

ADV

A DIFFERENT VIEW

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Editors:
Felipe Nunes
Thomas Bobinger
Tobias Franke



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Editorial

Welcome to Issue 24 of A Different View

Tobias Franke
Thomas Bobinger
Felipe Nunes

The 24th issue of ADV is also the last one in the year 2008. As mentioned in the editorial of last month, we decided to put both issues under the heading of “security”.

The year 2008 saw security challenges in various forms. The Russian-Georgian war in August was an example of a so-called “*hard*” security issue, whereas the Russian announcement to station Iskander missiles in Kaliningrad as a response to the Bush Administration's plans to deploy an Anti-Ballistic Missile Defence in Eastern Europe can be qualified as security *rhetoric*. Yet, also *insecurity* was on the rise in European states, where national governments continued to hollow-out fundamental rights of their citizens in their war on terror.

The year 2008 was thus not so different from other years. If you remember 2006, Lebanon and Israel fought a minor war, North Korea became nuclear and Iraq became bloody enough to trigger change in the US congress, bringing the Democrats to power. This year, the will of the American people swept to power the Democrat Barack Obama, an even bigger change, who will

be the 44th President of the USA.

Similarly, in the European Union not much changed over the years. In 2005, the constitutional treaty was rejected by French and Dutch voters, in 2007, the German Chancellor Angela Merkel hammered out a mandate for an Intergovernmental Conference in Lisbon, and in 2008 the Irish rejected the result of that conference. As if that is not enough, from the sideline, two Eastern European countries just keep on bashing the treaty, even though one of them got almost everything it wanted during the mandate negotiations, everything but the square root for which they were prepared to die for. Hence, while Europe's “strategic partners” rub their hands and say: “well, well, same old, same old, nothing new on the old continent”, the genocide in Darfur got three little brothers, the crisis in East Congo, extreme violence in Kenya, and pirates in Somalia.

In the light of these security challenges, the articles we drew together in the 24th issue of ADV will deal with security in its various forms.

In an opinion article, **Tobias Franke** will deal with the European Union's anti-piracy

mission Atalanta, while **Thomas Bobinger** presents the first part of a two-part series on developments with the European Union's Justice and Home Affairs.

In the academic section, **Jonathan Soderberg**, will tackle the question of whether media is crucial for terrorism, and **Saskia Dewitz's** researched to what extent religious and civilizational differences are causes of contemporary international terrorism. Furthermore, **Bennet Strang** will explain the Maastricht Treaty, the founding treaty of the EU, from an intergovernmentalist perspective. Lastly, **Maren Hofius**, foreshadows the topic of our January issue on the EU and the US, and asks if military necessity annihilates cultural validation, focusing on the interplay between human rights and the US led war on terror.

Berlin, December 31st 2008

Opinion Articles

Nomen Est Omen European Union Mission Atalanta

Tobias Franke

University of Bath
tobias.felix.franke@web.de

The European Union (EU) has an impressive record when it comes to using Greek and Roman mythology for the names of its civil-military missions. In 2003 it named its engagement in Macedonia after the Roman goddess Concordia. According to the legend, Concordia symbolizes harmony and unity, two attributes the EU forces needed to foster and maintain in the aftermath of the conflict between Albanian separatists and Macedonian police and military forces. Moreover, Concordia was honoured for keeping peace and tune between the citizens of Rome capital of the ancient Empire. Taking Brussels as an analogy, Concordia materializes as a wise choice as agreement and harmony were desperately needed between the representatives of the member states after the Iraq crisis in order to ensure a common European approach to the small Balkan country.

Greek goddess Artemis can also enlighten us about the 2003 EU mission in the Congolese province of Bunia. Mythology depicts her as the protector of women and children. Similarly, EU mission Artemis sought to shield the civil

population from atrocities of competing militias in and around Bunia. Moreover, Artemis is seen as free and independent she was never married, had no children and was never subservient to anyone. Maybe this can also be interpreted as a modest side blow in the direction of NATO as Artemis was conducted as an autonomous mission, i.e. without the use of NATO assets.

As a result, it is time to examine in more detail what the name Atalanta can tell us about the latest EU mission and wonder whether we can substantiate the claim *nomen est omen*. Literally Atalanta means well-balanced or even. In this context, it is noticeable that the mission launched on December 8 by a Council Joint Action cannot be accused of being influenced by or biased towards a special national interest, as has been the case with, for example, the EUFOR mission Chad/CAR. Instead Great Britain, France, Germany, Greece and Spain each send a battle ship, some of which carry an extra air patrolling unit. Also, agreement on a mission to combat piracy was formed relatively early on and the preparatory mission NAVCO paved the way for Atalanta.

Nonetheless, a common approach by the member states cannot cover up the too obvious signs of an old EU disease: the gap between expectations and performance. With only about six ships and some air support it is questionable if the mission can live up to its Greek patron known as a swift hunter when it has to control an area off the Somali coast equal to the size of Western Europe. Experts estimate that even with 100 ships the security shield would not be waterproofed.

As a proper goddess Atalanta also frequently consulted the local oracle for advice. It told her that she would be ruined if she ever got married. At first sight, Brussels, fortunately, has not been confronted with such matters. However, at a closer look we can see considerable problems when it comes to the legal side of the European honeymoon in the Gulf of Aden. While the Council mandate is robust about arresting and bringing pirates to court, it cannot solve the question of what to do when other state simply refuse to accept the pirates. An Indian ship currently 'hosts' 23 pirates who were arrested during their attempt to kidnap a ship. However, neighbouring states and their countries of origin Somalia and Jemen show little interest of bringing them to justice. Moreover, the Council mandate underlines that prisoners will not be delivered to any country using the death penalty. These two points taken together, it might be up to the EU member states to deal with the pirates national interpretations about how to prosecute them and whether or not they can apply for asylum still diverge.

Yet, do we need an oracle to solve this problem? It suffices to take a look at the straits of Malakka. The sea passage between Indonesia, Malaysia and Singapore used to be the world's most dangerous route with about 120 incidents of piracy in Indonesian waters in the year 2003. After mild international pressure the three states finally decided to cooperate in 2005 and used Western support and technology to reduce the registered acts of piracy to only two in 2008. In sum, we can retain that at least a half-hearted engagement with and between the countries in the region can increase chances for success.

To the disappointment of many spectators the EU has not even resolved the ménage-à-trois in the backyard of its mission territory. Besides mission Atalanta, two more command structures cavort in the region: Operation Enduring Freedom and several national missions. None the less, the story of Atalanta has also provided some explanations for these flaws. When

When Hippomenes wanted to marry Atalanta, she told him that he had to beat her in a race in order to tie the knot. Knowing that Atalanta has been the fastest sprinter for years, Hippomenes asked Aphrodite for advice. She provided him with three golden apples he could use to distract Atalanta during the race. Confused by the golden apples placed along the track Atalanta slowed down and Hippomenes came in first.

But is there really a danger that someone will steal the EU's show? The US and NATO both have openly thought about launching their own missions to combat piracy. In contrast to the EU, their mandates might include the fight against pirate hide-outs on Somali territory. The American argument holds that only if the areas of retreat are effectively combated can one dissolve the basis for piracy. Although not everyone would agree with bombing or raiding Somali villages, it is true that the short one-year mandate of the EU could allow the pirates to sit it out after having received an estimated € 90 million from blackmailing this year alone.

Arguably such a hard approach can be advantageous and certainly create stunning images for the media. However, does not the EU have a value added in its approach an approach to often neglected by short media coverage? In other words, even if Atalanta comes in second what exactly does she do with the three golden apples, i.e. what trumps does she have at the end of the race? The EU's three trumps certainly lie in its threefold comprehensive approach to security. Besides the military engagement in the maritime mission, it supports Somalia economically with € 215.8 million from the 10th European Development Fund in the period 2008-2013. The aid focuses on rural development, good governance and education, all of which are necessary to eradicate the causes of piracy and terrorism in a sustainable way. Finally, the EU accompanies the political process of reconciliation in Somalia desperately needed to stabilize a country in disarray since the early 90s. Admittedly, the EU's means are limited. The approach, however, shows that a minimal consensus on the understanding of security exists. In how far this understanding can be put into practice depends on the member states though, keeper of competences (and resources) in security. In the Greek legend the victory of Hippomenes over Atalanta leads to their wedding. In order to be successful in the Gulf of Aden a marriage (of convenience) between the US and the EU might be necessary and desirable; even the more so if we put into perspective one

important root of piracy. After the collapse of state authority in Somalia in 1991, Western fishers exploited the unpatrolled Somali waters. Large fleets overfished the area and Somali fishers considered piracy as the only tool to get back the catch. Hence, it appears imperative that Western countries take long-term responsibilities in Somalia. Once more this underlines the importance of a comprehensive approach to security.

Thus, if *nomen est omen*, we might want to consider supplementing our wishes and advice for the next year towards the Czech and Swedish presidencies with a book about Roman and Greek gods. ... And maybe, mythology could also provide us with a catchy god to sell the unpopular name "Lisbon-Treaty" to the voters in 2009. I suggest Kairos, the god of opportunity and the right moment. After all, the "Kairos-Treaty" would not sound too bad, would it?

Opinion Articles

“The Cube”

An Assessment of Developments in EU Justice and Home Affairs

Thomas Bobinger, LL.M
t.bobinger@gmail.com

“The Cube” is a Canadian science-fiction horror movie directed by Vincenzo Natali from the year 1997. Seven complete strangers are involuntarily placed in an endless Kafkaesque maze made up of hundreds of cubes, which rotate and move according to an impossible to define pattern. None of the protagonists knows why they are put in this nightmare, what the construction is for, and how they are supposed to get out of it. Yet, it is not the fact of being placed, like rats, involuntarily in a gigantic death-trap (many of the cubes through which the protagonists have to pass when they explore the structure contain sadistic and deadly traps), neither is it the utter feeling of helplessness that makes the viewer feel horrified. Rather, it is the slowly emerging fact that there is indeed no purpose, and no reason why they are put in it. The constant question “why was it built and by whom and why me?” makes the viewer notice that indeed the whole ordeal of the protagonists serves no greater purpose, neither scientific nor punishment-wise. It is especially ironic that one of the people in the Cube is an architect, who later in the movie notices that he has in fact designed some of the walls, without knowing who the contractor was, and what the

walls were intended for. Finding himself in the cube makes him wish dearly that he never had supported it and that he should have inquired more fervently into the purpose of his design!

At the time that I write this article, EU Home Affairs ministers are attempting to introduce on EU-level a structure that might not be as deadly as the Cube, but which is at least as frightening and kafkaesque as the movie.

This is the first of two parts on police cooperation in Europe and how some of the fundamental liberties of EU citizens are hollowed out on the European and national level in the name of fighting terrorism. This series is at the same time a call to support the Lisbon Treaty as an instrument that will bring greater say to the European Parliament and national parliaments as well as to the European Court of Justice. This first part will set out the two basic principles around which police and judicial cooperation in the EU are structured. The second and third part, will deal with an evaluation of security measures and how they curtail fundamental rights and human rights as well as the danger they pose to our “Western values”.

Setting events into motion

Police and Judicial Co-operation in Criminal Matters (PJCC), is the third of the three pillars of the European Union, focusing on co-operation in law enforcement. As long as the Lisbon Treaty is not ratified by all 27 Member-States, decision-making in the third pillar remains intergovernmental, meaning the European Parliament has no veto powers, and the European Court of Justice can exercise only limited judicial oversight over legislative acts adopted by the responsible national ministers coming together in the Justice and Home Affairs Council (JHA Council).

In the so-called "area of freedom, security and justice" (AFSJ), the aim of police and judicial cooperation in criminal matters is to ensure a high level of safety for EU citizens by promoting and strengthening speedy and efficient cooperation between police and judicial authorities. Its aim is to prevent and combat racism, xenophobia and organized crime, in particular terrorism, trafficking in human beings, crimes against children, drug trafficking, arms trafficking, corruption and fraud.

Since the inception of cooperation in criminal and judicial matters in the Maastricht Treaty there have been two multi-annual programs adopted by the European Council of Heads of State and Government, which will be followed by a third one, which will probably be adopted under the Swedish Council Presidency in the second half of 2009. The first was the so-called Tampere Program. It was meant to set the political objectives to be achieved by third-pillar measures between 1999 and 2004.

The first principle: Mutual Recognition

The basic principle that was put forward under the Tampere Program was the "principle of mutual recognition". This is a concept that is already well-established in internal market law, since the European Court of Justice decided in the case "Cassis de Dijon" in 1979 that if a product manufactured in one Member State satisfies the requirements laid down by national law and is allowed to circulate in that Member State, the other Member States have to allow this product onto their markets without stipulating further requirements about its quality or safety. Under the assumption that in order to guarantee a functioning internal market it is neither possible nor necessary to standardize each and every product circulating in the Member States, the European Commission picked up the principle

proposed by the Court and transformed it into one of the core principles around which the common market is structured.

The Tampere Program proposed in 1999 that the common area of freedom, security and justice should be structured around the same principle, meaning that the principle of mutual recognition should be applicable to police and judicial decisions. Hence, Member States are to recognize the judicial and police decisions of one Member State, without stipulating further requirements and act on these decisions without starting a procedure of their own. Thereby the Commission and the JHA Council assume that each Member State guarantees a sufficient protection of fundamental and human rights and that e.g. procedural rights in criminal matters are safeguarded by national law. Since then the European Commission has come up with an array of measures forging the political objectives of Tampere into concrete legal obligations.

The first measure adopted under the aegis of the Tampere Program and implementing the mutual recognition principle was the "framework decision on the European arrest warrant and surrender procedure", which abolishes the sometimes cumbersome and often politically sensitive extradition procedure between Member States. It represents a major achievement in facilitating the surrender of people whose return is sought for prosecution or to execute a prison sentence.

However, with respect to the European Arrest Warrant it is problematic that the principle of double criminality is done away with. The latter principle is a standard principle governing traditional extradition agreements between states, stipulating that extradition will be refused if the alleged act for which a person is wanted is not defined as a crime in the country from which extradition is requested. Abolishing the principle of double criminality assumes a great amount of trust in the legal systems of all the 27 Member States of the European Union, especially with regard to Member States whose legal systems are still in a state of transition and who are still dealing with legislation made under their communist regimes. Hence there is good reason to include Art. 38 in Bulgaria's and Romania's EU Accession Protocol, which states that if there are serious shortcomings or imminent risks of such shortcomings in Bulgaria's and Romania's transposition of measures relating to mutual recognition in the area of criminal law the EU may temporarily suspend the application of relevant provisions and ignore decisions taken by judicial authorities in Romania and Bulgaria.

The second principle: Availability

However, it is the second multi-annual program, the so-called "The Hague Program" that deserves special attention not only by the media and scholars, but also by ordinary citizens, as this program introduced another principle that might infringe not only on people's everyday lives, but also on some of their basic and most valued human rights, namely their right to respect for private life (data protection) and the right to an effective remedy, meaning a right to suitable judicial review.

After the Tampere Program introduced the principle of mutual recognition, EU ministers decided it was time to fill this principle in with another one: The principle of availability. This is a name that drives no-one to the streets to demonstrate against and yet it is the basic principle around which The Hague Program (due to run out in 2010) and probably also the next multi-annual program is structured. The principle of availability means: if data is held somewhere then it can be shared between law enforcement agencies. Under the imperative of 9/11 the state of crisis and emergency that was proclaimed, was more and more accepted as the normal state of political and social life. Under the assumption that security is the core value of our society, and under the further assumption that absolute security and safety can be achieved through technological progress, the political elite invented a principle that in the words of Tony Bunyan, director of the NGO Statewatch: "will become the guiding light for access to personal data held by national law enforcement agencies in other EU member states."

The aim of the European governments may seem worthwhile at first: In order to fight terrorism and organized crime such as human trafficking, drug trafficking and money-laundering, law enforcement agencies should have direct access to data held by another Member State. It follows from the nature of globalization, interconnected markets, and a European Union in which people enjoy free movement that organized crime is also globalized, freely moving and interconnected. Hence, so the argument of the interior ministers of the Member States, there is a need to create the free movement of information.

For this purpose the principle of availability was supposed to become operational from January 2008 onwards. Up to this point it was quite cumbersome to extract the information from another Member State's database by way of traditional judicial assistance. Such traditional judicial or legal assistance was based on bilateral

or multilateral agreements, which just like the traditional extradition agreements described above, often led to politicization of the process, long time delays and in the end a failure of the process.

The principle of availability symbolizes a paradigm change, as it does away with divergent national laws and establishes a system of "equivalent authorities" which are determined ex-ante, under vague criteria and without an independent supervisory authority. Just like the freedom of movement for goods and persons, capital and services there should be a freedom of movement for information between these equivalent authorities, hindered neither by territorial borders nor differing national jurisdictions nor differing national data protection laws. In fact, the Council states quite frankly that national data protection laws should not impede or stop the flow of information on personal data.

By now there is a Proposal for a Council framework decision on the exchange of information under the principle of availability. Such a framework decision is needed to make the political will, which calls for the application of the principle of availability, legally binding. Even though the European Parliament and the European Data Protection Supervisor, Peter Hustinx, are against it, they both lack the power to substantially change the proposal.

The proposed legislative act on the principle of availability goes much further than what is already possible under the Prüm-regime, which allows for law enforcement agencies to check for information in the databases of Member States on a hit/no hit bases and then request the information via national contact points. A full implementation of the principle of availability would allow for direct online access to the databases from a police station in e.g. the shabby town of Königsbrunn in Bavaria, Germany onto the national databases of Poland or Malta. The types of information that may be obtained under this proposal to prevent, detect or investigate criminal offences are DNA-profiles (without information about specific hereditary characteristics), fingerprints, ballistics, vehicle registration information, telephone numbers and other communications data (and if the data are held by a designated authority even the content data of the telephone conversation), and minimum data for the identification of persons contained in civil registers. These are only six types of data, but a report from the "Friends of the Presidency" identified a total of 49 types of information that should be stored.

It is worrying that in Germany the Anti-Terror database is already holding information on

people's religious denominations and that Dieter Wiefelspütz (a Social Democrat) asked for the inclusion of "*sexuelle Auffälligkeiten*" [sexual conspicuity] in the Anti-Terror database. The inclusion of sexual conspicuity would open doors to a general inclusion of people's sexual orientation in such a database, a practice that lasted from Hitler's regime up to the 1970s in the form of "Rosa Listen" [pink lists] until these lists were finally abandoned in the 1970s. It is always a matter for society, to determine what constitutes sexual conspicuity, and especially Germans should be careful with gathering too much data about people's core identities.

Even though, the principle of availability does not oblige Member States to set up new databases and only applies to data already available, the proliferation of databases in the past years since 9/11 has shown that if it is technologically possible to obtain certain data, those data will in the end be used. Examples are the 2006 Directive on the mandatory retention of all communications data across the EU and a 2004 Regulation on EU passports requiring the taking of fingerprints from everybody applying for a passport from 2009 onwards. In addition large databases are already established under the heading of "immigration and border control". The most well known are the Schengen Information System (SIS), which is to be upgraded to hold more categories of data including fingerprints and DNA (the so-called SIS II) and access to all the data is to be extended to all agencies (police, immigration and customs, and secret services). Furthermore, there is EURODAC, which saves fingerprints of asylum seekers, and the Visa Information System (VIS), which stores the data submitted by visa applicants. Thus it is safe to say that the proliferation of databases will continue, also with regard to continued pressure that the US puts on the EU in the name of fighting terrorism more effectively.

It seems that the retention of data, as well as the surveillance of EU citizens, the proliferation of databases and the easy access to information by secret services, custom authorities, administrative authorities and police authorities as well as Europol has become a fast selling item within the JHA Council. Like an end in itself, police and judicial cooperation was started under the Maastricht Treaty in 1993, and since 9/11 the primacy of security over freedom has led to a whole range of measured curtailing the personal freedom of people, has taken away the ownership over their data, meaning the data subject is to decide to whom and when he wants to reveal his data. And while the final report of the so-called Future Group (which is supposed to set

out certain objectives to be attained under the multi-annual program following the The Hague Program), speaks of a "digital tsunami environment", which is only waiting to be harnessed by new technologies, human activity becomes increasingly surveyed and EU citizens increasingly unfree from the state.

It is doubtful whether the current policy makers, the ministers of interior and justice know what the end-result of their measures is supposed to be. The governments also have not proven so far, at least not through a scientific study that the retention of all these data is in fact reducing terrorism or does indeed help fighting terrorism. Since cooperation in Police and Judicial affairs was started in the 1970s with the TREVI group against the background of rising terrorism in Spain, Germany and Ireland, the persons representing those ministries have completely changed. The current ministers just follow up on the measures started in a different time and against the background of a different threat, maybe without being aware what they are doing in their quest for the holy grail of absolute security. They make it harder each day to reverse the trend, and obstinately strive to complete this area of freedom, security and justice, in which freedom and justice become subservient to the principle aim of security.

Seamlessly, principle is combined with principle, stone is put on stone and it has yet to be decided whether in the end the European House built on three pillars will be a home promising safety and freedom, a home that serves as a symbol of privacy, freedom of thought, a tool for self-fulfillment and a sanctuary against the arbitrariness of the state ... or a gigantic, kafkaesque CUBE in which 500 million citizens are put under a shady purpose to fight terrorism.

Academic Article

Is Media Crucial for Terrorism?

Jonathan Soderberg

University of Bath
ml3js@bath.ac.uk

There are many views on media and terrorism. Contemporary political scientists have tackled this question from the point of view that the media is either pro-terrorist or anti-terrorist depending on which factors you choose to emphasize.

In this essay, the argument will not be whether media increases or decreases incidents of terrorism but will instead focus on the meta-physical issue of the often proclaimed necessity of the media. It is a common academic view that for terrorists getting through the political statement behind their acts is more important than the act itself. The essay will analyse whether in this sense media is crucial for terrorism, is media the cause of terrorism and without media there would be no terror? This alleged co-dependency between the media and terrorism is highly contested and could even be regarded as an argument making the case for censorship, which in itself is a much debated political issue.

The argument will be based on principles from the economics of warfare as well as political and social theories of terrorism. Using this approach, the question of terrorism can be considered from an alternative point of view, one

in which it is to be shown that the main motive of terrorism is fundamentally the same as in warfare. Thus, examining terrorism not merely from a political and social perspective of “just and right”, but from the viewpoint of economics and military strategy, it can be argued that terrorism is a low-cost and high-efficiency weapon to fight an otherwise superior enemy.

The media is a double-edged sword as it can be used to increase the cost but it is not easily used and can do more harm than good if handled recklessly. In short, the media is not the crucial factor for terrorism to occur, but it is a tool that will be used to change the likelihood of terrorist incidents and the cost of terrorist actions. There can be a distinction whether the media furthers terrorist goals or if it fuels and creates terrorism. It is argued that the media only furthers the terrorist objective and that terrorism would occur even if media did not exist.

A much overlooked fact is that the common definition of terrorism - an act of violence for political means - is closely similar to the classical military proposition of Karl von

Clausewitz (1976) that war is not a mere act of policy but a true political instrument, a continuation of political activity by other means. This compares to the framework of terrorism, of the (perceived) inability to reach one's goals through conventional means. The political differences are more concerned with legal and theoretical frameworks such as labelling terrorism as conflict on non-state level. This is however to ignore the close similarities of both actions. If we agree that war and terrorism are similar in motive, namely the implementation of a political message a more specific comparison between the two can be made.

Using the economics of warfare to analyze terrorism is simpler than one would expect. Stahel (2002) outlines two kinds of warfare, asymmetric and dissymmetric. The concept of asymmetric warfare contains ideas of fighting a war against a superior enemy. It involves classical theorems of guerrilla warfare such as espionage, violent resistance, non-violent resistance, sabotage, electronic and information warfare. Dissymmetric warfare is the product of the employment of massive force by the stronger military power against the weaker opponent in a military conflict.

These broad and inclusive terms denote that two sides in a conflict have such drastically different strengths and weaknesses that they resort to drastically different (thus asymmetric) tactics to achieve relative advantage. This theory firmly explains terrorist behaviour as rational if one takes the state as the superior actor and the terrorists as the inferior (Betts, 2002). Terrorists are consciously conducting asymmetric warfare.

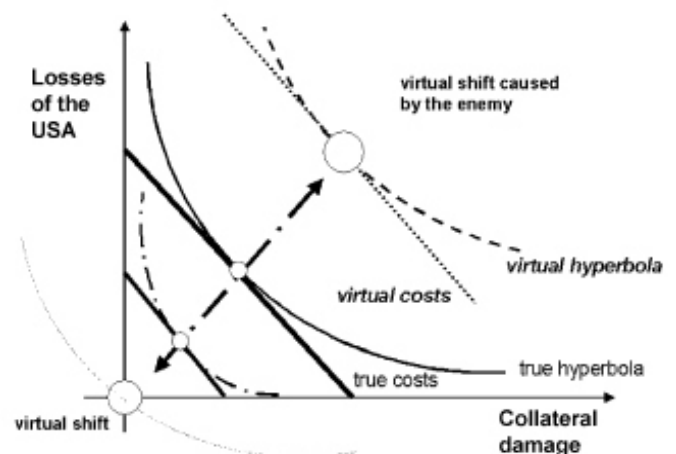
As we have established that terrorism can be accurately described in military economical terms, we can then conclude that the statement of victory in terms of an inferior actor lies in inflicting costs higher than the opposition is willing to accept. Hence, warfare must have low costs and high efficiency in order to achieve maximum impact (Kennedy, 1975). The argument regarding the media is usually that they provide the incentive for terror attacks, in other words, the media and their message is the true cost for the government. In this sense, the public pressure is the true cost that terrorism poses for the government and the main reason for terrorists to carry out an attack (Bell, 1978).

However, economic theorists argue a choice-theoretic approach of terrorism and find that it is only the subjective estimate of success

and failure in combination with the monetary value of each given outcome that are of value (see Landes, 1978: in Sandler and Hartley, 1995). Terrorism occurs when the expected utility is greater than the utility expected without terrorism. We can then conclude that as the media is not an independent factor by itself, it must be examined in its ability to either change the estimate of success and failure or increase or decrease the monetary value of outcomes. It can be said that the investigation is whether the media can change the expected utility from terrorism thus increasing the possibility that it will occur.

So, the question then lies in the possibility of media to affect terrorist decision-making. Is this possibility crucial for the occurrence of terrorism? Economically, Figure 1 outlines the example of dual media effects as a description for terrorism theory. The true cost of terrorism is in terms of losses to the superior actor and in collateral damage (used here in the sense of impact on the terrorist cause) that can be altered by the media. If initial losses have a heavy impact upon public opinion, causing popular opinion to change, it can be said that there is a virtual cost added upon the true costs. This also argues a case for censorship of the media, because when the loss is not made public at all it only carries the purely physical cost. It is in this model assumed that part of the true cost will always be the public cost of opinion. This alters the monetary value of success and failure. Note that a virtual shift can have a negative effect due to adverse media coverage.

FIGURE 1 - Costs of Terrorism



Stahel (2000)

The media can create an additional cost of terrorism upon superior actors, but is this cost crucial to the act itself, i.e. is the media effect calculated when executing the act of terror? If

**FIGURE 2 - Game Matrix:
Asymmetric vs. Dissymmetric warfare**

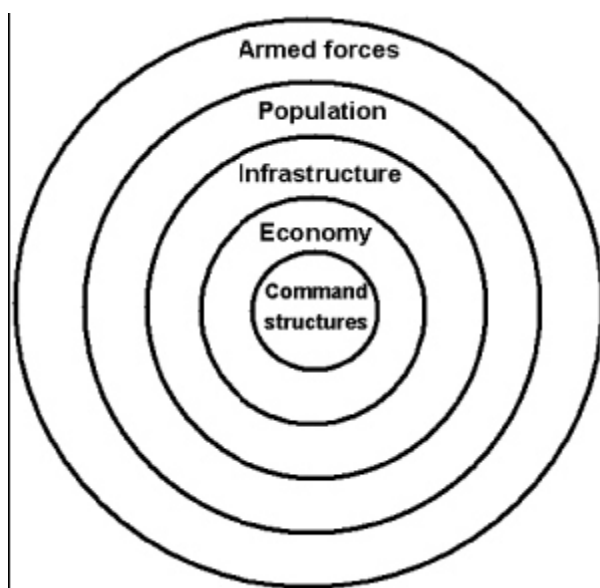
		Superior Actor	
		Asymmetric	Dissymmetric
Inferior Actor	Asymmetric	5, 5	7, 2
	Dissymmetric	2, 8	1, 10

there was no media, would the attack still take place?

Game theoretic analysis of terrorism has lately been applied to this as it often concerns the strategic interactions between two actors. Strategies conclude that utility expected from attacks are greater when choosing asymmetric warfare (Lee, 1988: in Sander and Hartley 1995).

Figure 2 concludes that inferior actors will always benefit from asymmetric warfare (i.e. terrorism) while superior actors must change depending on their opponents choice. Thus, if a political statement must be made, asymmetric warfare indicates maximal utility. As terrorism can be analysed as war both in technical and political terms, interesting developments can be made. Applying our theory of terrorism on Walden's (1995) warfare principles which states that an inferior actor should be attacking from the middle and out according to Figure 3. to achieve maximum impact.

FIGURE 3 - Walden's 5-ring model



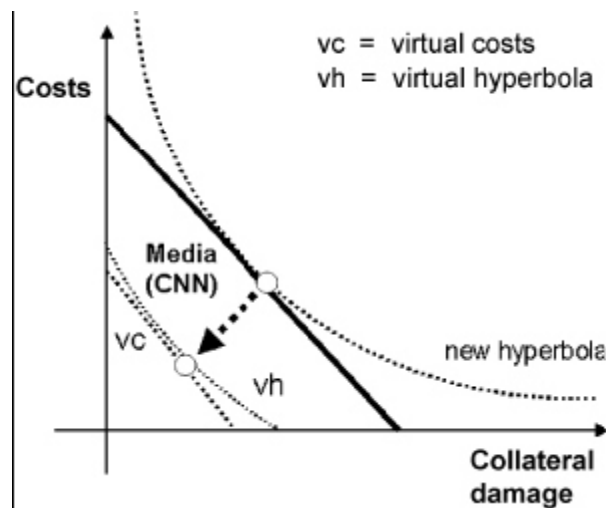
(adapted from Walden, 1995)

In this perspective, when terrorists attack a target they are not doing so solely because it carries a media value, they are instead attacking

an integral part of an enemy in order to inflict maximum cost. Looking at 9/11, we can see that the attack was aimed at all five levels of Walden's model. Viewing terrorism from this model, we can conclude that attacks are not committed because they hold media value, but because it was strategically sound. Of course, the impact was enormous, but this is a direct effect of an attack trying to achieve maximum cost.

We have concluded that terrorism can be seen as warfare and that acts of terror can have their cost increased by media. We have also discussed the theory that terrorists choose targets based on their news-value by arguing that it is instead that targets of value for strategic warfare that are newsworthy and not that newsworthy targets are of value just for their own sake. This is an important but not exhaustive distinction for the discussion whether media is crucial for terrorism. However, as we have discussed that media can increase or decrease losses of superior actors, we must also stress that it can decrease costs of the inferior actors according to Figure 4.

FIGURE 4 - Costs of Terrorist'



(Stahel, 2002)

It is sometimes described as the warfare CNN effect and in simple terms media "picks up

the rifle” of terror by decreasing costs of terrorism. This military economics argument is commonly used as a reason for putting media under military control (Harrison, 1998). This is a clear support of the view that media is indicted as pro-terrorist and crucial for their existence. In contrast, Scott (2000) empirically proves that the expected spiral of terrorism has not occurred. He attributes his findings to the fact that terrorists compete for media attention and to the quickly fading interest of the public in terrorist activities. In equilibrium, terrorists congest the media, limiting the use of additional actions.

This is an area which sees plenty of discussion. Hoffman (1998) among others argues that terrorism is purely the cause of media. That terror attempts such as hijackings and kidnappings are designed and carried out in such a way as to carry the most potential effect by exploiting media, by “spinning” the coverage. While Hoffman lines up plenty of empirical evidence in his favour, he fails to see or perhaps fails to underline a basic principle. If you are fighting an enemy so far superior to yourself that you cannot possibly win a war of attrition by inflicting more harm than they are willing to accept it means that either the costs of inflicting damage are too high, or the efficiency of inflicting them is too low. Hence, terrorists are forced towards media by the fact that their opponents cannot be defeated by the true/physical costs of asymmetric warfare. To win, virtual costs are crucial. The media is in this sense a tool, a weapon in the arsenal of terrorists. It is a means to seek a better allocation of the scarce resource power and it is argued that media is the ultimate weapon to affect politics and economics (Burton, 1979).

In turn, this fuels the question of whether the media is crucial for terrorism. The media is embedded in the institutional system of most nations with freedom of speech and expression. This is perhaps something most treasured by liberal countries. Nevertheless, if terrorism is the consequence of modern media and if thoughts like those of Nacos (2003) “*Without publicity, terrorism would be like the proverbial tree that falls in the forest and the press is not there to report, it would be as if the incident never happened*” (Nacos, 2003, p.23) - were true, would not nations have an incentive to simply take control over the media making terrorism disappear?

Authors argue that this is the beauty and the beast of the power of media as a tool of terror -

There are also arguments which take the position that the media is in fact anti-terrorist. Chomsky (1988) argues for example that the media have a built-in bias towards the superior actor, meaning that terrorist acts will without doubt be reflected negatively, portraying them in a way which de-legitimizes their status. The drought of funds coming from the US to the IRA is a clear example of this, indicating that media power effectively hinders terrorism (The Economist, 2005). Although Dobson and Payne (1982) and Maxwell (2003) indicate and prove that the means necessary for low-cost, high efficiency terrorism is available without backing from sponsors, they fail to consider what would happen if a terror group is de-legitimized unilaterally on an international level. Combined with Chomsky's argument of bias, it would mean that terrorists would have to walk a thin line between what they can do and what they cannot do or else they would find themselves opposed from all directions. Without public support, without initial funding and without a legitimate claim for their political cause they die (Dobson and Payne, 1982). These claims contradict the view that media only promotes terrorism as it can be seen as a double-edged sword. To exemplify this, Nassar (2005) imagines Palestinian terrorists indiscernibly killing Israelis and Arabs to such an extent (a “dirty” bomb in Jerusalem perhaps) that nations around Israel would be forced by public pressure to take action and condemn the attacks. Without refuge and support from neighbouring countries, their cause would suffer.

Here we can begin to discern a differentiation between the roles of the media in relation to terrorism. It is an important detail to consider whether the media furthers terrorists' political goals or legitimizes the terrorists themselves. Certainly the media did not portray Afghan mujahedeen fighting the USSR as terrorists, although they would fit the profile of conducting asymmetric warfare against a superior actor. When US attacked Afghanistan in 2001, the mujahedeen were magically transformed into terrorist insurgents (Maxwell, 2003). This highlights the theory that media is a propaganda tool of superior actors and if terrorists do not play the media game they will be locked out of the political community, i.e. terrorists are forced to use media and not that media forces terrorism (Chomsky 1986, 1991). Inferior actors are forced to use the media but would, if possible, use other viable options to publicise their political cause as the media could arguably reject them in

the interests of superior actors.

In conclusion, it has been shown that media can increase or decrease costs of superior actors by changing public pressure. We also conclude that targets are not chosen because of their news-value meaning that terrorist attacks do not factor in media pressure as a part of their rational decision-making. Attacks are made with respect to warfare theory, to win a war against a superior enemy. The media is used because it enables terrorism to lower their own costs while at the same time provide the possibility to inflict greater harm upon their opponent. Arguments of scholars that the media is the purpose of terrorism, that without media there would be no terror, is exaggerated because they fail to comprehend that the media is in the eyes of terrorists a tool for a continuation of politics. On the margin, media effects would have impact upon decisions regarding warfare choices in the Walden 5-ring model and in choice-theoretic approaches but from a military terrorist perspective, causing costs in the conflict itself are of more importance. The media will further the goals of terrorism but not create terrorism. Denying terrorism the oxygen of publicity is not only impossible, it is also pointless and as Chomsky (2003) argues, if the media is biased in your favour, it may actually work against terrorism and blur the distinction regarding the moral and ethics.

Political pressure is an additional cost, but it is not the crucial cost. Terrorists would continue to fight even if no-one ever knew about it. Terrorism is a continuation of politics by other means and as the media is a part of the international system it cannot be avoided, it will be taken into account in terrorist decision-making processes. Thus, analyzing terrorism by economics of warfare leads us to conclude that there is a convincing argument that the use of media by terrorists is rational, but not crucial for its existence.

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Academic Article

To what extent are religious and civilizational differences a cause of contemporary international terrorism?

Saskia Dewitz

University of Bath
sdewitz@jacobs-alumni.de

“The uncertainty and unpredictability of the present environment as the world searches for a new world order, amidst an increasingly complex global environment with ethnic and nationalist conflicts provide many religious terrorist groups with the opportunity and the ammunition to shape history according to their divine duty, case and mandate while they indicate for others that the end of time itself is near.” (Ranstorp, 1996, p. 62).

Introduction

Since centuries differences in cultures and societies have caused human beings to wage wars against each other. Already a thousand years ago, during the Crusades (1095-1291 A.D.) violent wars of Christians trying to fight against the threat of a Muslim expansion in the Near East and in West Turkey can be found. Later, from 1618 until 1648 the infamous Thirty Years' War took place in central Europe, ending

with the Treaty of Westphalia. During this war, Protestants and Catholics fought each other extremely violently, for example killing one quarter of the German population. The Peace Treaty of Westphalia then gave way for the creation of a secular state, separating state from church, which still serves as a basis for many Western and Western oriented countries today.

“The 'founding act' of much IR thinking, the peace of Westphalia is widely seen as the end of an era where international relations and wars had been about religion.” (Laustsen & Waever, 2000, p. 706).

However this was not the end of religious conflicts, as throughout the centuries that followed the Treaty of Westphalia people from different confessions still fought each other. A good example for this can be found in the long lasting Northern Ireland conflict, again of Protestants against Catholics. Especially throughout the 20th century, numerous acts of terrorism shook the Republic of Northern Ireland resulting in a large number of civilian casualties.

Nevertheless, especially after the end of the Cold War, international terrorism increased immensely. It is important to note, that there are at

least two different kinds of terrorism: on the one hand there is national terrorism, very often concerning the desire for increased independence of a minority from the state, such as the ETA in Spain. On the other hand, there is terrorism on an international level, in many cases having a religious background. A very prominent example for this is the conflict between Islam and the Western World. A number of scholars explain the increasing hostilities between especially the United States and Islamic countries with the fact that after the end of the Cold War, a new enemy for the US is needed. "For a Western World long accustomed to a global vision and foreign policy predicated upon super-power rivalry for global influence if not dominance a US-Soviet conflict (...) it has been all too tempting to identify another global ideological menace to fill the 'threat vacuum' created by the demise of communism." (Esposito, 1999, p.2)

Furthermore, as Ranstorp points out: "The growth of religious terrorism is also indicative of the transformation of contemporary terrorism into a method of warfare and the evolution of the tactics and techniques used by various groups, as reaction to vast changes within the local, regional and global environment over the last three decades." (Ranstorp, 1996, p. 45).

In addition, it is significant to point out, that the general world population is steadily increasing, making resources even scarcer. This is yet another important factor that heightens the potential for violent conflict.

In order to find out about how much international terrorism is really caused by religious or civilizational differences, one can do two kinds of analyses. On the one hand one can develop a quantitative research model by counting the overall acts of terrorism and in consequence investigating how many of them were having a religious background. Another way to answer this question lies on the qualitative level, picking a number of terrorist incidents in the past or present times and then trying to explain their underlying reasons.

The following piece of work will investigate on a qualitative level, using the conflict of Islam and the Western civilization as an example. It will begin first of all with an analysis of the very prominent and highly discussed work by Samuel Huntington, the "Clash of Civilizations" and then use this as a basis for explaining world's current conflicts after defining the most important terms on this subject. Following up on the initial research question, this paper will also investigate to what extent international terrorism can be related to the increasing scarcity of resources.

Samuel Huntington "The Clash of Civilizations?"

In 1993, the Eaton Professor of the Science of Government, Samuel Huntington published an article in the journal of Foreign Affairs with the title "The Clash of Civilizations?" which caused a great dispute among international relations scholars.

Three years later he followed up on the article with a book of a similar title, however without the question mark: "The Clash of Civilizations and the Remaking of World Order". In the article Huntington argues, "the fundamental source of conflict in this new world will not be primarily ideological or primarily economic. (...) The principal conflicts of global politics will occur between nations and groups of different civilizations" (Huntington, 1993, p. 22).

Hence, for him conflict occurs at two different levels, the macro and the micro level.

"At the micro level, adjacent groups along the fault lines between civilizations struggle, often violently, over the control of territory and each other. At the macro-level, states from different civilizations compete for relative military and economic power, struggle over the control of international institutions and third parties, and competitively promote their particular political and religious values." (Huntington, 1993, p. 29).

In the second part of the article he moves on to elaborate the so-called kin-country syndrome, which he describes as different countries with the same ethnic groups allying in order to dominate or threaten others. An example for this would be the Muslim states such as Iran or Iraq in the past.

In addition to that, an important aspect is that the Western world, at the time of his writing, was extremely powerful. As a consequence, Huntington claims "Through the IMF and other international economic institutions, the West promotes its economic interests and imposes on other nations the economic policies it thinks appropriate." (Huntington, 1993, p. 39).

He then moves on to claiming that there are also civilizational conflicts within countries, especially if they are large and diverse, Huntington calls them the "torn countries". (Huntington, 1993, p. 42).

In the last part of the article, Huntington emphasizes the importance of the Confucian-Islamic connection as a counter balance to the dominating Western world. Especially important for this is the growing expansion of China's

military and economic power.

These developments present a significant challenge for the West with large implications for its politics. There are many civilizations that become modern, especially with regard to technologies and political values, therefore similar with respect to power, however they still choose not to adapt to the culture of Western World itself. A good example for this can be found in Japan, which has a very advanced society and works closely with countries such as the United States, however still maintains its own distinct culture. Huntington concludes by stating that "For the relevant future, there will be no universal civilization, but instead a world of different civilizations each of which will have to learn to coexist with the others." (Huntington, 1993, p. 49).

In 1997, Samuel Huntington published a book, as already mentioned above, called "The Clash of Civilizations and the Remaking of World Order" where he further elaborates on the arguments of his essay. As a consequence, a large number of reviews are connected to the book rather than to the essay, but can also be applied to it since the ideas are very similar.

I will first elaborate upon a number of positive aspects pointed out by colleagues of Huntington and then move on to some criticisms.

First of all, already twelve years before the September 11th attacks on the World Trade Center, Huntington predicted that the next large conflict would be between the West and Islam. As Fernandez-Annesto points out, "Huntington is right about big issues: the next world war could be between China and the West or the West and Islam or, as Huntington fears, between the West and most of the rest. His call for 'an international order based on civilizations' (p. 321) deserves respect." (Fernandez-Annesto, 1997, p. 548).

Huntington offers explanations and outlooks into future conflicts that might shape a new world order, however there are also several points of weakness in his writing to be found.

Rubenstein and Crocker come up with the question "Why should clashing values generate political and military confrontation? Huntington does not answer that question directly. He assumes that politicized civilizations are power blocs, each of which naturally struggles for survival, influence, and, where necessary, domination." (Rubenstein & Crocker, 1994, p. 114). Especially with advancing technologies and means of communication one could think that it will be easier in the future to negotiate and communicate across different cultures having different values and traditions.

Furthermore, other critics argue, that "he

"he downplays international and civil wars within civilizations (for example, the Iran-Iraq war, the genocide in Cambodia, Burundi, and Rwanda) and loads the dice a bit by interpreting a number of questionable cases (Ethiopia, Sri Lanka) as intercivilizational conflicts." (Jervis, 1997, p. 308).

In order to move on with the argumentation of this paper, it is significant to define terms and characteristics of Islamic terrorism.

Definitions of terms and characteristics of Islamic terrorism

Before getting into more detail about civilizational and religious differences connected to international terrorism, it is important to clarify and distinguish some important terms such as Religion, Fundamentalism and Jihad which are sometimes used in different or even misleading contexts.

Religion is a concept that has a number of different meanings, however all having very similar core aspects. According to Daniel Philpott in his article on "The Challenge of September 11 to Secularism in International Relations",

religion "is a set of beliefs about the ultimate ground of existence, that which is unconditioned, not itself created or caused, and the communities and practices that form around these beliefs." (Philpott, 2002, p. 68).

A similar definition can be found in R. Scott Appleby's book "The Ambivalence of the Sacred". According to Appleby, "religion, as interpreter of the sacred, discloses and celebrates the transcendent source and significant of human existence. (...) Religion embraces a creed, a cult, a code of conduct, and a confessional community." (Appleby, 2000, p. 8).

As both of these are commonly used definitions, this essay will take this into a background consideration.

However it is also important to keep in mind what Scott M. Thomas points out, namely that "no universal concept of religion applicable to all societies and cultures is possible, (...) and not only because the elements of religion are historically specific." (Thomas, 2005, p. 23). In addition to that, Laustsen and Waever point out, that "More specifically, religions often entertain an idea of a cosmic war, a great encounter between cosmic forces of ultimate good and evil, of divine truth and falsehood." (Laustsen & Waever, 2000, p. 742). Hence, already within the definition is a potential for violence to be found.

Looking now at the term of fundamentalism, which is closely connected to religion and religious beliefs, it originates in early American Protestantism, involving the literal interpretation of the bible text. "Strictly speaking,

the name "fundamentalism" should be applied only to one particular movement within Protestantism that came into existence in the early twentieth century, inspired by a series of booklets that attacked the theological modernism called The Fundamentals." (Aikmann, 2003).

Nevertheless, nowadays, the term fundamentalism is very often used in connection with Islam, people despising modernity and strictly living according to the rules of the Quran. Furthermore, especially in the media it "is often equated with political activism, extremism, fanaticism, terrorism and anti-Americanism (...) Often little distinction is made between Islam and fundamentalism, or between violent and non-violent fundamentalists." (Esposito, 1999, p. 10). Hence, the notion of fundamentalism is generally a very sensitive one, to be used with careful reflection on what is meant by it.

Very often closely related to fundamentalism, is the term *jihad*. It is widely translated as holy war in the name of God. However, according to Lincoln, "its etymology and its full range of semantics are both better served by translation as 'struggle'." (Lincoln, 2003, p. 33). There are two kinds of struggle, one being internally against one's own vices such as laziness, and other traits that keep one from reaching a "religious self-perfection". (Lincoln, 2003, p. 33). The other struggle more widely known, it is the one against the non-Islamic world, trying to spread beliefs not hesitating to use violence. (Lincoln, 2003, p. 33). Ranstorp refines this notion by saying that "Islam's jihad, for example, is essentially a defensive doctrine, religiously sanctioned by leading Muslim theologians and fought against perceived aggressors, tyrants and "wayward Muslims. In its most violent form, it is justified as a means of last resort, to prevent the extinction of the distinctive identity of the Islamic community against the forces of secularism and modernism." (Ranstorp, 1996, p. 47).

Before moving on to the next part, it is significant to briefly discuss some central characteristics of Islamic international terrorism.

First of all it is important to note that suicide attackers are promised an eternal life in heaven with 72 virgins etc. (Lincoln, 2003). Generally, after their death they will be highly celebrated and cherished among their communities and even serve as role models for future terrorists. In addition to that, symbols play an important role in terrorist attacks, such as for example, as commonly known, the date of September 11th being the same as the emergency phone number in the US. Not to mention the symbolic character of the World Trade Centre being the heart of the

Western World economy. Furthermore, the preparation and execution of terrorist attacks often involves Western technology and their own means, such as the extensive use of the internet, or satellite cellular phones.

Also, "While the religious extremists uniformly strike at the symbols of tyranny, they are relatively unconstrained in the lethality and the indiscriminate nature of violence used, as it is conducted and justified in defense of the faith and the community." (Ranstorp, 1996, p. 54).

Nevertheless, Islam is in general a peaceful religion and it only "occasionally allows for force while stressing that the main spiritual goal is one of nonviolence and peace." (Juergensmeyer, 2001, p. 80).

Even so, in addition to that a further characteristic of Islamic terrorism is that, "in contrast to other terrorist organizations, Al Qaeda is global in its activities." (Gray, 2003, p. 75), which makes it even more dangerous, as they have shown, attacks can happen in any Western country at any point of time.

The conflict between the United States /Western World and the Islam

As already mentioned in the introduction, the conflict of the Western World with Islam has roots dating back into centuries of history. In this part, I will attempt to elaborate and explain underlying reasons for this hostility.

First of all it is important to point out that "Islam constitutes the most pervasive and powerful transnational force in the world, with 1 billion adherents spread out across the globe." (Esposito, 1993, p. 2). From the realist point of view, "modern terrorism can best be seen as a power struggle: central power versus local power, big power versus small power, modern power versus traditional power." (Cronin, 2003, p. 282). Trying to explain the reasons behind international terrorism motivated by religion, I will analyze the conflict first from the Islamic point of view and then from the Western World, because "we want to understand why some people acting in sincere response to the sacred acting religiously chose violence over non-violence, death over life." (Appleby, 2000, p. 27).

Especially in the conflict of the Islamic World against the West, modern power versus traditional power plays a major role. In particular the concept of modernity is an interesting aspect in Islamic-fundamentalist terrorism groups. On the one hand they condemn the Western World for their values and beliefs, at the same time taking advantage of their advancing development of technology. Hence, "while Westernization and

secularization of society are condemned, modernization as such is not". (Appleby, 2000, p. 27). The general perception among Muslim fundamentalists is such that the Western World, the United States playing the main role, is trying to influence the rest of the world according to their values, beliefs and political systems. An example for this can be found in the invasion of Iraq and Afghanistan, the US trying to impose democracy upon a completely different culture. Also Huntington points out that "The West in effect is using international institutions, military power and economic resources to run the world in ways that will maintain Western predominance, protect Western interests and promote Western political and economic values." (Huntington, 2003, p. 40). On the other hand, however, "Western societies are governed by the belief that modernity is a single condition, everywhere the same and always benign."

In nowadays, very often media and policy statements shape the general view of the western world of Islam. Very often Islam is presented too populist and harsh in the media, distorting "the nature of Islam, the political realities of the Muslim world and its diverse relations with the West. (...) For many in the West it has been axiomatic that Arabs are nomads or oil sheikhs, denizens of the desert and harems, an emotional, combative, and irrational people" (Esposito, 1999, p. 3).

The culture is perceived as patriarchic, not giving women any rights, not to mention the lack of emancipation. Generally their way of life is often compared to the Middle Ages, lack of technology, and no modernization at all. The political systems are viewed as authoritarian ones, far away from Western values of democracy.

Generally speaking, as already mentioned in the introduction, the worst enemy of the West seems to be Islam. However, obviously, the real world is in fact more complicated than what the good and evil distinction implies.

The problem in this conflict is that both sides perceive themselves as the "right" ones, entitled to rule the world.

Scarcity of resources and international terrorism

A large part of this work so far shows how much religious and cultural aspects influence international terrorism, mostly supporting Huntington's claims, however, there is still an important factor to keep in mind: increasing world population relating to an increasing scarcity of resources.

As Gray points out, "Well before September 11th, the Bush administration made

clear that it regarded access to energy as a matter of national security. (...) Hence Twenty-first century wars will be resource wars, made more dangerous and intractable by being intertwined with ethnic and religious enmities." (Gray, 2003, p. 61). In the future, world population will keep growing, especially in poor countries who, however tend to have natural resources such as oil (i.e. Gulf States). Since the Western industry keeps growing, more energy supply is needed and a number of countries tend to make use of their power in order to cheaply acquire resources from poorer countries dependent on them. Of course, this does not lead to satisfaction among the local populations and may trigger hostility towards the Western world which could then also be a source of international terrorism. A good example for this can be found in the invasion of the United States in Afghanistan and Iraq, many people claiming a strong reason for this being the oil reserves there. Obviously this does not create a friendly and welcoming atmosphere of the population towards them.

Thus, future conflicts may not be only determined by cultural or religious differences but also interest in resources, whereas oil is not the only important one, but also the distribution of water plays an increasing role in world affairs.

This brings me to the last part of this paper, a discussion of a possible new world order and the future of international terrorism, as well as a possible religion and world change.

Conclusion: The Future of Terrorism and a New World Order?

In order to conclude this essay, it is important for me to point out that there is a wide range of literature to be found on this topic and it has been very difficult to make a selection of sources. The ones quoted here only serve as examples and are by no means the only or best ones. Comparing Huntington's writing with the conflict of Islam and the Western World, one can see that he was right in a number of aspects. This conflict is about different ideologies, rather than single nation states fighting each other with armies. Muslim terrorists have attacked all over the Western World, not only in the United States (i.e. London Underground). Undoubtedly, the recent attacks of terrorism have significantly changed the world. After September 11th, new rules and regulations were created in order to prevent such an attack in the future. For example security on airports increased significantly, not to mention the creation of the Department for Homeland Security in the United States.

However as elaborated on in the previous section, there are not only differences in culture

and religion that cause international terrorism, but also a growing world population, making resources such as oil or water extremely scarce. As a consequence, the cleavage lines of terrorism motivated by a religious background and by a fight for resources go parallel: Islamic terrorists on the one hand fighting against their oil resources being exploited and at the same time defending and promoting their ideas and values. According to a realist point of view, an end of the struggle between Islam, the most important militant group here being Al Qaeda and the Western World is not in sight until one side has gained a victory over world power. However, maybe there is reconciliation possible? Generally, all world religions provide a base for peace, in their respective societies. (Appleby, 2000, p. 169). There are various attempts for a possible solution to be found (Esposito 1999, Gray 2003, Appleby 2000), however this paper will focus on the suggested solutions by Mark Juergensmeyer.

The question is how international violence could come to an end: Mark Juergensmeyer comes up with 5 propositions: the first one “encompasses instances in which terrorists have literally been killed off or have been forcibly controlled.” (Juergensmeyer, 2001, p. 233). However this does not seem to be completely realistic since at least today it seems to be impossible to even discover or learn about the intentions of all terrorist groups. A second possibility could be that “the threat of violent reprisals or imprisonment so frightens religious activist that they hesitate to act.” (Juergensmeyer, 2001, p. 236). Still, even after attacking two Muslim countries (Afghanistan and Iraq) in a very short period of time, this has not shown any consequence in scaring away terrorists. A third solution is “when the violence is used as a leverage in political negotiation and the causes behind the struggle are met. Terrorism in this way, wins.” (Juergensmeyer, 2001, p. 238). Fourthly, Juergensmeyer suggests that “the absolutism of the struggle is diffused, and the religious aspects are taken out of politics.” (Juergensmeyer, 2001, p. 240). However, according to Juergensmeyer, the last one of the possible scenarios seems to be the most promising: solutions that “have required the opponents in the conflict to summon at least a minimal level of mutual trust and respect.” (Juergensmeyer, 2001, p. 243). This appears to be the most promising solution for making peace with Al Qaeda, however to reach this point, both sides have to agree to meet in the first place to get into talks. And this point seems to be far away in the present days.

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Academic Article

The agreement on Political Union: an intergovernmentalist perspective

Bennet Strang

London School of Economics

bennet_strang@web.de

How can we explain the agreement on Political Union and its varied features? This essay will argue that an intergovernmentalist account contains the greatest explanatory power. Exogenous factors were important in putting different features of the agreement on Political Union at the top of the agenda. Finally, however, the national preferences and relative bargaining powers of the twelve Member States were decisive for the agreement on Political Union. Supranational institutions were of secondary importance instead. Critics of this approach might point out that the Member States are necessarily the most important actors in an IGC, making it easy to argue from an intergovernmentalist point of view. They instead take a neofunctionalist or sociological institutionalist perspective, which attributes importance to supranational actors and the structuring role of ideas.

These explanatory accounts will be challenged in the essay. After having outlined the contextual background of the agreement on Political Union, the national preferences of Germany, France and the United Kingdom will be analysed. Their role as key players in the

emphasis upon them. An evaluation of the process and the results of the bargaining on the varied features of Political Union will subsequently build on this basis. This analysis will in particular concentrate on the three-pillar structure, CFSP, co-decision, EU citizenship and social policy. An attempt will thus be made to explain why and how these features were agreed upon, given that national preferences on some of these points initially conflicted with each other. Finally, a conclusion will summarise the findings.

The years at the end of the 1980s were characterised by profound transformations. After the Iron Curtain fell in 1989, the Soviet Union began to disintegrate. This left a 'power vacuum' in Europe. A retreat of the US military from the continent, which had been unthinkable during the Cold War, was not so anymore. Moreover, German unification propelled the old foreign policy challenge of the German Question back to the top of the agenda. Concerns about German hegemony and a weakening commitment to European integration put a strain on the Franco-German relationship and touched upon French security concerns (Martial, 1992). On top of that, the Gulf crisis highlighted the absence of

common European voice. After the decision to convene an IGC on EMU had already been taken in 1989, exogenous events such as the increasing salience of the question of German unification, a 'power vacuum' in Europe and the Gulf crisis contributed to the need to move beyond the primarily economic leitmotif of Europe. More internal and external visibility had to be striven for.

Given the economic bias of the SEA, the Commission called for a complementary social dimension. Delors remarked that "[...] the Community will never win the support of ordinary citizens if it does not offer workers and their families protection as well" (Lourie/ Ware, 1993, p. 8). The Community should not continue to be only associated with neo-liberal liberalisation and technocratic initiatives. Instead, the social and economic dimensions should be given equal weight (Schulz, 1996). Whereas countries such as Germany¹ were in favour of a social dimension, others such as the United Kingdom were vigorously against it. This issue should not remain the only bone of contention during the IGC negotiations and the Maastricht summit, which will be analysed later.

It is first of all important to realise why the indicated main features of Political Union came on the agenda. The elaborations of the preceding paragraph already suggest that social policy was going to be an issue during the IGC, since it resulted from a Franco-German concern to complement the predominantly economic character of the Community. In order to further raise the internal visibility of Europe and to address the growing democratic deficit, co-decision and EU citizenship assumed topical importance. The power vacuum in Europe and the Communities' incapacity to display a cohesive common position as evidenced during the Gulf crisis secured a central place for CFSP on the agenda (Laursen *et al.*, 1992). Moreover, concern about the trajectory of future German foreign policy led to the desire of Germany's European partners, ie in particular of France, to lock it into an irreversible integration process (van Wijnbergen, 1992). Political Union also served to do this.

The essay will now slowly turn to the analysis of the IGC and Member States' preferences. An intergovernmentalist reading is already supported by considering the relevant agenda-setters. Instead of supranational actors having assumed an important role, the Franco-German axis was crucial for the convening of the IGC. This is evidenced by their letter to the Irish Presidency on 19 April 1990 (*ibid.*; Schulz, 1996). Thus, "[...] we cannot escape the impression that

the Commission's influence on the course and outcome of the negotiations has not been as determinate as on the previous IGC [leading to the SEA] [...]" (Wester, 1992b)². All Member States apart from the United Kingdom supported the Franco-German initiative. However, the latter agreed after having been faced with the credible threat of becoming excluded (Laursen *et al.*, 1992). This even confirms a liberal intergovernmentalist reading. The IGC finally opened in December 1990³.

First of all, it has to be noted that the Franco-German axis was the most influential driver for the negotiations and the agreement on Political Union. Both countries put forward various joint proposals calling, *inter alia*, for EU competences in the field of social policy, EU citizenship, CFSP and co-decision (*ibid.*). Starting with social policy, France and Germany conditioned their final yes to any agreement on progress in this field (Schulz, 1996). The German objective to give equal weight to both the economic and social dimensions has already been referred to⁴. Likewise, it followed from Mitterrand's Socialist background that France would also welcome EU competences in the field of social policy. The main opponent on this issue was the UK (Forster, 1998). Prime Minister Thatcher feared 'socialism through the backdoor' and an encroachment on its national sovereignty. The other eleven, however, wanted to move ahead with social policy and could not allow the whole agreement to be jeopardised. The solution for this impasse in form of the (symbolic) British opt-out from the Social Protocol was crucial for enabling the agreement on Political Union (*ibid.*)⁵.

Turning to EU citizenship⁶ and co-decision, the Member State most in favour of both was Germany (Schulz, 1996). The objective was to give more democratic legitimacy to the European decision-making process by strengthening the European Parliament with co-decision (Forster, 1998; Johansson, 2002). France, on the other hand, opposed both co-decision and EU citizenship. Particularly the latter was considered to raise conflicts with national sovereignty (Martial, 1992). The reason why France later gave in is to be found in the relatively higher bargaining power of Germany. Chancellor Kohl undertook an explicit issue linkage between the agreement on Political Union and the one on EMU. This meant that France had to accept Germany's preferences on what the former should consist of, i.e. including co-decision and EU citizenship, in order to get the agreement on EMU (Laursen, 1992). There would not have been EMU without Germany. Thus, Kohl had a

relatively stronger bargaining position, which enabled him to realise his national preferences against initial opposition.

As has already been indicated, CFSP assumed a high place on the agenda due to exogenous events. Given that foreign policy and defense matters touch upon the heart of national sovereignty, cooperation in this area of high politics was almost destined to continue in the intergovernmental footsteps of EPC. Agreement on CFSP was made even more difficult due to differing national conceptions. Whereas France and Germany favoured CFSP, a common defence policy and the incorporation of the WEU into the Union, Britain was opposed (*ibid.*). France wanted CFSP to be able to counterbalance US hegemony and NATO one day (Forster, 1998; Martial, 1992). An explanation for both the French and the German preference for CFSP was the fear of US troop withdrawals from Europe after the end of the Cold War. Although Britain had initially been opposed to CFSP due to sovereignty concerns and the special relationship with the US (Laursen *et al.*, 1992), the threat of US retreat also changed the British attitude towards this issue (Wester, 1992a). In exchange for having achieved a watered down CFSP, the United Kingdom ceded its hostile position on co-decision (Laursen, 1992).

After these remarks, the essay is left with accounting for the coming into being of the pillar-structure. Shielding the different policy areas off from each other and applying different decision-making procedures to them was neither in the original interest of federalist Germany, nor in the one of the Commission. By contrast, the three-pillar structure, being a French idea (Martial, 1992), was fiercely advocated for by Britain (Forster, 1998). In the end, it represented the necessary compromise between German federalist and Franco-British intergovernmentalist preferences. Nobody could impose its conception on the other.

The overall analysis has strengthened the case for an intergovernmental explanation of both the process and the results of the bargaining on the varied features of Political Union. The explanatory power of this approach will be further underlined in the following by a criticism of alternative accounts.

Johansson (2002) challenges the intergovernmental explanation of the agreement on Political Union. Instead, he argues that the European People's Party, a transnational advocacy coalition composed of the Christian Democrat heads of government, was vital for the conclusion of the agreement. Explanatory power

is attributed to the pre-coordination of agenda items, resulting from frequent encounters, socialisation effects and the role of shared federalist ideas. Johansson's (*ibid.*) 'proof' is that "Christian Democrats dominated the three presidencies charged with the task of initiating and completing the two IGCs" (p. 876). However, his argument is unconvincing with regard to four aspects.

Firstly, he fails to prove that the meetings of the heads of government were a sufficient and not only a necessary condition for the final outcome. Secondly, he admits himself that "[i]t might be argued that such meetings are intergovernmental rather than transnational and that they serve primarily as an instrument for oiling the wheels of the negotiations" (p. 879). He failed to show that they were more than intergovernmental and thereby indirectly builds the case of intergovernmentalism. Thirdly, he states himself that "[...] this research has, on the whole produced poor empirical evidence as to the impact of such activities on the agenda-setting and policy-making overall" (p. 888). And fourthly, he is indeed right in saying that "[...] it is sometimes difficult to separate transnational and intergovernmental factors from each other" (*ibid.*). Given these self-admitted severe limitations, his argument can hardly be upheld any further.

Overall, the application of intergovernmentalism to the agreement on Political Union provides the greatest explanatory power. The analysis has highlighted that supranational actors were of secondary importance compared to the Member States. The Franco-German axis and the big three in general were instead vital for the outcome of the final agreement on Political Union. The support of the other Member States was secured by side-payments, eg in the form of the cohesion funds (Laursen, 1992).

The analysis of alternative social constructivist and neofunctionalist explanations has further build the case for an intergovernmental reading. This is not to suggest that ideas and socialisation effects did not matter at all. Johansson (2002), however, failed to establish the causal link between his account undermined by himself and the negotiations. Given the arguments presented, an intergovernmentalist perspective contributes most to an understanding of the agreement on Political Union.

Notes

1. Germany was already compensated for the European social deficit by putting a Social Chapter on the agenda at the European Council of Hanover in 1988 (Schulz, 1996).
2. The fact that the Member States finally agreed on a three-pillar structure against the will of the Commission can be seen as a further example for its secondary importance (Laursen et al., 1992).
3. MEP Martin characterised the twelve Member States in the following terms: "The star players in the European team at the moment are Belgium, Germany and Spain. The Atlantic Alliance of Britain, Ireland and Portugal is reluctant to take the ball. The midfield is made up of Luxembourg, Denmark, Greece and The Netherlands. But those who take the field with promise and consistently play below their pre-match write-up are Italy and France. If the goal of Political Union is to be reached, these two countries will have to take their courage in both hands and play a team game" (quoted in Laursen et al., 1992, p. 7).
4. "Kohl [...] stressed that equilibrium between monetary and political union was indispensable" (Johansson, 2002, p. 884).
5. Laursen (1992) argues that "[t]he fact that 11 Member States insisted on moving ahead in the area of social policy suggests spill-over" (p. 238). Unfortunately, he does not say why.
6. Laursen (1992) argues that EU citizenship constitutes a spillover from the Rome Treaties' four freedoms. His reasoning is why there should not be EU citizenship if there was already free movement? This claims is, however, speculative and therefore unconvincing.

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Academic Article

The Annihilation of Cultural Validation

When 'Military Necessity' Takes the Lead

Maren Hofius

University of Bath
mkh22@bath.ac.uk

Introduction

In the wake of the Bush Administration's launch of the so-called 'war on terror' in 2001, and especially following the disclosure of the coercive treatment of detainees in the United States (US) Detention Camp at Guantanamo Bay, Cuba, the human rights academia has published ample literature on the fact and the ways in which the Bush Administration has violated international humanitarian law (IHL) as well as international human rights. In great detail, academics have not only identified the leading figures involved in the defiance of fundamental human rights, but have also ascertained the underlying mechanisms that the Executive branch of the US government deployed to circumvent well-established international law such as laid down in the Geneva Conventions (*cf.* Sands, 2006). The academia has thus been able to disclose *how* the United States of America (USA) has strayed from the human rights track. Implicit in their argument is consequently the assumption that norms are *facts* with which states either comply or do not comply; they appear to presuppose fundamental human rights norms as being of an inherently stable quality. The meaning

of norms, in their view, does not seem to be questioned or subject to change within a community of states that shares liberal democratic principles.

This paper, on the contrary, takes a more critical stance towards the concept of norms. It contends that norms are, as Wiener (2007a) has forcefully described it, 'contested by default' (p. 6). The perspective on norms therefore shifts from a behaviouralist *logic of appropriateness*, which considers norms as 'social facts', towards a societal *logic of contestedness* that views norms as assuming a dual quality (*cf.* Wiener, 2007b). In line with the underlying assumptions of the latter approach, this paper shall examine *how it has been possible* for the Bush Administration to diverge from fundamental principles that have purportedly been shared by Western liberal democratic communities.

It will be argued that the Bush Administration was able to launch a unilateral attempt of redefining fundamental human rights norms precisely because norms are malleable, especially in situations of perceived crises. Given a less well-pronounced legal framework and a restricted social space at the transnational level,

the cultural validation in the form of communicative action in the supranational sphere and societal deliberation in the national sphere become the crucial determinants of 'smooth performance' (cf. Habermas in Wiener, 2007b, p. 60). Absent the component of this cultural validation, the implementation of international human rights norms at the domestic level becomes susceptible to the arbitrary application of the rule of law. Transferred to the case of the United States (US) government, one can discern the *construction* of a social facticity that for a long time inherently lacked societal contestation. Backed by its covering rhetoric of 'military necessity' (Forsythe, 2006, p. 477), the Bush Administration systematically impeded cultural legitimacy; it was the unwillingness to participate in contestation in the transnational arena, the isolation of the public and the conferral of 'unlimited' authority on the US Executive which enabled it to bend human rights norms as it saw fit.

The paper is divided into two parts. Part I. will provide the theoretical reference frame through a synopsis of the three dimensions of norm validation and their respective significance in different political arenas, while also suggesting a time sequence of how validation proceeds. Part II. shall empirically assess these theoretical claims by applying them to a case study on US violations of IHL and international human rights in the context of Guantanamo Bay. It proceeds along the lines of the proposed *life spiral* which will draw less attention to the initial norm emergence and agreement at the international level but will instead place particular emphasis on the *domestic* process of norm validation. Its effect on subsequent norm contestation at the transnational level will henceforth be highlighted.

Part I. Theoretical Backdrop The Necessity of Cultural Validation

In the framework of the modern nation-state, the legitimacy of norms has traditionally rested on the interplay of the two principles of constitutionalism and democracy (Wiener, 2007b, p. 56). With reference to the former principle, a norm's legal validity has been derived from the 'shared recognition of the type of rights that stand to be defended and protected by the constitution' (Wiener, 2007a, p. 3). The latter principle refers to society's recognition of an institutional context which broadly interpreted consists of principles that structure or guide the practices of the individuals subject to this order (Wiener, 2007b, p. 60; Wiener, 2007a, p. 9). This intimate interaction does not necessarily remain

stable over time, though. Since norms emerge as a result of '*intersubjective* understandings' of society (Finnemore in Florini, 1996, p. 364, emphasis added), their meanings will always be 'contingent and subject to change, despite periods of stability' (Puetter & Wiener, 2007, p. 1067). The primary reason for their contingency lies in their dependence on context; meanings of norms must always be interpreted *in relation with* or *by reference to* given socio-cultural patterns of the social world. This observation begs the question of what will happen to a norm's meaning in the face of shifting contexts, for instance from the nation-state to the supranational level? In such situations, where fundamental norms are separated from their original frame of reference, normative meaning becomes de-contextualised (Wiener, 2007a, p. 4); the traditionally national customary aspect of a norm is 'decoupled' from its organisational dimension (ibid.).

Transferred to a transnational community setting then, the legitimacy of a norm can therefore no longer rest upon its incorporation into a constitutional framework and its former societal appropriateness (social facticity). In a transnational environment, contestation over the meaning of a norm becomes particularly fierce since different meanings of norms compete for recognition. Thus, absent a stable legal framework and social facticity, the individual ability to appreciate a norm through the everyday experience of the world acquires invaluable quality with respect to the recognition of norms (Wiener, 2007b, p. 63; 2007a, p. 7). The significance of this cultural dimension of any political order essentially pertains to its flexible nature. As Wiener (2007b) poignantly notes, 'culture includes shifting and changing groups which are not bound to a particular constitutionalised political community, nor to the limited institutions of one particular society' (pp. 62-3). Dialogue and deliberation among individual actors are therefore not confined to validate norms in one political arena only; instead, their flexibility paves the way towards smooth performance of normative practices both at the national as well as supranational level.

In this regard, it must, nevertheless, be stated that the legitimacy of norms, rules and principles fundamentally hinges on a democratic system's inclusiveness (Dahl in Wiener, 2007a, p. 6); cultural validation is only effective once a broad platform for the participation of *national* societies is provided. Since negotiation at the transnational level only settles the agreement about a *type* of norm, subsequent successful implementation and socialisation of this norm vitally relies on the interactive communication

between state and social actors in the given domestic context. National differences in the meanings attached to the norm type inevitably occur as a result of the respective socio-cultural 'resources' or what Puetter & Wiener term 'normative baggage' on which each state actor draws (Wiener, 2007b, p. 57; Puetter & Wiener, 2007, p. 1067). At both political levels, however, active debate may limit differences. While discursive interaction in intergovernmental settings may create 'new values' (Wiener, 2007b, p. 57), public scrutiny may help limit a state actor's opportunity to evade previously agreed objectives in the first place.

The *Life Spiral* of Norm Emergence, Contestation and Reconstruction

Change in normative meanings is, as has been demonstrated above, a result of a reciprocal process between the domestic and international political arena. Relatively stable national customs that have emerged over time in a given political order become subject to contestation at the transnational level through the decoupling of a norm's meaning from its traditional social environment. The moment norms are projected onto the international level, Wiener (2007) argues, 'communicative action [...] potentially produces "new values" in the process of deliberation' (p. 57). This is especially likely in the presence of a 'norm entrepreneur' who successfully utilises his own 'normative baggage' as a 'political resource' to persuade other actors of its validity. What then follows is a complex incorporation of the agreed norm into the domestic context. Here, the norm type is subjected to an adaptational process which must relate the out-of-context norm with the prevailing socio-cultural patterns. This, in turn, may generate new domestic meanings attached to the norm. This process of creating and recreating meaning is *ongoing*. In this respect, unlike what Finnemore & Sikkink (1998) have termed a norm 'life cycle', this pattern rather resembles a norm *life spiral*'. The crucial difference here may be explicated by reference to the different logics that are used to qualify a norm. Whereas Finnemore & Sikkink potentially allow for a norm to 'acquire a taken-for-granted quality' (p. 895), the adopted logic in this paper tends to associate with Wiener's (2007a) assumption that '[n]orms are [...] contested by default' (p. 6). There is no ultimate state which a norm might acquire.

In the following section this paper takes a two-fold approach. By means of adapting Wiener's (2007b) 'dialectical perspective on norms as evolving through practice and in

context' (p. 55) to the US Human Rights Policy since 2001, it will attempt to trace the *life spiral* of the principle rights of international law which have surrounded the debate on the US treatment of detainees at Guantanamo Bay, Cuba². More importantly, though, this theoretical framework will serve to highlight how the US government was able to exploit and distort the process of norm validation to its own advantage. This illustration will not only confirm the assumed volatility of normative meaning as such, but shall also point out under which conditions the Bush Administration was able to play on the contestedness of normative meaning. As will become plain, it has been the Executive's sidelining of cultural validation at the domestic level which permitted the practices at Guantanamo Bay to occur.

Part II. Theory in Practice

The *Life Spiral* Applied to US Human Rights Policy in the Era of 'the New Paradigm'³

The Re-creation of Meaning at the Domestic Level⁴

There might be no equivalent state belonging to the Western liberal democratic community that so inherently mirrors the contestedness of human rights norms as the USA. As the 'self-appointed champion of human rights' and the rule of law (Mertus, 2003, p. 371; Forsythe, 2006, p. 466), the US has been the most dominant player in shaping rules of international law. Equally true, however, is the fact that the USA has always maintained an ambivalent stance towards international human rights, a behaviour which is commonly described as 'exceptional exceptionalism': while 'continually holding others to standards that it does not apply to itself', the United States have availed themselves to 'selective, instrumental manipulation of human rights' (Mertus, 2003, p. 371).

In a likewise fashion, though on an unprecedented scale, the US Administration has embarked on a strategy of 'unilateral reordering' since the inauguration of President Bush in 2001; international human rights instruments have systematically been sought to be redefined (p. 374). This shift has ever since been enhanced when the September 11 attacks supposedly triggered what Gonzales, then the White House General Counsel, has termed a 'new paradigm' (in Greenberg & Dratel, 2005, p. 119). The ensuing discourse of the Bush Administration on the 'war on terrorism' was significantly facilitated in the atmosphere of growing *perceived* insecurity. Justified under the disguise of the 'war on terrorism' then, the 'Administration

[henceforth] put particular emphasis on the unrestricted exercise of Executive Branch power' (Forsythe, 2006, p. 474).

What followed was a social facticity that has been established in the paradoxical twilight of societal 'approval' and exclusion. While, on the one hand, the Bush Administration has progressively invoked a 'state of emergency' with which it has been able to justify 'necessary' sacrifices on the part of civil liberties as well as on those rights held by foreign detainees, the Bush Administration has, on the other hand, foreclosed any *genuine* emergence of social recognition. The *former* line of reasoning primarily relates to the Executive's manufacturing of a 'social reality' which has essentially been characterised by exceptional circumstances. This, in turn, has provided the Bush Administration with the ideological platform from which its actions have become acknowledged as socially appropriate. According to Sands (2006), the US government developed the following logic: since 'the US faces an unparalleled threat, [...] all necessary means may be used to obtain information from captives' (p. 206). As a corollary, so the argument goes, 'international law is inapplicable and/or unenforceable and/or irrelevant' (ibid.). In short, '[...] rules of international law must be interpreted to allow a *threatened* state to do everything *necessary* to *protect* itself' (ibid., emphases added). This legally defective argument has additionally been reinforced by what Forsythe (2006) has termed 'covering rhetoric' (p. 477). Whereas President Bush has tried to reassure that '[...]prisoners would be treated *humanely* [...]', this would only work 'in so far as *military necessity* permitted' (ibid., emphases added). This artificially constructed legitimisation inevitably entailed the issuing of a blank check to the US government; in the face of national insecurity, military necessity eventually trumps IHL and international human rights standards.

As regards the latter point of consideration, this paper argues that a genuine foundation on which this 'social' recognition rested was not able to emerge. Broadly speaking, there have been three mechanisms at work that led, first, to the absence of genuine social recognition and, second, to a lack of cultural validation. The first mechanism concerns the way in which 'State Department officials[,] those from the National Security Council (NSC), including even NSC Advisor Condoleeza Rice, [as well as many uniformed lawyers] were apparently shunted aside early in deliberations' (Forsythe, 2006, p. 470-1; cf. Sands, 2006, p. 217). Those who could have opposed to Bush's approach towards 'unlawful combatants' were accordingly

overridden.

As a second mechanism, one needs to take a closer look at the legislation that was passed in response to the 9/11 attacks. While the *USA PATRIOT Act* aimed at 'expanding police and prosecutorial powers' (Joyner, 2004, p. 245), such legislation implied at the same time a systematic curtailment of 'guaranteed rights and freedoms in both US constitutional and UN-based human rights law' (ibid.). Equally, the *Domestic Security Enhancement Act of 2003* represented, in Mertus's view (2003), 'the crackdown on civil liberties' (p. 377). Potentially rising civil opposition to the Bush Administration's policy towards detainees at Guantanamo Bay was hence nipped in the bud. Restricted and biased US media coverage on Guantanamo may have additionally contributed to an ill-informed public which did not see any 'sizable grassroots public movement [to arise] in protest' (Forsythe, 2006, p. 480). Here, the geographic location of Guantanamo Bay seems to have had a decisive impact: having long been shielded from public scrutiny, it was only in 2004 when the *International Committee of the Red Cross* eventually broke its silence that the public saw the prevailing conditions under which the purportedly 'unlawful combatants' were held.

The last mechanism must be considered in close conjunction with the Administration's artificial creation of social facticity in view of its 'national security' and 'military necessity' discourse. Not only was US civil society still heavily influenced by the images of the September 11 attacks, and therefore susceptible to a 'national security' narrative. As Forsythe notes, it was likewise Congress that eschewed to critically question 'the Bush policy toward[s] enemy detainees during the period from 2002 to 2004' (ibid.). While this was self-evident for the then prevailing Republican majority, it was also the Democratic Party that 'did not want to appear soft on national security issues [...]' (p. 482). Given this lacking, at best cautious dissent in the general societal discourse, one must conclude that the lack of deliberation was mainly due to the disqualifying framework that had been installed by the US government; where social recognition had been imposed from above genuine cultural validation was unlikely to emerge.

Bending the Rules to the Maximum A Strategic Attempt to Redefine 'the Norm'

The necessary building blocks for subsequent strategic action had now been neatly put in place: whereas the Executive's discourse on 'national security' and 'military necessity' had

done its work by only weakly institutionalising a societal awareness of the validity of international human rights norms, and hence impeding cultural validation military tactics and interrogation techniques, that were at times 'tantamount to torture', had now to be operationalised. The Bush Administration has proceeded along three distinct lines of action. It *first* of all discarded the application of international humanitarian law to any Guantanamo detainee. This implies that the US government has refused to accept that the *Geneva Convention (GC) III* pertains to any of these 'unlawful combatants'. According to the Bush Administration, detainees do not qualify for the prisoner of war (POW) status which, in situations of armed conflict, would grant prisoners the right to 'humane treatment' without 'acts of violence or intimidation and [...] insults, and public curiosity' (in Sands, 2006, p. 149). In the face of doubt over the detainee's legal status and this doubt does not arise out of the result of the US Administration's determination any captive shall have access to the *habeas corpus* writ, as Article 5 of the *GC III* stipulates (*ibid.*).

The *second* strand demonstrates on an equal basis the arbitrary application of IHL at Guantanamo Bay: when President Bush reaffirmed on 7 February 2002 that the US would treat detainees 'humanely' and 'in a manner consistent with the principles of Geneva', it did not take long until he eventually resorted to his infamous justification of non-conformity with IHL. He went on to note that this treatment would only prevail 'to the extent appropriate and consistent with *military necessity*' (in Sands, 2006, p. 155). Under this light, it was consequently possible to redefine provisions of the 1984 *UN Convention against Torture*. Assistant Attorney General Jay S. Bybee patently 'misread' Article 1(1) thereof when he asserted that 'the definition of torture [...] encompasses only extreme acts' such as something similar to 'death or organ failure' (in Greenberg & Dratel, 2005, pp. 213-4).

Sands (2006) and Forsythe (2006) both give useful insight into the *third* line of action which aimed at endowing the President with further 'legitimation'. Several memoranda were issued 'arguing that in times of war, the President had *unlimited authority* to protect the nation, and that even national laws did not necessarily always apply' (Forsythe, 2006, p. 473, emphasis added). As Bybee makes it plain in his 1 August 2002 memo, '[I]aws [by Congress] that would prevent the President from gaining the intelligence he believes necessary [...] would be unconstitutional' (Sands, 2006, p. 214). He thereby affirmed what had been laid down in the early *November 2001 Executive Order*, i.e. that

the President plays a central role in shaping the standards of conduct for interrogations. According to the Order in question, 'it is the President alone that is responsible for the final review of any verdict [on a person's detention]' (Sands, 2006, p. 156). With regard to the use of language, this has only been exceeded by the *Working Group on the Interrogation of Detainees* when its members contended that '[the prohibition against torture] must be *construed* as inapplicable to interrogations undertaken pursuant to [the President's] Commander-in-Chief authority'⁵ (in Sands, 2006, p. 217, emphasis added). The elaborate system that was subsequently established resulted in procedures that not only essentially violated applicable international laws but also eliminated any checks and balances vis-à-vis the Executive. President Bush's insistence on a 'new paradigm [...] [that] requires new thinking in the law of war' was hence followed by the strategic implementation thereof (in Greenberg & Dratel, 2005, p. 134).

Lacking Contestation at the International Level

What had the so-called 'international community' to offer to the well-institutionalised system that the Bush Administration had put in place at Guantanamo Bay? Bush's strategically designed vitiation of international law had demonstrated the fragility of IHL and international human rights law. In the face of a weak social recognition of international human rights norms that had additionally been influenced by a misleading discourse of 'necessity' cultural validation at the domestic level had not been provided with a stable foundation on which to build. A distinct national consensus on the protection of political detainees and the application of the associated rights had been absent. Considerations about the potential loss of reputation vis-à-vis the international community, such as had been advanced by US Secretary of State, Colin Powell, were sidelined in the course of 'creating a new legal regime' (Sands, 2006, p. 154).

While at the international level, clear *agreement about* IHL and international human rights norms had been reached, as codified in both the *Geneva Conventions* and the UN-related body of human rights treaties, this was similarly incapable of pulling the US government back on track. According to Forsythe (2006), the *UN High Commissioner for Human Rights* expressed his concern about US treatment of enemy detainees (p. 483). 'However', he concludes, 'none of these statements seemed to have any impact on Washington' (*ibid.*). In this regard, nonetheless,

Joyner (2004) makes a valid point. Since 'the force of national autonomy remains strong', persuasion towards the adherence of human rights in 'the global power structure within which the UN operates' has been barely possible (p. 253). This tendency was not only long sustained by the US government's general unwillingness to submit to reasoned debate but instead by its will to engage in the unilateralist redefinition of international law. It was also partly to sustain because a common international condemnation of the Guantanamo Bay atrocities was absent. As Sands (2006) highlights, 'for more than two years[,] the British government made no public criticism' on the treatment of enemy detainees⁶ (p. 157). Another reinforcing factor for lacking contestation in the international sphere may have been the subsequent bandwagoning of numerous governments to curtail civil liberties 'in the name of enhanced national security' (Joyner, 2004, p. 243) a narrative that had originated in the higher echelons of the US Administration. To put it bluntly then, this discourse might have represented the only 'new value' generated at the transnational level.

Conclusion

This is, of course, highly cynical and does not capture the whole picture. After all, in 2004, the US Supreme Court ruled in *Rasul et al. v. Bush* that *habeas corpus* petitions from the detainees would fall under its juridical purview. An 'unbound' Executive had eventually been subordinated to judicial oversight. As Justice Sandra O'Connor observed with regard to the case *Hamdi v. Rumsfeld*,

We have long since made clear that a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens. Whatever power the United Nations Constitutions envisions for the Executive in its exchanges with other nations or with enemy organizations in times of conflict, it most assuredly envisions a role for all three branches when individual liberties are at stake (in Fischer-Lescano, 2005, p. 691).

This 'triumph' has decisively been shaped by international human rights organisations (e.g. *Amnesty International* and *Human Rights Watch*) who were key players in keeping the Administration's violations of domestic and international law on the agenda. The New York City based *Centre for Constitutional Rights* has been particularly active in running direct-appeal

campaigns against the US government such as *Rasul et al. v. Bush* and *Hamdi v. Rumsfeld*. In light of this, Forsythe (2006) argues that 'all of this NGO activity, when linked to media reports and congressional actions, 'may have generated some pressure on the Bush Administration to restrict the scope of coercive interrogation at US military facilities' (p. 484).

One must therefore conclude that public scrutiny *may* be an integral part, and if established, the public's scrutiny renders states which operate at the verge of legality, and above all of legitimacy, less likely to take the lead. A state's desire to maintain its reputation in the face of public outcry may represent a great incentive to abstain from risking international resentment. Nonetheless, this hinges on two essential conditions: first, NGO and media attention must prevail in the first place and it needs to be given a platform from which to proceed. If the groups' actions succeed in reaching civil society, these groups can instigate debate on a particular normative meaning and thereby help anchor it in society. Second, and related to the former condition, as long as a state's 'window dressing' is not debunked, and a state manages to uphold a rhetoric close to the 'image of international law' (cf. Scott, 2005, p. 58), the need for this state to conform with what is considered legally binding is no imperative. So much the more is cultural validation important: By way of providing access points to open debate among the general public, the discrepancy between rhetoric and reality may be highlighted.

The paper has attempted to contribute to the debate surrounding the treatment of 'enemy detainees' at Guantanamo Bay by emphasising precisely the lack of cultural validation of international human rights in the US society which facilitated the Executive's unilateralist approach. Once the system had been installed nationally, the international community had only a restricted chance to oppose by contestation, given a seemingly irresistible discourse on 'necessity'. Despite the fact that the paper has only been able to sketch a section of a norm's *life-spiral*, it has elucidated how the fragility of a norm in the domestic arena has significant transnational repercussions. In an age where the state of emergency determines the public discourse, this very fact enables governments like that of the United States to temporarily undermine the 'smooth performance' of an international human rights norm.

Notes

1. The author has permitted herself to develop a term which adequately captures the evolutionary aspect of a norm as explicated by Finnemore & Sikkink's (1998) 'life cycle' concept, but which likewise elucidates the dialectical quality of norms stable *and* flexible which Wiener (2007a, 2007b) has so forcefully advanced.

2. They first and foremost concern the 'principle of the prohibition of torture' as laid down in the 1977 *Geneva Protocol I*, Article 75(2), as well as in the 1984 *United Nations (UN) Convention against Torture*, Article 1. Similarly, the debate has revolved around the status of protection of foreign detainees in situations of armed conflict. Here, they must be assigned the respective rights specified in the Geneva Conventions III and IV.

3. This term was used by then White House Counsel Alberto Gonzalez when defending the Bush Administration's stance on the inapplicability of the *Geneva Convention III*. Consequently, Gonzales confirmed President Bush's line of reasoning by arguing that 'the war against terrorism is a new kind of war [...] [and a] new paradigm [that] renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions [...] (in Greenberg & Dratel, 2005, p. 119).

4. Since the concept of the norm *life spiral* has been adopted in order to underline the ongoing process of norm (re-)creation, this implies that there is no definitive point of departure from which the analysis must proceed. This paper shall hence start out at the point where an agreed international norm is transferred into a given domestic arena.

5. This working group composed of US armed forces was set up by the US Defence Department in 2003 after Secretary of Defence, Donald Rumsfeld, had ordered to do so.

6. This is notwithstanding the fact that, informally, doubts on the US undertaking had been raised. See, for instance, then Foreign Secretary Jack Straw's comment on the detainees' legal rights: 'Whether or not technically they have rights under the Geneva Convention, they have rights under customary international law' (Sands, 2006, p. 160).

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ABOUT THE CONTRIBUTORS

Tobias Franke, 25, has obtained his BA of European Studies at the University of Maastricht. He has recently submitted his MA thesis on European security to the University of Bath after having completed trimesters at Charles University, Prague and Sciences Po, Paris. His main interests are CFSP, ESDP, international relations and diplomacy.

Thomas Bobinger, 25, is a college graduate who received his BA (cum laude) in "European Studies" at the University of Maastricht in 2007. In 2008, he obtained an LL.M (cum laude) in "Law and Politics of International Security" at the Free University of Amsterdam. He has written his Master Thesis on private security companies and their influence on state sovereignty, and currently interns at the Europe department of the German Institute for Human Rights in Berlin.

Jonathan Soderberg, 24, from Kiruna, Sweden is holding a BSc in Politics and Economics as well as a MA in Contemporary European Studies: Politics, Culture and Society from the University of Bath. His main interests are EU Integration, Enlargement, Economics of Politics and War Studies.

Saskia Dewitz is currently enrolled at the University of Bath, England. However, she just completed her Master's Degree in "Contemporary European Studies - Politics, Policy, Society" (also known as Euromaster).

Bennet Strang is currently enrolled at the London School of Economics, where he follows the MSc Politics and Government in the European Union.

Maren Hofius, 25, graduated in European Studies at the Universiteit Maastricht, Netherlands, in 2007 and will receive her M.A. degree in Contemporary European Studies from the University of Bath, United Kingdom, and the Humboldt-Universität zu Berlin, Germany, in 2009. During her undergraduate studies she specialised in EU/European Education Policy focusing on the Commission's role in the Bologna Process and the OMC as a new mode of governance. In her M.A. programme she has shifted her focus towards studying the significance of norms in beyond-the-state contexts.

