In the post-Cold War world, state failure, i.e. the inability of the state to provide basic public goods, was recognised as one of the major sources of collective violence. As a response, the international community, as organised in the United Nations, set out to strengthen its capacities for coping with violence collectively. While the Secretary General designed an Agenda for Peace, the Security Council opened up the possibilities for putting it into practice. Building on earlier precedence (especially with a view to fighting apartheid), the Security Council authoritatively stated that the systematic violation of minority rights, the gross violation of human rights, the break-down of public order and the forceful disruption of democratisation processes all constituted threats to international peace. As a consequence, violent domestic conflict was turned into an object of collective action in accord with Chapter VII of the UN Charter.

But the willingness to extend collective action based on Chapter VII of the UN Charter soon turned out to be quite limited. Instead of being strengthened, the authority of the United Nations as a source for legitimising the use of force was undermined in successive steps. Whereas in 1992, the UN was able to subcontract NATO, in 1995 the UN were relegated to carrying out what had been agreed upon by NATO states (Dayton Agreement). In 1998, the US and Britain resumed bombing of the no-fly zone in Southern Iraq putting themselves in the place of the UN with a view to interpreting the legal quality and practical implications of the behaviour of the Iraq Regime. In 1999, NATO started an outright air war on Serbia without waiting for Security Council legitimisation. Finally, while there was a brief attempt at
reaffirming UN authority in the immediate aftermath of September 11, 2001, soon afterwards
the Bush-Administration began to debate the need for a war on Iraq in a way which seemed to
confirm a shift towards a “post-Charter self-help paradigm”. Though the Europeans are by no
means united on these issues, transatlantic relations are coming under massive stress and there
is fear that the anti-terror alliance might falter - even within the inner circle of the Western
democracies. What seems to be at stake, however, is not only the reshuffling of specific
constellations of conflict and co-operation, but rather the very idea of replacing the arbitrary
use of force on the part of individual states and groups of states by collective action in accord
with Chapter VII of the UN Charter.

With a view to these issues the present paper will develop the following theses:

1. The end of the East-West conflict opened up a window of opportunity for civilising the use
   of force in international relations. This constituted a “Kantian moment” in international
   relations.

2. Activities to seize this opportunity have been only modestly successful. They are in danger
   of being outrun by increasing pressures to take recourse to self defence. I call this the
   “republican turn” in the use of force which can also be described as a failure of states to build
   a more perfect international society.

3. The attempt to mitigate these pressures by falling back on just-war considerations is
   counter-productive. What is needed instead is a strong commitment to pursue, in a determined
   if pragmatic way, the historic project of replacing self-help by collective action. This may be
   referred to as the “democratic challenge” to the use of force in international relations.

The Kantian Moment

The United Nations was set up under the expectation that (even) a heterogeneous group of
states could be bound together by the common endeavour to overcome war as a social

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1 The respective resolution referred to the situation in Southern Iraq, the war in Bosnia, state failure in
   Paradigms”, inCharlotte Ku/Paul F. Diehl (eds), International Law, Boudler/London: Rienner 1998:
   327-351.
institution. In terms of the English School, it was built on the idea of an international society at the global level in which states’ expectations increasingly would convergence around commonly shared rules and institutions.\(^4\) The fate of the League and the experience of the Second World War provided a strong historic incentive for pursuing the UN project. In spite of this background, the project soon got stuck in the Cold War between East and West. Yet, contrary to the League, it survived the divisions among the member states because “Real Socialism” passed away without another major war. Western democracy, in contrast, remained in tact. Beyond that, its potential impact on world politics was strengthened by what Huntington identified as the Third Wave of democratisation. From a Kantian viewpoint, the end of the Cold war therefore not only implied a reshuffling of inter-state relations, but provided an essential ingredient for moving towards the abolition of inter-state war.

As is well known, Kant’s argument was not based on the assumption that democrats where better or more peace loving people than non-democrats. In this respect he did not go beyond the images of human kind prevailing in the writings of such authors as the Abbé de St. Pierre in France or Adam Smith in England. However, while Kant’s colleagues relied on the sheer force of the argument that the opportunity costs of war were outpacing what could be gained by it, Kant argued that the economic rationality of peace could only come to bear under the condition that the decision on war and peace was made by those who had to bear the costs and suffer the consequences of war. This condition was met by democracy. However, while democracy was considered to be a necessary condition of peace, Kant did not suggest that it was sufficient. Being aware that people could not always be expected to practice what was rational in theory, he suggested that democracies should form a pacific union. This was to help overcome the vicious circle of self-enforcing expectations of violence. In a further step, Kant suggested the introduction of a global civil law (Weltbürgerrecht) which would spell out the conditions under which people should move about and deal with each other. The entire intellectual construction rested on the notion of global interdependence, or - closer to Kant’s formulation - on the observation that the violation of a right at any location ricochets around the world.


A certain weakness of Kant’s argument lay in the failure to address in a systematic way the relationship between democracies and non-democracies. On the one hand, he argued in favour of strict non-intervention. On the other hand, he introduced (in his “Metaphysik der Sitten”) the idea of the “unjust enemy”, who by his very behaviour negated the possibility of a rational order. Some (like Habermas) argue that this idea was really not central to Kant’s argument and that it therefore can be discarded. However, with a view to the element of scepticism present in Kant’s ideas on a perpetual peace (after all, it was the illustration of perpetual peace as a grave yard which inspired him), the “unjust enemy” can be taken as a hint that even democracies may find themselves in uncomfortable situations where it would be difficult to decide whether to stick to strict non-intervention or not. Vice versa, if we take Kant’s three-pronged system consisting of democracy, international organisation and global civil law as an expression not only of inter-democratic but of world wide interdependence, if we furthermore allow for the limits of democratisation as a force working towards peace, we may conclude that international organisation and global civil law may by themselves have a pacifying effect on the relations between democracies and non-democracies to the extent that democracies are participating in the respective designs. This may be so because international organisation and basic normative integration of societies regardless of the differences of political systems and cultural traditions, in the context of interdependence opens up space for negotiating interests and even for re-defining identities. To whit, modern theories on negotiation and communication with their implications for identity formation apply not only to democracies, though they are sensitive to domestic structures.

In this sense, the Third Wave of democratisation together with the gradual appearance of a global civil law (e.g. human rights), growing interdependence and the fact that the UN not only survived the East-West rift but actually became a focal point of world politics, all combined to form what I call a “Kantian moment” in the long history of attempts to hedge power at the international level and to turn it into a force for controlling violence. The old Stalinist idea of the two world systems had long given way to the realisation of global problems which could only be solved on the basis of routine co-operation. The recognition of

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5 I deviate her from the notion of “triangulating peace” xxx referring to democracy, international organisation and interdependence. The latter is the over-all condition underlying the spread of democracy, international organisation and global civil law.

human rights, both, with a view to meaning and international support and protection, had
made considerable progress over the years as documented by the Vienna Human Rights
conference in 1993. Democracy was more widely accepted as a model for organising the
political system than at any other time of history. Finally, the UN, instead of emerging out of
the East-West confrontation as a discredited institution, was now seen as the focal point of
global governance which was seen to include the task to elevate democracy beyond the
confines of the nation state.

If there was a “Kantian moment” at the end of the Cold War, there was also ample reason for
seizing the opportunity and turning the UN finally into a working peace system. Contrary to
the expectations of those who believed that much of the previous fighting had emanated from
the Cold War, the end of the latter as such did not have a beneficial impact on the frequency
and intensity of collective violence around the world. To the contrary, the zone of turmoil, if
anything, expanded. It was not sheer hysteria which provided Robert D. Kaplan with such a
big audience all the way up the White house. There were not only left-overs from the Cold
War which had to be cleaned up, there were new wars developing and these new wars proved
to be even more brutal than the old ones.7 Whole societies were traumatized as state failure
turned entire populations into willing or unwilling combatants. With other words, the Kantian
moment was not an idyllic one. There was a sense of uncertainty which was spurred by the
second Gulf War and the beginning of fighting closer home, in Yugoslavia.

It was on this background that the Security Council gradually expanded the scope of
collective action to encompass cases of domestic conflict, and also commissioned the UN-
Secretary General, Boutros-Ghali, to lay out a plan for expanding the instruments available to
the international community for coping with violent conflict. The ensuing Agenda for Peace
offered indeed a concrete vision for civilizing the use of force in international relations with
the help of preventive diplomacy, peacemaking and peace-keeping. The Agenda was written
in the context of a dramatic expansion of UN activities in this issues area. Between 1988 and
1992 Security Council resolutions had risen from 15 to 53, peace operations from 5 to 12 and
the respective UN budge from 230 Mio to 1,7 billion US Dollars. All but two of the peace
operations related to intra-state conflict. While this development expressed the virulence of
the problems at hand, especially with a view to state failure, it also signalled a new

determination on the part of international community to seize the opportunity for collective action offered by the end of the Cold War.\(^8\)

There was a certain pioneer spirit which was enhanced by the involvement of a growing number of non-governmental organisations and spurred on by a series of World Conferences. To be sure, these conference did not achieve much in and by themselves, but they opened up new prospects for recuperating the idea of progress from the shambles of “Real Socialism” and from the all-out critique of modernisation by the post-modernists. The Commission on Global Governance\(^9\) summed it all up in a substantial report, translating the various initiatives into a comprehensive scheme which also acknowledged the new role of civil society on the local, the national and the international levels. By that time, the Security Council resolutions had risen to 78, peace-keeping operations to 17 and the respective UN budgeted to 3.6 billion US Dollars.\(^10\)

Furthermore and perhaps even more remarkable, the one remaining alliance of the Cold War years, NATO, seemed to move towards integration into collective action to preserve and restore international peace. Thus, in 1992, NATO and the UN agreed on a co-operative scheme, according to which NATO would contribute to UN peace operations under the guidance of the Security Council. Nato confirmed “the preparedness of our Alliance to support, on a case by case basis and in accordance with our own procedures, peacekeeping operations under the authority of the UN Security Council, which has the primary responsibility of international peace and security”.\(^11\)

This was the outcome of the search on the part of NATO for a new role in the post-Cold War era, and of an initiative taken by the Secretary General, who had a strong interest to recruit NATO for UN peace operations. The Secretary General, especially after the Somalia experience, felt that the UN had reached the limits of its possibilities with a view to logistics, equipment and command and control capacities. Since it was unlikely that the respective needs would be met through Art. 43-commitments of the member states, the idea was to make

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\(^10\) Boutros-Ghali (note 8): 8.
use of the capabilities of regional organisation to compensate for the remaining gap in UN peace missions.

The first positive NATO response to the respective request by the Secretary General came in June 1992. This is to say that it matured at the same time that the Agenda for Peace was written up. In this context, NATO’s willingness to operate under the authority of the UN could be read as an important step towards the operationalisation of the UN peace system. The logic of the long historic evolution leading up to the creation of this system is to curtail the right of the individual state to use force, while expanding the right (and duty) of the international community to act collectively in accord with established procedures. To the extent that co-operation between NATO and the UN kept in line with this logic, it could also be understood as seizing the Kantian opportunity in the form of sharing the democratic peace within the framework of a heterogeneous international organisation (consisting of democracies and non-democracies). While the co-operation between the UN and NATO contained an element of regional “subletting” which is not confined to democracies, from a Kantian point of view it would be important to stress the fact that democratic security communities are not necessarily exclusive but can be opened up by sharing the democratic peace with others as it also happened in the CSCE/OSCE. This would be in line with the argument presented above that democracies are especially sensitive to the costs of war and thus should prefer co-operation to confrontation in defining and pursuing their interests.

To sum up at this point: In the early 1990s, the international community seemed to make quick progress in extending the long historical evolution of a global regime for hedging power and controlling violence. The ending of the East-West conflict opened up new vistas of global modernisation. It interacted with a third wave of democratisation and a general recognition of human rights. At the same time, it eliminated ideological blockades of Security Council decisions-making. Thus, all three elements of the Kantian idea of peace seemed to materialise. At the same time there were indications that the gap in Kant’s argument concerning the relationship between democracies and non-democracies could be filled by democracies in two ways - by playing an active and constructive role in constructing and running general (heterogeneous) international organisations and by linking democratic security communities to such international organisations (sharing the democratic peace). As pointed out above, Kant

\[12\] cf. the case of ECOMOG and the war in Sierre Leone.
rested his idea of a democratic peace not on the assumption of an essential peacefulness of democrats. He rather argued that democracies would be suited to bring peoples self-interest to bear in favour of peace. In a democracy even devils could be made to work towards peace lest they wanted to carry the burden of war. As it soon turned out, however, even ordinary democrats (let alone devils) seem to have a hard time committing themselves to the reasonableness of peace.

**The Republican Turn in the post-Cold War Use of Force**

The Kantian moment faded away all quickly. The Clinton-Administration got more and more disenchanted with the Secretary General up to a point at which Boutros-Ghali became a *persona non grata* at least in relationship to the Secretary of State, Mrs. Albright. This personal factor was enhanced by domestic pressure on the part of the US Senate which used UN issues as a lever to apply pressure on the Clinton administration. Furthermore, cooperation between NATO and the UN in the wars on the Balkans did not develop as anticipated. “Operation to Deny Flight” which began in April 1993 and which was to prevent the Serbs and the Bosnians to use air craft, went rather smoothly. The air support and strike operations which were to provide air-cover for the safe heavens and for UNPROFOR posed more problems. While on the military side, these problems could be solved, tensions began to build up on the political side, when the Secretary General insisted on being the one who initiated air strikes. Boutros Ghali carried the day but there were some misgivings on the part of NATO countries, not only the US, with the installation of a dual key control of NATO air power in Bosnia. The unprecedented issues of command and control which went along with this system and were enhance by the delegation of the Secretary General’s powers to his deputy on the ground, Yasushi Akashi, were the cause of quite some friction and frustration, especially on the side of NATO.\(^\text{13}\)

Due to these frustrations, the ensuing Operation Deliberate Force turned into a factual NATO undertaking, since it operated under NATO strategic and operational command and with the use of NATO’s rules of engagement. The Dayton Agreement matched this new pattern of action. While the US played the decisive role in bringing about the agreement, the Security Council gave NATO a brought mandate to supervise its implementation. This was the result of a dispute between President Clinton and the Secretary General in which the former had

\(^{13}\) Brock/Dembinski (note 11).
insisted that US forces would only take part in guaranteeing the Dayton agreement if this supervision proceeded under the auspices of NATO and not the UN.

In the Kosovo war, NATO under US leadership pushed this line of action to the extreme by deciding to carry out air strikes even without Security Council authorization (Operation Allied Force). The claims under international law on which this action was based were never spelled out very clearly. In accord with procedures established by Art. 39, the Security Council had formally stated that the situation in Kosovo constituted a threat to international peace. But the Security Council had refrained from authorising the application of military force. NATO claimed that no such decision could be expected to come about. It therefore prepared for action on its own. On the one hand, the Rambouillet conference offered a platform for a last minute negotiated settlement. On the other hand, the terms of the negotiation put forward by the West were such that Milosovic could hardly be expected to agree. Not surprisingly, then, the final deadline set by NATO expired without a positive response from Serbia. As pre-announced, NATO reacted by starting the air war. The Security Council only came back in for the approval of the peace agreement which was finally reached after much of the Serbian infrastructure had been destroyed.

Thus Western policies moved from allowing NATO to be contracted by the UN to ignoring the UN in the context of NATO action, and from expanding the Security Council’s competence in dealing with threats to international peace to ignoring its central function, i.e. the authorisation of the use of force. Instead of building up the UN’s capacities for collective action, NATO member states decided to rely on self-help. It was particularly the US, accompanied by the British, who pushed into this direction. This had become quite evident even before the Kosovo war. In December 1998, the US and Great Britain carried through a heavy bombing campaign against Iraq (operation Desert Fox). Both countries argued that they were acting to enforce the will of the UN Security Council in view of a “substantial breach” of Security Council resolution 687 (1991), and that they were pre-empting Iraq’s future potential use of weapons of mass destruction. As Marc Weller has pointed out in a careful study of the case, the first arguments were legally untenable, while the last one (pre-empting a threat) “suggests a doctrine of preventive war that carries with it extremely dangerous implications for international relations”.14 The Security Council was far from ignoring that

Iraq was partly obstructing the work of UNSCOM, nevertheless it saw no reason to authorise military action in order to assure a higher degree of compliance. As a matter of fact, in the spring of 1998, Iraq’s compliance was considered to be sufficient to merit debate on a partial lifting of sanctions (which in turn was to improve Iraqi co-operation on the issue of weapons inspections). Against this possibility which seemed to gain in support by other members of the Security Council, the US und Britain pursued a course of resuming the bombing. They did not seek the consent of the Security Council for doing this but rather rested their case on an autonomous interpretation of the issues involved and the responses which it called for. On November 5, 1998, the Security Council passed resolution 1205 condemning Iraq’s flagrant violations of Resolution 687. In spite of the fact that this resolution expressly excluded an automaticity of response and that the Security Council had decided to “remain actively seized of the matter”, the US und UK claimed the right to military action. Accordingly, both countries, after they had tested the situation by air-strikes in Mid-November, carried out a major air campaign in mid-December, even though Secretary General Kofi Anan shortly before the attacks had suggested to proceed with the evaluation of the inspections. Marc Weller concludes:

“It may be tempting to see in the position of the US and UK ant atempt to revive the promise of the New World Order - a vision so quickly trumpeted and then rashly abandoned after the conclusion of the Cold War. After all, this appears to be a case where individual states were willing to make their vast military potential available to implement the will of the interntional community and to rid the world of a dangerous future potential arsenal of WMD. In truth, however, Operation Desert Fox and the continued air campaigns of 1999 fundamentally challenge the presently existing structures for international order, rather than strengthening them.”15

The debate on “preventive self-defense” unleashed by the Bush Administration in the aftermath of September 11, 2002, seems to confirm Weller’s assessment, especially if we take into consideration that it goes together with a 14% increase in defence spending, a Nuclear Posture Review which broadens the options for the use of nuclear weapons, a Revolution in Military Affairs which may in itself be interpreted as signalling the end of co-operative security politics even among democracies (Müller/Schörnigxxx), a growing unilateralism (refusal to ratify the Comprehensive Test Ban Treaty, abolishment of the ABM treaty, refusal to follow up the Kyoto Protocol) and strong attempts to obstruct the International Criminal Court which include the threat to veto the continuation of peace missions should US personnel not be granted immunity from ICC prosecution. The very insistence on such a

15 Ibid.: 96.
special status and the threat to free US personnel if necessary by force should it be held for
trial in Den Haag, may as such be seen as running counter to the idea of building up an
international society bound by rules and acting through institutions of peaceful change. All
this is being neatly matched by the president’s executive order of November 13, 2001,
establishing military commissions as an option for trial, and by the USA Patriot Act of
January 2002, which seems to fall back on the 19th century principal of the *primacy of foreign
policy* suggesting that civil liberties and the rule of law have to be adjusted to the necessities
of self-assertion on the global level. The foreign policy implications of this Bismarckian
approach to security were spelled out by Ruth Wedgewood in the affirmative: “Is was a sheer
intellectual failure to suppose that admissible courtroom proof, American-style, was the only
relevant standard in assessing danger and in justifying necessary act of self-defence.”

In his *State of the Union* address of January 30, 2002, President Bush not only called for an
assertive policy to deal with what he identified as the “axis of evil”, but also made it clear that
the US would act on their own if others were not prepared to go along. With other words, the
US are substituting their own authority for that of the UN. There is a pragmatic aspect to this
policy which George Lopez has referred to as “making the rules as we go along”. But there
is also a dogmatic aspect which implies that the US seem to be determined to upset the sense
of achievement in international law which has prevailed since the League, the Briand Kellog
Pact and finally the formulation of Art. 2(4) of the UN-Charter. In the words of Michael
Byers: “The identification of an ‘axis of evil’ comprising Iran, Iraq, and North Korea
challenges one of the twentieth century’s greatest accomplishments: the prohibition of the
threat or aggressive use of force in international affairs.”

As Byers points out, great powers have always shaped the international system (and the rules
to go by) to their advantage. So do the US today. Since the US is the only remaining
superpower, US foreign-policy decision-makers apparently see it to be to the advantage of the
country to turn the wheel of history back from collective action to self-defence and to expand
the meaning of self-defence to include preventive war in order to protect the “city on the hill”

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8-13, on p. 9. For a thoughtful critique cf. George A. Lopez, The Style of the New War: Making the
Rules as we Go Along, ibid., 21-26. An alternative view is expressed b Richard Falk, Identifying
Limits on a Borderless Map, ibid., 1-7.

17 George A. Lopez, “The Style of the New War: Making the Rules as We Go Along”, *Ethics and
against a threatening environment. Self-defence, of course, always has had a prominent place in security politics under the Charter. The entire political security complex during the cold war was based on Art. 51 providing for individual or collective self-defence in case of an armed attack. But Art. 51 leaves open what self-defence means and states have been careful not to interpret it in such a way that it would open up a Pandora’s box of recourse to force. Only in rare cases have states claimed that self-defence was not only applicable to the inter-state level but included the right to fight terrorist groups and their installations within countries, and in even rarer cases have they claimed that self-defence included the right to pre-emptive action (as the Israelis did in the 1967 war). What the present US policy amounts to is an attempt to change customary international law so as to include the right to anticipatory or preventive self-defence against hostile states which are in the process of acquiring weapons of mass destruction and/or harbor terrorist groups which have attacked other states or have the potential to do so.

What is of even greater potential importance is the apparent tendency on the part of present US administration to change the very notion of international law. Thus Michael Byers confirms the observation made by Marc Weller, that the US are more and more claiming the right to establish the meaning of treaties, or Security Council resolutions and decisions of the International Court to the extent that they take note of them at all: There seems to be a strong tendency to discard the wording of treaties, resolutions and decisions and instead to go by their supposed purpose. However, the present administration may aspire not only to change customary international law in its favour, but actually to develop exceptional rules applying exclusively to the US:

“The Bush administration would clearly wish to have an imperial tinge, with the US serving as global law-maker and sheriff, setting the rules and acting alone or at the head of a posse of compliant allies to impose discipline and stamp out foreign threats” (Byers 2002, 125).

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19 “Widespread sympathy in the aftermath of September 11 and heightened concern about terrorism have made possible the securing of a long-sought-after goal: an extension of the rights of self-defence, to include military responses against states that support or harbour terrorist groups.” Byers (note 18): 121.
20 The Bush-Administration “pays little if any attention to decisions of the International Court of Justice - even though most other countries regard them as authoritative pronouncements on the existence and content of specific rules of international Law. As a result, international law as applied by the US increasingly bears little relationship to international law as understood elsewhere.” Byers (note 18): 124-25.
I call this the “Republican turn” in the post-Cold War history of international relations. This republican turn precedes September 11 and reflects American exceptionalism as such. But September 11 has obviously given it a new spin. Speaking of a “Republican turn” refers to a specific trait in the US culture of national security which points to a basic difference in the security constellations prevailing in Europe and North America at the end of the 18th century when Kant drew up his plan for perpetual peace and the Federalists formulated their plea for a strong union of the newly independent States.

Immanuel Kant developed his idea of a lasting peace with a view to the relations of states which at that time constituted the unchallenged power centre of the world: Europe. Thus, he was not concerned with threats from third countries, but rather with the permanent propensity of the European states to wage war against each other (though he did not ignore the extra-European environment of the European states). Nevertheless, his peace plan was universalistic because it relied on arguments which, by necessity were non-exclusive (just as reason was non-exclusive). The political constellation in North America at that time was quite different. Here the newly created states where in danger of suffering the consequences of their weakness vis a vis the great powers of Europe. Particularly England and France were to be expected to attempt to draw the new republics into their rivalries and machinations. The Federalists therefore argued that it was in the utmost importance of the former colonies to form a federal union - not for the purpose of being able to join the game of power politics, but to defend the achievements of the revolution; to secure the freedom not only of countries but of the people living in them. In as much as this freedom was threatened by a particular group of countries (almost all of them rogue states) the peace which was to be established among the American States was by necessity particularistic or exclusionary. George Washington’s farewell address, which begged his fellow country men to shy away from entangling alliances, affirmed this particularistic focus of US security thinking. I call a policy which claims to be first and foremost about securing the achievements of the republic against outside machinations “Republican”. “Republican” security policies imply as little self-binding as possible since self-binding would impinge upon democratic self-determination. In contrast, Kant’s scheme may be called (as it is being called today) a “Democratic peace”. Here the basic idea was not to protect democracy (as a historic achievement) but to secure peace with the help of democracy. This purpose implied self-binding through or within international institutions.
Of course, there were “republican” elements present in the politics of the European republics as there were always “democratic” elements present in US foreign policy. Concerning the latter, the republican perspective of “no entangling alliances” had to be matched with the need to foster international law and regulation in the course of modernisation and growing economic interdependence. For this reason, late 19th century US attempts to foster institutionalised co-operation within the Western Hemisphere just like the Wilsonian leadership in establishing the League of Nations have to be read as manifestations of the need to accept a modicum of self-binding even in a hostile world or rather because of the many hostilities pervading international relations. Avoiding entanglement was not enough. But still it did not loose its meaning as a motto for US foreign policy, and their remain good reasons to retain it as long as democratic forms of government are confined to individual states. Thus, US policy in the early twentieth century moved from helping to set up the League to deserting it and retreating into isolation - not the least because the victorious Europeans expressly wanted to engage the US as a stabilising force in post-war Europe. The political retreat of the US, on the other hand, stood in sharp contrast to economic interdependence, to which the World Economic Crisis of 1929/30 and the global implications of fascism and Stalinism testified. No neutrality laws were able to shield the US from these socio-political developments abroad. So is was quite logical that the US, though reluctantly, turned back to global engagement, both in the form of war and in the form of sponsoring a post-war organisation of peace that was to go beyond the League. Thus the United Nations and the Bretton Woods institutions came about, both located within the US! But then the US also played the leading role in blocking the World Trade Organisation and in bringing about the Cold-War alliance system which quickly replaced collective security as envisaged in the Charter by collective self-defence though the latter - according to the Charter - clearly was not intended to become the centre of security politics but was to serve as a stopgap device in case collective security should fail.

With the end of the Cold War, some effort were made (or accepted) to put collective action at the centre of peace making and security politics within the UN system. But since the mid-1990s, Washington seems to be inclined to reduce the long-standing tension between the republican tradition and the need to adjust to complex interdependence once again in favour of the republican tradition. It is tempted to do so i.a. because of the status of the US as the single remaining super power. If so, however, it is not only the arrogance of power that comes to bear but also the inevitable role of such a power as a target for the frustrations of others.
These frustrations, may be seen in the US as being directed against the very revolutionary project for which America stands - the more so as attacks from the outside are being launched from within.

Under a Kantian viewpoint, then, the “republican turn” does not simply amount to a return to power politics after a brief interlude of idealistic illusions. It rather is the temporal manifestation of a long-term contradiction in US foreign policy as it comes to bear in a situation of almost absolute power preponderance of the US vis a vis the rest of the world. But since this situation will not last, since interdependence cannot simply be dealt with by way of self-help and finally because of the very fact that co-operation has become as much part of the national security culture of the US as the distrust of entangling alliances, there is leeway for discourse and change.

Understandable as the “republican turn” in US foreign policy may be, alleviating the tension between the republican tradition and interdependence in favour of self-help inevitably leads to other tensions, even within the “democratic zone of peace”. With this let us turn to the third thesis concerning the “democratic challenge” of present policies in the field of peace and security.

**The democratic challenge**

As was pointed out above, there seems to be a strong inclination on the part of the US not only to view the inherent right to self-defence as the centre-piece of security policies once again, but also to broaden its scope - preferably in the form a an exceptional rule applying only to the US as the one remaining super power.21 If this inclination should continue, on the part of the US today, on the part of some other power tomorrow, what could be done to solve the central problem around which international law has evolved in the first place, the curtailment of the discretionary use of force? One of the most popular answers today seems to be to take refuge to the idea of “just war”. Michael Walzer took the lead in digging up this concept out of the dumpgrounds of history and many have developed an interest in what he came up with, not only in the US but also abroad (though reflection on the just war tradition in Europe preceded its rediscovery in the US). The latest example is Jean Bethke Elshtain’s

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21 Cf. in this context the strong pressure which the US put on India and Pakistan not to make use of the right to self-defence in the strong tension that arose between the two countries in early 2002.
reflection on “how to fight a just war”\textsuperscript{22} which has to be read, of course, against the background of the somewhat heated post-September 11 debate between American and German intellectuals on this topic.\textsuperscript{23}

There are two issues involved. One concerns the admissibility of the use of force, the other the restraint of the use of force. What made the debate between the American and the German intellectuals so bitter was their disagreement on the first point. The American adherents of the doctrine of “just war” proclaim that it points to a basic dilemma in human affairs: the collision of values in a situation in which you may have to hurt or kill someone in order to protect the life of others: “A requirement of neighbourly love may be a resort to arms,” writes Jean Bethke Elshtain. “Self-defence is trickier,” she continues. “According to Augustine, it is better for the Christian as an individual to suffer harm rather than to commit it. But are we permitted to make that commitment to non-self-defence of others? No, surely not.” That implies that a terrorist attack demands a response.

“That response involves just punishment, not in order to inflict grievous harm on the non-combatants of a country whose operatives have harmed your citizens but to interdict in order to prevent further harm and to punish those responsible for the harm that has already occurred. In so doing, one reaffirms a world of moral responsibility and justice.”\textsuperscript{24}

This confidence is irritating, because it may counteract the second aspect of the just-war doctrine - the limitation of the use of force.

The just-war doctrine is quite tricky. It tells you that you may use force, but also that you have to be careful about it. The crux of the matter is that everybody or rather every government may decide on its own what is “just”. As a result one’s own belief to be careful (responsible, morally sound, etc.) in using force may undermine self-restraint and actually encourage the recourse to force and to forget about its basic moral flaws. So there is always the possibility of instrumentalising “just war” for “unjust” purposes. Not even Augustine was above that danger. You can read him as helping the Christians to use power without feeling too bad about it. That was not his intention but that is the way it worked, especially when the Spaniards used the doctrine to justify the conquest of America. Today, the issue is not conquest, the issue is humanitarian, but humanitarian issues can themselves be insolubly tied

\textsuperscript{22} Jean Bethke Elshtain, “How to Fight a Just War”, in Booth/Dunne (note 18): 263-269.
\textsuperscript{24} Elshtain (note 22), 263-264.
to material interests (like oil and pipelines): “Terrorism can cause great destruction and upheaval, but efforts to stamp it out can also be a smokescreen for the pursuit of other, less worthy goals.” This is, were the other side of the picture comes in: There are always those who see nothing but the smokescreen and that is what some of the critics of the “just war” doctrine seem to do and which rightly annoys Jean Bethke Elshtain and her colleagues so much. It would be absurd to suggest that fighting terror is no better than committing it. If we were to see things in this way, we would have to give up the possibility to distinguish between right and wrong, the lawful and the unlawful all together. On the other hand, the adherents of “just war” have to be aware that the claim to do what “a nation’s honour and responsibility” calls for carries with it the danger of self-immunisation against any critique.

It is not by accident that the just-war doctrine disappeared when the modern state system came about. Under the Westphalian order every war waged by a state as such was just. The consequence was that the attempt to regulate the right to war (ius ad bellum), was replaced by the attempt to regulate wars (ius in bello). Inevitably, however, as the costs of war (both material and human) were rising and the confidence in mankind’s ability to act reasonably grew, the issue of the ius ad bellum came back in the 18th century among political philosophers. In the 19th century it was taken up in politics and began to be tackled in successive steps culminating in the 20th century in the prohibition of the use of force (Art. 2/4) by the UN Charter and the concomitant regulations on collective action as laid out in its Chapter VII. The clue of this solution is that the decision to use force, except for self-defence in case of an armed attack, is not left to the parties involved any longer but resides in the United Nations. With a view to these stipulations, falling back on the doctrine of just war is the same as if we were to return from the logic of courtroom justice or the rule of law to the logic of feuding.

The surprisingly widespread acceptance of “just war” can in part be explained with the observation that in the context of protecting human rights, for instance, it may look quite modern in comparison to state centred notions of non-intervention. Thus, “just war” interacts quite closely with the debate on the limits of sovereignty in an age of cross-border normative

25 Byers (note 18), 126.
26 Elshtain (not 22): 267.
integration and the transformation of international society into a world society. World society in this respect would be distinguished from international society by a value hierarchy which would put human rights on top of sovereignty. This is actually what the solidarist version of the English school calls for.\(^{28}\) However, if the grounds on which cross-border interference is legitimate are being expanded you need a parallel expansion of safe-guards against misuse. As long as the latter do not exist or are consciously ignored, if not obstructed (as in the case of the International Criminal Court), the moral dilemma ingrained in the use of force is one-sidedly “solved” in favour of self-help which in turn operates at the price of arbitrariness.\(^ {29}\) And overcoming arbitrariness in the endeavour to improve human affairs is precisely what the history of law is about. In the face of globalisation, this history cannot stop at the level of the nation-state.

So what else could be done in order to cope with the dilemma addressed by the adherents of “just war”? Arend and Beck proceed on the assumption that Art. 2(4) of the UN Charter prohibiting the use of force has been rejected by “the rule creating process, authoritative state practice” and therefor is dead.\(^ {30}\) Therefore, self-defence moves into centre-stage as the single most important principle for legitimating recourse to force. If this is so, then strings should be attached to the use of self-defence. Arend and Beck propose to confine the right to self-defence to the following situations: Imminent attack, indirect aggression in the form of covert action, the support of rebels and terrorist action, and finally the need to protect nationals abroad. The idea is to reduce the subjectivism of decisions to use force and to confine the instances to which recourse to the right of self-defence is admissible. Along this line they consider all uses of force to correct past injustices and to promote self-determination to be impermissible. “Although any given use of force for these purposes could indeed be just, it seems impossible to devise any realistic criteria that would be both reasonably objective and acceptable to all states.”\(^ {31}\)

This proposal has some merits by limiting the scope of the claim that force may be applied as admissible as long as it is being considered, by the parties involved, as just. However, apart of


\(^{29}\) This is why the liberal version of the English School as represented for instance by Robert Jackson insists on the merits of non-intervention as a basis for improving human conduct in world affairs. Robert Jackson, *The Global Covenant*, Oxford: Oxford University Press 2000.

\(^{30}\) Caren/Beck (note 2): 335.

\(^{31}\) Ibid.: 350.
the fact that the limitations are modest (amounting to a substantial extension of the present wording of Art. 51), the central problem remains unresolved. It is still left to the discretionary decisions of injured parties to define the nature of the injury and to determine what constitutes an adequate response. When the parties to a conflict decide on their own what constitutes covert action, support of rebels or harassment of nationals abroad, whether these situations is serious enough to invoke the right to self-defence and what the latter would comprise, still entails a high degree of subjectivity. Thus the problems of the just-war approach may be somewhat reduced but they are not overcome.

A third attempt to deal with the problems addressed here has recently been suggested by Robert Cooper, an advisor for international affairs to the present Labour Government in Great Britain. Cooper suggests to give up the idea of designing one set of principles to be applied to the relations of all states. He distinguishes between post-modern, pre-modern and modern states.

“The challenge of the postmodern world is to get used to the idea of double standards. Among ourselves, we operate on the basis of laws and open co-operative security. But then dealing with more old-fashioned kinds of states outside the post-modern continent of Europe, we need to revert to the rougher methods of an earlier era - force, pre-emptive attack, deception, whatever is necessary to deal with those who still live in the nineteenth century world of very state for itself. Among ourselves, we keep the law but when operating in the jungle, we must also use the laws of the jungle.”

In relation to pre-modern failing states Cooper suggests a defensive imperialism exercised in the case of Afghanistan or Kosovo. While Cooper points out what in part actually happens, his observations are not very convincing with a view to their normative or strategic implications. Thus he leaves it to his reader to decide whether the law of the jungle should apply also to relations between post-modern Europe and the US which Cooper considers to belong more to the modern group. Furthermore, if we were to apply his categories in a strict sense, then defensive imperialism would serve the purpose to lift the pre-modern states to the status of modern states which we would then fight according to the laws of the jungle until finally they would all turn post-modern. May this suffice to conclude, that using double standards affirmatively will not lead anywhere though it may help us to be aware of the fact that much of the thinking of all of us is not beyond using double standards.

So where do we go from here? A second reading of “just war” or the arguments of Arend and Beck alerts us to the logic implied in any attempt to hedge violence. Any such attempt calls for some procedure to check whether and how this purpose is being fulfilled. If “just war” is not only to justify but actually to limit the use of force than the question comes up how this effect can be achieved. On the national level, self-defence is subject to legal examination with a view to the criteria which make for “just war” (just cause, proportionality, discrimination, etc.). There are good reasons not to consider the good intentions of a person as sufficient to justify his/her behaviour. So if what we are looking for is a way to limit the use of force on the international level, then one would have to work towards the establishment of some effective measure to examine, as objectively as possible, the action taken in the light of the criteria spelled out in the “just war” concept.

Likewise, when Arend and Beck suggest to accept, and at the same time to curtail, the right to self-defence, then the question is who is to ascertain in which way and with which effect whether action taken keeps within the confines of the restrictions suggested by the authors. Of course, good international law consists of those rules which are being abided by the international community. Aberration from the rules then is the beginning of a change of the law. But one has to be careful not to deprive international law (in the tradition of John Austin) of its meaning as a system of legal rules. Law implies compliance and, concomitantly, enforcement. Otherwise it would not be law but just a habit or even only a passing mood. And law thus understood is not confined to the state level. If anything, we would have to regard all law as a social construction the concrete results of which are open for change. But there is a certain purpose to constructing law and though this purpose can be defined in terms of a pragmatic adjustment to changing situations (without resort to any essential ethic) we should be careful not to reduce law to the will of the powerful or the emanations of a passing mood, lest law would stop to serve its purpose - lowering the transactions costs of being sociable. Again, this reasoning applies not only to law at the state level, but to international law, too, otherwise international law would not exist.

This having been said, one could draw the following conclusions: With a view to “just war” there is nothing wrong with bringing the standards to bear which it entails, but the latter should be applied as part of the global rule of law and not as part of a strategy to get around it.

33 Cf. on these issues Mary Ellen O’Connell, forthcoming.
Accordingly, the standards derived from the “just-war” doctrine should be applied within a framework of institutionalised control of decision-making at the state level. This framework already exists both, in the form of the Security Council and in the form of the International Court of Justice. Whoever wants to hedge recourse to force according to the standards that are to make for a “just war” not only would have to be in favour of accepting these authorities, but would actually have to support the expansion of international authority, for instance in the form of the International Criminal Court. Of course, there are follow-up problems of accepting international authority, especially for democracies. And there are good reasons under the republican tradition to be careful not to delegate authority to a level which is beyond the reach of democratic control. But this is certainly not the case with a view to the International Criminal Court which has sufficient safe-guards built in to avoid an undue impingement upon democratic self-determination.

With a view to defining what the right to self-defence comprises, it should be clear from what has been said so far that this strategy would only work, if the right would continue to be invoked in the present Charter-context, i.e. as Art. 51 which stipulates that self-defence may be invoked only until the Security Council takes over. Arend and Beck base their argument on the observation that there has been a shift towards a *post*-Charter self-help paradigm. If that were the case then their way of presenting the case, in contrast to the professed intentions of the authors, would indeed amount to opening up a pandora’s box instead of closing it. But there is actually little evidence that the international community has accepted a *post*-Charter self-help paradigm. All the cases in which countries heretofore have invoked the right to self-defence without regard to the authority of the Security Council, have remained contested. So there is no need to think in terms of a post-Charter paradigm. The Charter is still good international law. And this includes the stipulation that recourse to self-defence may only be taken until the Security Council takes appropriate action.

Equally important, the substantive parts of Chapter VII are not dead either. True, the euphoria that prevailed in some quarters at the beginning of the 1990s has passed and the “Kantian moment” identified earlier in this paper has not been seized. With a view to the very mixed record of UN peace operations one could even claim that the UN tumbled into a crisis which

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34 Arend and Beck themselves concede that besides the author who first referred to the post-Charter paradigm (Thomas Frank) no other major international legal scholar has explicitly taken the view that Art. 2(4) is dead and therefore self-help is the law today. Arend/Beck, p. 335.
only in part can be blamed on the republican turn in US foreign policy. In the midst of conflicts arising out of state failure and turbulent processes of transition, the UN were entrusted with a task for which it was ill prepare for. Whereas in the first generation of peace missions, the task was confined to keeping conflicting parties at a distance, in the second generation the UN were to monitor and enhance the reconstruction and transformation of entire societies which included demilitarisation, reintegration, emergency relief, political transition, the building-up of a state infrastructure, the training of administrative personnel and police forces, trauma work, reconciliation, etc. In the “third generation” of peace missions, the UN were even called upon to use force (“robust peace keeping”) as a matter of peace-enforcement.

In the meantime, there has been a cut-back on this latter type of activity, though the peace missions have remained highly complex. Whereas personnel has been cut almost by half in comparison to the all-time high of 1994, the number of missions has remained more or less the same (fifteen in July, 2001). The mixed experience with UN peace keeping lead to systematic efforts to improve the work of the organisation in this area. Thus a training program was initiated which is to serve the co-ordination between the various groups of personnel (soldiers, police, civil peace workers) which are involved in peace operations. Furthermore, a Standby-Arrangement System (UNSAS) was inaugurated in the middle of the 1990s through which member states commit military and civil capacities to UN peace missions including civil infrastructure and other facilities. This program has met with considerable support on the part of member states. 90 states are involved up to now and 35 have reached the highest level of commitment which includes the presentation of Planning Data Sheets and a Memorandum of Understanding which regulates the concrete modes of co-operation under the program. The Department of Peace Keeping Operations has been reformed, too, and today seems to work as efficient as any respective office at the national level. More basically, the UN have also been involved in getting a learning process started with a view to improving the efficacy of sanctions (smart sanctions). 35

David Cortright and George Lopez come to the conclusion that sanctions policies must be guided y a widely accepted code of conduct and basic international legal principles. They cite Roger Normand who stated in 1995 with reference to the sanctions policies vis a vis Iraq:

“The imposition of sanctions by the Security Council as well as by individual states, needs to be governed by an explicit legal regime, drafted by a panel of international experts and informed by both human rights and humanitarian law principles. Under this regime, future cases of sanctions could be assessed according to universal criteria, in contrast to the current situation in which sanctions increasingly are imposed without reference to any legal or ethical standard at all.”

At this point let me briefly return to Kant and the idea of the democratic peace derived from his writings and historical observations. Though Kant stresses the importance of democracy for peace, democracy does not come in as a normative argument, but as one addressing the likelihood of peaceful behaviour. This peaceful behaviour is reasonable. Therefore, under a Kantian viewpoint it may be regarded as a categorical imperative for democratic states to share the democratic peace with non-democratic states as long as this does not by itself undermine the reasonableness of the international order. Sharing the democratic peace with non-democratic countries would take up the issue of uneven political and economic development in its relevancy for peace, but it would do so with a clear understanding that the heterogeneity of international society calls for a specially strong determination on the part of the democracies to promote the transformation of the international system from its present under-institutionalized form into something which would be more in line with the present scope of global interdependence. The task is to get out of the jungle by moving beyond the law of the jungle because the jungle is being at least in part constituted by the very laws which we proclaim as being necessary to survive in it. On the other hand, no matter how we turn and twist the matter, there remains the dilemma, present already in the unresolved co-existence of non-intervention and the “unjust enemy” in Kant’s writings. Since we are not able to solve the dilemma, we are forced to deal with it in a pragmatic way. Such pragmatism can help us to avoid the trap of legal or other dogmatism. But we have to be aware that there is only a thin deviding line between pragmatism and unprincipled opportunism. The countries who are responding to US policies today are operating on this very thin line. There is a strong inclination to call on the US for true co-operation, but to acquiesce if it does not come about. To avoid opportunism without getting unpractical about solving the acute issues of our times, constitutes the essence of the democratic challenge in an ever more interdependent world. The challenge in my view can only be met by working towards the improvement of the substantial

parts of Chapter VII of the UN Charter as an alternative to going back to Art. 51 or even to operating outside the Charter on the basis of a supposed post-Charter self-help paradigm.

Conclusion

All this is to say that while the “Kantian moment” of the early 1990s has not been seized by the international community, the “republican turn” does not yet signal a new era of international law and security politics. Whether it will in retrospect have to be seen this way, depends a lot on the concrete policies pursued not only by the US but also by the other member States of the UN. Under a Kantian perspective the other democracies have a special role to play in this respect, not because they are any better than the US, but because they operate from a different position in the global constellations of power and interests and because they have always been closer to the “zones of turmoil” than the US. Under these conditions the Kantian idea of a universal peace is closer to the Europeans while the US is closer to the idea of defending democracy against its adversaries. Combined, the democracies could be strong indeed. But apparently it takes a lot more even for democracies to work together in the heterogeneous setting of uneven development than has been realised up to now. Democracies on both sides of the Atlantic face the challenge to preserve democracy and peace because discarding the categorical imperative to work for peace under conditions of interdependence would certainly undermine democracy, too, as it is already beginning to do.

The UN despite of all the disappointments which went along with assigning it tasks it was not prepared to fulfil, still offers a valid framework for achieving both, peace and the advancement of democracy. There is no other comparable framework available. The UN bureaucracy has proven its ability to learn, to increase efficiency and competence. What the UN bureaucracy can now do depends very much on the member states - but fortunately not all together. A lot depends also on how the general public and the intellectual communities think who feed their thoughts and observations into the public and into the various political systems thus co-shaping the patterns of perception and political legitimisation around the world.

A post scriptum after re-reading what was written above: In the fifties we talked about the military-industrial complex. Today we are up against a military-industrial-media-entertainment network, which we are at the same time a part of. James Der Derian has raised
the question: “Are the social sciences intrinsically unsuited for the kind of investigation demanded by the emergence” of this complex?-37 Perhaps they are.