacemaking. Moreover, the peacemaker must persuade his various constituencies that the peace that is being made is consistent with the often intense moral characterizations that were applied to the belligerency in order to win popular support for the costs that had to be borne in war-stopping and peacemaking.

A second antinomy is that the ineluctable *deus ex machina* in contemporary international politics, a democratic political system, will be

impelled by internal forces to stop wars and make peace, yet will be increasingly unable to mobilize popular support for the major investments of blood and treasure that will be consumed in those activities if they are to succeed. The democratic political leadership that seeks or finds a peacemaking role thrust upon it may then discover that it cannot deploy the force, of which it is theoretically capable and which is necessary to make its diplomacy effective. While there is insufficient popular support for such an investment, there are paradoxically strong popular demands from parts of the constituency to stop the war and make peace.

If the *deus ex machina* cannot use explicit coercion to stop the war and make peace, the only alternative is to negotiate with all sides—one of whom has been presented as the incarnation of evil. The United States cannot act as peacemaker, and Israel cannot make peace with the Palestinians without negotiating with their titular leader, Yassir Arafat, a person whom both have presented as unredeemably villainous. The Palestinians face the same problem in mirror-image. If the United States is not prepared to incur the costs necessary towards assisting one side in achieving total victory, it cannot arrange a peace agreement in the former Yugoslavia without negotiating and concluding agreements with Presidents Milosevic and Tudjman, the architects of the conflict and, under *respondeat superior*, the persons ultimately responsible for the legal and moral violations that have occurred. Because of the constraints their own political processes impose on them, modern peacemakers find themselves obliged to negotiate with persons they have already diabolized in order to arouse and consolidate the support of their own population for the intervention that is involved in war-stopping and peacemaking. However, trucking with the devil conflicts with the moral vision in which the war has been set.

The devices that have been used to deal with this contradictory and antinomic situation are distinctly modern. One technique is the creation of the pseudo-peace, in which a vision of peace that is consistent with the moral values of the peacemaker and its constituency is set, like a great happy-face mask, over a much nastier reality. Popular attention is then directed away from this “success” to other urgent matters. Perception becomes and remains reality as long as reality does not intrude. As the aftermath of the Somali imbroglio shows, a studied diversion of the public gaze to novel issues can keep an ugly reality out of sight.

A second technique is the ritual transformation of the erstwhile villain into a good person. This remarkable process of transmogrification may be accomplished by spin but is greatly helped by the award of an international prize. Who would have thought that Yassir Arafat and Yitzhak Rabin, and F.W. DeKlerk and Nelson Mandela, would share



Nobel Prizes? Is it conceivable that we may yet see Slobodan Milosevic and Franjo Tudjman with the Laureate? These symbolic transformations are extremely important, as they justify, in moral terms, peace agreements with persons with whom it has been established authoritatively we should not be making peace.

Nobel peace prizes are not necessarily lifetime achievement awards. Of late, they often celebrate an individual act quite inconsistent with everything that has transpired before. The act is important and prizable because it clears the way for an advance toward peace. But what of the hideous actions for which the former adversaries are responsible? In many cases, the evidence has been carefully gathered and organized and transmitted through the media as part of the ongoing mobilization effort. In some circumstances, legal machinery, staffed by skilled and passionately committed jurists, is already grinding away when the ritual transformation of the villain occurs. The symbolic uses of the law now acquire paramount importance. The establishment and selective operation of an international criminal tribunal for former Yugoslavia provides a striking example. The major architects of the conflict are now indispensable partners in achieving and implementing a negotiated settlement. Consequently, they are not indicted and tried. It is rather their underlings who are put in the dock, amidst great public attention, in a type of sacred ritual that confirms the wickedness of what was done, but imposes responsibility on other individuals rather than on the architects and the governmental systems in which they have embedded themselves. In a variant, "Truth Commissions" broker transactions in which confessions of human rights crimes are swapped for pardons, while those, often family members of victims, who clamor for full application of the law, are dismissed as vengeful extremists whose "exorbitant" demands now threaten the fragile peace that has been attained.

## VII. FUTURES

The dynamics sketched in this Article indicate the formidable difficulties in terminating international conflict and leave us with a bleak picture of the international prospects for stopping wars and making peace. Particular wars may be stopped, only to reignite when the effort to stop them exhausts itself, because a meaningful peace will not have been made. The great democracies are more likely to engage in making pseudo-peace. Other than military victories, with their own horrifying costs, meaningful peace settlements will prove elusive.

The future is, of course, the handiwork of the present, and one can construct futures in which wars will be treated quite differently. The

establishment of an international military force to perform the *deus ex machina* function would stop wars, and an international social reconstruction corps could then make peace if sufficient authority and resources translatable into effective power were assigned to it. Given the domestic and international dynamics we have reviewed, such a future seems remote. Individual governments may create units or departments, but the international needs will outstrip the few resources they are likely to be given.

Alternatively, a future in which stopping war and making peace is “re-nationalized” may also be imagined. In such a future, international efforts would be confined to containing the effects of the war through techniques such as protecting international trade by reinforcing laws of neutrality and stemming refugee flows (for example, by establishing internationally supervised “safe havens”). In this future, the effects of wars would be confined to their specific arenas; international criminal courts would function to assuage the conscience of an international community that had retreated from responsibilities it had tried to assume in the past. NGOs would seek to temper the rigors of conflict, while the rest of the world, paying guilt money to the NGOs, would simply accept war and its costs as inevitable, like death and taxes. People who had been formerly agitated by violence elsewhere will retreat to their own “safe havens” of more pleasant private realities.

#### VIII. ALTERNATIVES

Given the deeply rooted dynamics explored in this Article, it is important to explore the range of alternatives available to those who would stop wars and make peace. The most urgent task is the education of the electorates in the great democracies about the actual possibilities and costs of peacemaking. This may produce new departments and bureaucracies assigned this task, with mandates and budgets to develop appropriately trained and equipped peace-forces. These departments will have to acknowledge that peacemaking may require a long-term presence and a long-term investment.

An area of promising, but less ambitious, action is that of prevention. Many of the most intractable wars of the present period might have been averted by an international community whose political capacities may prove insufficient for stopping wars but may suffice to prevent their outbreak. This is not to exaggerate the possibilities of “early-warning” systems. While it is true that most wars are seen, in retrospect, to have been preceded by ominous storm clouds, many critical situations that could have become wars, but self-corrected, also

manifested such signs. More feasible and focused are large-scale transnational monitoring programs of pathogenic changes in the *elite* and *rank-and-file* perspectives of war-prone countries and areas. Such programs could be conducted by NGOs. More generally, transnational educational programs could seek to forge and then reinforce inclusive rather than narrowly exclusive identifications.

One of the most common contexts of war that the international community has been unable to stop or transform into peace involves the breakup of states that were composed of different ethnic groups. The pattern is so familiar as to constitute a paradigm. In a state composed of many ethnicities in which one, inclusive national identification is made dominant, members of different ethnic, tribal, or language groups will come to define themselves, with varying degrees of intensity, in terms of that larger national symbol. As they do, they will begin to move about the country, settling in various places that used to be viewed as exclusive group preserves, on the expectation that exclusive ethnicities are no longer critical political factors. If contending elites within that erstwhile inclusive state are permitted to break the territory back into ethnic components, often as a way of advancing their own interests, the exclusive ethnic identifications that had been dormant will revive. At this point, it will suddenly become relevant and urgent to members of one ethnic group that the village down the road is largely composed of, say, Punjabis, and that it now blocks them from direct land contact with the major concentration of fellow Hindus or Muslims, as the case may be.

When amalgamated states of this sort break apart, there will be forced population movements, and they will be violent. This was the case, for example, during the division of Palestine into Israel and the Palestinian-Jordanian territories in 1948, the division of the sub-continent into India and Pakistan in 1949, and the breakup of Yugoslavia, whose death agony continues to this day. Because people do not willingly leave their homes, their livelihoods, and the graves of their ancestors, these population transfers are always bloody affairs, with each side ruthlessly calculating with escalating violence the most efficient means for driving this group or that from their homes and lands.

The breakup of Yugoslavia is a tragic case in point. Rather than seeking to sustain the Yugoslav Federation as a community based on significant trans-ethnic identifications, the international community actively assisted in its subversion by untimely recognitions of break-away components. The people of former Yugoslavia and many of their neighbors are still living with the consequences of this ill-advised action. The international architects of this breakdown may have been animated by calculations of the short-term political gain to be gained through the

disintegration of the Federation or, more naively, by a romantic infatuation with the notion of self-determination. Those who clamor for self-determination in such circumstances should appreciate its dark-underside: the “un-self-determination” of many groups in that territorial community.<sup>53</sup> If the wars of Yugoslavia cannot now be stopped and effectively transformed into peace, perhaps they could have been prevented.

## IX. CONCLUSION

Stopping wars and making peace in contemporary international politics thus emerges as a contradictory and imperfect process. Each mobilization for stopping wars or making peace requires the establishment of a moral vision and a characterization of the conflict in moral terms. Yet each accommodation (and there must be accommodations if we are unwilling to make the sacrifices of life and treasure necessary for achieving victory) clashes with the moral vision that has been brought into play. For those actually engaged in the war, the question is: why did we fight and sacrifice loved ones? Why should we do it in the future? For those on the outside who pressed for stopping the war and making peace, the question is: why did we ratify the immoral results of the conflict? Why did we confirm the losses of those we called victims while rewarding those we called criminals against humanity?

The tragedy here—and it is a tragedy in the classic sense—is that amidst the conflicting pressures of liberal democratic communities and the clashing aspirations of our own ideals, terminating conflicts in modern international politics will continue to be subject to often-crippling contradictions. Thus, as in so many other areas of life, we will do the best we can. What we often do leads to profound confusion, at deep levels, in our moral vision. Especially for those who have been mobilized and have made sacrifices and for families that have lost loved ones in the interest of stopping wars and making peace, the realization that those who made sacrifices may, indeed, have died for nothing can lead to deep cynicism about government and law, and make it even more difficult for leaders who must mobilize their own peoples in the future to do so. In the face of these questions, the international criminal tribunal technique (with its sacred ritual and careful selection of a limited number of defendants, coupled with its avoidance of the responsible elites whose cooperation may be necessary for terminating the conflict) emerges as a way of resolving this moral dissonance. In the final analysis, it may serve to

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53. See generally W.M. Reisman, *Too Bad If My Self-Determination Destroys You*, INT'L HERALD TRIB., Aug. 14, 1992, at 4.

reinforce national leadership and, ironically, enable that leadership to call upon its citizens to help conduct wars, if not to stop them and then make peace.