

Chapter I

Unconventional Warfare, Liberal Democracies, and International Order

Alberto R. Coll

The high political, military, and economic risks increasingly associated throughout the course of the twentieth century with open, conventional war have led many States and non-State entities to shift to other forms of violence as instruments of foreign policy. While the attention of liberal democracies and their governments tends to be riveted on the spectacular scenarios of nuclear war or regular conventional conflict, numerous international actors resort to what might be described as strategies of “violent peace” to achieve their objectives. Far from making open war, these actors do their best to persuade their adversaries that they are at peace with them and that relations between them should be “normalized”. For these actors, violent peace is a state of affairs in which a wide spectrum of unconventional and highly creative modes of violence, best summed up under the term “unconventional warfare”, are used against an opponent, while maintaining the pretense that there is no open war going on. It is a conception of warfare with which ancient strategists and philosophers of war such as Sun Tzu (400 B.C.) and the author of the Arthashastra (300 B.C.) were familiar, but which democratic societies, shaped as they have been by notions of rational liberalism and the feasibility of true peace, have difficulty comprehending.

Unconventional warfare covers a diverse range of activities, many of them associated with the term “low-intensity conflict”: support for guerrilla warfare, insurgencies, and non-State actors committed to using violence to achieve their political purposes; undeclared war aimed at overthrowing governments allied with, or friendly to, one’s adversaries; aid to terrorist groups through the provision of money, arms, training, false documents and sanctuary; sponsorship of violent coups to install more pliable foreign regimes; sophisticated and intensive disinformation campaigns through the use of broadcasting, other communications media and forged documents to incite violence against the adversary’s diplomatic personnel overseas and foreign governments friendly to it; support for acts of assassination and political intimidation against foreign leaders and high-profile defectors and dissidents; and cooperation with entities involved in the wholesale export of narcotic drugs.

4 Legal & Moral Constraints on Low-Intensity Conflict

Unconventional warfare poses serious problems for democratic, open societies committed to the rule of law in international relations. The covert nature and elusive instrumentalities of unconventional warfare make it difficult for societies under attack to identify the source of the threat and to rally domestic and international opinion to support effective defense and deterrence measures. Unconventional warfare places its victims in the awkward legal, moral and political dilemma of choosing an appropriate response. Sectors of the international community often misperceive responses of a conventional nature, such as the 1986 U.S. bombing raid on Libya, as “disproportionate” or aggressive in themselves. A double standard sometimes prevails, according to which societies under the attack of unconventional warfare are denied the means to defend themselves. The traditional rules of international law and the legal framework of the United Nations Charter, elaborated to deal with outright, open conventional military aggression, are difficult to apply to the highly creative modes of violence characteristic of “violent peace” and unconventional warfare.

Unconventional warfare always has been an inextricable component of international politics, though its salience at a particular time has depended on the character of the State system within which it takes place. In highly anarchical and competitive State systems whose members are bound by few or weak legal and moral ties such as Renaissance Italy, unconventional warfare tends to prevail more than in stable State systems such as 19th century Europe where there is a relatively strong consensus on what constitutes legitimate international behavior. The foundation of unconventional warfare is a particular view of statecraft which sees international relations as inevitably competitive, as providing little space for the long-term accommodation of divergent interests, and as requiring the pursuit of the most devious political instruments to achieve the greatest possible security for one's State. Thus, unconventional warfare, regardless of the military nature of many of its instruments, is essentially political in its guiding logic and its character. Its objective is to confuse, weaken, paralyze and undermine an adversary so as to increase the power and security of one's State or group. Insofar as unconventional warfare resorts to military force, it does so in a carefully calculated fashion and within the context of a broad strategy that includes diplomatic, economic and psychological instruments. To appreciate the true significance of unconventional warfare in the late twentieth century requires that we understand some of the deep, ancient intellectual roots of this particular mode of statecraft. The thought of Kautilya, Sun Tzu, and Machiavelli is especially relevant.

Kautilya's Arthashastra.

Chanakya Kautilya (345-300 B.C.?) was chief advisor and close friend to Chandragupta Maurya, founder of a new empire and dynasty in the heart of

India. Kautilya's reflections on the science of politics, known as the *Arthashastra*, occupy a prominent place in Indian literature and constitute one of the earliest and most articulate expositions of the statecraft of violent peace and unconventional warfare.¹ The counsels with which the *Arthashastra* is filled are based on the assumptions that international politics is anarchical in nature, that rivalry and conflict are inevitable, and that the State's survival requires as much cleverness, dissimulation, deceit, and the employment of covert aggression as raw military and economic power.

From Kautilya's perspective, permanent peace among States was impossible. In fact, one of the most striking aspects of Kautilya's thought was his view that a state of peace can go hand in hand with one of permanent enmity. Whereas in the Western liberal tradition peace and amity are generally seen as logical complements, Kautilya argued that peace and enmity are equally complementary and are as "natural" an expression of power politics as the forced complementarity of peace and friendship. A State may find it prudent to arrange a truce with an adversary of equal strength, so as to avoid a senseless war in which victory is impossible, but such a truce is temporary in nature and subject to revision according to the fluctuations of the balance of power. Moreover, such "peace" need not imply a corresponding psychological condition of friendship. Underneath the political truce, enmity is to be continuously cultivated in the psychology of one's State and its long-term statecraft, in preparation for the day when it may be possible to pounce on the unsuspecting adversary and destroy him. Similarly, a weak State may submit peacefully to the hegemony of a stronger one, or find itself courted by a stronger State seeking its support for containing a common adversary, but underlying such "peaceful" relationships is an element of convenience which can easily disappear given the ever shifting tides of international relations.

Every State finds itself in one of three conditions: deterioration, stagnation, or progress. One of the statesman's chief tasks is to evaluate correctly the actual condition of his adversaries and respond accordingly. An opponent's stagnation or deterioration is to be exploited without fail, while progress in his power capabilities may require a diplomatic offensive designed to "normalize" relations and arrange a truce so that he will not use his expanding capabilities to gain significant political or strategic advantages.

From his personal involvement in numerous wars, Kautilya was well aware of the high costs and unpredictability of regular "open" warfare. Hence, much of his treatise offers detailed advice on how to carry out what we would call "covert" or unconventional warfare. Of particular importance were intelligence-gathering, acts of destabilization, intensive resort to propaganda and psychological warfare, political deceit and pretense, outright treachery and assassination. Unconventional warfare might be carried out in the context of a political strategy in which the statesman, playing the part of a snake charmer, would lull the

6 Legal & Moral Constraints on Low-Intensity Conflict

adversary into passivity by means of a nonaggression pact or an agreement defining spheres of influence.² As Adda Bozeman has argued, with reference to Kautilya's India,

What we have . . . on this subcontinent and in hinduized Indo-China and Indonesia are vast fields of interstate relations in which each king, guided by the principles of *artha*, was forever trying to "acquire and maintain the earth," i.e., to outwit and conquer his neighbors. This unabashed philosophical and actual commitment to power and victory, whether rendered through the symbolism of geometry or that of chess - pursuits in which Indians excelled - was obviously incompatible with anything resembling international law or international organization as these terms are understood in the Occident. The only kind of law governing this Oriental state system was the law of the fishes (*matsya nyaya*), in accordance with which the big fish eat the little fish, might is above right, and right is in the hands of the strong. Inequality was postulated as the everlasting condition of political existence, power as the only measure of political worth, war as the normal activity of the state, peace as a lamentable condition of inferiority, and espionage as the most reliable, indispensable shield of royal fortune. Indeed . . . the skills of intrigue, tabulated and annotated under such titles as "Government based on Deceit" and "The Administration of Subversion," were more highly prized than material power. . .³

Sun Tzu's The Art of War.

While uncertainty surrounds its origins, Sun Tzu's *The Art of War* was probably written between 400 and 320 B.C.⁴ The treatise's counsels to the ruler can be read at two levels: the tactical one, dealing with particular military stratagems for defeating an adversary, and the strategic and political one, aimed at shaping a long-term statecraft to bring about the enemy's gradual debilitation and eventual surrender. Some of the twentieth century's most outstanding revolutionary leaders, such as Mao Tse-Tung and Che Guevara, indicated that they profited greatly from reading *The Art of War* at both levels.

Sun Tzu shared Kautilya's basic assumptions about the nature of international relations. His intimate acquaintance with the dynamics of the Chinese State system led him to see war and violence as the norm rather than the exception, peace as little more than a truce of convenience, and cunning and deception as essential prerequisites to survival in a dangerous world. In the state of "violent peace" which Sun Tzu perceived as the regular condition of international affairs, unconventional warfare was a vital instrument of State policy.

Like Kautilya, Sun Tzu recognized the high costs and risks of conventional war. Many of the Chinese States of Sun Tzu's time were fairly evenly balanced in their power capabilities. Large armies were difficult to raise, to train, to maintain in operational readiness over long periods of time, and to deploy across long distances over arid or mountainous terrain. Thus, any attempt to defeat an enemy by annihilating its armies in open combat and storming its cities was

fraught with innumerable dangers, not the least of which was the possibility that by the end of the war the enemy State might be so utterly destroyed and the victorious party so exhausted as to call into question the meaning of the entire effort. Hence, for Sun Tzu, the “unconventional approach to warfare”, a vital dimension of which was the kinds of activities that today we would call “unconventional warfare”, was indispensable. The truly intelligent statesman, argued Sun Tzu, sought to take his adversary’s armies and cities intact following a prolonged period of psychological and moral softening up:

Generally in war the best policy is to take a state intact; to ruin it is inferior to this. . . Do not put a premium on killing. . . To capture the enemy’s army is better than to destroy it. . . For to win one hundred victories in one hundred battles is not the acme of skill. To subdue an enemy without fighting is the acme of skill. . .

The supreme excellence in war is to attack the enemy’s plans. . . Next best is to disrupt his alliances. . . The next best is to attack his army. . . The worst policy is to attack cities. . .⁵

The softening up prior to ultimate victory was to take several forms. The enemy was to be deceived as to one’s true intentions, long-term strategic objectives, and actual strength. Sun Tzu ranked the ability to deceive as the greatest of political virtues. The tools of deception were diplomacy, espionage, and the use of “disinformation” and “active measures” to confuse the adversary, sow self-doubt and divisions within him and alienate him from his allies. It was essential to attack the enemy’s “mind”, his confidence and sense of identity.

Psychological warfare should not refrain from employing the more violent instruments of unconventional warfare. A dissatisfied minority or faction within the enemy State might be encouraged to revolt. An unusually successful enemy general or political leader might be assassinated.

In the kind of adversarial strategy that Sun Tzu saw as proper to most States in an anarchical international system, victory was facilitated by an understanding of “how to use both large and small forces.” Sun Tzu’s counsels on this point, as with most others throughout his treatise, apply not only at the tactical military level, but also at the much higher level of strategy and policy. “There are circumstances in war when many cannot attack few, and others when the weak can master the strong. One able to manipulate such circumstances will be victorious.”⁶ Victory required an understanding of the different modes of warfare. In some situations, the use of conventional war (“large forces”) might be appropriate, while in others the whole spectrum of unconventional warfare, from special forces and unconventional warfare to guerrilla war, subversion, propaganda, and psychological and political warfare (“small forces”) was the most fitting policy instrument.

While *The Art of War*’s premium on unconventional warfare and deception grates liberal sensibilities, there are those who have seen Sun Tzu’s doctrine of

8 Legal & Moral Constraints on Low-Intensity Conflict

war as far more humane and reasonable than traditional Western conceptions of warfare. Sun Tzu's emphasis on "the unconventional approach", his elegant strategy of overcoming an adversary with as little destruction as possible, and his aesthetic disdain for indiscriminate brutality prompted Liddell Hart to speculate, somewhat disingenuously, that if European statesmen and generals around the turn of this century had imbibed Sun Tzu's theories, the course of both World Wars might have been far different.⁷

Machiavelli's *The Prince*.

Perhaps the most famous expositor of "violent peace" in the Western tradition remains Niccolò Machiavelli (1469-1527). *The Prince* belongs to the same genre as the *Arthashastra* and *The Art of War*.⁸ It is a manual for political and military success addressed to the ruler of a State in a highly anarchical system of international relations. While debate continues on the true nature of Machiavelli and his work, many readily agree with Leo Strauss's estimate of Machiavelli as "a teacher of evil".⁹ He was also a gifted humanist and patriot.

Although much of *The Prince* deals with how a political adventurer may seize power in a State and keep it against the intrigues of his domestic opponents, there is also an implicit theory of statecraft and warfare. To keep power, a prince not only must eliminate his internal enemies; he also must guard against the perpetual machinations of rival States seeking to conquer his own State. Moreover, success in expanding the size and power of his State may strengthen the prince's domestic position and give him the legitimacy he so badly needs. So, Machiavelli developed a doctrine for success in diplomacy and war. And its core elements were, as in the doctrines of his Oriental counterparts, dissimulation and deception accompanied by various forms of unconventional warfare as a substitute for, or at least a requisite prelude to, direct military assault against foreign rivals.

In diplomacy, as in his dealings with his own subjects, it was important for the prince to disguise his true intentions. In fact, if one had to choose, it was better to appear to be a good man than to be a truly good man. As with Sun Tzu, propaganda, disinformation, and active measures designed to confuse and paralyze the adversary were essential.

The prince also should be prepared to resort to the entire panoply of violent subversion: support for factions within an enemy State seeking to overthrow the existing regime; assassination of selected foreign leaders; the nurture, through money and other means, of civil war in a State to weaken that State and its allies and increase the power of one's own; and any other form of treachery and covert violence available. Unconventional warfare was to be carried out in the context of a diplomacy of "normalcy" and under the cover of the most solemn assurances by the prince concerning his own piety, integrity, and devotion to peace.

Although some of the best contemporary minds looked at Machiavelli with disdain, and the sovereigns of Europe were quick to dissociate themselves publicly from his teachings, the actual course of international politics in the second half of the sixteenth century served as a vast canvas on which the practices counseled by *The Prince* were richly illustrated. The long struggle between England and Spain from 1559 to 1604 remains a classic case study in the dynamics of violent peace and unconventional warfare.¹⁰ While Spain sought hegemony over Europe, England was moved by the desire to stop this hegemonic drive and break open Spain's monopoly over the New World.

During the two decades of violent peace and "cold war" that preceded the outbreak of actual hostilities in 1588, both powers, well aware of the difficulties entailed in attempting open war against one another, resorted to numerous forms of unconventional warfare. Elizabeth I encouraged and helped to finance English expeditions directed against Spanish colonial possessions in the Caribbean and South America. To the protests of the Spanish ambassador, the Queen responded by feigning displeasure over, and disclaiming responsibility for, the acts of pillage and plunder carried out by her unruly subjects. She also looked the other way while an extensive proxy network developed among English, French Huguenot, and Dutch privateers to harass the Spanish lines of communication with the Low Countries across the English Channel. Among the English privateers and their backers were some of her most trusted counselors and financiers. Religious and political passions blended with economic motives and Elizabeth's own larger strategic objectives in tightening the bonds of this proxy network. The Queen also actively intervened in the Dutch revolt against Spain by providing sanctuary for the Dutch rebels, assisting with arms and money (and eventually troops), and intervening in France's budding civil-religious war on behalf of the anti-Spanish faction. Under the leadership of the formidable Francis Walsingham, Elizabeth also developed an espionage network second to none in Europe.

For his part, Philip II of Spain showed a similar grasp of the potentialities of unconventional warfare. His ambassadors in London disbursed large sums of money throughout a wide network of dissatisfied English Catholics willing to assassinate Elizabeth and replace her with either the Catholic Mary Stuart or Philip himself. He sent subsidies to prominent Catholic nobles in Scotland, to encourage them to depose the Protestant James VI and invade England from the north. Eager to isolate England diplomatically in preparation for an invasion, and hoping to turn France into a docile Spanish satellite, Philip fanned the fires of civil and religious discord in France by financing the Catholic League, so that French power would be unable to assist England at her hour of need. Eventually, Spanish troops were involved in the French civil war in support of the League. Meanwhile, on the eve of the Spanish Armada's attempt to invade England in the summer of 1588, Philip's representatives were busy negotiating a possible diplomatic settlement with the English at Borbourg. The king had made it clear

10 Legal & Moral Constraints on Low-Intensity Conflict

to his Council of State, though not to his diplomats, that the negotiations' chief purpose was to lull England into slackening its own military efforts.

The most fertile soil for unconventional warfare is an international system where the sense of membership in a society of States bound by certain common rules and values has been gravely weakened. That was true of Sun Tzu's China, Kautilya's India, and Europe in the second half of the sixteenth century. The bitter religious antagonisms between Catholics and Protestants, and the rise of new and powerful nation-States eager to assert themselves on the stage of international politics had helped to sunder the fragile sense of community inherited from the Middle Ages. Religious and political differences were perceived as more significant than common values and interests, and remained so until well into the next century when the Peace of Westphalia (1648), acknowledging the exhaustion into which all the great powers had sunk by virtue of the Thirty Years War, put to rest the religious struggle by formalizing the principle of "*cuius regio, eius religio*". The signatories of the Peace also recognized that, despite their differences, they were bound into a society of States by a common Christian culture, a developing system of international law, and the principle of the balance of power.

It is interesting to note that the incidence of unconventional warfare in Europe fell markedly following 1648 and did not return to the high levels of the second half of the sixteenth century until well into our own times. The breakdown of European international society that accompanied the First World War; the subsequent appearance of ideological divisions, rivaling the earlier religious hatreds, in the form of Communism, Fascism, and Nazism; the emergence of powers such as Hitler's Germany and Marxist Russia unwilling to accept the cultural values of the liberal democracies and ready to exploit the principles and rules of international law for the purpose of subverting and overturning the existing balance of power; the evolution of the European-dominated international society of the nineteenth century into a highly diverse multicultural system of States; and the nearly universal recognition of the increased economic costs and politico-military risks of conventional military force; all these factors provided an ideal setting for the recrudescence of unconventional warfare in the twentieth century.

Liberal Democracies and Unconventional Warfare.

The traditions and institutions of liberal democratic societies render them vulnerable to unconventional warfare, and make it difficult for them to understand its nature and develop appropriate counter-strategies. Modern liberal democracies are the product of a set of traditions and ways of looking at the world, spanning several centuries, that in turn were shaped by Christianity, liberalism, and capitalism. From Christianity the modern democratic State has

borrowed notions about the brotherhood of man, the desirability of universal peace and reconciliation, the high value of forgiveness and compassion, and the undesirability of deception as an instrument of politics.¹¹

From the broad philosophical universe of liberalism modern democracies have imbibed a view of history as progressive and tending towards greater rationality and harmony. Man and society are seen as capable of undergoing substantial moral improvement. The liberal tradition tends to view war as a retrograde human aberration, an unfortunate holdover from less enlightened days which the enlargement of human understanding gradually will render into oblivion.¹² The intellectual heirs of Sun Tzu and Machiavelli believe that war is a rational instrument of politics, no different from diplomacy or other “peaceful means” in its essential character as a means for the acquisition of power, and whose appropriateness at a particular moment is determined solely by expediency rather than morality. Liberalism, on the other hand, tends to see war as the Christian tradition has done: as a last resort, a basically evil alternative justified only by the necessity of defense against the even greater evil of aggression and conquest. For liberals, war is an abnormal state that periodically punctuates the more natural condition of human peace and harmony.

From its basically optimistic and progressive temperament, liberalism derives the strong hope that modern man will come to see the senselessness and waste of violence and will learn to avoid it. The invention of weapons of mass destruction has only reinforced the earnestness underlying this widely shared liberal hope. The irrationality of nuclear war, the danger of conventional conflict crossing the nuclear threshold, and the exorbitant costliness of conventional conflict itself, suggest to many liberals that since nations need to develop peaceful international mechanisms for settling their differences, they actually will do so.

Capitalism has been another powerful contributor to the general disdain with which liberal democracies tend to view war. In spite of its detractors’ arguments, capitalism during the twentieth century has been found more often on the side of those forces supporting diplomatic accommodation and peaceful resolution of conflicts than on the side urging war.¹³ This was true of the highest business and financial circles of Great Britain and the United States prior to the outbreak of World War I and during the 1930s.¹⁴ It continues to be true today with regards to the world’s large multinational corporations. By the end of the nineteenth century, it was already becoming apparent to some observers that, although a future general war might provide possibilities for great profit to selected industries in certain countries, on the whole its destructiveness would deal a heavy blow to the increasingly sophisticated and fragile network of international trade, investment and industrial production undergirding the world economy. By 1914, most capitalists in Great Britain and France, and even many in Germany, shared this perception and were, therefore, worried about the darkening clouds on the international political horizon. Their fears did not prove to be unfounded. The

12 Legal & Moral Constraints on Low-Intensity Conflict

legendary tales of capitalists who made large fortunes out of World War I need to be balanced by an account of the many more who were ruined or adversely affected by it.

Today, capitalism is on balance a force for international political restraint and accommodation. Radical critics who point to the connections between large capitalist firms and the world's military establishments tend to downplay other more significant dimensions of the impact of capitalism on international politics. At the height of the Cold War, Gulf Oil happily pumped oil in Angola under the protection of Cuban troops, while its Washington lobbyists pushed for a diplomatic understanding with the Soviet-backed Luanda government and a cutoff of aid to the anti-Marxist rebel Jonas Savimbi. In Sandinista Nicaragua, Exxon maintained its refineries in top working condition for many years, while resisting the Reagan Administration's policy of isolating that country economically and politically. In early 1988, when most of America's large multinationals were engaged in a scramble to secure new economic opportunities in the USSR under the umbrella of *perestroika*, the Chairman of the Board of IBM politely declined to sign an innocuous appeal to President Gorbachev for greater religious freedom, apparently for fear of offending Soviet sensibilities.¹⁵ Throughout the Cold War, American business circles supported a strong defense and large military expenditures for deterrent purposes, but they wanted the competition between the superpowers to remain carefully controlled, so as not to disturb the expansion of international trade, investment, and the processes of wealth-creation. Today, Western multinational corporations are the strongest advocates of expanding trade and investment ties with Iraq and Iran, in spite of the massive evidence that both countries are trying to develop nuclear weapons and Iran remains a major backer of terrorist groups in the Middle East.

There is another significant way in which capitalism indirectly reinforces the liberal democracies' vulnerability to unconventional warfare. The fusion of modern democracy with a capitalist economic system has produced societies whose highest reason for being is the unlimited acquisition and enjoyment of material goods. The Jeffersonian ideal of the pursuit of happiness, hedonistic enough in 1776, has become even more so in the succeeding two centuries. The ultimate standard by which liberal democracies measure themselves, the goal to which all political parties aspire, and the test by which all incumbent politicians are judged, is success in securing ever higher levels of what Hobbes called "commodious living."¹⁶ By fostering consumerism and materialism, and by glorifying individualism to the point of sometimes condoning selfish and anti-social attitudes, modern capitalism provides a less than fertile soil for the nurture of the martial virtues and a poor climate for the acceptance of war as a tragic but unavoidable part of life for which a democracy's citizens must be ever ready.

If the traditions and leading ideas of liberal democracies do not prepare them well for the challenges of unconventional warfare, neither do their predominant

political institutions. Democratic political systems are adversarial by design. They foster pluralism of perspectives and interests, and a political process which prizes combativeness, partisanship, and the pitting of factions against one another. There are always opposition parties thirsting for political blood, and a vigorous free press conscious of its duty to promote public debate and eager for fame and profit. Unless they are faced with an immediate, overwhelming threat, democracies find it difficult to fashion a coherent foreign policy commanding the solid support of their contending domestic factions.

Unconventional warfare is an effective instrument of aggression against democracies and their allies. The subtle, unconventional and generally covert nature of unconventional warfare avoids violence that crosses that threshold above which a democratic populace might be rallied to respond. While conventional aggression might tear a democratic society away from the pursuit of commodious living, unconventional warfare most likely will not. It is also obvious that the highly sophisticated, technological infrastructures underlying the economic systems of many democratic societies are highly vulnerable to forms of unconventional warfare such as terrorism and urban guerrilla warfare.

Moreover, unconventional warfare, as its great theorists and practitioners always have understood it, usually takes place in the context of a process of diplomatic entreaties designed to lull its victim into relaxing its defenses. Within every democratic society there are many individuals of unquestioned integrity and intellectual acuity who will interpret the adversary's diplomatic moves, not as the strategy of Kautilya's "snake charmer", but as good faith efforts towards a reasonable settlement. They will stand up and call for a reciprocal response involving a degree of good faith similar to that which they imagine the adversary to have. When resistance arises to their suggestions, many of these individuals will accuse the government of their own democratic society of being the main obstacle to peace. The ensuing recriminations, divisiveness, and intellectual confusion generated by what inevitably becomes an acrimonious and highly partisan debate further weaken the democratic State's foreign policy and its bargaining position versus its adversaries, most of whom have no similar domestic problems hampering their policies.

While the record of the Western democracies in countering the unconventional warfare waged by the fascist powers in the 1930s is hardly reassuring,¹⁷ it is still an open question whether over the long run democracies are structurally incapable of successfully responding to unconventional warfare. It may be that, in spite of their severe handicaps, democracies can rally the requisite determination, unity of purpose, and political shrewdness necessary for dealing with unconventional warfare. Modern democracies have an impressive array of policy instruments with which to tackle the problem, if they choose to act. Their economic prowess gives them leverage with which to exert costly pressure on their adversaries. Their technological and military capabilities give them conven-

14 Legal & Moral Constraints on Low-Intensity Conflict

tional military options with which to raise the costs to the enemy of resorting to covert war. And finally, democracies can, and occasionally have been able to, wage unconventional warfare effectively.

No serious study of unconventional warfare can avoid the morally and politically problematical question of whether democracies should “answer fire with fire”, that is, engage in selective unconventional warfare of their own as a means of compelling an adversary to desist from its own unconventional warfare efforts. If economic and diplomatic sanctions have proven ineffective, if the mechanisms of international law and organization are unavailable or have failed, if direct war and conventional military options are unadvisable because of their high costs, unconventional warfare may be the appropriate instrument with which a democratic society should defend itself and its allies against an adversary’s strategies of violent peace. A resort to unconventional warfare under such circumstances serves the joint purposes of defense against the existing attack and deterrence to future ones. Alexander Hamilton laid the philosophical foundations for the argument that democracies should be prepared to resort to defensive unconventional warfare when he argued in general terms that, as a matter of common sense and practical survival, the United States could not guide its international behavior by the same practices and institutions that govern its domestic life.¹⁸

The rejoinder to the above argument, as articulated by critics from Thomas Jefferson down to our own day, takes several forms. First, there is the claim that democracies should not stoop to the immorality that unavoidably accompanies unconventional warfare. This particular claim is rooted in the Jeffersonian view that, as Paul Seabury put it, “both the means and ends of American foreign policy. . . should be always judged against the highest standards of American civic values. . . the moral character of our civilization should be reflected both in the ways in which we deal with other nations, and in the ultimate purposes to which we aspire in these dealings. . .”¹⁹ A second kind of claim asserts that in resorting to unconventional warfare democracies corrupt themselves. Supposedly, the practice of Machiavellianism in one’s dealings abroad produces Machiavellianism at home; deception, secrecy and treachery in foreign policy lead to the cultivation and spread of similar attitudes and values within the domestic political process.²⁰ Third, there is the more pragmatically oriented claim that, given their peculiar traditions and institutions, democracies are ill equipped to carry out unconventional warfare, and that their attempt to do so often winds up in failure, in moral and political embarrassment both internationally and domestically, and in loss of the “moral high ground” with all its attendant intangible benefits.²¹

These arguments against the employment of unconventional warfare by democracies need to be taken seriously, but they do not make a foolproof case. At most, they remind us of the pitfalls involved in “fighting fire with fire.” Intellectually as well as morally, the most relevant question is not whether

democracies should resort to defensive unconventional warfare, but under what circumstances, and with what kinds of limitations, restraints and provisos such resort should be countenanced.

Unconventional Warfare and International Order.

In theory, the written and unwritten rules and institutions of international society allow democratic States to defend themselves against unconventional warfare. The chief framework of international law, the United Nations Charter, explicitly prohibits the use of force in international relations for aggressive purposes. The Charter was written with a view to the kinds of "open" wars of aggression, such as World War II, in which clear aggressors marshal their conventional military might to conquer their neighbors. In such wars, it is fairly easy not only to determine who the aggressor is, but also to verify the fact that an aggressive attack is taking place. The Charter's framers were, for the most part, hard-headed statesmen; they included men such as Dean Acheson and John Foster Dulles with practical experience in foreign affairs and vivid memories of the 1930s.²² Had they surmised that the future course of international politics would be marked more by violent peace and unconventional warfare than by invasions of panzer armies, they would have had no trouble seeing that the proscription on aggressive force should embrace the subtle instrumentalities of unconventional warfare as well as the traditional means of direct conventional war.

The Charter also was realistic enough to recognize that the prohibition of force in international relations should not extend to defensive uses of force. This is the meaning of the celebrated Article 51, which states that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs. . ." It would be wrong to read any convoluted interpretations into the meaning of self-defense, or to argue that "self-defense" is an excessively narrow concept that ties the hands of democratic societies in responding to aggression. Self-defense implies the right to defend oneself, as well as to inflict whatever degree of force is necessary to deter an adversary from future attacks.²³ Article 51 was not intended to serve as a straightjacket for victims of aggression.

In practice, international law and the United Nations Charter have not proven very helpful to democracies facing unconventional warfare. Three problems help to explain why.

The Problem of Inquiry.

By its very nature, unconventional warfare leaves as few trails as possible. Conclusive, incontrovertible evidence of a party's guilt is hard to come by. The

16 Legal & Moral Constraints on Low-Intensity Conflict

East bloc States that, in the early 1980s, sent arms to Cuba and Nicaragua for transshipment to the Salvadoran guerrillas, made sure that they did not include Soviet-made weapons. The bulk of the arms came from U.S. stockpiles captured by North Vietnam during the Vietnam war, so that the guerrillas could claim that their arms were American-made, and that they had captured them in the course of their own military operations against the U.S.-assisted Salvadoran army. Political assassinations are frequently carried out by individuals having no ideological connections whatsoever to the entity that employs them for their task. If the Bulgarian intelligence services were indeed behind the assassination attempt against the Pope in 1981, one can expect that they would have used, not a disgruntled radical leftist but a right-wing extremist such as Ali Mehmet Agca. The captured Grenada Papers show that the top Grenadian leadership intended to make available to the Soviet Union and Cuba the large "civilian" airport under construction at Point Salines; yet when the Grenadians asked the Soviet Union for direct financial aid to help them complete the airport, Foreign Minister Gromyko told them that this was out of the question and that Grenada should seek a loan from the IMF instead.²⁴ Fidel Castro, acknowledged by most Latin Americans of the right and the left as an active supporter of violent revolutionary movements in the region for nearly three decades, was superbly skillful in blotting out any evidence of such support. Similarly, during the last three years the Serbian government of Slobodan Milosevic has stoutly denied giving any significant support to the Bosnian Serb armies that have ravaged large sections of Croatia and Bosnia-Herzegovina. Indeed, in a script right out of Machiavelli's *Prince*, Milosevic has even attempted to paint himself as an honest arbiter between the Bosnian Serbs and their Moslem enemies. Whereas conventional military attacks are susceptible to fairly straightforward processes of inquiry, and hence to authoritative determinations that armed aggression has taken place, unconventional warfare is not.

The problem of inquiry has an additional dimension inherent in the institutions of liberal democratic societies. The news media, which might be expected to act as effective ferrets, often wind up focusing on the covert activities of democratic societies and neglecting those of their adversaries. This should not be surprising. Journalists are as full of biases as the rest of us mortals. They are frequently liberal, suspicious of their governments to the point of cynicism, and full of crusading zeal to expose and cleanse the supposed impurities of their own societies. They are skeptical of information or intelligence supporting government claims, and their investigative processes and reporting are affected by the partisan and combative nature of the democratic political process of which they are an integral part. Among the first news item to reach the United States from Grenada following the 1983 intervention was a report of the discovery of a substantial cache of old Springfield rifles at a large warehouse near St. George's. The reporters' subtle inference, explicitly articulated by many editorials ridiculing

the Reagan Administration's supposed alarmism, was that this was the extent of the grave military threat posed by the Grenadian regime against its Caribbean neighbors. Only somewhat later did reports begin to filter back indicating that the total supply of arms found on the island exceeded the wildest estimates of U.S. intelligence both in numbers and in technological sophistication. Enough modern arms of high quality were found for an army of 10,000 (in a country of barely more than 100,000 inhabitants). Many of them were of a clearly offensive nature.²⁵ Also discovered by U.S. forces, and somewhat downplayed by the media, were unconventional treaties between the Grenadian regime and various Soviet bloc States, providing for the supply of even more weaponry well into 1985.

At a more practical level, unconventional warfare by authoritarian adversaries is much more difficult to investigate because of their adeptness at deception and manipulation of information, which in turn is facilitated by the closed and secretive nature of their societies. Hence, by a combination of default, inertia, and deliberate purpose, inquiry into unconventional warfare against liberal societies receives less emphasis on the evening news or the front page of *The New York Times* than revelations of involvement by democratic governments in covert operations.

The problem of inquiry lends itself to skillful exploitation by the architects of unconventional warfare. The disciples of Sun Tzu know the importance of dissimulation, and they work hard to take advantage of the pluralism and partisanship within democratic societies by sowing skepticism and confusion about their activities. Perhaps no case illustrates this better than Nicaragua's long involvement in the Salvadoran civil war in the 1980s. The first State Department reports in 1981 documenting arms shipments from Nicaragua to El Salvador were received by the U.S. media with wide skepticism bordering on hostility.²⁶ It did not make much of a difference that shortly thereafter the Democratic-controlled Permanent Select Committee on Intelligence, which had access to the relevant classified information, found in two separate reports in late 1982 and mid-1983 that the evidence of Sandinista and Cuban support for the Salvadoran guerrillas was ample and credible.²⁷ Nor did it matter that successive defectors in 1983, 1984, and 1987 respectively from Nicaraguan counter-intelligence, the Cuban Ministry of Planning, and Cuba's intelligence services (DGI) confirmed that the involvement was not limited to the supply to weapons, but also included training, command and communication facilities in Nicaragua within driving distance of Managua, and economic assistance.²⁸ While the evidence of illegal Nicaraguan involvement in the civil war was solid, it was rendered politically irrelevant by the fact that the Sandinistas succeeded in persuading important segments of the media and Congress that what was involved was a set of exaggerations and outright fabrications by a knee-jerk interventionist Administration obsessed with Nicaragua.

The Problems of Impartiality and Politicization.

An effective international legal system capable of providing protection against aggression requires mechanisms for the impartial evaluation of whatever data the processes of inquiry supply.²⁹ If the inquiry component of this requirement is weak, so is that of impartiality. The institutions of international law, like those of international politics, are hardly impartial. They are affected by the deep political, ideological, cultural and historical differences that divide international society. Agreement and consensus may exist on general principles such as the unacceptability of aggressive force and the legitimacy of defense, but every particular crisis calling for the specific application of these principles to often ambiguous and highly controversial situations brings out the profound differences in interests as well as outlook among the various participants in the international legal process. International law does not exist in a political vacuum. Its principles are cited and argued by governments representing specific national interests, by legal scholars with subjective political sympathies and philosophical predispositions, and by international organizations whose voting majorities reflect a particular set of ideological, political and strategic biases.

Undoubtedly, any future efforts to strengthen the role of international law and the United Nations in curbing aggressive unconventional warfare will have to come face to face with the problems of inquiry, impartiality and politicization. It may be that new and creative policies, approaches and institutions can be developed to reduce the size of these problems and diminish the friction which they presently pose for the authoritative functioning of the norms against aggression. Such hope, however, must coexist side by side with a degree of skepticism. The nature of the international system itself makes it highly resistant to any such innovative approaches.

The existence of a society of States bound by certain general rules and reciprocal expectations (a proposition, incidentally, which is not accepted by all students of international politics) should not confuse us into thinking that there is such a thing as a single international community. At best, there is in today's world a large number of different international communities, each of them wrapped around a particular set of interests and values, some of them more inclusive than others, but none truly universal either in membership or in the scope of its objectives. The lines of membership in these communities are not always mutually exclusive; they often crisscross. But what does not exist and will not exist for a long time, despite the abstract language and fervent desires of world order theorists and many international lawyers, is a single international community that speaks with one voice and represents authoritatively the widely diverse communities of interests and values which make up the real world.

For this reason, although international law and organization deserve the support of liberal democracies, and although it is a morally and politically

worthwhile enterprise to explore the degree to which they may make a better contribution to defense and deterrence against aggressive unconventional warfare, any serious study of unconventional warfare and of the perils it poses to liberal democracies in the late twentieth century will have to go beyond the realm of international law and organization and consider the wider range of policy responses available to democratic States, including some forms of unconventional warfare itself. If one accepts the proposition that effective deterrence contributes to peace and is therefore a friend of peace, then consideration of such a wider range of policy alternatives is a legitimate, indeed unavoidable, subject for discussion.

The question of what constraints and guidelines should shape a democratic State's resort to unconventional warfare will be discussed elsewhere in this book. What has been established here, however, is that unconventional warfare is an old, persistent feature of international politics, present throughout different periods with varying degrees of intensity. To pretend that unconventional warfare does not exist, or that it is not a significant threat to American interests, is illusory. A democratic State's capability and will to resort to unconventional warfare can be a powerful deterrent against its adversaries' resort to it. At a minimum, it can raise the political costs to such an adversary of using unconventional warfare, and it can give the adversary a powerful incentive to explore a more constructive and accommodative relationship. Awareness of the dangers entailed in a democratic State's resort to unconventional warfare is salutary, but it should not be turned into a sweeping theoretical ban against it. Such dangers, too real to be ignored, only remind us of the need for further thinking on how unconventional warfare by democratic States should be carefully circumscribed so as to limit its potential harmful effects, while retaining its usefulness as one of several deterrent mechanisms available to democratic societies in a dangerous and highly unstable world.

Even in the post-Cold War world unconventional warfare remains highly relevant. Shortly after the collapse of Communism in the fall of 1989 it became fashionable for a period of time to argue that whatever problems unconventional warfare or "low-intensity conflict" had posed for international order during the Cold War would become irrelevant in a world in which the Soviet Union no longer would be financing or otherwise supporting such forms of violence. By 1995 such arguments seem less credible. It is true that Marxist-inspired insurgencies are *passé* these days, and that with the exception of Colombia, Peru and Guatemala, unconventional warfare has largely ebbed away in Latin America. Moreover, as the confrontation between the Soviet bloc and the Western alliance has disappeared, so has resort to unconventional warfare among the great powers against each other at present. Yet, various forms of unconventional warfare remain useful instruments of policy for a wide range of groups, nations and States in the Balkans, the Middle East and the Persian Gulf, Central Asia, and large parts

20 Legal & Moral Constraints on Low-Intensity Conflict

of Africa. These conflicts may not always be of strategic importance to the United States or even of marked significance to the fabric of international order, but in the future they could be. An understanding of the peculiar nature of unconventional warfare, the challenges it poses to liberal democracies, and its persistent recurrence will be as useful in the future as it has been in the past.

Notes

1. KAUTILYA (Shamasastri trans. 4th ed. 1951).
2. BOZEMAN, POLITICS AND CULTURE IN INTERNATIONAL HISTORY 123 (1960).
3. BOZEMAN, THE FUTURE OF LAW IN A MULTICULTURAL WORLD 128 (1971).
4. SUN TZU, THE ART OF WAR 11 (Griffith trans. 1971).
5. *Id.* at 77-78.
6. *Id.* at 82-83.
7. *Id.* at v-vi.
8. MACHIAVELLI, THE PRINCE (1947). Equally important are Machiavelli's Discourses.
9. STRAUSS, THOUGHTS ON MACHIAVELLI 9 (Bergin trans. 1958). For another interesting commentary, see Norton, *Machiavelli and the Modes of Terrorism*, *Modern Age* 304-313 (1985).
10. See MATTINGLY, THE DEFEAT OF THE SPANISH ARMADA (1959); PADFIELD, ARMADA (1988); MARTIN & PARKER, THE SPANISH ARMADA (1988).
11. The more pessimistic strands within the Christian tradition, such as Augustinianism, have not been as deeply absorbed within the contemporary ethos of liberal democracies as the pacifist, liberal ones that focus on the Beatitudes and downplay the stark political realism implicit in the Pauline epistles.
12. See Kant's essays on "Idea for a Universal History from a Cosmopolitan Point of View", "An Old Question Raised Again: Is the Human Race Constantly Progressing?", and "Perpetual Peace" in KANT, ON HISTORY (Beck ed. 1963). See also the discussions of the liberal tradition in international relations in WALTZ, MAN, THE STATE AND WAR (1954); WOLFERS & MARTIN, THE ANGLO-AMERICAN TRADITION IN FOREIGN AFFAIRS (1956).
13. See Hans Morgenthau's trenchant refutation of the argument that capitalism causes wars in MORGENTHAU, POLITICS AMONG NATIONS 51-57 (5th ed. 1978).
14. *Id.* at 56.
15. The appeal, signed by representatives of all the major religious groups and denominations in the United States, was circulated by the James Madison Foundation (Washington, DC), and President Reagan presented it personally to President Gorbachev at the Moscow summit of May 1988.
16. HOBBS, OF THE NATURAL CONDITION OF MANKIND AS CONCERNING THEIR FELICITY AND MISERY, 102 (Oakeshott ed. 1968). "The passions that incline men to peace, are fear of death; desire of such things as are necessary to commodious living; and a hope by their industry to obtain them."
17. WISKEMANN, EUROPE OF THE DICTATORS 1919-1945 (1966); SHIRER, THE NIGHTMARE YEARS 1930-1940 (1984).
18. On Hamilton's views, see WOLFERS & MARTIN, *supra* n. 12 at 139-154; LANG, FOREIGN POLICY IN THE EARLY REPUBLIC (1985); and Seabury, *Moral Purpose and American Foreign Policy* (unpublished paper presented at a conference on *Moral Purpose and American Foreign Policy* sponsored by the New York-based Center for Religion and Society at the Smithsonian Institution, Washington, DC, Feb. 20-22, 1987).
19. Seabury, *op. cit.*, 2.
20. BOYLE, WORLD POLITICS AND INTERNATIONAL LAW 293-5 (1985).
21. This is one of the themes in TREVERTON, COVERT ACTION (1987).
22. See AREND, PURSUING A JUST AND DURABLE PEACE: JOHN FOSTER DULLES AND INTERNATIONAL ORGANIZATION (1988).
23. See the extended discussion in Schachter, *International Law in Theory and Practice V*, *Collected Courses of the Hague Academy of International Law* 150-6 (1985).
24. SEABURY & MCDUGALL, THE GRENADA PAPERS (1984); VALENTA & ELLISON, GRENADA AND SOVIET-CUBAN POLICY: INTERNAL CRISIS AND U.S.-OECS INTERVENTION (1986).
25. Arthur, *Grenada and East Caribbean Security* 177 *Conflict Studies* 20 (1985).
26. For a careful study of the State Department's "White Paper" and of the highly politicized and biased reaction to it by much of the media and Congress, see FALCOFF, SMALL COUNTRIES, LARGE ISSUES: STUDIES IN U.S.-LATIN AMERICAN ASYMMETRIES 34-44 (Washington: American Enterprise Institute for Public Policy Research, 1984).

27. HOUSE COMM. ON INTELLIGENCE, SUBCOMMITTEE ON OVERSIGHT AND EVALUATION, STAFF REPORT: U.S. INTELLIGENCE PERFORMANCE ON CENTRAL AMERICA: ACHIEVEMENTS AND SELECTED INSTANCES OF CONCERN, 97th Cong., 2d sess. 3 (22 Sept. 1982), and HOUSE COMM. ON INTELLIGENCE REPORT 98-122, 2 (13 May 1983).

28. The defectors were, in the order given, Miguel Bolanos Hunter, Jose Luis Llovio Menendez, and Maj. Florentino Azpillaga. See the interviews with Bolanos Hunter in *Washington Post*, June 19, 1983 at A4. For Llovio Menendez, see "Cuban Defector Says Castro Finances Salvadoran Rebels' Arms Purchases", *Washington Post*, November 19, 1984 at A10. Maj. Azpillaga was a high official in the Cuban DGI who defected to the West in the summer of 1987. From August through November of 1987 Radio Marti (United States Information Agency) conducted extensive interviews with him, the transcripts of which are available. Much of the evidence of Nicaragua's illegal intervention in El Salvador has been gathered in MOORE, *THE INDIRECT WAR IN CENTRAL AMERICA* (1987), and TURNER, *NICARAGUA V. UNITED STATES: A LOOK AT THE FACTS* (1987).

29. For a thoughtful exploration of the problem of impartiality in international law, see FRANCK, *THE STRUCTURE OF IMPARTIALITY* (1968).