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# TAKING AIM AT REGIME ELITES

## FOREWORD

### THINKING SERIOUSLY ABOUT WAR AND PEACE

ROBERT F. TURNER<sup>1</sup>

A dozen years ago it was my great honor to serve as the first President of the Congressionally established U.S. Institute of Peace. One of our first priorities was to examine a variety of intellectual approaches to peace,<sup>2</sup> ranging from arms control and collective security to third-party dispute settlement. But by far the most remarkable product of this inquiry was a category we called "Political System Approaches" - particularly the work being done under the rubric of "The Democratic Peace" and "Democide." Much of this work, I am pleased to say, was done with the financial support and encouragement of the Peace Institute.

This "new thinking"<sup>3</sup> rejects the conventional wisdom that wars result primarily from ethnic differences, imbalances of power, misunderstandings, or the existence of large numbers or types of weapons, contending instead that the most important single factor in predicting the outbreak of international aggression is the nature of the political regimes involved. Put simply: democracies do not wage war against other democracies. While this issue is not beyond debate, the evidence to date suggests that they never have. Not once in human history. And it is highly unlikely that they ever will.

Some more cautious scholars qualify this. They say that *well-established liberal* democracies do not go to war against each other; and

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1. Professor Turner served as the first president of the U.S. Institute of Peace prior to joining the faculty of the University of Virginia in 1987, where he has taught in both the Woodrow Wilson Department of Government and Foreign Affairs and the School of Law. A veteran of two voluntary tours of duty as an Army officer in South Vietnam and former Charles H. Stockton Professor of International Law at the U.S. Naval War College, he has written extensively about issues of war and peace.

2. See W. SCOTT THOMPSON & KENNETH M. JENSEN, *APPROACHES TO PEACE: AN INTELLECTUAL MAP* (1991).

3. During the transition from Leninism to democracy in the former Soviet Union, it became common to identify individuals who longed for the old ways as Auld thinkers, and to distinguish them from an exciting group of intellectuals who were struggling to build free institutions in Russia and the other new states. Of course, few ideas are really new, and the roots of the democratic peace date back at least to publication of Immanuel Kant's *Zum Ewigen Frieden; Ein Philosophischer Entwurf* in 1795.

it is probably true that the better established and more liberal a regime, the less likely it is to attack other regimes of a similar character. But even without these caveats, the rule seems to hold true, without exception.<sup>4</sup>

For several years, Professor John Norton Moore<sup>5</sup> and I have been teaching a War and Peace seminar at the University of Virginia School of Law. Every spring, our students examine in detail various possible exceptions to the Democratic Peace theorem. Thus far, neither they nor we have found not a single clearly valid exception. The odds of this correlation occurring naturally are at least 1,000 to 1.<sup>6</sup> But even if one could establish one or two exceptions the odds would be too great to attribute the correlation to chance.

Not only are non-democratic regimes far more likely than democracies to engage in major aggression, but they are also more inclined to use violence against their own people, even in peacetime. Professor R.J. Rummel has coined the term *Democide* to identify "the intentional government killing of an unarmed person or people."<sup>7</sup> On the basis of his careful examination, he concludes that approximately 179 million people have died in this manner during the twentieth century - between three and four times more than people than have died in combat in all of the century's wars. And again, the decisive factor in determining State behavior is political structure: the world's megamurders all come from the totalitarian sector.

We now know that there is a strong inverse correlation between free and democratic government and initiation major armed international aggression. Unchecked power is dangerous; as Professor Rummel notes (borrowing from Lord Acton), "Power kills, and absolute power kills absolutely."<sup>8</sup>

If we seriously want to promote peace, we need to recognize this reality and to abandon the mythology that all forms of government are equal, rejecting the politically-correct contention that any suggestion to

4. *See generally*, BRUCE RUSSETT, *GRASPING THE DEMOCRATIC PEACE* (1993).

5. Professor Moore is the Walter L. Brown Professor of Law at the University of Virginia School of Law; former Counselor on International Law to the U.S. Department of State, Director of the Center of National Security Law and Center for Oceans Law and Policy, and former two-term first Chairman of the Board of the U.S. Institute of Peace, among his many other accomplishments.

6. I am indebted to Professor Bruce Russett, former Chairman of the Department of Political Science at Yale University, for this estimate, which was made in a conversation at the University of Virginia School of Law in June 1997.

7. R.J. RUMMEL, *DEATH BY GOVERNMENT*, 36 (1994).

8. *Id.* at 1. *See also*, R.J. RUMMEL, *POWER KILLS: DEMOCRACY AS A METHOD OF NONVIOLENCE* 9 (1997).

the contrary is insensitive and chauvinistic. When it comes to promoting peace, it is abundantly clear that all forms of government are not equal. Human freedom matters, as does the public accountability produced by a system of checks-and-balances under the Rule of Law.

But this is only part of the solution. A different strand of modern scholarship<sup>9</sup> has demonstrated that tyrants launch aggression when they perceive it is in their interest to do so. The great wars of history have not resulted from the victims being too well prepared or from an out-of-control arms race. Rather, they come from perceived *weakness*- from a lack of military power, or above all else a lack of apparent *will* to use power effectively - and a consequential absence of effective deterrence. As Thomas Jefferson explained:

Justice . . . on our part, will save us from those wars which would have been produced by a contrary disposition. But how can we prevent those produced by the wrongs of other nations? By putting ourselves in a condition to punish them. Weakness provokes insult and injury, while a condition to punish it prevents it. I think it is to our interest to punish the first insult; because an insult unpunished is the parent of many others.<sup>10</sup>

The great Chinese theorist Sun Tzu wrote more than 2500 years ago: "To win one hundred victories in one hundred battles is not the acme of skill. To subdue the enemy without fighting is the acme of skill."<sup>11</sup> Our goal ought not to defeat all of our potential adversaries on the battlefield, but rather to deter war before it starts and to live in peace with all states.

Man is neither inherently good nor evil, but rather naturally prone to pursue perceived self-interest. When tyrants gain political power and are able to internalize benefits while externalizing cost - e.g., by launching wars for their own profit to be paid for by the blood of the children of their subjects - they often find aggression attractive. Knowing this, the job of the international lawyer or strategist who wishes to promote peace is to alter incentive structures to modify those perceptions. This can be done by reducing the perceived benefits of aggression,<sup>12</sup> by increasing the

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9. Particularly valuable on this subject is DONALD KAGAN, *ON THE ORIGINS OF WAR AND THE PRESERVATION OF PEACE* (1995).

10. Jefferson to John Jay, Aug. 23, 1775, 8 *THE PAPERS OF THOMAS JEFFERSON* 426, 427 (Julian P. Boyd, ed. 1953).

11. SUN TZU, *THE ART OF WAR* 77 (Samuel B. Griffith, ed. 1963).

12. To take an example from domestic criminal deterrence, a home owner might make it known that his valuable art or coin collection has been removed from the home

perceived cost,<sup>13</sup> or ideally by a combination of both.

Historically, one of the biggest errors in trying to bring "new thinking" to the business of war and peace has been a failure to distinguish between whose perceptions need to be altered. Thomas Jefferson proposed as early as 1794 that the United States "should give the world still another useful lesson, by showing to them other modes of punishing injuries than by war, which is as much a punishment to the punisher as to the sufferer."<sup>14</sup> Jefferson had an opportunity to test his theory during his second term as President when he persuaded Congress to enact the Embargo Act of 1807,<sup>15</sup> but the policy failed and the act was repealed by Congress under pressure from New England merchants.<sup>16</sup>

The difficulty with Jefferson's embargo was not the principle of using non-forceful sanctions as an alternative to military means, but rather his choice of a target. The decisions Jefferson wanted to change were made by London politicians. The Embargo act shut down textile plants in Liverpool and put unemployed workers on the streets, but did not directly hurt the interests of the decision makers whose behavior he needed to influence.

As the article which follows demonstrates, there is a growing appreciation that our problems are not with the *people* of Iraq, Libya, North Korea, or any other country where we seek to guard the peace; but rather with the *regime elites* who actually make decisions in these countries. Saddam Hussein was readily prepared to sacrifice hundreds of thousands of his country's sons if necessary, just as he had done in his war against Iran a few years earlier. His soldiers and citizens were not naturally our enemy, and their primary error was to be unfortunate enough to be born into a country run by a vicious tyrant.

The invasion of Kuwait in August 1990 was attractive to Saddam because he had managed to externalize the "cost." As I argued at the time,<sup>17</sup> the key to dissuading Iraq from continuing its unlawful aggression

and secured in a bank vault.

13. Again using a municipal metaphor, the homeowner might install stronger locks or an alarm system, move next door to a police station, install a video surveillance system, or take numerous other steps to increase the difficulty of access to valuables and increase perceived risk of apprehension and punishment.

14. Jefferson to Tench Coxe, May 1, 1794, 8 THE WRITINGS OF THOMAS JEFFERSON 147-48 (Paul Leicester Ford, ed. 1904).

15. 2 Stat. 451 (1807).

16. For a discussion of the embargo, see FORREST MCDONALD, THE PRESIDENCY OF THOMAS JEFFERSON 143-149 (1976); ROBERT M. JOHNSTONE, JR., JEFFERSON AND THE PRESIDENCY 268 (1978); EDWARD CHANNING, THE JEFFERSON SYSTEM 268 (1968).

17. See Robert F. Turner, *Killing Saddam: Would It Be a Crime?*, WASH. POST, Oct. 7, 1990, at D1.

was to focus the international community's response on imposing specific discomfort on Saddam Hussein himself. Ultimately, if given no option but to permit the aggression to continue, to lose thousands of our own forces killing thousands of Iraqi soldiers, or to intentionally use lethal force against Saddam Hussein, I concluded that for both legal and moral reasons it was preferable to target Saddam.

To be sure, this upset some people. "One just doesn't do that," I was told. And, indeed, for centuries there has been a general understanding that it is impermissible even during war to kill the adversary's king or leader. As early as 1612, Italian-born Oxford scholar Alberico Gentili—perhaps the best known international law publicist prior to Hugo Grotius—writing in *De Jure Belli*, argued that the natural response to being attacked was to kill the other country's king. But he observed:

This practice, however, is quite opposed to the habits of modern warfare. For now it is the common soldiers who are slain. The leaders, the rich, are saved. . . . [O]ur worthy leaders consult for their own interests in this new fashion; for if they should come into the hands of the enemy, they would no longer have to fear for their own lives, now that the lavish shedding of the blood of the common soldiers has become customary.<sup>18</sup>

Emmerich de Vattel published *Le Droit des Gens* ("The Law of Nations") in 1758, and made the same observation:

Formerly, he who killed the king or general of the enemy was commended and greatly rewarded . . . . Nothing was more natural: . . . the death of the leader often put an end to the war. In our days, a soldier would not dare to boast of having killed the enemy's king. Thus, sovereigns tacitly agree to secure their own persons.<sup>19</sup>

There may have been some logic to such a rule when sovereignty was perceived as flowing from God, to the Pope, to the King; and when the people of a country were but "subjects" of the king who could be ordered about just as the king might dispose of his mineral resources. But those times are no more. Today, the clearly established principle is that sovereignty resides in the people of a State,<sup>20</sup> and since Nuremberg it

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18. ALBERICO GENTILI, *DE JURE BELLI* (1612, John C. Rolfe, Trans., 1933).

19. EMMERICH DE VATTEL, *LE DROIT DES GENS*, bk. III, ch. VIII (1758).

20. Robert F. Turner, *State Sovereignty, International Law, and the Use of Force in Countering Low-Intensity Aggression in the Modern World*, reprinted in, *LEGAL AND MORAL CONSTRAINTS ON LOW-INTENSITY CONFLICT* 59 (Alberto R. Coll, et. al., eds. 1995).

has been established that launching an aggressive war is an international criminal act. The lives of soldiers and noncombatants have moral value, and it is not self-evident that they ought to be placed at disproportionate risk in order to protect the safety of a criminal tyrant.

Not only does the intentional targeting of regime elites conform with the law enforcement paradigm,<sup>21</sup> but it also promotes effective deterrence. And if we really want peace, that is an essential ingredient. The perceived absence of both ability and will were major factors in producing most of the major acts of aggression in this century.

On the broader issue of the causes of war and effective responses, certainly no one in the legal profession has more brilliantly made the case for a new foreign policy paradigm, rooted in incentives and incentive structures, than Professor John Norton Moore,<sup>22</sup> who is cited repeatedly in the article which follows.<sup>23</sup> Indeed, the article originated in a National Security Law course taught by Professor Moore at Georgetown University Law Center, where the writer recently earned his Juris Doctor following extended service as a naval intelligence officer. The paper set the curve, and it fully warrants publication in a respected scholarly law journal.

One need not accept all of Mr. Wingfield's arguments<sup>24</sup> to recognize

21. To be sure, the preferred response to any lawbreaking is to apprehend the accused and subject them to a judicial trial with full due process of law. But the law makes an exception when the perpetrator of illegal acts threatens the lives of the innocent. Thus, every civilized society permits police sharpshooters to kill hostage takers who have the ability and express the intention of killing hostages. Here, society must balance the accused perpetrator's right to due process of law against the right to life of the clearly innocent hostage.

22. Most of Professor Moore's work has been in the form of teaching and lectures, but he has published one very important article summarizing his paradigm. See John Norton Moore, *Toward a New Paradigm: Enhanced effectiveness in United Nations Peacekeeping, Collective Security and War Avoidance*, 37 VA. J. INT'L L. 811 (1987).

23. Professor Moore deserves recognition as the father of National Security Law as an academic specialization. He began teaching the country's first course in Law and National Security about twenty-five years ago and (with the present writer) established the Center for National Security Law in 1981. He is the principal editor of the casebook, *National Security Law*, and for six years served as Chairman of the Board of the U.S. Institute of Peace. Over the past eight summers, the Center under his direction has trained scores of law and political science professors and practicing government national security lawyers from five continents, and many of the nation's most senior national security lawyers have been trained in one way or another by Professor Moore.

24. For example, I would analyze the intentional killing of violent international aggressors under the law of self-defense, and would distinguish such acts from assassination on the grounds that, by definition, assassination is a form of murder. A tyrannicide may or may not be assassination, but to be lawful I believe any use of lethal force in this setting must be in response to an ongoing campaign of violence that is reasonably certain

the value of his contribution to this very important topic. He has done our community a great service for which he deserves our gratitude. No issue ought to be of greater concern to readers of the *Maryland Journal of International Law & Trade* than the role of law in avoiding war and other significant acts of transnational lethal violence. Because of this, the *Journal* deserves high praise for its cutting edge contributions to the cause of peace. The article which follows, and the lead article in the Spring issue,<sup>25</sup> raise issues of momentous importance in the ongoing intellectual struggle for effective legal remedies to these troublesome issues.

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to take more innocent lives unless effective action is taken. In that setting, whether the target is a uniformed general, a civilian head of state who personally was involved in the decision to use force, or a leader of a non-governmental terrorist organization like Osama bin Ladin, lethal force may be a moral and legal option. See Robert F. Turner, *In self-defense, U.S. has right to kill terrorist bin Ladin*, USA TODAY, Oct. 26, 1998 at 17A.

25. Walter Gary Sharp, Sr., *Revoking an Aggressor's License to Kill Military Forces Serving the United Nations*, 22 MD. J. INT'L L. & TRADE 1 (1998).



