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The Invention of a “Common Enemy”: U.S. Armed Interventions Overseas, From Korea to Iraq

ABSTRACT

In the last century, the Law of War had undergone a significant change from the set of rules that regulate the practices of war, to a more morally bounded prohibition of war. Such transition led to a significant change in the use of force by the superpowers after the Second World War. Armed intervention, proxy war, and “the invention of the enemy” became the strategic and moral justification of military action without declaring war. During the Cold War, U.S. foreign policy revived the “amity line” described by the German philosopher and jurist, Carl Schmitt, as the world was divided into the Western cultural-political sphere and the Soviet sphere. During the wars in Korea and Vietnam, the United States employed narratives of national interest to defend its sphere

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of influence and its cultural values, while China and North Vietnam viewed the wars as a struggle for national liberation and survival. When viewed through the lens of Carl Schmitt’s political thoughts, during the Cold War the United States exhibited the traits of a “partial sovereign” within the capitalist cultural-political sphere, while the end of the Cold War saw U.S. foreign policy falling into an entanglement between national interest and its alleged global responsibilities as an “international sovereign.” Although the United States wields the greatest international political power among nations, the authorization to use force (and sometimes the lack of it) by the United Nations indicates that the organization also possesses a legal character as an “international sovereign” in the realm of global governance.

Keywords: United States, armed interventions, Cold War, Carl Schmitt, international sphere, the sovereign power.

On August 30, 2021, the Taliban once again became the “state” of Afghanistan as U.S. troops completed their withdrawal from the country, signaling an end to the decades-long war. The withdrawal cast doubts and confusion about the U.S. role on the world stage as the only superpower since the end of the Cold War. The foreign policy behavior of the United States has reached beyond the standard perceived role of nation-states. On the one hand, U.S. armed interventions were derived from domestic interests; on the other hand, those interventions often went under the narratives of maintaining global norms and order in the world community, a role that is typically played by a sovereign power in the domestic—not international—political arena.

This article discusses whether the ideas of the German philosopher and jurist Carl Schmitt (1888-1985) on sovereign power and exception are useful perspectives to understand American foreign



policy in the post-Second World War “inter-state” community.¹ Some scholars believe that the U.S. approach to the world exhibits the features of a “sovereign” in the practice of the “state of exception” in Schmitt’s theory. To the contrary, this article argues that the U.S. role within the Western bloc and U.S. foreign policy during the Cold War is clarified to some extent through the analogy of the sovereign power and the “state of exception”—meaning the suspension of the entire existing order and the assumption of unlimited authority by a national leader. After the end of the Cold War, U.S. armed interventions exhibit the befuddlement of an American foreign policy muddled between national interests and “moral responsibilities.”

To begin with, it is worth clarifying a similar-looking concept but different in nature—American Exceptionalism—an ideology that indicates a belief in American uniqueness and superiority among the international community, that the United States has a special destiny to lead the world, seen in Abraham Lincoln’s declaration “the US is the last best hope of earth.”² Such exceptionalism was also prevalent in many countries during the industrializing process. Nevertheless, American “exceptionalism” is not entirely equivalent to the “state of exception” or state of emergency devised by Schmitt. The “state of exception,” according to Schmitt, is a term associated with unique sovereign power, including the power to decide on what is an extreme

¹ I would like to express thanks to Dr. Harish Mehta, Editor-in-Chief of the *Rising Asia Journal* for his inspiring and meticulous advice during the revision of the article.

² Abraham Lincoln, “Annual Message to Congress—Concluding Remarks,” Washington, D.C., December 1, 1862, <http://www.abrahamlincolnonline.org/lincoln/speeches/congress.htm>.

emergency when the sovereign has unlimited authority and the existing legal order is suspended.³

Some of the existing literature on the topic analogizes Schmitt’s state of exception with American international behavior in the world after the Second World War. Alfred W. McCoy claims that during the Cold War the United States had adopted exceptions to the international rule of law, including illegal interrogation and serious human rights abuses by the United States in Iran, the Philippines, and South Vietnam.⁴ Afterwards, it was in the post-Cold War period that U.S. diplomacy was labeled a “state of exception,” especially after 9/11, according to Diken and Laustsen, who note two types of “state of exception”—a national level and an international level of exception.⁵ The national level includes emergency legislations such as the U.S. Patriot Acts. Three dimensions of the American “state of exception” stand out at the international level. The first dimension is the U.S. withdrawal from major international conventions. Robert G. Patman points out that during the early years of President George W. Bush’s administration, the United States renounced the Kyoto Protocol on climate change, unsigned the Rome Treaty on establishment of the International Criminal Court, withdrew from the Anti-Ballistic Missile treaty, and rejected the Comprehensive Nuclear Test Ban Treaty.⁶ The

³ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Cambridge, MA: The MIT Press, 1985), 5–12.

⁴ Alfred W. McCoy, “American ‘Exceptionalism’ or just Above the Law? Torture, Drones, Assassination with Impunity,” February 25, 2015, <http://www.juancole.com/2015/02/american-exceptionalism-assassination.html>.

⁵ Bülent Diken and Carsten Bagge Laustsen, “7–11, 9/11, and Postpolitics,” *Alternatives: Global, Local, Political* 29, no. 1 (2004): 105.



Trump administration further entrenched this trend by withdrawing from the Paris climate accord.

The second dimension of the U.S. “state of exception” is armed intervention without the authorization of an international body. Roberto Ciccarelli argues that the U.S. practice has contributed to the transformation of the state governed by the rule of law into a “power-state” where law becomes the state’s agent instead of a limiting power as a guarantor of rights. The logic of political crime assumed by emergency legislation (the Patriot Acts of 2001 and 2002) has justified armed interventions without international authorization.⁷

Timothy Nunan identifies American interventions as a spoilage of the Monroe Doctrine, which originated as legitimate defense of democracy against monarchism but was transformed into a pan-interventionist ideology.⁸ On the War on Terror, the United States seems to officially regard the situation after 9/11 as a state of emergency or exception that requires extreme methods. In this regard, Bruno Gulli suggests that the United States is acting as a world sovereign who has the power to decide on the exception, for instance, the speech by George W. Bush rebuking the UN before attacking Iraq: “We don’t need permission,” or his decision to open the detention camp at Guantánamo Bay.⁹ The United States, besides imposing a state

⁶ Robert G. Patman, “Globalisation, the New US Exceptionalism and the War on Terror,” *Third World Quarterly* 27, no. 6 (2006): 972.

⁷ Roberto Ciccarelli, “Norm/Exception: Exceptionalism and Governmental Prospects in the Shadow of Political Theology,” in Alessandro Dal Lago and Salvatore Palidda eds., *Conflict, Security and the Reshaping of Society: The Civilization of War* (Oxon: Routledge, 2010), 58.

⁸ Timothy Nunan, “Carl Schmitt, American Prophet,” *Humanity Journal*, June 10, 2014, <http://humanityjournal.org/blog/carl-schmitt-american-prophet>.

of emergency itself after 9/11, also required its allies to “compromise their constitutional and international commitments,” which forms a larger “international state of emergency,” as Kim Lane Scheppele points out.¹⁰

The third dimension of the U.S. “state of exception” is the detention of prisoners at Guantánamo Bay which is relevant to Schmitt’s “amity line,” or the cultural line between the civilized sphere and the uncivilized sphere, or lines to separate the civilized “self” from the uncivilized “other.”¹¹ The United States utilizes labels such as “enemy alien,” “unlawful combatant,” and “enemy combatant” to vindicate the detentions and suspension of the legal system at Guantánamo Bay.¹²

Those arguments about Schmitt’s “state of exception” and American policy provide an innovative perspective for understanding U.S. behavior in the post-Second World War world, especially after the end of the Cold War. On the other side, the “framing” of the U.S. approach into a Schmittian theory confounds and blurs the essence of the U.S. approach. The explanations of the U.S. “state of exception” are often found denoting different issues. For example, some scholars’

⁹ Bruno Gulli, “The Sovereign Exception: Notes on Schmitt’s Word that Sovereign is He Who Decides on the Exception,” *Glossator*, Volume 1 (2009), <https://solutioperfecta.files.wordpress.com/2011/10/gulli-the-sovereign-exception-8x10.pdf>.

¹⁰ Kim Lane Scheppele, “Law in a Time of Emergency: States of Exception and the Temptations of 9/11,” Public Law and Legal Theory Research Paper Series Research Paper No. 60, University of Pennsylvania Law School, <https://www.law.upenn.edu/cf/faculty/kscheppe/workingpapers/6JofConstituLa w1001.pdf>.

¹¹ Jason Ralph, “The Laws of War and the State of the American Exception,” *Review of International Studies* 35, no. 3 (2009): 644.

¹² Diane Marie Amann, “Guantánamo,” *Columbia Journal of Transnational Law* 42 (2004): 263–348.



observations are about the state of exception as a “display” of U.S. policies, while others are about the state of exception as the “motivation” of the United States, or simply about summarizing U.S. behavior through a “state of exception” lens. Such confusions may partly result from the complex nature of Schmitt’s theory of exception. After a brief review of Schmitt’s theory and its controversy in the next section, the remaining part of the article will review the evolving topic of legitimacy on declaring inter-state wars during the twentieth century, and it will discuss whether the “state of exception” theory is a good analytical lens for explaining the U.S. approach to the world during and after the Cold War.

1. Schmitt’s Theory of Exception

The term “state of exception” denotes a crisis-situation of such severity that it requires the application of extraordinary measures, such as the need to declare war or temporarily suspend the law and legal rights during peaceful times.¹³ Sometimes the “state of exception” appears in the form of a “state of emergency,” a term with similar meaning but concentrating on a wider variety of factual circumstances and the crisis aspect of the situation, whereas “state of exception” emphasizes that exceptions are being made to the normal legal regime.¹⁴ The state of exception is a situation decided upon only by the sovereign, according to Schmitt. In fact, Schmitt defines “sovereign” as “he who decides on the exception,” i.e., “whether there is an extreme

¹³ Schmitt, *Political Theology*, 5, note 1.

¹⁴ Joan Fitzpatrick, *Human Rights in Crisis: The International System for Protecting Rights During States of Emergency* (Philadelphia, PA: University of Pennsylvania Press, 1994), 1, note 1.

emergency as well as what must be done to eliminate it.”¹⁵ The power to decide on the exception makes the sovereign unbound by law so that he/she “stands outside the normally valid legal system.” In Schmitt’s usage, the concept of exception is important in sovereignty and state survival. The necessity for exception arises when the state might face a challenge so severe that it must make the “exception” by suspending the normal order to preserve itself by empowering the sovereign with unlimited authority. The reason that the power to “decide on the exception” must (or should) vest in the sovereign authority instead of legal arrangements is that “the precise details of an emergency cannot be anticipated, nor can one spell out what may take place in such a case.”¹⁶

The origins of Schmitt’s idea might reside in the chaotic situation that Weimar Germany faced when Schmitt wrote *Political Theology*. As Scheppele points out, the capability to effectively respond to the immediate crisis in Weimar Germany was “more than a purely theoretical issue,” where “the constitutional order lurched from one unstable government to the next and where the economy lurched along with it.”¹⁷ He argues that in Schmitt’s eyes liberal parliamentary government seemed always on the brink of failure and unable to maintain civic order.

Apart from preventing the state and the system from total breakup, Schmitt believed the exception has a philosophical significance. The exception not only confirms the rule but also its

¹⁵ Schmitt, *Political Theology*, 5-12.

¹⁶ *Ibid.*

¹⁷ Scheppele, “Law in a Time of Emergency,” 11.



existence.¹⁸ The rule or normal legal order does not make sense without the exception. Giorgio Agamben gives an exemplary illustration in this case: “The exception does not subtract itself from the rule; rather, the rule, suspending itself, gives rise to the exception and, maintaining itself in relation to the exception, first constitutes itself as a rule.”¹⁹

A Variant of Exception

Schmitt’s theory contains a “variant” of exception in world politics. When the sovereign deals with an “uncivilized,” “immoral” enemy, or “war criminals,” it would naturally come into an exception where laws or normal rules cease to apply.²⁰ This type of exception originated from the “amity lines” and the law of war during the early modern period when the world was divided by Europeans into two: a “civilized” society and a “savage, uncivilized” one. The law of war such as treaties, peace, and friendship only applied within Europe, while outside the line only power and law of the jungle applied. Warfare “beyond the line” was not bracketed.

According to Schmitt, the United States revived the practice of “amity line” through the Monroe doctrine—“America became a sphere of freedom and naturalness” while the sphere outside the “global line” was corrupted.²¹ This global line evolved as the U.S. grew into a superpower. The “land of freedom” expanded accordingly, especially after the Second World War, to include Western Europe and Japan.

¹⁸ Schmitt, *Political Theology*, 15.

¹⁹ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford, CA: Stanford University Press, 1998), 18.

²⁰ Carl Schmitt, *The Nomos of the Earth: In the International Law of the Jus Publicum Europaeum*, trans. G. L. Ulmen (New York: Telos Press, 2003), 219.

²¹ *Ibid*, 92–95.

Regions outside this sphere were considered an “exception.” On the other hand, a different type of “non-geographical” dividing line also came into existence. Since the end of the First World War, war was no longer recognized in international law. War, along with armed conflict, became illegal, aggressive, and criminal. Not only does the violation of rules on the battlefield remain impermissible, but the act of launching a war also became a war crime. The remaining permissible form of armed intervention therefore became peacekeeping and humanitarian intervention. Schmitt observes that the meaning of international law also underwent a change in the early twentieth century, from a set of inter-state laws that emerged and shaped European international relations since the early modern times to a new set of norms based on moral values, which would be discussed later in the article.²²

Risk of Misuse

The fundamental problem of the theory of exception lies in whether it is an abstracted description of political institutions in reality or an ideational design about what the political institutions ought to be. If the theory was generalized from empirical observations, or an abstract roadmap intended to provide a guideline for implementation, then it is necessary to empirically test the theory within the political reality.

The first question arising from the theory of exception is the actual authority of the various nominal sovereigns. The sovereign, as an invented role within a legal system, does not always attain the type of power conceptualized in the term. This controversy stems from Schmitt’s presumption that the sovereign is a “unitary, rational” actor, either in the form of a person or a group of people, that is impartial and insightful in making crucial decisions for the public. However, in

²² Ibid, 259-289.



reality the identity of the political actors taking the office of the sovereign power is always fluid. Many times, a decision on the exception made by a head of state is disputed by a representative agency, the Court, or contenders for the sovereign power. This confusion makes Schmitt's theory impracticable in some respects to discuss the reality of international affairs.

Analyses of the sovereignty concept sometimes confuse the constructed concepts with political realities. "Sovereignty" as a constructed concept was developed by a number of theorists. For example, in *Leviathan* Hobbes conceived a number of political ideas such as the creation of a "Common-wealth" and a Sovereign Power" which has the absolute authority.²³ It is clear that Hobbes' creeds were mainly constructed as an ideal framework. In reality, the "capability" of the sovereign often emanates from the power dynamics. Sovereignty is essentially the shifting projection of political and coercive power relations. It is not naturally attached to a fixed personified sovereign. Rather, sovereignty is hypothetically "divided" among every actor (a person or a group of people, such as the military) within the state proportionally to their respective clout. In this sense every actor wielding power is a "partial sovereign," though the powers of those "sovereigns" vary. If a political actor possesses greater clout than the one occupying the "sovereign" position (e.g. head of state), then such actor's decision might be more "sovereign like" than the nominal sovereign. For example, the Empress Dowager Cixi of the Qing Dynasty attained a role more "sovereign" than the nominal Emperor Guangxu. The powerful viceroys in the provinces, such as Li Hung-Chang (1823-

²³ Thomas Hobbes, *Leviathan*, ed. A. R. Waller (Cambridge: Cambridge University Press, 1904), 120-8.

1901) and Yuan Shikai (1859–1916) also wielded a more dominant say in foreign and military affairs than the emperor Guangxu.

On the other side, suppose the “nominal” sovereign has the greatest actual power within the state, the other state actors still hold their share of “sovereign power” within their sphere of influence. For example, in modern states the major portion of sovereign power was shared between monarchs/head of states and parliaments. In the former Soviet Union, even at the height of Stalin’s dictatorship, the Politburo could still play a role in decision-making.²⁴ In the Qing Dynasty of China where the monarch had a significant degree of absolute power, the capability of designating a “state of exception” was not the monarch’s monopoly. A case in point is the Boxer Rebellion in 1900. When the Empress Dowager declared war against eleven countries, it was a sovereign decision on the exception or the emergency. However, several viceroys and governors in the southern provinces defied the royal ordinance on declaring war. Instead, the viceroys signed a “peace treaty” (“The Mutual Protection Treaty in Southeastern China”) with the foreign governments with whom they were technically at war.²⁵ Here, the power to decide upon the exception migrated from the nominal sovereign, the Empress Dowager, to the viceroys. In other words, the “Mutual Protection Treaty” vindicated two points. First, powerful members within the state are also capable of deciding on the exception within their sphere of influence. Secondly, in certain contexts those powerful members are able to nullify the

²⁴ Yoram Gorlizki, “Stalin’s Cabinet: The Politburo and Decision Making in the Post-War Years,” *Europe-Asia Studies* 53, no. 2 (2001): 291–312.

²⁵ Lanxin Xiang, *The Origins of the Boxer War: A Multinational Study* (London: Routledge, 2003), 315–7.



sovereign's decision on the exception, i.e. creating a "state of exception" outside the sovereign's "state of exception."

The diffusive nature of sovereign power discussed above shows it is impractical to conceive a single sovereign who "stands outside the normally valid legal system" because legal orders per se are the result of political struggle and compromise. In other words, laws and legal orders are the balancing result of expectations or wishes from members of the state, or the multiple "sovereigns" of the state. The concept of the sovereign as outside the domestic legal system is essentially a constructed idea in light of the blurred and fluid realities within domestic politics.

2. End of "Legitimate" Inter-State Wars and the Beginning of "Armed Intervention"

The new types of "wars" occurring within the post-Second World War international community could be conceptualized variously as the policing war, the proxy war, and the undeclared war. Distinct from the military interventions usually led by regional or international organizations and aimed at peacekeeping or confronting non-traditional security challenges, many of the policing wars are still fought between the traditional belligerents—the states. Examples of those wars are the Korean War, to some extent the Vietnam War, the Kosovo War, the wars in Afghanistan since 2001, and the 2003 Iraq War. Prior to the twentieth century, a state declaring war on another nation-state did not risk losing international legitimacy, while the belligerents of the more recent armed conflicts usually sought a form of "international legitimacy" by garnering support from other members of the international (or "inter-nation-state") community. These new wars are waged on the ground of "policing" or "peace-

keeping” despite the trend of the delegitimization of war between states in the first-half of the twentieth century.

According to Carl Schmitt’s thesis, although the occurrence of war crimes was intermittently discussed since the late-nineteenth century, the focus of war crimes usually refers to the violation of “war norms” or “codes of the battlefield” rather than the prohibition of war itself.²⁶ The declaration of war among states was not considered a crime until after the two world wars whose massive cruelty and losses led to the accelerated outlawing of wars among nation-states. In the aftermath of the First World War, tribunals were set up to bring to trial those recognized as responsible for war. Advocated by the British, Belgian, and French delegations, the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties was established to investigate or allocate war blame, all of which was attributed to the defeated parties. At the insistence of Britain, the German Kaiser was assigned responsibility, despite objections from the United States and Japan. This was the first time a head of state was blamed for a war among nation-states.²⁷ The 1930s witnessed the dual processes of incrimination of both “terrorism” (against the state) and “war criminals.” The League of Nations in November 1937 introduced the Convention for the Prevention and Punishment of Terrorism, and the Convention for the Creation of an International Criminal Court. The former convention was a prerequisite for states to participate in the latter. The proposed International Criminal Court was formed at The

²⁶ Schmitt, *The Nomos of the Earth*, 260–262.

²⁷ Theodor Meron, “Reflections on the Prosecution of War Crimes by International Tribunals,” *The American Journal of International Law* 100, no. 3 (2006): 551–579.



Hague, with five judges and five deputy judges of different nationalities.²⁸ The Second World War witnessed further strengthening of the condemnation of the aggressor of an inter-state war. The Atlantic Charter of 1941 reaffirmed “the abandonment of the use of force” and the self-determination principle—“no territorial changes that do not accord with the freely expressed wishes of the peoples concerned.”²⁹ The UN Charter of 1945 escalated the elimination of inter-state wars to a new level, stipulating in Article 1 that the priority purpose of the UN is “to maintain international peace and security” by “collective measures,” and to remove “threats to the peace.”³⁰ According to the charter, all members are required to renounce inter-state wars and settle disputes by peaceful means.

The delegitimization of war between states corresponds with the institutionalization of the “inter-state” community and the diminishing character of anarchy or self-help within the international arena proposed by the realism paradigm of International Relations. The international community began attempting to eliminate war among states and to sustain peace during the twentieth century. In the words of Carl Schmitt, the twentieth century saw a decline of the traditional European international law and the rise of the universal international law, while those laws of politics were being replaced by the laws of universalist values of humanity, civilization and progress. The “inter-state” or international politics was transformed into a “global domestic” politics, with principles guiding domestic political institutions

²⁸ Manley O. Hudson, “The Proposed International Criminal Court,” *The American Journal of International Law* 32, no. 3 (1938): 549–554.

²⁹ The Atlantic Charter, August 14, 1941, The Franklin D. Roosevelt Presidential Library and Museum, <https://www.fdrlibrary.org/atlantic-charter>.

³⁰ “Compete Text of the Charter Adopted by the United Nations’ Security Organizations,” *New York Times*, June 27, 1945, 12.

increasingly overspilling into the international realm. A new type of “religious war” with a common enemy replaced the old “political enemy” and the practice of *jus in bello*, which was conducted during the early modern European international politics and accompanied by the secularization of the state. Schmitt argues that the political wars fought during the early modern period had evolved into a type of “just war” that resembles some of the religious wars in the Middle Ages. As Schmitt puts it, unlike the “old” international law that was limited to the European nation-states, the onset of the universal international order in the twentieth century came with an absence of a unitary or common cultural basis, therefore making it potentially unstable owing to the multiplicity of political cultures that existed under the scope of the League of Nations or the United Nations.³¹ Yet, contradictions and conflicts may arise from the lack of a unitary political culture, making it impossible to maintain a normal international order; thus the international community would be constantly put under a situation of emergency.

In the more recent words of political scientists, the new universal order that covered the entirety of the globe in the twentieth century, especially after the Second World War, lacks a political-cultural consensus or common perception of legitimacy. Almond and Verba suggest that the presence of a “political culture,” or more specifically a “civic culture,” is a prerequisite to a stable and functioning order.³² To form such a feasible order out of the diversity/multiplicity of the international community, Schmitt suggests a division of the world into several *Großraum*—regional spheres with a

³¹ Schmitt, *The Nomos of the Earth*, 228–261.

³² Gabriel Almond and Sidney Verba, *The Civic Culture: Political Attitudes and Democracy in Five Nations* (London: Sage, 1989), 12–29.



common basis of political culture and identification—each one of which would be led by a sovereign-like state, or a “stabilizer.”³³ This type of hegemon has been discussed under the rubric of the hegemonic stability theory and by theorists Robert Keohane and Robert Gilpin.³⁴ The international “sovereign” is therefore responsible for maintaining a stable order and coping with the challenger state or the “rebel” against existing international institutions.

The presumption of a “sovereign of the world” state inevitably leads to a confusion of roles between the nation-state with national interests and the hegemon, the upholder of international order and arbiter of disputes. In the meantime, the advent of the global Cold War and nuclear weapons further enhanced and complicated this interpretation of the world order. On the one hand, ideology became the foundational norm underpinning the domestic legitimacies within various nation-states and nation-blocs. Hence morality, righteousness, and “holy wars” became a frequently employed reason for armed intervention during a time when declaration of inter-state wars became illegitimate. On the other hand, the lessons from the world wars and the ultimate fear of mutual destruction in a nuclear war resulted in the “growing up” and cautiousness of modern nation-states towards inter-state full scale wars. As a result, a new type of invention—armed intervention and the proxy war—came into the spotlight.

³³ Schmitt, *The Nomos of the Earth*, 253–255.

³⁴ Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, NJ: Princeton University Press, 1984); Robert Gilpin, *The Political Economy of International Relations* (Princeton, NJ: Princeton University Press, 1987).

3. A Clash of Norms—The Slide Towards Asian Proxy Wars During the Cold War

In the aftermath of the Second World War, the UN institutions that were created upon the principles of the Yalta Conference only introduced a superficial universal international order based on loose principles. In reality, international political power was divided into two major groups—the Communist bloc and the Western bloc. The two blocs were supported by different apparatuses of armed forces—North Atlantic Treaty Organization and the Warsaw Pact. The political configuration of the post-war international arena resembled the *Großraum* devised by Carl Schmitt. Those blocs were roughly defined by two separate sets of norms or political cultures, although diversity prevailed within each bloc and could not be extracted into a simple pattern or paradigm. International order within each of those two camps was maintained by the “hegemons”—the United States and the Soviet Union.

The presence of such cultural-political spheres was first indicated in Winston Churchill’s March 1946 speech at Westminster College in Fulton, Missouri, in which he used the well-known description of “The Iron Curtain,” a modern “amity line” defining the boundary of the cultural-political sphere between the two camps: “From Stettin in the Baltic to Trieste in the Adriatic, an iron curtain has descended across the Continent,” and behind that line lay the cities of Warsaw, Berlin, Prague, Vienna, Budapest, Belgrade, Bucharest and Sofia, all of which were located in “the Soviet sphere, and all are subject, in one form or another, not only to Soviet influence but to a very high and in some cases increasing measure of control from



Moscow.”³⁵

Apart from this metaphor, a less discussed aspect of Churchill’s speech is his profound description of the Western cultural-political sphere, based on a common political culture and a set of norms generalized by Churchill, although those norms may seem more specific to the Anglo-American circumstances:

The great principles of freedom and the rights of man, which are the joint inheritance of the English-speaking world and which, through Magna Carta, the Bill of Rights, the habeas corpus, trial by jury and the English common law find their most famous expression in the American Declaration of Independence.³⁶

For the defense of those principles, Churchill suggested the United States should take the leading role. The United States possessed both the capability and the cultural-political ideology to act as an order-keeper resembling a “sovereign” of the Western political sphere conceived by Carl Schmitt. As Churchill put it, “The United States stands at this time at the pinnacle of world power.” Besides its enormous power, the United States should take moral responsibility, for “the high and simple causes that are dear to us and bode no ill to any,” to protect “the principle of common citizenship,” as it bore “an awe-inspiring accountability to the future.”³⁷

³⁵ Winston Churchill, “Mr. Churchill’s Address Calling for United Effort for World Peace,” *New York Times*, March 6, 1946, 4.

³⁶ Churchill, “Mr. Churchill’s Address.”

³⁷ *Ibid.*

Perhaps inspired by Churchill’s encouragement that gave it a sense of confidence about its capability, U.S. diplomacy during the Cold War often revolved around the need to preserve the interest of the Western camp and the cultural-political norms underpinning the international order within the camp. Hence the containment policy was born. The policy, initially outlined in the Truman Doctrine, strove to contain communist intervention in Greece, Turkey, and other newly independent postcolonial states in Asia and Africa. U.S. financial aid was extended to those regimes to counter the risk of social, ideological, or political conversion/subversion of those states. According to the narrative employed in the U.S. National Security Council Report-68 released in April 1950, just one month before the outbreak of the Korean War, the containment policy resulted from a conflict of values and norms, a dichotomy between the sphere of “freedom” versus the sphere of “slavery.”³⁸ The objective of U.S. foreign policy was to maintain “the material environment” in which Western fundamental values flourish. The challenge from the Kremlin “is directed not only to our values but to our physical capacity to protect their environment.” Therefore, U.S. policymakers formed a consensus to “lead in building a successfully functioning political and economic system in the free world.”

³⁸ “NSC 68: United States Objectives and Programs for National Security,” April 14, 1950, Digital National Security Archive collection: Donald Rumsfeld, 2001–2003, United States Department of Defense, July 1, 2002. <https://www.proquest.com/government-official-publications/nsc-68-includes-attachment-entitled-united-states/docview/2469730317/se-2?accountid=14426>.



The Korean War: The U.S., Soviet, and Chinese Response

Responding to the outbreak of the Korean War, the administration of President Harry S. Truman employed narratives of an international “state of exception” and a global emergency that had presumably exposed the Western camp to a grave threat from the Soviet camp. A month after NSC-68, the idea of containment faced its first test with the outbreak of the Korean War on June 25, 1950. From the perspective of U.S. policymakers, the conflict in the peninsula was a surprise and matter of survival for the whole Western cultural-political sphere. The United States considered the conflict an act of aggression by the international communist camp, whose escalation raised the risk of starting a third world war, and seriously threatened the survival of the Western bloc. Truman, pushed a resolution on the same day through the UN Security Council calling for military assistance to South Korea, and on June 27 ordered the U.S. navy and air force to deploy in South Korea.³⁹ Truman did not seek a Congressional declaration of war, and perceived the military operation as “police action” empowered by the UN.⁴⁰

Scholars have discounted several reasons why Truman did not seek Congressional approval. First, Truman could not claim that he did not have the time, or that the Congressional route would take too long because Congress was already in session when war broke out and it

³⁹ Statement by the President on the Situation in Korea, June 27, 1950, Truman Library, <https://www.trumanlibrary.gov/library/public-papers/173/statement-president-situation-korea>.

⁴⁰ “The United Nations in Korea,” Truman Library, <https://www.trumanlibrary.gov/education/presidential-inquiries/united-nations-korea>.

would certainly have endorsed the war.⁴¹ Secondly, Truman could not argue that the Korean conflict did not constitute war as the Constitution defined it. Truman, however, denied that the country was at war, at a press conference on June 29. A reporter who was present at the conference asked “would it be correct to call this a police action?” In reply Truman simply said, “Yes.” But many senators believed that he had acted extra-constitutionally. Senator Robert A. Taft argued that “there is no legal authority for what he [Truman] has done.” Truman intervened militarily because he believed that as the commander-in-chief he had the authority to send U.S. troops into battle—contrary to what the writers of the U.S. Constitution had envisioned. Some senators contemplated putting the intervention to a vote in Congress, but others shied away from taking the issue to Congress largely to avoid a lengthy debate. In the end, the avoidance of a Congressional vote vastly expanded the scope of presidential power.

After the Chinese intervention in the war in Korea in October, the United States began to suspect the emergence of a Sino-Soviet axis, and deemed the war an ideological and geopolitical move that endangered the survival of the Western bloc. A U.S. Central Intelligence Agency memorandum concluded in December that “the Soviet rulers have resolved to pursue aggressively their world-wide attack on the power position of the United States and its allies,” and the Soviet Union by “directing or sanctioning the Chinese Communist intervention in Korea, must have appreciated the increased risk of global war and have felt ready to accept such a development.”⁴²

⁴¹James M. Lindsey, “TWE Remembers: Truman’s Decision to Intervene in Korea,” Council on Foreign Relations, June 27, 2020.



Shortly afterwards, Truman made a public statement on the matter and explained the decision of the U.S. to provide military support to the South Korean government. Truman said that the attack by the North was seen as “beyond all doubt that Communism has passed beyond the use of subversion to conquer independent nations and will now use armed invasion and war” and to destroy “international peace and security.”⁴³ U.S. military operations in Korea were presented as an effort to “repel any and all threats against our national security and to fulfill our responsibilities in the efforts being made through the United Nations.”⁴⁴ Despite the purpose of internationally containing global communism, Truman’s official declaration of armed intervention was still based on a national ground—the text of Truman’s Presidential Proclamation called it a “national emergency” rather than an “international” one.

Despite the U.S. evaluation of the Korean War as a collective ideological-political action by the Soviet bloc, equaling a modern “religious war” confronting the Western cultural-political sphere, the reality might be more complicated. For example, the motivation behind the Chinese military response might be more “nationalist” than “ideological.” In the aftermath of the Second World War, traditional political norms of the nation-state and nationalism dominated strategic thinking in many Afro-Asian countries, even amid the

⁴² Memorandum by the Central Intelligence Agency, Washington, December 2, 1950, Foreign Relations of the United States, 1950, Korea, Volume VII, <https://history.state.gov/historicaldocuments/frus1950v07/d939>.

⁴³ Harry Truman, Statement by the President, June 27, 1950, <https://www.docsteach.org/documents/document/truman-statement-korea>.

⁴⁴ Harry Truman, *Proclaiming the Existence of a National Emergency*, Presidential Proclamation 2914, December 16, 1950, <https://www.docsteach.org/documents/document/presidential-proclamation-2914>.

tensions of the Cold War. The postcolonial movement that swept the majority of Asia, Africa, and Latin America underlined the value of practices featured in *Jus Publicum Europaeum*, the European international law. The foremost example and testament to this principle was the Non-Aligned Movement led by the newly independent countries that highlighted the importance of national sovereignty and self-determination. In the ideologically-prioritized communist camp, nationalist thinking prevailed in a number of states, including the People’s Republic of China. As shown below, the outbreak of the Korean War was certainly a result of Cold War clashes between two ideological and military camps, but it was also a clash of ideas between the interests of a Western cultural-political sphere on the one side, and the European nationalist thinking that prevailed since the eighteenth century but only recently appeared in Asia, on the other side.

In contrast to U.S. strategic evaluation that believed the P.R.C. was under the “direction or sanctioning” of “the Soviet rulers,” recent historical archival documents have shown that the P.R.C. was kept in the dark about the outbreak of the war. As early as 1949, the North Korean leadership began to seek approval from the Soviet Union for a full-scale attack on the south. On September 3, 1949, Korean leader Kim Il Sung came up with a plan to attack the Ongjin Peninsula, which bore similarity with the actual operation later on June 25, 1950. This plan indicated if the situation permitted, the North Korean army would continue to go south. He believed that North Korea could take over South Korea within two weeks to two months.⁴⁵ At this time, the Soviet

⁴⁵ “Telegram from Tunkin to Vyshinsky regarding Kim Il Sung’s Plan to Acquire the Ongjin Peninsula,” [Dunjin guanyu Jinricheng zhunbei duoqu wengjinbandao zhi Weixinsiji dian] September 3, 1949, АВПРФ, ф. 059а, оп. 5а, п. 11, д. 4. лл. 136–138, in Shen Zhihua ed., *The Korean War: Confidential*



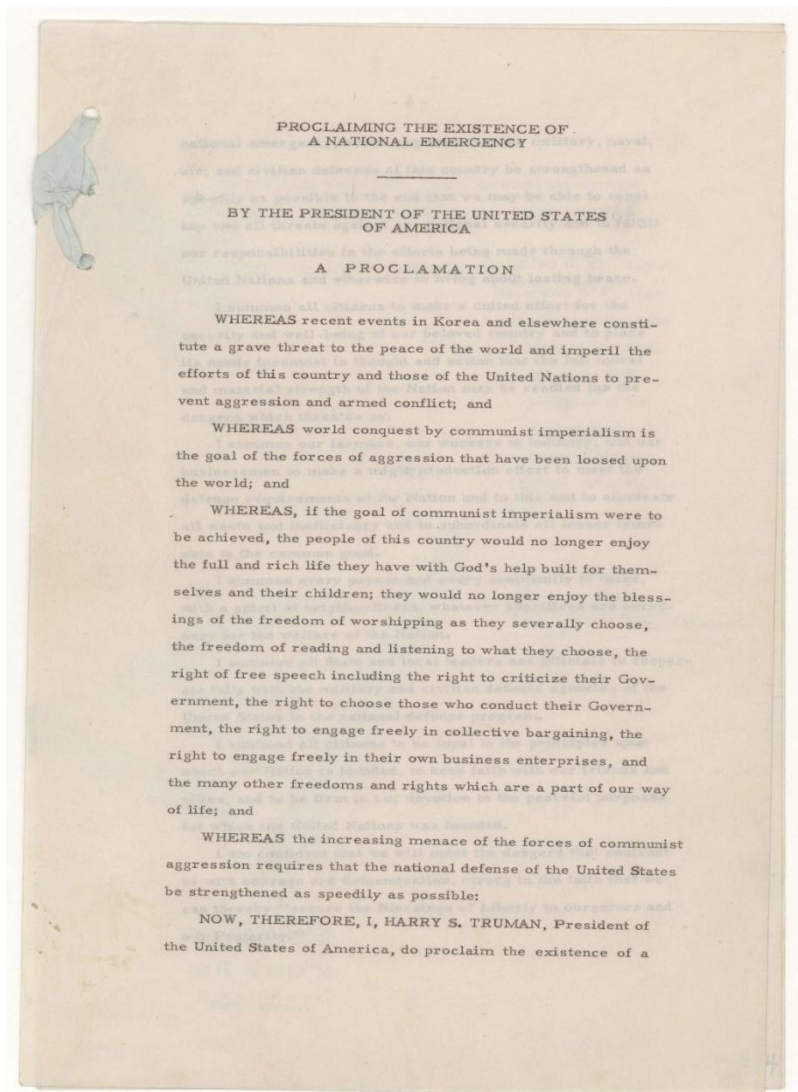
Union still doubted North Korea's capability to launch a full-scale military operation against the south. On September 23, 1949, the senior Soviet diplomat, Vyacheslav Molotov, explained in a reply to Kim that North Korea was not fully prepared for a military operation against the south both militarily and politically, and the plan to attack the Ongjin Peninsula was not advisable under the present situation.⁴⁶

The Soviet decision on Korea was also derived from national interests, and was not dictated by any plan for a full-scale global confrontation by the Eastern bloc of the Western bloc as speculated by U.S. officials. More specifically, the changing geopolitical situation in East Asia led to a reversal of the Soviet attitude because communist China was emerging as a new power. Following the creation of the P.R.C. in 1949, which replaced the Guomindang or the Nationalist government in China, a new Sino-Soviet treaty signed in February 1950 replaced the old one with the Guomindang. To the dissatisfaction of the Soviets, the new treaty revoked the privileges enjoyed by Imperial Russia, and later the Soviet Union, in Manchuria, including the Lüshun and Dalian port. By allowing North Korea to launch military action in the peninsula, the Soviet Union hoped to make up for the loss in Manchuria. If the North won, the Soviets could gain access to the whole Korean peninsula and the ports in Incheon and Busan. Even if the North lost the war, the P.R.C. could ask the Soviet military to remain in

Documents from Russian Archives, Volume I, [Chaoxian Zhazheng: eguo danganguan de jiemi wenjian] (Taipei: Academia Sinica, 2003), 230.

⁴⁶ "Instructions in Reply to Kim Il Sung, Submitted by Molotov," [Moluotuofu chengbao de nidafu Jinricheng de zhishigao] September 23, 1949, АИРФ, ф. 3, оп. 65, д. 776, лл. 33–38, in Shen Zhihua ed., *The Korean War: Confidential Documents from Russian Archives, Volume I*, 255–259, (Taipei: Academia Sinica, 2003).

Manchuria to balance the threat from the United States.⁴⁷



U.S. President Harry S. Truman proclaims an Emergency in Korea on December 15, 1950. Image by the courtesy of the U.S. National Archives.

The speculation over the existence of a “Sino-Soviet axis” was also a misperception by U.S. policymakers. In 1950, the P.R.C.’s policy

⁴⁷ Shen Zhihua, *Mao Zedong, Stalin and the Korean War* [Maozedong Sidalin yu chaoxianzhazheng] (Guangzhou: Guangdong People’s Publishing House, 2003), 174-177.



focus was on the Guomindang in Taiwan and Chinese domestic economic recovery after decades of civil war and the war with Japan. In September 1949, North Korean representative Kim Il met Mao Zedong. Mao suggested to Kim that it might not be a good idea for the North to launch a military operation in light of the “political disadvantages,” and if there would be a war, “the Chinese friends would not give North Korea any substantial support because they would be busy with domestic affairs.”⁴⁸ In order to avoid any possible objections by the P.R.C., the initial Soviet military aid to North Korea was all transported by sea instead of by railway through Chinese territory.⁴⁹

The question of China joining the war was a major focal point of the Sino-Soviet discord. On September 15, MacArthur launched the landing on Incheon and achieved strategic success. On the eve of UN forces crossing the 38th parallel, the Chinese government sent a note through Indian ambassador K.M. Panikkar to the United States on September 25 expressing objection to the advance by UN troops.⁵⁰ On September 30, North Korea requested the Soviet Union for “direct military assistance,” and if the Soviets could not deliver, North Korea requested the Soviet Union to “help build volunteer forces in China or other people’s democratic countries.”⁵¹ The Soviets did not agree to send troops, and instead pressured the P.R.C. to provide aid. On October

⁴⁸ Sergei N. Goncharov, John W. Lewis, and Xue Litai, *Uncertain Partners: Stalin, Mao, and the Korean War* (Stanford, CA: Stanford University Press, 1993), 153.

⁴⁹ *Ibid.*

⁵⁰ Shen, *Mao Zedong, Stalin and the Korean War*, 218–219.

⁵¹ “Telegram from Shtykov to Gromyko, the Letter Asking for Help from Kim Il Sung to Stalin,” [Shitekefu guanyu zhuanheng Jinricheng gei Shidalin de qiuyuanxin zhi Geluomike dian] September 30, 1950, АПРФ, ф. 45, оп. 1, д. 347. лл. 41–5, in Shen Zhihua ed., *The Korean War: Confidential Documents from Russian Archives, Volume II*, 563–565, (Taipei: Academia Sinica, 2003).

1, Stalin directly asked Beijing to send troops to North Korea and advance to the 38th parallel immediately.⁵² However, on October 3, Chinese policymakers were still deeply divided on whether or not to send troops to Korea, and could not reach a consensus. On October 5, Stalin once again pressed the Chinese to send in troops.⁵³ The consensus on sending troops began to have the upper hand based on the argument for national interest. As Chinese General Peng Dehuai pointed out, if American troops reached the Yalu River (at the China–North Korea border), they could launch an invasion at any time they want: “if China were to fight the United States three or five years later, then the enemy would be armed, our newly developed economy will also be destroyed.”⁵⁴ Peng’s support changed the atmosphere at the decision-making conferences which finally reached the decision to join the war in Korea.

The difference in understanding the nature of the Korean War led to consequent misperceptions and clashes of norms. The United States perceived North Korea launching the war as a prelude to a larger scale aggression by the Soviet bloc against Western civilization. In the meantime, the Chinese decision-making process was dominated by traditional nationalist thinking rather than defending its ideological

⁵² “Telegram from Stalin to Roshchin Suggesting China Send Troops to Assist North Korea,” [Shidalin guanyu jianyi zhongguo pai budui yuanzhu Chaoxian wenti zhi Luoshen dian] October 1, 1950, АИРФ, ф. 45, оп. 1, д. 334. лл. 97–8, in Shen Zhihua ed., *The Korean War: Confidential Documents from Russian Archives, Volume II*, 571 (Taipei: Academia Sinica, 2003).

⁵³ “Telegram from Stalin to Mao Zedong regarding China Sending Troops to North Korea,” [Shidalin guanyu zhongguo chubing wenti zhi Mao Zedong dian] October 5, 1950, SD11820, Shen Zhihua ed., *The Korean War: Confidential Documents from Russian Archives, Volume II*, 581–584, (Taipei: Academia Sinica, 2003).

⁵⁴ Peng Dehuai, *A Chronicle of Peng Dehuai* [Pengdehuai Nianpu] (Beijing: People’s Publishing House, 1998), 441.



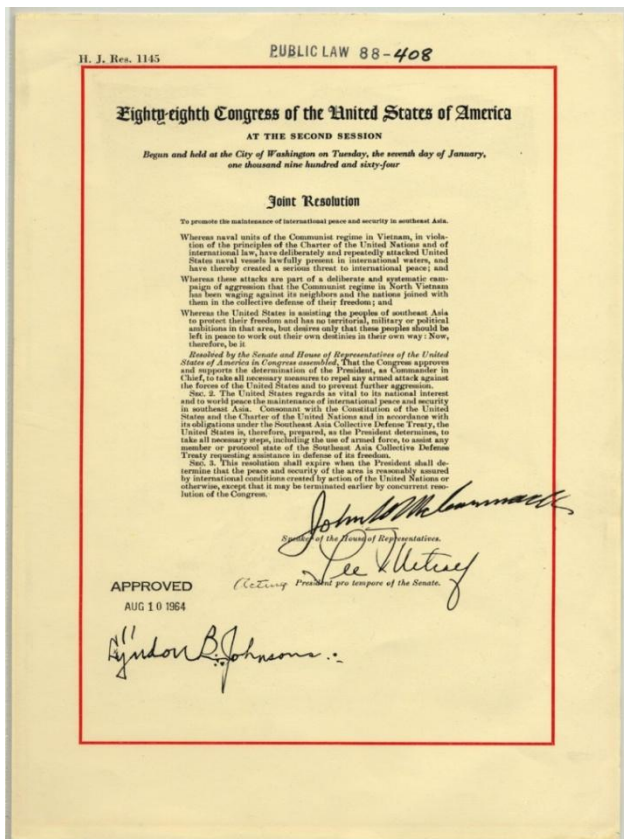
camp, despite certain pressures being applied from Moscow. As for the rationale behind the Soviet decisions, the preservation of Russian colonial privileges and seaports in Northeast Asia was a major motivation. While U.S. decisions concerning the Korean War could be partially understood as a limited “sovereign” within the Western bloc to confront the presumed “emergency” that endangered the survival of the normal order of the “free” world, the decisions of the Soviets and the Chinese were mainly the consequence of old-world traditional thinking to safeguard nationalist interests, which was just beginning to take root in post-colonial Asia in the mid-twentieth century.

The war in Korea left a profound legacy in U.S. diplomatic thinking during the Cold War which aimed at sustaining the political and cultural commonality of the Western free world, and coping with the presumed risk of ideological, political, or military conversion by the opposing bloc. A bloc came to resemble a new type of “empire” with various imperial norms, networks, and member states. The preservation of the Western cultural-political sphere led to a set of policies of strengthening the strategic outposts of the sphere in the “borderlands,” including Finland, Germany, Yugoslavia, Greece, Turkey, Iran, Afghanistan, Indochina, Vietnam, Taiwan, Korea and Japan. Armed interventions and proxy wars were fought on some of those lands as conflicts on the peripheries of empires. The “domino effect,” devised by President Dwight D. Eisenhower, was a genre of this strategic thinking that guided the U.S. intervention in Vietnam till 1975.

U.S. Undeclared War in Vietnam

President Lyndon B. Johnson realized early in his tenure that the dispatch of U.S. troops to Vietnam would require Congressional approval, especially in an election year. The Johnson Administration, in

order to find a pretext to intervene militarily, claimed that North Vietnamese vessels had launched unprovoked attacks on U.S. ships in international waters on August 2 and 4, 1964, in what came to be known as the Gulf of Tonkin incident.⁵⁵ Johnson took these episodes, that scholars claim were fabricated accounts, to Congress for the passage of a law authorizing the use of force.



The Gulf of Tonkin Resolution, officially known as the Joint Resolution for the Maintenance of International Peace and Security in Southeast Asia, signed on August 10, 1964. Image by the courtesy of the U.S. National Archives.

⁵⁵ “Lyndon B. Johnson and the Vietnam War,” Presidential Recordings, Miller Center, University of Virginia, <https://prde.upress.virginia.edu/content/Vietnam#:~:text=Passed%20nearly%20unanimously%20by%20Congress,U.S.%20military%20involvement%20in%20Vietnam.>



Although Congress voted nearly unanimously on August 7, 1964 to authorize Johnson to send troops to Vietnam under the Gulf of Tonkin Resolution, neither the president nor Congress ever formally declared war on North Vietnam. The aim of the war was regarded as “vital” to U.S. national interest and “to world peace.” Congress permitted the use of force for reasons of both defending U.S. national security and the “collective defense” of freedom in Southeast Asia where the United States claimed it had “no territorial, military or political ambitions.” The United States regarded armed intervention to be under the Constitution of the United States and the Charter of the United Nations, and in accordance with the Southeast Asia Collective Defense Treaty.⁵⁶ The U.S. narrative featured the preservation of both domestic sovereign power and international governance.

In the case of Vietnam, the United States did not seek to circumvent the UN or the U.S. Congress in the name of “exception,” nevertheless U.S. officials narrated the war as an international emergency to counter the “spread of communism.” The U.S. attempt to contain communism in order to protect the Western cultural-political sphere was confronted with a different line of thinking by its adversaries on the battlefield—the nationalist ambition of North Vietnam in the post-colonial era. In the eyes of U.S. decision-makers, South Vietnam was an outpost on the borderland of the free world, which once fallen into the opposite bloc could result in a breach of the sphere, and Laos, Cambodia, and Thailand might follow. The fight in Vietnam was thus not only political, but also a “religious” war defending “civilized” values and norms in the west. There was scarcely direct relevance to U.S. national interests in Vietnam. On the other side,

⁵⁶ Joint Resolution of Congress, H.J. RES 1145, August 10, 1964, https://www.ourdocuments.gov/document_data/pdf/doc_098.pdf.

for the North Vietnamese the Vietnam War was a struggle for national independence. UN Secretary-General U Thant in 1967 rejected the U.S. claim that “South Vietnam is strategically vital to Western interests and security.”⁵⁷ Thant commented that the “independent mood” within Vietnam and “their obsession with nonalignment” were often ignored. The aim of North Vietnam was more concerned with independence and national unification rather than challenging the survival of the Western bloc. As a result, the war in Vietnam was a battleground for conflicting perceptions of strategic objectives and international norms.

4. The Wars in Kosovo and Iraq

The end of the Cold War erased the potential for clashes between the two cultural-political “spheres”—the Soviet and the Western blocs. The need to sustain the survival of the Western bloc ebbed. A universal set of norms, values, and political cultures became more feasible. As a “partial sovereign” in the Western bloc, the U.S. role of maintaining “normal” status by addressing the “international emergencies” of the opposite bloc also seemed less necessary. U.S. diplomacy in the post-Cold War era is still on the path of transformation into various foreign policy choices, sometimes as an intentional attempt, while on other occasions as a passive choice. U.S. national interests more often intersected (and were sometimes confused) with the previous U.S. role as the “protector of the free sphere,” accompanied by the invention of “moral enemies” that needed to be defeated not only for the preservation of national or camp interests, but also as a moral obligation to uphold the justness or righteousness of those interests.

⁵⁷ Drew Middleton, “Thant Disagrees with U.S. on War,” *New York Times*, January 11, 1967, 1.



As the Italian medievalist, philosopher, semiotician, cultural critic, political and social commentator, Umberto Eco points out, the invention of the enemy often corresponds with the identity of nations. The enemy provides a measurement of values and definitions that, in turn, shapes their and our identity. Eco suggests that after the Cold War the United States risked losing its identity while the terrorist attacks and non-traditional security threats helped reshape U.S. identity.⁵⁸ The invention of the enemy may be regarded as a colonial legacy of re-inventing “the West” through Edward Said’s lens in his Orientalist narratives. Sometimes the invented enemy is narrated to be against the common interests of the international community, or a threat to the “civilized” world. In this respect, the “amity line” discussed by Carl Schmitt is an example of such reconstruction of cultural identities: a Western-centric division of the world between the “civilized,” the “half-civilized (barbaric),” and the “wild peoples (savages).”⁵⁹

Although the old line between communism and “the free world” diminished, a new and more fluid line emerged. This new line might travel through the division of the alleged “Global North” and the “Global South,” while it could also be seen within nation-state borders as a division that cuts through societies, groups or classes. The confusion of roles once again blurred the line between national interests (or sub-national interests) and maintaining a civic international order. On this framework, the following section discusses how this new “amity line” cast an imagined division within the international community, and how the “constructed enemies” outside

⁵⁸ Umberto Eco, *Inventing the Enemy and Other Occasional Writings*, Translated by Richard Dixon (London: Harvill Secker, 2012), 1–21.

⁵⁹ Schmitt, *The Nomos of the Earth*, 92–100, 233–234.

this line shaped the U.S. policy of armed intervention after the Cold War.

The Suspension of the “International Law”

The suspension of the “legal system” during times of emergency means the suspension of well-established principles of international relations, international law, and institutions. Most of the prominent cases of U.S. suspension of such principles concern military operations without U.N. Security Council authorization, a central principle codified in Article 2 (4) of the UN Charter: “Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”⁶⁰

The first case is NATO intervention in the Kosovo War. On June 9, 1998, U.S. President Bill Clinton declared a “national emergency” due to “an unusual and extraordinary threat to the national security and foreign policy of the United States” caused by Yugoslavia’s policy of “promoting ethnic conflict and human suffering.”⁶¹ On September 24, 1998, NATO issued an “activation warning” (ACTWARN) “for both a limited air option and a phased air campaign in Kosovo.”⁶² Later in October, the North Atlantic Council decided to issue activation orders for both limited air strikes and a phased air campaign in Yugoslavia.⁶³

⁶⁰ “Compete Text of the Charter Adopted by the United Nations' Security Organizations,” *New York Times*, June 27, 1945, 12.

⁶¹ Executive Order 13088 of June 9, 1998, Federal Register, Vol. 63, No. 113, Friday, June 12, 1998.

⁶² Statement by the Secretary General following the ACTWARN decision, NATO Press Statement, September 24, 1998, <http://www.nato.int/docu/pr/1998/p980924e.htm>.



On March 24, 1999, NATO started its military operation which lasted till June 10 after Yugoslav President Slobodan Milošević accepted the international peace plan on June 3.⁶⁴

The armed intervention in Kosovo contradicted the principles of the UN Charter. In the first place, use of force is illegal unless it has acquired the authorization of the UNSC. Secondly, the intervention did not fit into the scenario where use of force is permitted, as Article 51 of the UN Charter upholds the “inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations.”⁶⁵ Such intervention clearly constitutes a situation when state of exception applies.

During and after the intervention, a “dividing line” was also drawn, indicating the state of exception. Milošević was labeled a “war criminal” who had caused humanitarian crises. The International Criminal Tribunal indicted Milošević for forced deportation, murder, genocide, plunder of public or private property, torture, the extermination or murder of non-Serb civilians, imprisonment, and inhumane treatment.⁶⁶

Another widely-believed case of the United States ignoring the UN authorization is the 2003 Iraq War. In October 2002, U.S. Congress

⁶³ Statement to the Press by the Secretary General Following Decision on the ACTORD, NATO HQ, October 13, 1998, <http://www.nato.int/docu/speech/1998/s981013a.htm>.

⁶⁴ Press statement by NATO Secretary General, NATO HQ Brussels, June 10, 1999, <http://www.nato.int/kosovo/press/p990610a.htm>.

⁶⁵ “Compete Text of the Charter Adopted by the United Nations’ Security Organizations,” *New York Times*, June 27, 1945, 12.

⁶⁶ Slobodan Milošević, “Kosovo, Croatia & Bosnia” (IT-02-54), Case Information Sheet, International Criminal Tribunal for the Former Yugoslavia, http://www.icty.org/x/cases/slobodan_milosevic/cis/en/cis_milosevic_slobodan_en.pdf.

passed a joint resolution authorizing military action against Iraq.⁶⁷ The military invasion started on March 20, 2003 without a declaration of war.⁶⁸ The invasion did not meet significant and effective resistance. The war came to a temporary pause on May 1, 2003 marked by President George W. Bush’s “Mission Accomplished” speech on board the USS Abraham Lincoln, while U.S. troops completed their lengthy mission and fully withdrew from Iraq in December 2011 under the Obama Administration.⁶⁹

Apart from launching military intervention and suspending international legal norms, the United States also “self-exempted” from some of the multilateral agreements and regimes since the end of the Cold War, unless “they permit exemptions for American citizens or US practices.” One example of an exemption is that U.S. diplomats sought guarantees that U.S. military, diplomats, and politicians would never come before the International Criminal Court during the negotiations on this very matter in 1998.⁷⁰ Later the Bush administration expressed the intention to withdraw from the Court.⁷¹ This intention of “exemption” was to some extent a Schmittian style decision on the

⁶⁷ Authorization for Use of Military Force against Iraq Resolution of 2002, Public Law 107-243—October 16, 2002, 107th Congress, <http://www.gpo.gov/fdsys/pkg/PLAW-107publ243/pdf/PLAW-107publ243.pdf>.

⁶⁸ George Friedman, “What Happened to the American Declaration of War?” *Forbes*, March 30, 2011, <http://www.forbes.com/sites/beltway/2011/03/30/what-happened-to-the-american-declaration-of-war>.

⁶⁹ Gerard Baker, “Mission Accomplished?” *FT.Com* (December 29, 2003): 1. <https://www.proquest.com/trade-journals/mission-accomplished/docview/228814894/se-2?accountid=14426>.

⁷⁰ Michael Ignatieff, *American Exceptionalism and Human Rights* (Princeton, NJ: Princeton University Press, 2005), 4.

⁷¹ “International Criminal Court: Letter to UN Secretary General Kofi Annan,” Under Secretary of State for Arms Control and International Security John R. Bolton, May 6, 2002, <http://2001-2009.state.gov/r/pa/prs/ps/2002/9968.htm>.



“exception” where a “world sovereign” is not bound by the legal system. The Bush administration also strengthened the U.S. sense of “world sovereign” by opposing the Kyoto Protocol while hoping to apply the protocol to the European and Japanese allies.⁷²

A Second Thought

Notwithstanding U.S. resistance, the self-exemption acts discussed above did not equal the intentional self-delegitimizing within the international legal regime. While in some cases the United States ignored international law, on other occasions it did the opposite. A relevant example is the invasion of Afghanistan that was regarded under Article 51 of the UN Charter as legal self-defense after 9/11. According to the UNSC meeting, the United States

has obtained clear and compelling information that the Al-Qaeda organization, which is supported by the Taliban regime in Afghanistan, had a central role in the attacks... In response to these attacks, and in accordance with the inherent right of individual and collective self-defense, United States armed forces have initiated actions designed to prevent and deter further attacks on the United States.⁷³

⁷² Suraje Dessai, “The Climate Regime from The Hague to Marrakech: Saving or Sinking the Kyoto Protocol?” Tyndall Centre for Climate Change Research, December 2001, <http://www.tyndall.ac.uk/sites/default/files/wp12.pdf>.

⁷³ “Letter dated 7 October 2001 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council,” United Nations Security Council, October 7, 2001, S/2001/946.

According to Ben Smith and Arabella Thorp, although the U.S. military campaign in Afghanistan was not mandated by the UN, it was widely seen as a legitimate form of self-defense under the UN Charter.⁷⁴ During the 2003 Iraq War which was not mandated by the UNSC, the United States still sought to remain within the international legal framework. On February 5, 2003, U.S. Secretary of State Colin Powell delivered a presentation to the UNSC in an effort to acquire authorization for invasion.⁷⁵ The United States was also pushing for international support for the invasion through “rewards” or “punishment.” Scheppele observes that the United States would punish its allies and others for not supporting the war by either financial measures (aid was cut to Turkey and Russia, and trade restrictions were threatened on France and Germany), or by the threat of military measures (Russia believed itself to be surrounded, and Germany was threatened with a pull-out of American bases there).⁷⁶

This section has shown that when analyzed through a Schmittian aspect, U.S. behavior in the last two decades is a complex process that exhibits both an internal logic and contradiction. At first glance, the United States has been acting as the “world sovereign”—suspending international law in its own operations and opting/standing out of some international regimes. In the meantime, the United States seems willing to stay within and bound by the current international regime, if possible, thus inconsistent with Schmitt’s description of the “sovereign.” Such contradictions and inconsistencies

⁷⁴ Ben Smith and Arabella Thorp, “The Legal Basis for the Invasion of Afghanistan,” House of Commons Library, February 26, 2010, SN/IA/5340, <http://www.parliament.uk/briefing-papers/SN05340.pdf>.

⁷⁵ “Full text of Colin Powell’s speech,” *The Guardian*, February 5, 2003, <http://www.theguardian.com/world/2003/feb/05/iraq.usa>.

⁷⁶ Scheppele, “Law in a Time of Emergency,” 61.



reveal that the theory of the exception is a limited explanation of U.S. behavior during this period. One possible reason resides in the motivation of deciding on the exception. Schmitt designed an ideal sovereign concept whose ultimate duty was to protect the common interests and preserve the system. If the concept is extended into the “international constituency, ” an “international sovereign” becomes responsible for the stability of the commonalities within the political culture and norms that sustain the international order. If U.S. foreign policy during the Cold War displayed some of those responsibilities as an “international sovereign” within the Western bloc, U.S. diplomacy after the Cold War might be more concerned with national interests and security. The authorization (and sometimes the absence of authorization) by the UN indicates that the international organization also possessed part of the legal role as an “international sovereign” in the realm of global governance.

The Myth of “Exception”—the Case of the Iraq War

The “state of exception” is a useful narrative for states to navigate and acquire legitimacy in situations where legal authorization from an international body is absent. During the Iraq War, U.S. narratives featured a conception of a “just war,” arguing that because the liberal, free world was under attack, it must fight a war of the “good” against the “evil,” the world community against a “common enemy.”

The official narrative to launch the 2003 Iraq War employed a tone similar to Schmitt’s theory of exception. The joint resolution of the U.S. Congress authorizing military action against Iraq enumerates the main rationale for invasion: Iraq’s capability and willingness to use weapons of mass destruction posed a threat to national security; Iraq

has provided assistance to terrorists.⁷⁷ The war on terror has been framed as a long struggle between “civilized people” and the “evildoers.”⁷⁸ In such packaging of the issue, the “dividing line” between “good and evil” stands out in the rhetoric. The United States should employ every means possible to fight the “immoral enemies” in the “evil” faction where normality ceased to exist and a state of exception prevailed.

Yet, does international terrorism truly constitute a “state of exception”? In the Clinton era, it seemed the normal criminal justice system was sufficient in confronting terrorism. At that time, terrorist attacks were not regarded as a state of exception.⁷⁹ It was during the Bush administration that the issue of terrorism was elevated to a global struggle between “good” and “evil.” This redefining of terrorism as a threat to the normal international order renewed the shades of a “global civil war” where the United States must take the leading role to sustain the common norms and decide on an emergency when necessary. This ideal was inscribed in the Project for the New American Century (PNAC) which advocates “America’s leadership as the guarantor of the current great-power peace” and “general stability of the international system of nation-states relative to terrorists, organized crime, and other non-state actors.”⁸⁰ The 9/11 attack

⁷⁷ Authorization for Use of Military Force against Iraq Resolution of 2002, Public Law 107-243—October 16, 2002, 107th Congress, <http://www.gpo.gov/fdsys/pkg/PLAW-107publ243/pdf/PLAW-107publ243.pdf>.

⁷⁸ “National Day of Prayer and Remembrance for the Victims of the Terrorist Attacks on September 11, 2001,” Office of the Press Secretary, September 13, 2001, <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010913-7.html>.

⁷⁹ Scheppele, “Law in a Time of Emergency,” 23.



provided the opportunity for the neo-conservatives to succeed “in having their pre-existing agenda adopted.”⁸¹

Conclusion

This article has traced the tradition of armed intervention without the declaration of war to the first-half of the twentieth century when inter-state “political wars” gradually lost legitimacy. State-led armed operations began to require an increasing attribution of morality and just causes. Morally bounded “just war” reemerged during the Cold War and replaced the European inter-state “political wars” of the early modern period which followed the medieval religious wars. The concept of the “amity line,” described by Carl Schmitt, was revived at the height of the Cold War as the world was divided into the Western cultural-political sphere and the Soviet sphere. Defending the sphere—the modern “empire”—became the foreign policy priority of the United States, symbolized in “the domino theory” and the proxy wars which were met with local nationalism and struggle for self-determination. The Cold War proxy conflicts in Korea and Vietnam were regarded by the United States as part of a larger scale aggression on the part of the Soviet bloc against the commonality of the Western civilization, whereas the traditional nationalist ideas (rather than defending ideological purposes) dominated the thinking of the Asian participants of the wars.

⁸⁰ “Rebuilding America’s Defenses: Strategy, Forces and Resources for a New Century,” Report of the Project for the New American Century, September 2000, <http://www.informationclearinghouse.info/pdf/RebuildingAmericasDefenses.pdf>.

⁸¹ Stefan Halper and Jonathan Clarke, *America Alone: The Neo-Conservatives and the Global Order* (Cambridge: Cambridge University Press, 2004), 139.

The end of the Cold War marked the emergence of a single international sphere bound by a common set of international norms when U.S. foreign policy collided between national interests and the alleged role of the “international sovereign.” At times, U.S. policymakers tried to achieve both roles by “inventing the enemy,” as shown in the cases of the Kosovo War and the Iraq War. While the United States enjoyed the biggest clout of international political power and played a role of the “partial sovereign” in the Western bloc during the Cold War, the UN still dominates the legitimization of cross-border use of force in today’s international armed interventions. The tragedies accompanying the recurring modern armed conflicts perhaps suggest the deficiencies within the costly nation-state system or even modernity itself, in which imagined borders and identities constantly wedge into humanity. It becomes pertinent to reflect on modern political concepts that have been taken for granted, and to find new inspirations through the commonality within global society.

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