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Lessons from the Balkans for American Foreign Policy: Building Civil Society within a Multilateral Framework

Henry H. Perritt, Jr.*

I. INTRODUCTION

The end of the Cold War left the world without a structure of international relations. The first Bush Administration briefly flirted with the vague idea of a New World Order. The Clinton Administration pursued a policy of selective intervention with an emphasis on development of civil society and human rights, as in Bosnia and Kosovo. The second Bush Administration came to office preaching disengagement, unilateral pursuit of US interests, suspicion of multilateralism,¹ preoccupation with threats from China and Russia, and a determination to implement an unproven national missile defense system.

In the war on terrorism, the Bush Administration arranged a broad coalition of states to assist in responding to the attacks of September 11th through military intervention in Afghanistan. But aside from driving the Taliban from power in Afghanistan and catching Osama Bin Laden, what shall be the course of this war?

This essay, drawing on my involvement in the Balkans, suggests a strategy of engagement for US foreign policy, below and beyond the nation-state level. The United States must build civil society, rule of law, democracy, and open markets in countries that now breed terrorism, and develop a military capability to meet actual threats within a multilateral context.

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1. See John R. Bolton, *Should We Take Global Governance Seriously?*, 1 Chi J Intl L 205, 206 (2000) (expressing "Americanist" position that "Globalists" belittle popular sovereignty and constitutionalism, and restrict American policy flexibility and power). Mr. Bolton is now Under Secretary of State for Arms Control and International Security.

II. EXPERIENCE IN THE BALKANS

Beginning six years ago, I organized and led two projects—Project Bosnia and operation Kosovo—which sent law students to the Balkans for one to six weeks. These students' accomplishments included aiding the Bosnian Ombudsman and Constitutional Court in obtaining US and international funds to acquire computers and connecting the International Media Center in Banja Luka, Bosnia to the Internet. They provided technical assistance to the Property Commission in Bosnia and developed plans to reduce an enormous backlog of claims by victims of ethnic cleansing. They helped the Minister of Science and Technology in Croatia write a law for regulation of the Internet; provided assistance to lawyers in Macedonia who wanted to establish a bar association; and aided in the development of a plan for an Internet-based legal information infrastructure for Albania.

These students are continuing to work with young professionals in Kosovo and Albanian diaspora groups in Europe and the US to establish a Washington presence to assist the Kosovo chamber of commerce in attracting foreign capital into small and medium enterprises in Kosovo. The students also helped all the major political parties in Kosovo adopt sound market-oriented economic development policies and assisted Kosovar political candidates in gaining access to advice on how to conduct democratic political campaigns.

These students did not work alone. Often, the students supplemented the American Bar Association's Central and East European Law Initiative ("CEELI"), which assigns hundreds of lawyer-volunteers for one to two years to help build rule-of-law institutions in former socialist countries. They worked closely with local Soros Open Society Institute centers on Internet connectivity, the United Nations High Commissioner for Refugees, and the United Nations Mission in Kosovo.

Other groups were also involved in the Balkans. Such efforts were just the tip of the iceberg. Non-governmental organizations ("NGOs") held coordination meetings in Sarajevo and Pristina attended by nine hundred different organizations involved in humanitarian and civil society work.

We learned important lessons from Project Bosnia and Operation Kosovo. A few dozen American law students can achieve tangible results in building civil society in places that many Americans think are hopeless. My students successfully encouraged entrepreneurs to build high-tech businesses, induced new political leaders to adopt sound economic development plans, and got new legal institutions off to a good start. We learned that it is within America's capacity to assist in building civil society.

III. AMERICAN INTERESTS

The threats to America's interests in the twenty-first century are fundamentally different from those in the twentieth. In the twentieth century, threats proceeded

from essentially state-based extension of power over geography, reinforced by ideology. Although geopolitical factors have not disappeared from the international equation, most twenty-first century threats arise from a failure of states to channel and contain the forces of reaction to modernity, including globalization. Terrorism arises from that failure. Protection of American interests cannot succeed without a sophisticated understanding of these failures and a strategy aimed at overcoming the failures and, in the meantime, blunting the forces of reaction.

America must be engaged with the rest of the world to accelerate the construction of civil society and to support multilateral frameworks for trade, international law, peacekeeping, and, when appropriate, military intervention.

A. INTERNATIONAL RELATIONS INVOLVES MORE THAN SOVEREIGN STATES

Historically, foreign policy proceeded from two assumptions: military capability must aim at opposing and defeating armies directed by states; and diplomacy is defined by relations among states. Now states are only one among several types of international actors. The central conceptual challenge of the war on terrorism is to deal with this reality. Winning a war against al Qaeda is not at all the same as driving Iraq from Kuwait.

In this century, political power is diffused above and below the state level. States cede a measure of sovereignty upward in a complex framework of intergovernmental organizations, such as the World Trade Organization, and the institutions of the European Union. They also exercise power constrained by diffusion of political power into sub-state private groups such as NGOs, and militant organizations such as the Kosovo Liberation Army, al Qaeda, Hamas, and Hezbollah. New information technologies, including the Internet, open up new channels for political interaction, both domestically and across national boundaries. At the same time, other technological advances place powerful new weapons—antiaircraft missiles and biological weapons—into the hands of individuals and groups.

No foreign policy or national security strategy can be effective if it blindly focuses on the actions of states.

B. ENGAGEMENT IN BUILDING CIVIL SOCIETY

Societies in which education is available but opportunities are not, are breeding grounds for extremism. Creating opportunities for participation in public life and economic activity will enhance political stability and reduce the allure of religious extremism for new generations.²

2. See generally Thomas L. Friedman, *Foreign Affairs: Today's News Quiz*, NY Times A19 (Nov 20, 2001).

Such opportunities arise only when progress is made toward rule of law, civil society, and market competition. Progress requires many different kinds of institutions: courts and judiciaries, independent political parties, judges and bar associations; analogs of parent-teacher associations, leagues of women voters, veterans of foreign wars, rotary clubs, and alumni associations appropriate for local cultures; ministries of culture and education, trade promotion agencies, chambers of commerce, trade associations and trade unions. Private associations perform important political mediation functions between political authority and competing ideological and economic interests. Civil society also provides pathways of participation for those with ambition.

Because the existence of these institutions of civil society often is outside the tradition of countries in transition, US foreign policy should explicitly utilize all the tools available to assist in developing such institutions. My experience in the Balkans focused on building institutions that provided constructive pathways for the ambitions of a new generation that otherwise might have been tempted by extremism and violence.

C. ENGAGEMENT OF MULTILATERAL INSTITUTIONS FOR TRADE, PEACEKEEPING, AND MILITARY INTERVENTION

In 1997, Richard Haas wrote a book entitled *The Reluctant Sheriff*. The title signifies that the United States (the sheriff) finds itself in the position of having to build coalitions (the posse) in order to overcome threats to world peace and security. While the United States is the preeminent military power, it needs participation by other states to act effectively.

My 1998 review of Haas's book³ embraced the sheriff and posse metaphors, while arguing that the metaphors necessitate attention to the role of international law and multilateral institutions. The sheriff in the Old West had to persuade the public. A posse, whether or not organized by the sheriff, was a lynch mob unless there was a court-issued writ authorizing its formation and activity. Similarly, international law plays a major role in legitimizing the modern form of an international posse. In the war in Afghanistan, support for Security Council resolutions helped build the supporting coalition; in the war in Kosovo, the absence of unambiguous Security Council authority undercut support for the NATO bombing campaign.

US foreign policy must work within a multilateral legal framework, as it has for the last sixty years.

3. Henry H. Perritt, Jr., 26 Syracuse J Int'l L & Comm 95 (1998) (reviewing Richard N. Haas, *The Reluctant Sheriff: The United States After the Cold War* (Council on Foreign Relations 1997)).

1. Human rights

The human rights movement lies at the core of the transformation of international law from a regime that focused entirely on the relationships among states into a regime that focuses on the relationship between states and natural persons. The United States should continue to embrace the human rights movement, shaping it so that it focuses on the realm of the possible, rather than overreaching its capacity to enforce its norms.

The International Criminal Court can be a useful addition to the human rights apparatus, as demonstrated by the use of the International Criminal Tribunal for the former Yugoslavia ("ICTY").⁴

2. Pursue free trade with a sensitivity to human concerns

Expansion of international trade and reductions in trade barriers are good policy. Increasing the flow of goods and services, labor, and capital across national boundaries enhances economic opportunity within national boundaries, reducing the frustrations that breed extremism and terrorism. In Kosovo, for example, a new generation with strong entrepreneurial instincts seeks to study in the West and return to Kosovo. These young Kosovars desire access to private Western capital and Western markets for goods and services produced by new enterprises in Kosovo.⁵ Reducing trade barriers is an important tool in building civil society.

Immigration reform is also important. The United States must make more accommodations for those in other parts of the world who want to study or work in America or become Americans. Many who came to the US from Kosovo and Bosnia desire to return to their homelands once they have the skills and capital to succeed in their countries of origin.

3. UN

The United Nations is a symbol of the potential of multilateral cooperation. Despite its deficiencies, the UN has made marked progress under the leadership of Secretary General Kofi Annan and Ambassador Richard Holbrooke, working to bridge differences between the organization and the American right, represented by Senator Jesse Helms.

Building on experience in Kosovo (which in turn built constructively on the post-Dayton Accords experience in Bosnia), the UN's initial work in organizing the reconstruction of Afghanistan has been promising. The UN involvement in rebuilding Bosnia was hesitant at first, lacking focus, but it grew stronger over time. A

4. See, for example, Patricia Wald, *Judging War Crimes*, 1 Chi J Intl L 189, 191-92 (2000) (asserting that the ICTY helps fill gaps in international law and to memorialize the factual story of what happened).

5. See generally Henry H. Perritt, Jr., *Stabilizing Kosovo: Enterprise Formation and Financial Markets*, 2 J Global Fin Mkts 28 (Summer 2001).

stronger mandate for Kosovo, reposing *de facto* sovereignty in the UN Mission in Kosovo as a kind of trustee, produced better results.

The United States should reaffirm its commitment to the UN and continue to strengthen the organization's ability to deal with new problems of terrorism and the construction of civil society.

D. BROKER A MIDDLE EAST PEACE SETTLEMENT INFORMED BY A VISION OF THE FUTURE

The Balkan experience also can inform Middle East policy. In the Balkans and the Middle East, the problems appear(ed) intractable. In both, US involvement is essential; careful attention to civil society is appropriate.

The centerpiece of US policy in the Middle East must be an unequivocal commitment to Israel's right to exist within secure and recognized borders. Israel's long-term security depends on a viable political settlement.

Good mediation always is informed by an understanding of what happens in the long run. The United States must have in mind scenarios for economic development in any new Palestinian entity, so that short-term ceasefires do not collapse in the reality of hopelessness for masses of potential terrorists. And the United States must focus on a new generation of leadership for the Palestinian community.

Here, also, the Kosovo experience can be helpful. Any new Palestinian entity will be confronted by some of the same challenges Kosovo faced after the withdrawal of Serbian forces—ambiguity about sovereignty; the presence of large numbers of loosely organized armed young people, only vaguely distinguished from the general population; economic devastation; and uncertain prospects for economic progress in a market context. The United States must guide a multilateral effort to build political and economic structures in Palestine so that it no longer threatens Israel's existence.

IV. CONTINUE TO LEAD THIS HEMISPHERE INTO DEMOCRACY AND PROSPERITY

American foreign policy always has included a special regard for conditions in the Western Hemisphere. Sustained American engagement, defined by pressure to open up economic competition, to protect human rights, and to build the institutions of democracy and civil society has produced much success in ending Latin America's reputation as a collection of military autocracies.

Now, we have two important opportunities for refining and extending this policy into the twenty-first century: Mexico and Argentina. Under the leadership of President Vicente Fox, Mexico has experienced a peaceful political revolution. The United States must continue to encourage political evolution in Mexico by embracing new concepts for managing cross-border product, capital, and labor markets. We must improve our understanding of how Mexicans in the United States interact with

their communities of origin. The Mexican diaspora, like the Kosovar-Albanian diaspora, can be a force for economic development if it is explicitly engaged.

Before its recent currency devaluation, Argentina was the model of a country that takes American advice on reforming its economy. In many respects the advice was beneficial. But, ultimately, underlying forces in the Argentinean economy brought the experiment to an unhappy end. We must not only be fully engaged with Argentina's government on steering a course through this crisis, but we must learn how to give better advice in the future. Disengagement and indifference risk catastrophe.

A. DESIGN MILITARY AND NAVAL FORCE STRUCTURES TO FACILITATE ENGAGEMENT

America must design its military and naval force structures to support engagement in multilateral cooperation and building civil society. Clausewitz famously observed that "war is simply a continuation of political intercourse, with the addition of other means."⁶ Defense policy must be developed to serve foreign policy. One worrisome trend in the United States is the tendency of the armed forces and their advocates to constitute a separate interest group, suspicious of political leadership, and separated from the mainstream of American society by ideological differences. Such a cleavage is, in large part, a product of the Vietnam War and of the end to the draft. Too many Americans have no experience with the military, and too many military leaders have scant experience with other aspects of American life. This division is dangerous in the long run. In the short run, it leads to an illogical distinction between military missions defined by the Powell doctrine, and peacekeeping and nation-building activities, thought to be entirely outside the competence of the defense establishment.

The attacks of September 11th appropriately stimulated more probing threat assessments. We now understand a range of possible hostile actions threaten American interests including state-based nuclear attacks against the continental US; the primary threat during the Cold War conventional military attacks against US interests or those of its allies, as in Iraq's invasion of Kuwait; terrorist attacks as on September 11th; violence provoking political instability, as in Ireland or in Israel; and political instability that boils over into violent revolution, as in Iran after the Shah fell. Kosovo was a mixture, and the US thought itself poorly prepared to effectively intervene.

National defense strategy must be based on a sophisticated understanding of how the armed forces can respond effectively to each threat. We now understand that threats to US security come not only from attacks launched by foreign states, but also

6. Carl von Clausewitz, *On War* 605 (Princeton 1976) (Michael Howard and Peter Paret, ed and trans) (commonly rendered as "war is the continuation of politics by other means").

from armed groups like al Qaeda, and from sheer hopelessness in places like Ukraine, which is driving newly independent states back into the arms of traditional protectors like Russia.

Peacekeeping and war-fighting missions are not entirely distinct, but rather overlap. The best force-structure and training approaches increase the overlap as much as possible to avoid the need for two armies, one for peacekeeping and one for fighting a war. The appropriate doctrine can increase the amount of overlap. For example, peace enforcement doctrine can call for use of military forces only to secure and pacify an area for a limited period of six months, and then to withdraw, with a rapid-response capability if trouble overwhelms other forces. ("Other" forces must, of course, exist.)

General Wesley Clark's book about the Kosovo conflict reveals that US military leaders were reluctant to provide resources to win the campaign in Kosovo because they wanted to protect options to fight hypothetical conventional wars in other parts of the world.⁷ Clark also discusses the reluctance of the US defense establishment to reinforce the civil aspect of the peace accords in Bosnia.⁸ However, the armed services have an important role to play in peacekeeping, nation-building, and anti-terrorism. The United States should spend more money on training personnel to be effective peacekeepers and adjuncts to building a civil society in places like Kosovo, Afghanistan, East Timor, Indonesia, the Philippines, and Somalia.

B. PEACEKEEPING

American defense strategies must accommodate the need for peacekeeping and peace enforcement. There is a valid distinction between military and police operations. An international police force is a desirable tool; the US armed forces should not be the only available tool when violence breaks out.

The mismatch between the forces available and the problems to be solved was manifest in the reluctance of NATO commanders to move aggressively to arrest indicted war criminals in Bosnia. It was also evidenced in the professed inclination of US military leadership in Afghanistan to keep its distance from the UN- and British-led initiative to establish an interim government and to rebuild Afghanistan. The international community was slow to organize the police in Kosovo.

International police forces could be organized in a variety of ways.⁹ NATO provides one useful model. A permanent joint staff, like the one at NATO

7. See General Wesley K. Clark, *Waging Modern War* 313 (Public Affairs 2001).

8. See *id.* at 100-06.

9. See Henry H. Perritt, Jr., *Policing International Peace and Security: International Police Forces*, 17 *Wis Intl L J* 281, 296-98 (1999) (options include augmenting existing United Nations Civilian Police ("UNCIVPOL"), training of reserve forces by individual states, and implementing a force consistent with Article 43 of the UN Charter).

headquarters, would prepare and update tactical plans, doctrine, training materials, and technical standards for integrating police forces from different states. Police commanders would be detailed to the joint staff with periodic in-service training. Force components from different states would participate in joint training exercises.

C. MISSTEPS IN MISSILE DEFENSE

Current proposals for a national missile defense system represent the wrong approach to national security policy. They focus entirely on state-based threats, and thus distract attention from sub-state phenomena; they exalt unilateralism and weaken multilateral structures. The proposed national missile defense system involves a multi-billion dollar commitment¹⁰ to technology that does not work and is aimed at a threat that is less important than terrorism and other sources of instability around the world.

Withdrawal from the Anti-Ballistic Missile treaty was ill-advised. Advanced development and deployment of such a system risk destabilizing relationships with China, Russia, and Europe, exacerbating proliferation of weapons of mass destruction, and setting off a new arms race.

V. BUILD A PEACE CORPS FOR THE TWENTY-FIRST CENTURY

The United States needs a new mandate for a Peace Corps for the twenty-first century, to enlist young Americans to build civil society in countries in transition. This new organization should enlist disaffected youth from target countries.

The logic supporting such an initiative is compelling. My experience from Bosnia and Kosovo shows that small numbers of committed young people can make a difference in helping to build the institutions of a rule of law, civil society, and market economies. The work of the American Bar Association's CEELI project, work funded by George Soros's Open Society Institute, and work done by "Business Volunteers" in the Peace Corps, also provide models for what the United States should support on a more explicit basis.

A new mandate for the Peace Corps would focus on recruiting volunteers interested in building the institutions of a civil society. Afghanistan, Saudi Arabia, and Egypt come to mind as early targets, but obviously dozens more exist. The initiative should be shaped to avoid adverse reaction to American cultural imperialism. A regional approach might be useful, focusing efforts on "change agents," individuals (or maybe institutions or even countries) that others in the community and society look

10. For a recent study on the costs of deploying a national missile defense system, see Congressional Budget Office, *Estimated Costs and Technical Characteristics of Selected National Missile Defense Systems* (CBO 2002), available online at <http://www.cbo.gov/showdoc.cfm?index=3281&sequence=0&from=1> (visited Mar 24, 2002).

to and trust. Once ideas and institutions take root in a region, they look more "organic," and less threatening, to neighboring countries and peoples.

The Peace Corps should be clearly distinguished from military forces and the Central Intelligence Agency. Operating through NGO contractors rather than through US government employees may be more palatable in many places.

VI. EMBRACE NEW GEOPOLITICAL OPPORTUNITIES

Engagement in building civil society within states and pursuing American policy within a multilateral context are not the complete answer to a sound American foreign policy of course. We also must be open to larger geopolitical opportunities.

A. SEEK REALIGNMENT WITH RUSSIA

The attacks of September 11th and reaction to them provide the best opportunity since the Second World War for fundamental realignment of relationships between Russia and the United States.

Three new realities frame this opportunity. First, America and Russia have a common interest in opposing terrorism rooted in Islamic fundamentalism. Second, the military operations in Afghanistan have led the United States to appreciate the importance of South Asia far more than it did fifteen years ago when it armed the Taliban and helped it run the Russians out, and then virtually abandoned the region. Third, Russia's rich petroleum and natural gas reserves represent a potential solution to US dependence on Middle East oil. If Russia comes to supply a greater portion of US energy needs, an important new trade flow will link the countries economically, as the US becomes a growing source of foreign exchange for Russia.

Apart from avoidance of major-power conflict, dealing successfully with smaller-scale problems depends on the willingness of major powers to cooperate. Russia's position was a crucial part of the political and military matrix for success in Kosovo.

B. ENGAGE CHINA

The evolution of China from a closed, authoritarian, ideological, and militaristic society into one desiring economic development driven by market-oriented links to the rest of the world provides opportunities to reduce security tensions in Asia. Instead of viewing China as a military threat to the rest of the world, the United States must reinforce the internal Chinese forces interested in modernization, while reassuring China that its physical integrity is not threatened by openings to foreign ideas and capital. Helping China build the institutions of a civil society are central to such an approach.

VII. CONCLUSION

John Bolton has it wrong. He concentrates on one type of power diffusion, diffusion of power upward into multilateral institutions. He ignores the phenomenon of diffusion of power into sub-state private groups, thus disregarding the more important challenge to American interests. He views the human rights movement and the evolution of treaty-based regimes in international law as threatening US interests.¹¹ He wants the United States to isolate itself from global civil society.

I suspect that Mr. Bolton applauds US interest in economic and political development during the Cold War because it represented a policy approach that would forestall Marxist tendencies in developing nations. Marxism was bad because it tilted the balance of state power toward the Soviet Union and against the United States.

Now, emphasis on development of civil society is appropriate because it forestalls terrorist tendencies in developing nations. Not only is terrorism morally reprehensible, but it also represents a sub-state force antithetical to US interests. Rather than worrying about engagement bringing about global governance, policymakers should recognize that engagement is the only way to protect long-term US interests.

11. See Bolton, 1 Chi J Intl L at 221 (cited in note 1).

