

## The Limits Upon Civil-Military Interactions in the Post-Cold War World

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### ABSTRACT

Since the fall of the Berlin Wall, the steady rise in the incidence of disorder has seen a commensurate increase in the demand to use military forces in diplomatic and constabulary roles. The essay opens by mapping five dimensions of this new space.

New circumstance has taken military forces into three distinct directions:

- Towards peace enforcement, when it has proved impossible to conduct traditional peace-keeping;
- Towards humanitarian relief and ‘peace building,’ when the absence of other institutions has been such that the military has been obliged to provide ‘virtual government;’
- Towards new types of monitoring mission.

The paper will describe each of these three types of activities. It will describe first military experience, then civil experience and then assess the limits upon each. The paper assumes that it is both appropriate and desirable for there to be an increased degree of civil/military interaction in the new security environment which we now inhabit. Therefore, it argues that it is all the more important to identify the boundaries beyond which it would be unwise to ask military forces to go. To this end, it concludes by highlighting three sets of major missing requirements in civil and military provision.

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## INTRODUCTION

The difference between war and peace was once very precise. Private Price, were he alive today, would be able to witness that very specifically. Unfortunately, he is not here, because he was in the wrong place at the wrong time. He was with the Canadian forces near Mons on 11 November 1918. At 10.45 in the morning, Private Price and some of his colleagues came under attack from a German machine gun position on top of a mine dump. He lost his life, in fact at 10.58 and, thus, has the dubious honour of being the last allied soldier to lose his life in the Great War. Had he been in the same place five minutes later, he would not have lost his life because at 11.00 the German machine gun post dismantled its gun, raised its flag and marched down from the top of the mine dump. So, Private Price now lies in the cemetery at St. Symphorien, near Mons, together with the last British soldier, who died ten minutes before him, and the first one – they are all in the same graveyard. Were he here, he would be able to witness to the fact that once there was a clear distinction.

Now there is not. We have gone through the hiatus of the Cold War, very properly and accurately named – cold, in that there was a frozen menace of war: immense destructiveness held abeyant by both sides. This posture may (or may not) have had a greater or lesser connection to the fact that no hot war occurred during that period. From the point of view of the Cornwallis meeting and the Lester B Pearson Canadian International Peacekeeping Training Centre in its daily business, that period coincided also with the era of UN ‘traditional’ peacekeeping by blue-helmeted soldiers. Both those eras are now ended. The one evaporated with the quiet implosion of the Soviet Union. The other has not completely disappeared, but is now very much constrained and confined. The areas in which ‘traditional’ peacekeeping can be conducted are quite specific, limited, and shrinking.

## THE LIMITS OF CIVIL-MILITARY INTERACTIONS

In order to discern what the limits are upon civil-military interactions, we must identify the framing boundary conditions which lie in the contexts created by the post-Cold War world, and the nature of the political violence that is to be there encountered. Five dimensions are relevant to our consideration.

### A GENERALISED PATTERN OF UNCIVIL POLITICAL VIOLENCE

The first is self-evident and miserably so. With the ending of the Soviet Union, the relaxation of tension between the former superpower blocs led, among other things, to the bursting apart of the Balkans. Around the violent penumbra of Europe today we see the unexpected, but now generalised pattern of uncivil political violence, which has disfigured the death of the former Yugoslavia. Beyond Europe, we see similar patterns of violence as well. In many parts of the post-colonial world, the state structures created often in a fit of enthusiasm at the

end of colonial rule ('Seek ye first the political kingdom' said Kwame Nkrumah) are now variously and successively eroding or collapsing. That is especially true in Africa.

This first dimension has two implications for us. The first is that we are driven by circumstance to examine more closely than we have done hitherto in our professional lives the legitimacy of power located other than in state sources. It is not simply set before us as a consequence of the coincidence of the 40 years at the end of the Cold War and the 35 or 40 years at the end of the state-structured post-colonial experiment. In fact, it has much deeper roots because we are living through a period in which the suspended debate of the late 18th century is being reopened. All the questions about how individuals relate to superordinate power, which preoccupied Immanuel Kant and his colleagues (and which, we now concede, were prematurely foreclosed by the French revolution, that gave us a working solution for a couple of hundred years, the 'nation state' fusing the individual's moral identity and state), we find reopened spectacularly, and for many troublingly so. In Kant's use of the word, there is strictly a cosmopolitan question about legitimacy in the relationship between individuals and power sources, which touches us and the manner in which we now encounter uncontrolled, and in many ways uncontrollable violence in today's uncivil wars.

Looking at this context, the second implication is a neat inversion of Clausewitz. We see circumstances, not where war is the continuation of politics by other means, but where politics is the continuation of war by other means.

#### EXPERIMENTS WITH POSSIBLE USES OF ARMED FORCE FOR DIPLOMATIC PURPOSES

The second dimension, which is articulated to the first, is that in the ten years since the end of the Cold War we have been put in a position where we are given the opportunity to think about and to experiment with possible uses of armed force for diplomatic purposes, in ways that have not been possible for a very long time. This comes from two circumstances. First, the lifting of the threat of nuclear escalation, obviously. When any attempt to use armed force might have within it the risk of firing that powder trail leading to the nuclear powder kegs laid in the Cold War structure, then that risk was too great.

Due caution demanded that the position of prudence was one in which, while one might not like it, one had to do a deal on spheres of influence, as Churchill did in October 1944 in Moscow sitting with Stalin. That deal is now over. Secondly, for other reasons, this moment of change coincides with large quantities of weaponry, which can reliably deliver extreme precision, becoming available to the industrial armed forces of the world for the first time in modern history.

#### THE PRESENCE ON THE POLITICAL STAGE OF EMPOWERED NON-STATE ACTORS

The third dimension is the presence on the political stage of empowered non-state actors. Undoubtedly, we live in a world where non-state actors, whether they are large corporations

or non-governmental membership organisations, exercise real power. In the last five or six years, there have been several attempts to consider the policy implications of engagement with this world of multiple actors, such as aspects of the global governance report, produced under the chairmanship of Sir Shridath Ramphal and Ingvar Carlsson, in 1994. The issue here is the ‘power shift’ which Jessica Mathews described in her now celebrated article in *Foreign Affairs* in January 1998.

### NON STATE-BASED LEGITIMACY

Related to the presence of empowered non-state actors, which touches on the first implication of the first dimension about the need to look at the different sources of legitimacy than those deriving from a state’s origin, is the fourth dimension. It is the much-discussed but ill-understood phenomenon of globalisation. Globalisation is important for our purposes in the sense in which it has caused the deepening of a great divide in the human family: not the most obvious great divide between the rich and the poor, but something which, to a certain extent maps onto it. It is the divide between the one-third or so of humanity, of which we are all privileged members, which is basically able to operate the levers of power that run the globalised world, and those who cannot. On the one side are we who travel in airplanes, who send e-mails, make telephone calls and who thereby find ourselves living as a day-to-day fact cosmopolitan lives, in which our national identities are frankly less and less important parts of saying who we are. There is a great divide between those of us who ‘ride the juggernaut,’ in Tony Giddens’ memorable phrase, and the two-thirds of the human family who have not yet made a telephone call, who do not have access to the levers of power, and who find themselves in a situation where globalisation, far from empowering and broadening their horizons, throws them back upon themselves, makes them introspective.

In his dramatic book on this subject last year, *False Dawn*, John Gray makes strongly the point that the net major consequence of globalisation is the increase in introspection and fragmentation in the human family, rather than any compensatory increase in the degree to which we join together. It is simply a cultural conceit of the minority to think that we are the defining characteristic of globalisation — we are not. Within that two-thirds family, the reversion to a fiercely articulated and often bloodily defended self-identity, expressed very frequently in ethnic terms, has become a dominant feature: terms which may (or may not) relate to some historical reality. We live in a world of invented identities, as much as inherited identities. The degree to which we have fallen into the comfortable but dangerous shorthand of talking about such people as ‘Bosnian Muslims,’ or ‘Bosnian Serbs’ is an indication of how casually we have thought about this important issue, unlike the people of that region.

In the first federal census that included questions on religion and ethnic identity, which the federal Yugoslavian government implemented in 1990, the intelligentsia of Sarajevo, much intermarried and unable to distinguish among itself on the crude grounds of the questionnaire, filled in its returns with such replies as ‘bedpost’ to the question ‘What is your religion?’, and ‘street sweeper’ to the question ‘What is your ethnic identity?’ They were making the point that, from a cosmopolitan perspective, this is a facetious way of trying to identify people, and it has been the tragedy of those people of course that they have had this bridle cruelly thrust upon them.

## TENSION IN THE TWO CONVERGENT STRANDS OF STATE AND NON STATE-BASED LEGITIMACY

The fifth dimension is the tension in the two convergent strands of the differently originating legal regimes under which international society is now operating. There is, of course, a state-derived source, Article 2 Section 1, or Article 51 of the UN Charter: the notion that the world is only manageable if we recognise the degree to which it comprises independent and equal states, in whose internal affairs we do not interfere. At the same time, there is another source of legitimate legal mandate, which as it happens also had its legal root at the same moment that the UN was created, but in another place than San Francisco. The Second World War produced, on the one hand, the fierce resolution that future generations should be saved from the scourge of war that is to be found inscribed in the Preamble to the UN Charter. At the same time, in the judgment of the Nuremberg Tribunal, the equally fierce determination was expressed that individuals should be made responsible for their actions in order that others might be protected in the future.

From Nuremberg was derived the Genocide Convention (which is still to this day the most widely subscribed of international legal instruments) and many others offering a proliferating regime of customary international law, of which the Kosovo mandate is but the most recent and particular case. What is important about it is that it is derived in one part from the identification of gross abuse of human rights, linked to a proposition of the individual's human rights, including a right of access to good governance. In describing the emergence of this new regime, in which he has played so instrumental a part as the first Chairman of the *ad hoc* Commission on the Former Yugoslavia, Justice Goldstone of South Africa points out that the invention of such things as truth and reconciliation commissions carries within it the novel and radical proposition that an emphasis on individuals, and the satisfaction of injury done to individuals, is perceived as a necessary requirement for the reconstruction of civil society. It has to be done at the level of individuals, and he argues with justice that this is what was recognised as part of the logic of taking the truth and reconciliation route in South Africa.

The mandate for the Kosovo operation resides in a general UNSC resolution, which is therefore in conformity with Article 1 of the Washington Treaty, which says that NATO shall do nothing that 'is in any manner inconsistent with the purposes of the UN', a careful form of words. It does not mean to say, as is often misrepresented, that there is an absolute requirement to have a precise resolution from the Security Council on that particular issue. The wording is carefully chosen. I believe that there has been a careful attempt, in so far as possible, to protect the UN in a circumstance where the UN is embarrassed and where it stands at risk of suffering considerable damage. The NATO member countries have been trying, on the one hand, to protect the UN in a circumstance where, on the other, it was equally clear that something had to be done. The something that has to be done is the activation for the first time of the gross abuse criterion. It is a matter of historical coincidence, and in the future will be seen as being peculiarly appropriate, that, on the very day that the air operations against the rump of Former Yugoslavia began, the House of Lords handed down its revised judgment upon the attempt to extradite General Pinochet to Spain to answer for crimes committed in Chile, finding that he was indeed liable to be so extradited.

The point here is that both of these spring from precisely the same source. Both spring from the Nuremberg principle, which is not only one of establishing the nature of war crime and the duties and responsibilities of individuals for their actions. The other part, Article 17 of Nuremberg, says explicitly that heads of state have no protection from their actions by virtue of their status, and these two link together lineally. Indeed, Lord Justice Steyn made the linkage explicitly in his judgment on the first hearing. In finding for extradition, he pointed out that if Pinochet were to be granted immunity then so should have been Hitler and his colleagues for the act of genocide against the Jews. In that case, by implication, Nuremberg should be declared to have been a mis-trial. Since he did not take that view, therefore extradition was proper. These are momentous and important times.

However, this is not an absolute divide – there is a tension, but not a conflict. The well-drafted UN Charter is not the expression of a single view. Instead of looking at Article 2 Section 1, look at Article 1 Section 2, which speaks of equal rights and self-determination of peoples, not of states. Most importantly, look at Chapter 12 and the clauses which deal with trusteeship. There are opportunities here for construction of a durable basis for moving into the new regime of international action in such a way that we do not damage unnecessarily institutions which it would be worth preserving.

### **SPECIFIC CONTEXTS OF CIVIL-MILITARY INTERACTIONS**

The arena is now mapped. Within it, we must now inquire in what specific contexts civil-military interactions occur? Each of three circumstances will be described briefly, first in terms of military experience, then in terms of civil experience, and thirdly the limits on each will be reviewed.

#### **THE SHIFT IN THE CENTRE OF GRAVITY FROM PEACEKEEPING TO PEACE ENFORCEMENT**

The first circumstance is the shift in the centre of gravity from peacekeeping to peace enforcement. Since 1990 there has been a rising demand for what was originally called peacekeeping, during the period of the UN boom from 1990-95. Peacekeeping still continues as a requirement, but in restricted circumstances — the blue helmets, the white vehicles, the symbolic armament, the protection of the peacekeeper by virtue of his or her perceived neutrality and, of course, that implicitly based upon the recognition by all sides of the authority of the UN, or of the threat that interfering with peacekeepers will not be good for your health.

The decisive shift in the era of peacekeeping came in July 1995 in Srebrenica. The Dutch battalion was caught on the cusp — they were not equipped as troops, sent in harm's way in hostile territory, and they were over-armed to be symbolic, and could therefore not unreasonably be represented by the Bosnian Serbs as merely acting as protectors of the armed soldiers of the Muslims continuing to remain within the enclave. They were forced to withdraw ignominiously, leaving the 6,000 men to be massacred, and all the things which

Europeans thought they would never see again after the end of the Third Reich were suddenly to be seen. It was the turning point. The issue raised by Srebrenica was not just one of whether robust action should be taken, as it then was by General Smith which contributed to that circumstance which led to Dayton; it also highlighted the importance of there being strategic consent.

At the cusp between peacekeeping and peace enforcement, the Wider Peacekeeping definition, produced by the British Army, still remains the most workable. The view taken is that consent exists in two parts. There is an inner or tactical boundary local to the context and an outer or strategic boundary, which if not present makes any form of peacekeeping, as distinct from fully-protected khaki-coloured military presence, extremely dangerous. The point at issue is that it is quite possible to operate successfully in a circumstance where strategic consent has been given, but where tactical consent is lacking. Convoys can be fairly vigorously protected, as indeed various of the units within UNPROFOR successfully did. However, if strategic consent is not forthcoming, then it would be wise to withdraw. If a return is envisaged, then it should be undertaken properly equipped and properly armed with the necessary panoply of weaponry and the will to use it. The Rubicon is crossed. It was crossed in the summer of 1995. It will be very surprising if NATO troops ever again are allowed in harm's way symbolically armed. The context in which peacekeeping, in the earlier sense, is undertaken continues in places like Cyprus or Haiti — islands mainly. However, the general trend is unmistakable and is away from this, into the era of peace enforcement.

For civilian agencies, where there is tactical as well as strategic consent, then relief action is possible, and emergency food aid especially can be delivered. This activity of the non-governmental sector, as well as the UN acronymic agencies, has been most hotly condemned by analysts such as Edward Luttwak. Luttwak recently argued passionately for the condemnation of NGOs and recognition of their actions in *intensifying* suffering by prolonging war in almost all circumstances where they have intervened. Luttwak argues that the natural consequence of war is peace, but only when the victor has won. To intervene in order to stop this quasi-Darwinian process, in any form, is to confuse kind-heartedness with clear analysis. Far better to allow the matter to resolve itself, and then to deal with the consequences after the end of the fighting.

There are others who do not take quite so fundamentalist a view as Luttwak, but who certainly would sustain the case, with justice, that there are demonstrable examples of intervention by the civilian aid-providing bodies leading unintentionally to the feeding of the soldiers rather than of the intended recipients. A structural deformation within the politics of the circumstance thus occurred, which was neither understood nor wished.

What are the limitations upon civil and military interactions that we learn from this? First, for the military, to understand that it is not possible to force internal changes. It is not possible to counsel people to love each other. We cannot make people stop cutting each other's throats, unless we are prepared to stand a policeman at every house in the country. What one can hope to do is to hold the ring until such time as circumstances emerge in which, perhaps, people decide to do their own peace-building by *internal* process of change.

Secondly, that peacekeeping cannot be successful without strategic consent and, increasingly, situations are now being produced where there is, as a matter of simple fact, no

body that is competent to give that strategic consent. That being so, peace enforcement becomes important if any action at all is to be taken. This requires new sorts of mandates, of which the Kosovo action is the precedent: it is not the end of the process, but the beginning.

The third implication for the military is that a peace enforcement operation cannot easily be turned into a colonial police force. If the requirement is to provide virtual government for a territory where there is no longer any structure, that can be done, but to take the Allied Rapid Reaction Corps and expect it to turn itself from what it was designed to be into a colonial police force would not be easy and might be rather dangerous, both for those to be protected and for the continuing validity of the force. At the time of writing, this is an experience which may be attempted over the next few weeks and months.

For civilians the limitations are more constraining. There are three. First, strict limits on 'politically blind' actions, actions undertaken when intervention seems the right thing to do, but is done without adequate intelligence of the political and cultural contexts into which people are moving. The consequent risks of the diversion of effort, for example of food and medicines into the hands of soldiers rather than of the intended beneficiaries, become real. Secondly, we see limits on the degree to which those intervening civilians can claim to be, or can expect to be seen to be, impartial. Thirdly, there are very strict limits on how much so-called 'peace building' can be done, as a consequence of direct action. Holding the ring applies as much for the civilian as for any uniformed agency from the outside, and the belief that by other means one can do a great deal that will persist after you have gone away is not strongly supported in evidence.

## THE INCREASING DEMAND FOR HUMANITARIAN RELIEF

The second circumstance is the increasing demand for humanitarian relief and, on occasion where it is required, for virtual government to be provided. The very strength which the military possesses that makes it attractive to ask them to do these things is recognised in disordered parts of the world where the *coup d'état* has become the most popular way of organising government. It is quite simply that militaries are designed as organisational structures proofed against Clausewitzian friction, built to resist disintegration in circumstances where other forms of political or social organisation will disintegrate. As far as humanitarian relief is concerned, where tactical and strategic consent is present, using the military is very expensive and as a general rule not to be recommended.

Humanitarian relief is the classic *milieu* for the autonomous aid agencies and the UN agencies. The UN agencies have all the problems relating to them inherent in their quasi-statal status. A specific example is the UNHCR standard procedure for dealing with refugees. Under the UNHCR procedures the first thing that one attempts to do is to persuade people to go back home. Then the other circumstances that follow are dealt with. In other words, it is a state-derived reference set of instructions. This transitional moment is important and taxing for all the aid agencies because it requires a reconsideration from the very beginning of the manner in which they derive their notions of their own legitimacy.

What are the limitations? For the military the limitation of expense and duration in situations where there is tactical and strategic consent. Secondly, the danger in humanitarian relief operations of being either deliberately or unintentionally used in a partisan manner. An



example is Opération Turquoise and the partisan rôle which the French played as they stirred politics in Rwanda, and the consequences thereof.

The limitation on the civilian side is upon the ability to operate independently and safely. It is the consequence of a certain heroic irony. The arrival of the regime of enforceable human rights, much praised and supported, brings with it a real conundrum for those seeking to bring succour impartially, in the traditional manner, to the defenceless in conditions of war. For example, those following the mission for which the ICRC was set up. The impartial aid-givers find themselves, whether they wish it or not, identified with those, such as Commissioner Emma Bonino standing in trousers with a cigarette in her mouth on the tarmac in Kabul announcing to the world's press that she was there in order to represent and protect the rights of Afghan women — this in a context in which the Taliban were conducting a government which was seeking to impose a stricter reading of the Shari'a. It can be argued that what Emma Bonino was doing by declaring the partisan agenda of enforceable human rights was absolutely correct, in cosmopolitan terms, but it has had consequences. One is that the Red Cross no longer can protect either victims or even its own staff, as formerly. It has been physically the case for those ICRC employees who were deliberately targeted and shot. Stimulated by this, over the last couple of years, the ICRC has been running a series of workshops thinking about protection and looking at the ways in which people are beginning to react on the ground. One is to employ security contractors (mercenaries), as several aid agencies have been obliged to do in Angola, to take one example. Without doing so, the continuation of any of relief operation would have been impossible. But there are very difficult questions implicit in this for the civilian side. The degree to which civilians wish to try to maintain visibly and openly independence from those other parts of their own community in the rich cosmopolitan one-third of the world that is working in a theatre of operation becomes a matter which they have to decide on and for which is no cost-free answer.

The other characteristic, which is worth noting, is the rising importance for a successful operation of obtaining accurate local information, particularly accurate information about power structures and the likely cultural and social effects of proposed actions.

The third of the tasks that has been laid on both the civil and the military is that of monitoring. Since the end of the Cold War, from the military side the possibility has increased considerably to tap directly or indirectly, and to process national technical means and their output, and particularly to employ remote sensing data and to interlink those data with NGO databases. One example is the successful World Resources Institute partnership with parts of the intelligence community in the US, linking up with their databases and producing a much enhanced quality in resource mapping.

On the civilian side, the need has increased sharply to develop real working early-warning systems that deserve that description, unlike the early-warning systems that were unable to warn, early or late, of impending crises during the famines of the late 1980s in Africa, and particularly in the Horn. This requirement can profit very considerably from using security modes of assessment. For the last few years work has been ongoing in the UK to attempt to build an improved method for strategic assessment, which is applicable in these sorts of contexts as much as it is for new forms of military tasks.

What are the limitations in this area of monitoring, since quite substantial new opportunities exist on both the civilian and the military sides? They are, first, money and political will, but those can be overcome, the former usually when the latter is available. Secondly, there is a technical question principally for the military community. How to field efficient methods either of declassifying or of shielding data sources so that National Technical Means (NTMs) do not become compromised. Again, with a little creative improvisation this can be done and it has been done with great profit. The third, particularly from the perspective of civilian agencies, is the danger of co-option. From the point-of-view of NGOs that pride themselves on their independence (*Médécins sans Frontières* is perhaps the most aggressive example of this), there is an obvious danger of co-option. Increasingly, in practice, circumstance has already answered the question in the field for civilian agencies. There is no control over that.

## REQUIREMENTS OF THE POST COLD WAR WORLD

What are the requirements that have now to be met in this world, aspects of which are bleak but some of which, particularly under the monitoring heading above are rather brighter and rosier? They are three: in the areas of intelligence, in the shape and structure of military forces, and in the provision of political and legal mandates.

### A MUCH BROADER FORM OF SYSTEMATIC INTELLIGENCE GATHERING IS NEEDED

There is now a common requirement for a different, much broader form of systematic intelligence gathering for the military and civil communities. It looks routinely at more variables, and is much more locally sensitive. In the strict sense of the word, it is a much more anthropological form of intelligence gathering than has been undertaken, certainly on the military side, in the past, when it was easy enough to deploy worst-case analysis to look for military means to deduce intention from capability and then to do no more. That clearly is not sufficient on the military side, and it has never been sufficient on the civilian side. There are ways in which that collaboration can be rapidly accelerated. The danger of not doing so, is becoming clear in early analysis of some of the UN operations during the period of the UN boom in 1990-94, before the UN bust in which we are now.

This shows the degree to which intelligence was provided as a sort of inverted triangle, whereby frequently the ramified external structure was balanced on an extremely fragile and narrow point in terms of viable local information. None of that is very surprising, or would not be very surprising to any competent field anthropologist, or indeed to any competent member of the Indian civil service in the 19<sup>th</sup> century when the worst thing that could happen to his professional honour was for a famine to occur in a Collector's district without him knowing that it was going to happen. In practice, we have seen military intelligence organisations in the Former Yugoslavia adapting themselves to these new needs. The British Army Intelligence Corps found itself faced with a requirement to find an indicator of normality in Sarajevo - not something which an organisation set up to count tank tracks is automatically able to produce. Given the inventiveness of its personnel, they worked out how

to produce a basket of items that could be purchased in the market at Sarajevo in order to monitor micro-economic price changes.

There is therefore an intelligence requirement which is in common, whereby a great deal can be done to answer the needs of both communities. There are rather few limits on what could be explored.

### MILITARY PRESENCE IS NEEDED

The second requirement is for military presence. Military force, if it is to be useful in the circumstances of peace enforcement, in circumstances of holding the ring, has to be capable of being deployed and held in abeyance at a distance, possessing a full range of capability but not threatening anything specific at any particular moment. It has to be able to sustain for long periods of time. It is not military force which is usefully described in the unhelpful shorthand of the Cold War. It is not 'low intensity' military force, contrasted with the 'high intensity' military forces that were required for Article 5 tasks of facing down the Warsaw Pact. Indeed, the whole 'high/low intensity' spectrum has been a substantial block in being able to change ways of thinking about force planning.

### NEW FORMS OF MANDATE ARE NEEDED

The third requirement is new forms of mandate. The bottom line is that sovereignty is no longer the card which trumps all others. It is a strong card, a card which will frequently, but not automatically win the trick.

What we are going to live through is a continuation of the current, exciting and hugely impressive evolution of customary international law, which we are witnessing even now in Kosovo. How will this evolution continue? Exploitation of Article 1 Section 2 of the Charter is one way. Revising Chapter 12 in new circumstances. Article 75 is going to be important. Such territories may be placed under trusteeship that are then decided by individual agreement. Article 46 Section C specifies the reason why territories should be under trusteeship, specifically referring to respect for human rights. Article 77 1 Section C defines the mechanisms, 'territories voluntarily placed under the system by states responsible for their administration'. There of course comes the rub, because adapting these sleeping clauses in the UN Charter is not going to be an easy matter. Indeed, Article 78 is a tough one because it explicitly says that trusteeship cannot be made to occur over the territory of member states. What happens when member states have lost their legitimacy in the ways described? International lawyers are going to be facing these sorts of questions in the coming years.

### CONCLUSION

The death of Private Price, with which this essay began, and of all those others in the Great War, led to the failed experiment of the League of Nations. The Second World War led to

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Nuremberg and the UN regime, with all its limitations. We are now at another defining moment. The period between Srebrenica and the Kosovo mandate, July 1995 to March 1999, defines that challenge. When the judgment on the extradition of Pinochet was announced, Ariel Dorfman, the now exiled Chilean playwright, described the judgment as 'Chile's gift to humanity.' Likewise, it may be that Mr. Milosevic will become the cause of Serbia amplifying that gift.