Review of International Studies (2005), 31, 3–13 *Copyright © British International Studies Association*
doi:10.1017/S0260210505006893

Force and Legitimacy in World Politics

Introduction

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This volume was produced in the context of the crisis of legitimacy that occasioned the 2003 Iraq War. As is well known, a bitter feud broke out in the United Nations Security Council (UNSC) over the legality of using force against Iraq. The US government justified going to war in the context of a new doctrine of preventive use of force for self-defence – a doctrine that was soon named after President George W. Bush.[1] The British government anchored its case for war in two previous UNSC resolutions; res. 678 which originally authorised use of force against Iraq in the 1990–91 Gulf War, and res. 687 which suspended res. 678 on a number of conditions including the disarming of Iraq's weapons of mass destruction (WMD) stockpiles, facilities and programmes.[2] Both the US and British positions were underpinned by intelligence, subsequently proved to be flawed, that Iraq had failed to get rid of its WMD.[3] Opponents of the war disputed this intelligence and, moreover, argued that the Bush Doctrine was plain illegal and ridiculed the British idea of resurrecting twelve-year-old UNSC resolutions.[4]

War is invariably accompanied by debate, if not controversy, over the legitimacy of using force. Whilst formal declarations of war have gone out of fashion, governments (both democratic and dictatorial alike) still justify their military action to home and foreign audiences – even if this requires fabricating manifestly false reasons to legitimate using force.[5] Alongside this longstanding state practice of justifying use of force is the increasing codification of legal rules on the use of force. Indeed, major wars periodically generate crises of confidence in international society about the legitimacy of military force as an instrument of world politics.[6] Thus the

[1] *The National Security Strategy of the United States of America* (Washington, DC: 2002), p. 15, at ⟨http://www.whitehouse.gov/nsc/nss.html⟩. The genesis of this doctrine and, in particular, the fact that it was produced with Iraq in mind, is discussed in Bob Woodward, *Plan of Attack* (New York: Simon and Schuster, 2004), pp. 132–8.

[2] 10 Downing Street, 'Legal Basis for Use of Force Against Iraq', ⟨http://www.pm.gov.uk/output/Page3287.asp⟩. The Attorney General's secret memorandum to the Prime Minister, which was subsequently released following much public pressure, indicates that he was of the view that the legal case for war was 'unclear' and that the 'safest legal course' would be to secure a new UNSC resolution explicitly authorising use of force against Iraq. See Attorney General note to the Prime Minister, 'Iraq Resolution 1441', 25 April 2005, available at ⟨http://www.number-10.gov.uk/output/page7443.asp⟩.

[3] Lawrence Freedman, 'War in Iraq: Selling the Threat', *Survival*, 46 (2004), pp. 7–50; Christoph Bluth, 'The British Road to War: Blair, Bush and the Decision to Invade Iraq', *International Affairs*, 80 (2004), pp. 871–92.

[4] A comprehensive archive of critiques is available at ⟨http://www.lawyersagainstthewar.org/⟩.

[5] Brian Hallett, *The Lost Art of Declaring War* (Champaign, IL: University of Illinois Press, 1998).

[6] The classic study on this is Paul Fussell, *The Great War and Modern Memory* (Oxford: Oxford University Press, 1975). See also John Mueller, *The Remnants of War* (Ithaca, NY: Cornell University Press, 2004), chs. 3–4.

world wars of the twentieth century spurred the development of legal restraints both on the resort to force in the United Nations (UN) Charter prohibitions against use of force, and the use of force in the 1949 Geneva Conventions on the treatment of prisoners and protection of civilians in war.[7]

From this perspective, we can readily see that underlining debate about the specifics of the legality of the 2003 Iraq War are broader issues regarding the principles and practices for legitimating use of force in contemporary world politics.[8] In general terms, these principles define who may employ force, how and when. Legitimating practices enable these principles to be enacted, through interpretation and application in particular cases, as well as revised in line with changing geostrategic and sociopolitical circumstances. But questions remain about the substance of principles legitimating use of force, their relationship to international law, and the role of the UNSC and of great powers in using force to restore international peace and security. More broadly, one may inquire into the temporal and spatial dimensions of legitimacy and force. How have legitimating principles and practices interacted and changed over time, and to what extent are they universal or regional (at any moment in time)? To address these various questions, we invited contributions from leading scholars on legitimacy and force working from a number of disciplinary perspectives (including international relations, political science, philosophy, history, and law).[9]

In this brief introduction, we do four things. First, we discuss the complex relationship between law, legitimacy and force, as it exists in both domestic and international orders. Second, and leading on from the above, we identify some of the questions raised in the volume and explored by our contributors. Third, we throw the subject into historical relief in order to problematise the notion of 'international legitimacy' in the use of force. Finally, we suggest a way of conceptualising legitimacy and force – in terms of 'sites' as well as 'sources' of legitimation.

Law, legitimacy and force

Even in domestic social orders, the relationship between law, legitimacy, and use of force is less straightforward than it might first appear. In national societies, the use of force is generally portrayed as a matter falling entirely within the remit of the country's legal system. Laws prohibit private violence, except in certain very limited circumstances, and they also set out the conditions under which state agencies may use force. The legal system, in the final analysis, is itself seen as a coercive order in which an individual's obligation to obey the law derives in large part from the fact that the state can compel him to obey.

[7] For recent introductory surveys see Christine Gray, 'The Use of Force and the International Legal Order' and Christopher Greenwood, 'The Law of War (International Humanitarian Law), both in Malcolm Evans (ed.), *International Law* (Oxford: Oxford University Press, 2003).

[8] The distinction between principles and practices of legitimacy in statecraft is developed and explored in Ian Clark, *Legitimacy in International Society* (Oxford: Oxford University Press, 2005).

[9] The exception here is Helen Kinsella's chapter, which was not commissioned but rather came through the normal refereeing process and, given the close thematic fit, was subsequently included in the volume with the author's consent.

In practice, however, this austere (indeed Austinian[10]) view of the relationship between law and force requires further consideration. If, for example, the only argument in favour of obeying the law is the threat of punishment by the superior power (that is, the state) does that not encourage a 'winner takes all' culture that justifies incessant challenges to those exercising state power? Are we obliged to obey laws that are clearly unjust? Does the concept of the rule of law have the same standing in all societies: in Hitler's Germany and Roosevelt's America, for example? These are all, of course, much debated and indeed controversial issues but one recurring theme in many of the contributions to this debate is that the law should not be seen as a self-contained normative system, capable of existing in splendid isolation from political and social factors. In particular, individuals do not obey the law simply because they are compelled to do so but because they are persuaded of its necessity, utility or moral value. In other words, they accept the *legitimacy* of the law and of the coercive apparatus of the state that underpins the law.[11] Indeed, many would argue that enduring stability in any social order is dependent primarily on the order's legitimacy rather than its legal system.[12]

The problem is that 'legitimacy' is a far more elusive concept than 'law'. Should we see it, for instance, as deriving from an objective condition of a particular order, such as some kind of social contract, or as an essentially subjective phenomenon, to be found in the perceptions and assumptions of the order's members? Does it denote primarily a set of *procedural* requirements (for instance, that accepted processes are followed in the actual operation of a politico-legal order) or does it consist of specific *substantive* norms (for instance, that civil liberties are protected) or does it depend on the capacity of a social order to achieve certain *outcomes* (such as economic progress, the advancement of social welfare, reduced crime rates)?[13] Or perhaps all three are necessary ingredients of a legitimate social order?

If the meaning of legitimacy, and its relation to law and force, are complex and controversial questions in domestic societies, they are far more so in the international context. This has particularly been the case since the end of the Cold War. The traditional basis of the international legal order has been respect for the sovereignty of states and the corollary of that principle: non-intervention in states' internal affairs. Both principles are enshrined in the UN Charter, which also restricts the lawful use of force to enforcement actions approved by the Security Council and self-defence measures to deal with an immediate threat pending Security Council action. Taken together, these principles constitute what Christian Reus-Smit in this volume calls the 'equalitarian regime'.

All of these central norms have come under challenge from two directions in recent years. First, faced with extreme violence and civil war in collapsing states like

[10] John Austin famously described 'law properly so-called' as the command of a sovereign backed by sanctions, thus excluding international law from 'true law'. John Austin, *The Province of Jurisprudence Determined*, ed. Wilfrid E. Rumble (Cambridge: Cambridge University Press, 1995).

[11] Ronald Dworkin, *Law's Empire* (Cambridge, MA: Harvard University Press, 1986), pp. 190–5; Thomas M. Franck, *The Power of Legitimacy among Nations* (Oxford: Oxford University Press, 1990).

[12] The key figure here was of course Max Weber. See his 'The Types of Legitimate Domination', in G. Roth and C. Wittich (eds.), *Economy and Society* (Berkeley, CA: California University Press, 1978).

[13] For the most recent and fullest discussion of these issues, see Ian Clark, *Legitimacy in International Society*. See also David Beetham, *The Legitimation of Power* (Houndmills: Macmillan, 1991.

Yugoslavia and Somalia, and severe human rights violations elsewhere, the international community has debated the possibility that the non-intervention norm should be set aside in the case of dire humanitarian emergencies. In a few cases, usually with considerable reluctance, it has gone beyond debate. Secondly, the huge margin of military might over all conceivable rivals possessed by the United States has left the world with the wholly unprecedented situation where one great power is unaffected by the sort of balance of power considerations that, traditionally, have formed the main constraint upon the most powerful states. The terrorist attack on the United States in 2001 was soon followed by demonstrations of what this might mean in practice, in the form of military action in Afghanistan and Iraq.[14]

Volume themes

The controversies surrounding these events provided the impetus behind this Special Issue of the *Review of International Studies.* In particular, they raise seven important questions:

1. If the international legal provisions relating to force in the UN Charter are inadequate to deal with contemporary problems, can the use of force be evaluated within a different, non-legal framework: one essentially comprising principles of international legitimacy? Richard Falk in this issue considers the tension between legality and legitimacy and argues that the discourse arising from this tension is a valuable means of framing the contemporary debate about the use of force. Michael Byers finds the legal rules on the use of force to be remarkably resilient in the face of the current challenge to them.
2. Does 'legitimacy' have a clear and uncontested meaning in world politics? Andrew Hurrell suggests that it is not only a multi-faceted term but that it interacts in complex ways with the changing security environment. In his view, however, a crucial element of legitimacy will always be the need to persuade others that a course of action, a rule, or a political order is right and appropriate, which points to the need to view the UNSC not as a constitutional 'source' of legitimacy but as 'a deeply flawed and highly politicized body in which arguments can be presented and policies defended'.
3. If 'legitimacy' rather than 'legality' is to be the new criterion for the use of force, what fundamental norms should guide our evaluation of legitimacy? Nicholas Rengger discusses the revival of 'just war' principles in this regard, while Martha Finnemore examines the more recent debate about multilateralism as a possible basis for legitimacy.
4. To what specific activities do legitimacy norms apply? Traditional Just War doctrine distinguished between '*jus ad bellum*' (rightful causes of war) and '*jus in bello*' (moral conduct during war). Helen Kinsella here discusses the American administration's use of discourses of 'civilization' and 'barbarism' to explain differences in its own application of *jus in bello* to civilians and prisoners of war (the latter is also addressed by Michael Byers).

[14] Colin McInnes, 'A Different Kind of War? September 11 and the United States' Afghan War', *Review of International Studies*, 29 (2003), pp. 165–84.

5. If the international community accepts a new principle of humanitarian intervention, what corresponding sets of duties does that imply for individual states? This is the question directly addressed by Christine Gray in her discussion of peacekeeping operations in Africa. In a similar vein, John Mueller speculates that an 'Iraq syndrome' might develop in the United States similar to the earlier 'Vietnam syndrome' that was thought to inhibit US military action for many years after that war. He argues that non-violent Western policies aimed at nurturing effective government might offer a better long term solution to the problem of failed or criminal states.
6. One of the most controversial aspects of the new legitimacy discourse concerns the degree to which it reflects essentially Western viewpoints. This has several dimensions. As Jeremy Black argues here, force itself – or technological changes that enhance military capability and increase the imbalance between states – may sometimes act as an independent variable that can influence norms relating to force and legitimacy: a phenomenon apparent through history but particularly relevant in the context of contemporary American policy. Moreover, as Christian Reus-Smit and Lawrence Freedman point out in their otherwise very different contributions, the debate about the legitimacy of force has interacted with another set of arguments to the effect that liberal democratic states form, in effect, an exclusive club of actors who are more pacific and moral than others. The implications of this are twofold: on the one hand, democratic governance and human rights have come to be seen as part of the new standard of international legitimacy; on the other, coalitions of democratic states, some argue, possess sufficient international legitimacy to justify the use of force in certain cases where full Security Council backing cannot be obtained.
7. Finally, we should not ignore the fact that, in many cases, states seek to legitimise their conduct, not by reference to some international standard but in terms of their own national culture, traditions and norms. The United States has often been analysed in such terms, as the notion of 'American exceptionalism' indicates: an idea that goes back even to colonial times and which became prominent from the late nineteenth century. Michael Sherry gives this perspective an original slant here by showing how American practice and rhetoric in relation to crime and punishment – with the United States now having six to twelve times the incarceration rates of Western Europe and Canada – has spilled over into America's international outlook. Another, highly original, slant on internal legitimation processes is offered by Ted Hopf, in considering Russian behaviour in Georgia in the 1990s. As Hopf points out, there were three distinct discursive communities in Russia during these years, with three different ways of conceptualising legitimate international conduct. The West, by failing to understand this, missed an opportunity to shape Russian policy through working with the more liberal factions to create a 'consensual set of standards of legitimate conduct'.

The problem with 'international legitimacy'

Grotius said that 'War is not one of the acts of life. On the contrary, it is a thing so horrible that nothing but the highest necessity or the deepest charity can make it

right'.[15] Given that variants of 'necessity' and 'charity' (humanitarian motives) have been the most cited justifications for the use of force in recent years, this serves to show how enduring are not only the moral issues raised by war but the arguments used to rationalise wars. Indeed, 2,000 years before Grotius, the Roman Republic insisted that a college of priests (the *Fetiales*) should engage in lengthy deliberations over each possible declaration of war to determine whether it met clear criteria for it to be seen as a just war (*bellum justum*), after which point a majority of the Senate had to vote in favour of the war.[16] In the latter case, the legitimacy of particular wars was, therefore, entirely a matter for Romans to decide and, inevitably, as Rome's power and ambitions grew, so was its readiness to go to war less and less affected by 'just war' considerations and the procedural requirements for war to be declared became increasingly mere formalities. More recent discussions of international legitimacy have generally sought evidence of a wider consensus than that emanating from a single state. But earlier 'just war' doctrines, while not yet prepared to take the decision to use force away from the individual state, attempted to find criteria, such as the requirement that war be declared by a rightful authority or that the force used be proportionate to the objects of the war, that would, in effect, impose an externally determined set of standards, such as those of natural law, on war-making states.

The problem with all such standards is that they inevitably reflect some religious or political ideology and are, therefore, open to challenge from non-adherents of that ideology. The French revolutionaries, for example, challenged the prevailing eighteenth century concept of international legitimacy which upheld the divine right of kings and gave dynastic monarchs the sole right to commit their states to war. The new revolutionary doctrine that saw sovereignty as residing in the popular will was used to justify annexations of territories such as Avignon, which had been under Papal rule for many years, as well as the French wars to free territories from Habsburg or other external sovereignty. After the defeat of Napoleon, the Holy Alliance powers attempted to lay down a new, ultra-conservative principle of legitimacy, which justified interventions in states' internal affairs if there was a threat of revolution against the 'legitimate' (namely the dynastic) authority. A similar argument that tried to assert the principle of 'limited sovereignty' under specific circumstances was enunciated by the Soviet leader Leonid Brezhnev in 1968 when he justified the Soviet invasion of Czechoslovakia by asserting that sovereignty was not to be measured by some 'bourgeois yardstick' but only by the genuine standard of 'socialist self-determination'. If a state – such as Czechoslovakia – strayed away from the correct socialist path, its leadership was jeopardising this 'true sovereignty'. Moreover, by deviating from the 'common natural laws of socialist construction' it might deviate from socialism as such and so endanger the whole socialist camp which, therefore had the right, indeed duty, to intervene against such an eventuality.[17]

A further problem with attempts to place the use of force within some larger context of legitimating principles is that this opens the way for groups other than states to argue that their own use of force is legitimate. During the 1960s, the Third

[15] Hugo Grotius, *De Juri Belli et Pacis*, vol. 2, ed. William Whewell (Cambridge: Cambridge University Press, 1853), p. 442.
[16] Jacques Bex, *Essai sur L'Évolution du Droit des Gens* (Paris: Librairie des sciences politiques et socials, Paris, 1910), pp. 12–13.
[17] David Armstrong, *Revolution and World Order: The Revolutionary State in International Society* (Oxford: Clarendon Press, 1993), p. 151.

World majority in the United Nations argued (much as the French had done nearly two hundred years earlier) that national liberation wars fell outside the UN's restrictive conditions for the legal use of force because they were in pursuit of the higher principle of self determination. A far more controversial issue began to appear from the late 1960s when the United Nations found it almost impossible to arrive at a broadly agreed definition of 'terrorism' essentially because the General Assembly majority wished to exempt the Palestine liberation movement from any general condemnation of terrorism. Similarly, Islamist terrorists in the last decade have turned to the Islamic notion of 'just war' – the *jihad* – in their attempt to claim legitimacy for their acts of violence.

Sources of legitimacy, sites of legitimation

History underlines just how contested and contingent is the notion of legitimate use of force in world politics. It also invites us to consider where legitimacy comes from and how it is constructed.

One might adopt the method of international law scholars, who look for the 'sources' of international law. One obvious source is treaties, which concretely express what states understand to be law on specified matters. Treaties may take the form of contracts between two or more states on particular issues, or they may be designed to create new law for the whole international community. The other major source of international law is state custom. Neither treaty nor customary law are clear-cut, however.

The authoritative definition of custom is to be found in Article 38(1)(b) of the Statute of the International Court of Justice (ICJ): 'international custom, as evidence of a general practice accepted as law'. Most law scholars consider the definition of 'international custom' to be 'back to front'. It should read the 'general practice of states accepted by them as law provides evidence of customary law'.[18] Nonetheless, this definition has the virtue of distinguishing the two elements of customary law – state practice and *opinio juris* (that is, the belief that such practice embodies law).[19] Generally speaking, there must be consistency and general conformity in state practice for it to form the basis of a rule in customary law. Though, interestingly, in the *Nicaragua* case (1986), the ICJ stopped short of requiring 'absolutely rigorous conformity'. What matters is that most states – especially the most powerful states and those most closely concerned with the matter at hand – conform to the practice. States must also be engaging in such practice because they believe there to be a legal obligation to do so, as opposed to some other reason – courtesy, nicety, morality, or whatever. This is where *opinio juris* comes in. Often, in determining the existence of customary rules, the ICJ is willing to assume *opinio juris* on the basis of state practice. The problem is that it is tautological to see in state practice evidence of the legal

[18] Richard K. Gardiner, *International Law* (Harlow, UK: Person-Longman, 2003), p. 101. It may also be read: 'International custom as *evidenced by* a general practice accepted as law'. Rosalyn Higgins, *Problems and Prospects: International Law and How We Use It* (Oxford: Oxford University Press, 1994), p. 18.

[19] Thus Shaw refers to 'the actual practice of states' and Gardiner 'the general practice of states'. Malcolm Shaw, *International Law*, 4th edn. (Cambridge: Cambridge University Press, 1997), p. 58; Gardiner, *International Law*, p. 101.

obligation that is supposed to generate such practice in the first place.[20] In short, *opinio juris* is often grossly underspecified.While treaty law is generally more specific than customary law, here also there is room for disagreement among states as to what has been agreed in treaties. In part, this disagreement is rooted in different methods of treaty interpretation. Some states (such as France and Italy) favour an 'intention' approach, whereby the common will of the signatories is deduced from the preparatory discussions and documents. Other states (including the United Kingdom) favour a 'textual' approach, which seeks to identify an objective interpretation of the treaty based on a common sense reading of the document itself. Some international jurists and the United States favour a 'purposive' approach, by which treaties are interpreted in the context of their object and purpose. The 1969 Vienna Convention on Treaties prioritises the textual approach. *Travaux préparatories* are relegated to 'supplementary means of interpretation' that may only be used to confirm an interpretation derived from a literal reading of the text. Nevertheless, this difference of approach, combined with possible differences in interests, often leads to differences in opinion between states as to the content and application of treaties.[21]

Scratch below the surface then and it quickly becomes apparent how much room there is for state disagreement over the meaning, let alone the application, of international law. The problem is even more apparent when one considers the nature of legal obligation, which is fundamental to what constitutes law and how it works. Legal scholars have attributed state compliance with international law to consent, fear of sanctions, and notions of fairness. But these motivating factors do not create nor require a sense of legal obligation. Rather, obligation towards certain legal rights and duties is developed in an international political process involving instrumental, normative, and idiographic reasoning and action by states.[22] From this point of view, we may appreciate that international law does not provide clear rules to regulate state action so much as a framework and vocabulary for states to imagine, negotiate and realise social relations.[23]

An alternative way of thinking about international law might be as a *site of legitimation* for state action. Instead of seeing the UN Charter and humanitarian law as laying down the law on when and how states may use force, it might be more useful to view them as political spaces where states engage in normatively bounded deliberation about legitimate action.[24] These sites are normatively bounded in the sense that state reasoning, deliberation and action is constituted and constrained by pre-existing norms that shape social identities and situations. At the same time, states may exercise normative agency in altering norms in the process of interpreting and enacting them.[25] Viewed thus, the dispute in the UNSC over the use of force against

[20] Michael Byers, *Custom, Power and the Power of Rules* (Cambridge: Cambridge University Press, 1999), pp. 133–41.

[21] Shaw, *International Law*, pp. 655–60; Antonio Cassese, *International Law* (Oxford: Oxford University Press, 2001), pp. 133–4.

[22] Christian Reus-Smit, 'Politics and International Legal Obligation', *European Journal of International Relations*, 9 (2003), pp. 591–625.

[23] Antje Wiener, 'Contested Compliance: Interventions in the Normative Structure of World Politics', *European Journal of International Relations*, 10 (2004), pp. 189–234.

[24] This follows on from Ian Clark's suggestion that 'Legitimacy can be conceived as a political space, but not an unbounded or normatively autonomous one'. Clark, *Legitimacy in International Society*, p. 29.

[25] This dynamic is explored in Theo Farrell, 'World Culture and Military Power', *Security Studies*, 14 (forthcoming 2005).

Iraq is not simply a matter of the United States and Britain trying to circumvent article 2(4) of the UN Charter (which prohibits use of force), but rather these states, their supporters, and opponents, engaging in a process of argumentation about what action is appropriate in this case. To be sure, argumentation can take the form of strategic use of rhetoric to advance national self-interest, but it also involves truth-seeking deliberation, in this case, about the nature of the threat and the appropriate response.[26] Charter law provides the normative framework for such argumentation, bounding both rhetorical and truth-seeking action by states.

Law is not the only site of legitimation for state use of force. Other sites include various state moralities and ideologies. One such morality is the Western just war tradition, which has contributed to and is therefore similar to modern international law in some respects but elsewhere differs in substance. Thus both contain procedural norms defining rightful intention, authority, and conduct in the use of force but they differ, for example, in terms of what constitutes just cause (for example, in the just war tradition force may be used to punish whilst this is illegal in modern international law) and rightful authority (sovereigns in the just war tradition versus the UNSC in modern international law).[27] The just war tradition has been drawn on in recent attempts to revise the international legal rules on use of force, to permit such use for humanitarian purposes.[28] However, this falls foul of an even more profound difference between the two – one identified and explored by Nicholas Rengger in this volume. Namely, whereas modern international law is predicated on the enterprise of defining universal rules of state behaviour, the just war tradition is a casuistic one of practical moral reasoning about the use of force. In other words, the just war tradition provides a guide to thinking about moral action rather than a guide to moral action itself. This comes closer to the idea of morality, in this case the just war tradition, as a site rather than a source of legitimacy.

Ideology is another obvious source and site of legitimacy for use of force. 'Revolutionary ideologies' are commonly thought to be behind military action by revisionist states intended to alter the world order.[29] As noted earlier, this creates obvious opportunities for tension with legal restraints on the use of force. Indeed, Soviet socialist ideology did not recognise the legitimacy of Western derived principles of international law.[30] In contrast, liberalism is widely seen as providing a benign influence on world order, as it delegitimates use of force between democratic states.[31] But the liberal democratic peace, in so far as it exists, is an exclusive zone. Outside this zone of peace, liberalism works no such magic. More to the point, as Lawrence Freedman and Christian Reus-Smit discuss in this volume, liberalism may prompt use of force against states and other political communities perceived as

[26] Thomas Risse, ' ''Let's Argue!'' Communicative Action in World Politics', *International Organization*, 54 (2000), pp. 1–39.
[27] Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977); James Turner Johnson, *Morality and Contemporary Warfare* (New Haven, CT: Yale University Press, 1999).
[28] Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility* (New York: United Nations, 2004), para. 203, p. 66. See also Ian Holliday, 'When is a Cause Just?' *Review of International Studies*, 28 (2002), pp. 557–75.
[29] Stephen Walt, *Revolution and War* (Ithaca, NY: Cornell University Press, 1996).
[30] Iain Scobbie, 'Some Common Heresies about International Law: Sundry Theoretical Perspectives', in Evans (ed.), *International Law*, pp. 72–5.
[31] John M. Owen, 'How Liberalism Produces Democratic Peace', *International Security*, 19 (1994), pp. 87–125.

illiberal and dangerous towards it.[32] Indeed, such moral asymmetry has been advanced by some prominent international law scholars in the United States.[33] In the process, liberalism may also legitimate a project of imperial expansion.[34] Viewed as a site of legitimation, we can more readily appreciate how liberalism (and other state ideologies) provides the terms for social deliberation about the proper role of the state and what therefore constitutes proper and progressive states. The point is that such understandings are not fixed but are contingent on and evolve from the interplay of expectations and experiences. Thus, understandings of what it means to be a liberal state, and who are the foes of liberal states, will change over time and vary across the world.[35]

Conclusion

The 2003 Iraq War brought to the fore, in a very dramatic and public way, disagreements between and within states over the legitimate use of force in contemporary world politics. Obviously, such disagreements had boiled over before – most noticeably when the North Atlantic Treaty Organisation (NATO) decided to use force in March 1999 to stop ethnic cleansing by Yugoslav authorities in Kosovo. Forcible humanitarian intervention by NATO in this case was not authorised by the UNSC, principally because of blocking vetoes by Russia and China. But there was more than competing self-interests at play here. Rather the UNSC found itself locked in debate, as it would four years later over Iraq, about when was it right to use force. Most lawyers agreed that there was no legal basis for use of force for humanitarian purposes, but equally many accepted that it could be legitimate in Kosovo given the compelling moral basis for such action.[36] Against this, the Yugoslav state tried to project a competing morality, one of state security and sovereignty.[37] The Kosovo case illustrated, perhaps even more starkly than the Iraq case, the tension between law and legitimacy in the use of force. It also clearly demonstrated the tensions within international law – in this case between, on the one hand, the non-intervention and non-use of force norms, and on the other, norms of human rights. Arguably, Kosovo also revealed the crusading militancy of liberalism. Above all, it showed how law,

[32] Of course, this is not a new phenomenon. See, for example, Iain Hampsher-Monk, 'Edmund Burke's Changing Justification for Intervention', *The Historical Journal*, 48 (2005), pp. 65–100. For a contemporary example, see Lee Feinstein and Anne-Marie Slaughter, 'A Duty to Prevent', *Foreign Affairs*, 83 (2004).

[33] Thomas Franck, 'The Emerging Right to Democratic Government', *American Journal of International Law*, 46 (1992), pp. 46–91; Fernando R. Teson, 'The Kantian Theory of International Law', *Columbia Law Review*, 92 (1992), pp. 53–102; Anne-Marie Slaughter, 'International Law in a World of Liberal States', *European Journal of International Law*, 6 (1995), pp. 503–38.

[34] Tarak Barkawi and Mark Laffey, 'The Imperial Peace: Democracy, Force and Globalization', *European Journal of International Relations*, 5 (1999), pp. 403–34.

[35] Ido Oren, 'The Subjectivity of the Democratic Peace: Changing Perceptions of Imperial Germany', *International Security*, 20 (1995), pp. 147–84; Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge: Cambridge University Press, 2004).

[36] See, for example, Bruno Simma, 'NATO, the UN and Use of Force: Legal Aspects', *European Journal of International Law*, 10 (1999), pp. 6–14; Alain Pellet, 'Brief Remarks on the Unilateral Use of Force', *European Journal of International Law*, 11 (2000), pp. 385–92. See also the special section on the Kosovo War in the *American Journal of International Law*, 93 (1999).

[37] Lawrence Freedman, 'Victors and Victims: Reflections on the Kosovo War', *Review of International Studies*, 26 (2000), pp. 335–58.

liberal ideology, and competing moralities provide sites for states and publics to deliberate about the legitimacy of using force in world politics.