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# Society and Hierarchy in International Relations<sup>1</sup>

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## Abstract

The emerging pattern of crisis and war triggered by the terror attacks on New York and Washington in September 2001 and sustained through successive wars against Afghanistan and Iraq, provides a new context within which we must re-evaluate the English School claim that international society is a key element in the reality of world politics. From today's perspective, two dilemmas are undermining international society. There is the old fear that international order – meaning the security of the actors and the stability of the system – cannot be sustained without the members of international society participating in the working of common institutions. And there is the new fear that US preponderance is such that even prudential considerations are not sufficient to compel it to act in ways that support international order. Running these arguments together, we are forced to address the question, 'How far can international society be maintained alongside a hierarchical system?'

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Martin Wight urged his students to guard against the provincial assumption 'that we stand on the edge of unprecedented prosperity or an unparalleled catastrophe'.<sup>2</sup> While being mindful of the danger of presentism, there are nevertheless good reasons for posing the question whether the period between 9/11 2001 and March/April 2003 marks the emergence of a new era in international relations.<sup>3</sup> The attacks on New York and Washington and the regime changes in Afghanistan and Iraq have not themselves created a new global order but together they have forced us to confront its becoming. The point of this essay is to peer over the edge of the current order and examine whether the dominant rules and institutions of late 20th-century international society remain intelligible today. The most obvious symptom of the crisis is the fact that the leading power in the world is in unilateralist overdrive. Rather than acting to create and strengthen global institutions, as it did after the Second World War, the US now treats these institutions with intense suspicion. Even if it is conceded that the US poses a threat to international society, we need to hold out the possibility that this may be temporary; it is not clear how long American public opinion will support a war on terror once the



costs and risks of the enterprise begin to rise. Similarly, it is possible that over the medium term there could be a change in the balance of power such that the US can no longer act with virtual impunity. Once equilibrium has been restored, US foreign policy would be compelled to be more circumspect, and the returns on cooperation would be higher.

Given the number of ‘unknown unknowns’ – to borrow a phrase from Donald Rumsfeld – about international relations after 9/11, it would be wiser to ‘wait and see’ than rush to arrive at a judgement as quickly as Bush rushed to war against Iraq. Such a comfortable distance from our present predicament will not be maintained below. Instead, the position adopted at the outset is that this moment in history provides a critical test for those who believe that states are increasingly caught up in a normative web spun from cosmopolitan thread.<sup>4</sup> The challenge for such accounts is to revisit the extent to which, as E. H. Carr maintained, law and morality are contingent on power. Such a line of thought leads ineluctably to considering how far the concentration of power in the hands of a single state will necessarily lead to the imposition of US values and beliefs on other peoples and the simultaneous erosion of their cultural difference.

Hedley Bull famously dismissed E. H. Carr’s moral relativism by pointing to the fact that states clearly had interests and values in common. The problem as Bull saw it was the extent to which the process of decolonization had unleashed forces that were conspiring against this cooperative venture known as international society. The revolt against western dominance was such that Bull prophesied that ‘it may readily be imagined that in the next few decades’ such stresses will be placed on international society ‘that it will decline drastically or even disappear altogether’.<sup>5</sup> In what follows below, I will argue that Bull was right – albeit for reasons he did not anticipate. International society is not being unravelled from below, so much as being choked from above.<sup>6</sup>

In *The Anarchical Society*, Hedley Bull makes the familiar move of equating anarchy with ‘the absence of government or rule’.<sup>7</sup> While this does not lead inexorably to a culture of self-help, as it does for Waltz,<sup>8</sup> nevertheless the international is constituted as something other than the domestic. The only form of hierarchy envisaged by Bull was an international state, an end point that required the reproduction of the social contract among states.<sup>9</sup> The issue addressed in the opening section of the essay is whether in fact the presumption against hierarchy still holds: if it doesn’t, then how far is an international society composed of a plurality of sovereign states compatible with hierarchy? After 9/11, the dilemma is no longer ‘how much society’ is likely ‘to flourish in an anarchical structure’<sup>10</sup> but how much society is likely to flourish in a hierarchical structure’.

An obvious response to this claim is to argue that international society has always had gradations of power: world powers, great powers, middle powers, minor powers, and so the subdivisions go on. In other words, the sovereign states system has historically admitted many formal and informal hierarchies: what is different about international order after 9/11? There are two immediate responses to this question. First is the scale of US superiority. When Britain was the leading

naval power at the turn of the 20th century, it spent as much as the next two navies; next year, the US will spend as much on defence as the next eight biggest spenders put together. Second, what marks US relative power off from, say, British 'rule' in the 19th century is the ideology of exceptionalism that is driving US foreign and security policy.

Section two of the article delves more deeply into the character of US power; if identities constitute interests as constructivists tell us, then we need to consider the strategic and moral purpose of the US. In so doing, it will be possible to think more carefully about the character of hierarchy; if, for example, we find that the US refuses to accept the existence of authority outside its own political institutions, then this would amount to an imperium. In section three, I will look at the extent to which the war against Iraq prosecuted by the US and its allies counts as a subversion of the UN system of rules. During the war on terror, the US has shown itself to be adept at claiming special privileges while being unwilling to support the institutions and rules of the post-1945 order. Is the US acting as an outlaw or is it selectively following international law according to a narrow conception of its national interest? The conclusion will revisit the framing theme of the essay, namely, whether international society is fundamentally incompatible with a hierarchical order, or whether an uneasy cohabitation is possible.

### Society and hierarchy

The idea that states form an international society is based on two connected claims about common interests and shared values. At the most basic level, states take into account the impact their decisions have on other members of their society. This is motivated in part by prudential considerations in so far as the survival of each community is dependent on the security of all. But there is more to the idea of international society. In addition to the fact of interdependence which generates common interests, states also have a capacity for sociality, manifested in the diffusion of shared values and in their general fidelity to the rules. This does not mean that states will always act in accordance with agreed rules and conventions, only that this is the regular pattern and not the exception.

The societal domain is one variable determining the outcome of interactions. In the classic works of Martin Wight and Hedley Bull, we find that the societal exists alongside darker forces leading to the concentration of power, and potentially lighter forces seeking to burst out of the boundaries of particularism to forge a cosmopolitan community of humankind.<sup>11</sup> Yet, for all their recognition of the interplay of these three elements in constituting the 'reality' of world politics, there is no doubt that the English School saw as their principal aim the foregrounding of the societal dimension. As Bull wrote in *The Anarchical Society*, 'the element of a society has always been present, and remains present, in the modern international system'.<sup>12</sup>

If Bull was reflecting on world politics after 9/11, would he still make the same

claim? Does international society remain 'present' today? Before addressing this question, it is important to make a distinction between a thick and a thin notion of international society. There is no doubt that a thin notion remains present: states continue to recognize one another as members, and routine rules are complied with. This is likely to continue, given the extremely high levels of economic and technological interconnectedness. Neither will state leaders stop invoking the language of an international community, a term that loosely approximates to what Bull and the English School understood by the term 'international society'. In all these respects, international society remains present. However, if we operate with a thicker notion of international society, one whose primary purpose is the regulation or elimination of forms of warfare that threaten international order, then there are good reasons for fearing that the element of society is absent from world politics. The two are not completely unconnected; indeed, there could be something of a reverse spill-over effect in which a weakening of the thicker conception begins to undermine the more regulative interpretation of international society. What is being inferred here is that those patterns of reciprocal cooperation generated by common interests are likely to come under strain in the event that international society has either gone underground or been marginalized by the powerful.

The two principal threats to the 'thicker' conception of international society are the absence of a balance of power and the lack of consensus among the primary power brokers in world politics. To reiterate the point made in the introduction, while Bull thought the primary challenge to international society was the 'revolt' against the West by newly decolonized states and peoples, the main threat today would appear to be a revolt against the institutions of international society by the US.<sup>13</sup>

Why is a concentration of power in the hands of a single entity a threat to international society? The answer to this question takes us straight to the origins and purpose of international society. From the earliest consciousness of the idea of common rules and institutions agreed to by sovereign states, the primary justification has been anti-hegemonial in character. International society exists to protect diverse political communities from being overrun by more powerful neighbours. It is, in this sense, a great leveller. To invoke a helpful – if fictitious – metaphor deployed by Vattel, 'a dwarf is as much a man as a giant is: a small republic is no less a state than the most powerful kingdom'.<sup>14</sup> This is why non-intervention is the constitutive norm of international society: to recognize another community's right to independence is at the same time a commitment not to interfere in its domestic jurisdiction. As far as the moral purpose of international society is concerned, it is worth underlining the fact that, from its inception, it was 'not just a society of sovereign states but a society *for* sovereign states'.<sup>15</sup>

Throughout the period of European international society, the right of non-intervention was routinely compromised. Intervention was believed by many 18th-century theorists – including Vattel, the father of modern international law – to be a legitimate means of maintaining the balance of power. In the absence of a legitimate enforcer, Vattel believed that the balance of power must take priority

over 'legal attempts to regulate the resort to force'.<sup>16</sup> It is as if there was a fault line running through European international society between the development of a body of international legal rules covering trade, free passage, diplomatic privileges, and so on, as against a prior disposition to maintain 'a just equilibrium of power'.<sup>17</sup>

In the absence of a world government, it is up to the great powers and other institutions to ensure the rights of sovereign states are protected. The fact that Bull referred to the great powers as one of the institutions of international society suggests that he was very aware of the ambiguous relationship between law and power: law needs to act as a constraint upon those states looking to act in ways that are counter to the greater good, while at the same time law requires enforcement, a burden that fall disproportionately on the shoulders of the great powers. The members of international society generally accept that order has to be managed. This explains why it is that in a system of legal equality, certain privileges are nevertheless accorded to great powers. In the UN system, the Security Council is responsible for international peace and security, and that council is dominated by the permanent members. More broadly, all the major peace settlements since Westphalia have been dominated by the great powers.<sup>18</sup>

There are many other examples where Vattel's fiction of sovereign equality is compromised in practice. In the early modern period, European states applied sovereignty norms in the non-European world in a hierarchical manner, as is evident from the following examples.<sup>19</sup> From 1530–1830 the so-called 'barbary powers' – Algiers, Tunis and Tripolis – had commercial relations with European states but were not granted statehood. China's sovereignty was infringed by extra-territorial claims by Britain that remained in place until 1943. The export of property law and the settlement of European peoples in places such as North America and Australia effectively dispossessed indigenous peoples of their title to their land. It was not just the withholding of sovereignty to non-European peoples that constitutes an infringement to the principle of equality; it was also the *granting* of sovereignty to corporations like the British East India Company, empowering it to make war, monopolize trade and to extract taxation.

If we run these two lines of thought together, we see that hierarchy is not something that is new in international politics. What *is* different is that in the case of classical European international society, the members agreed to accept the legitimate nature of the hierarchical order and extend the same privileges reciprocally. The distinction between great powers and ordinary sovereign states was accepted in both the League Covenant and the UN Charter. Similarly, European states did not dispute the legitimacy of colonial possessions, even if the normative language signifying that hierarchy changed over time (from dominion to trusteeship to self-governing territory). Are members of international society today willing to accept the special privileges that US leaders are claiming for themselves? If the answer to this question is no, then we are at best in a world in which a weak society coexists with hierarchy. This theme is developed later in the article; in the meantime, it is important to think about the type of hierarchy that is implied by US identity.

## Identity and imperium

What, then, is the character of American power and is its manifestation incompatible with the norms and institutions of international society? Let us consider the plain fact that US power knows no balancer. With the end of the Cold War, the Atlantic Alliance has been foundering ever since the Soviet Union signalled its own dissolution. By 1994, all Russian troops had withdrawn from Central Europe. The wars of the Yugoslav succession further served to highlight Europe's weakness in stark contrast to American strength. Robert Kagan puts this point forcefully: 'When the United States was weak, it practiced the strategies of indirection, the strategies of weakness; now that the United States is powerful, it behaves as powerful nations do.'<sup>20</sup> As we have already seen, it is a mistake to view the US as a sole superpower, or the last remaining great power; both these categories presuppose the existence of other poles in the system. For this reason, the term 'hyperpower'<sup>21</sup> better captures the extent of US primacy.

The months after 9/11 crystallized this image of US capability to enforce its will, with or without the help of allies. As President George Bush put it in his State of the Union address of 2003, 'the course of this nation does not depend on the decisions of others'.<sup>22</sup> This quotation and many others like it have triggered a debate about the relative merits of multilateralism versus unilateralism. Such a representation of the issue implies a dispute about means when more is at stake. If unilateralism was simply a matter of single-handedly enforcing agreed rules, then this could be consistent with a society of states (albeit one whose procedural legitimacy was weak). However, where unilateralism is about defining the ends and the means independently of the wider community of sovereign states, then such a tendency diminishes that society.

Once the hyperpower begins to lay down the law to others and at the same time exempts itself from all authority outside of the state, then it has crossed a boundary that separates a society from a hierarchy. The hyperpower becomes an imperium or empire. Much has been written on the extent to which the US has become an empire, by which is meant 'effective control, whether formal or informal, of a subordinated society by an imperial society'.<sup>23</sup> A distinguishing marker of empire from a juridical point of view is that its sovereignty admits no higher authority to make and execute laws. The basis of the US legal case for its use of force against Iraq comes close to such an imperial view of the law. At the signing of the joint congressional resolution on Iraq of 16 October 2002, President Bush stated that, 'with this resolution, Congress has now authorized the use of force'.<sup>24</sup> The implication here is that international action is subjected primarily to domestic legal and political scrutiny.

The idea of the US acting as an imperium has a long history. During the Cold War, Raymond Aron cleverly described the US as 'the imperial republic'.<sup>25</sup> Albeit in a different context, this oxymoron is useful for the reason that it begins to answer the question how it is possible for a constitutional democracy founded on the rule of law to act in ways which undermine those same values internationally.

Inwardly, the US has one of the most deeply embedded democratic societies with constitutional checks on potential abuses of power; outwardly, it is an expansionist state that shows few signs of restraint.<sup>26</sup> Throughout the 1990s, the rise of a US imperium was greeted with a great deal of concern in Europe and outside. Jacques Chirac's foreign policy advisor in the early 1990s said that Chirac had been driven by the desire for 'a multipolar world in which Europe is the counterweight to American political and military power'.<sup>27</sup> With rather more success, neo-conservatives in the same decade were actively lobbying in favour of the opposite outcome, namely, a desire to preserve and expand 'an American imperium'.<sup>28</sup> By 2001, those defenders of American primacy were in the White House urging the President to 'discourage advanced industrial nations from challenging our leadership or even aspiring to a larger regional or global role'.<sup>29</sup> He was persuaded by their arguments. In his speech to the military academy at West Point, Bush noted that 'America has, and intends to keep, military strengths beyond challenge. . .'.<sup>30</sup>

September 11 2001 gave the George W. Bush presidency a mission. Terrorism became the enemy, as did those states that harbour them. The war on terror became the ideology. To combat terrorism, Bush urged the American people and their allies to accept the need to fight on all fronts and to tolerate exceptional measures, including control over immigration and restricting civil liberties. In this war on terror, there can be no neutral ground: all states must choose whether to be on the side of the US or on the side of the terrorists. Such a policy of coercive homogeneity runs counter to the ethos of the sovereignty norms that are embodied in the UN Charter and that are so deeply embedded in the mindset of post-colonial state leaders.

What are the techniques for establishing and maintaining imperium? The most important is the production and projection of military power, or what Bush chillingly referred to as 'full spectrum dominance'. In terms of hardware, the US possesses a relative advantage not seen before in history: it is so far ahead in conventional forces that other states are not even trying to catch up. The US has nine supercarrier battle groups; no rival has a single supercarrier. Air power superiority is such that in the last three wars its adversaries didn't get their fighter aircraft off the ground. And as we move to a new era in weapons technology, the US holds a massive lead in the militarization of space.<sup>31</sup>

Post 9/11, this overwhelming military superiority has been harnessed to a strategic doctrine that is prepared to use it. The defensive ethos of deterrence that defined US strategy in the Cold War has been supplemented by an offensive doctrine of pre-emption. The new enemies of the US cannot be deterred in the same manner that the Soviet sphere was contained during the long peace. These 'rogue states' sponsor terrorism, brutalize their people and seek to acquire weapons of mass destruction. Their threat must be countered. In the words of the *National Security Strategy* of the United States: '[t]o forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preventively'.<sup>32</sup> This argument is very slippery as it claims to rest on a justification based on a customary right of prevention, yet as Wheeler argues, 'it is clear from the text that what is

meant here is a doctrine of preventive or anticipatory action'.<sup>33</sup> Offensive preventive wars are contrary to international law, unless the fear of an imminent attack can be demonstrated. Moreover, by naming certain states 'evil' and making them military targets accordingly, the US is effectively clawing back the decision about rightful membership of international society from the realm of collective judgement.<sup>34</sup>

The ethos of interventionism in the affairs of other states around the world, and a hyper-sensitivity to any intrusion into their own sovereignty, betrays what Pierre Hassner calls 'an imperial mentality'.<sup>35</sup> Such claims likening the US to an empire have been widely debated and disputed. Philip Zelikow, for instance, exalts everyone to 'stop talking of American empire'; instead 'we must speak of American power and or responsible ways to wield it'.<sup>36</sup> There is no doubt that the term empire is problematic if it is meant to imply a connection with historical empires, something Hardt and Negri cleverly avoid by severing the connection between empire and territoriality.<sup>37</sup> Whether the label fits or not, beyond the shores of the US there is a consensus that America has too much power for its own good, but little agreement on what to do about it. Its identity as an *orbis terrarum* – or world power – and its strategy of pre-emptive/preventive interventionism constitutes a danger to international society, as discussed further below.

### Societal institutions under hierarchy

The long 19 months between 11 September 2001 and 20 March 2003 has seen a significant challenge to the view that states feel 'bound by a common set of rules in their relations with one another'.<sup>38</sup> Set against this *sine qua non* of the society of states, the President of the US – George W. Bush – intimated at a press conference on 17 September 2001 that 'there are no rules'.<sup>39</sup> If Bush's words can be applied more broadly, where does this leave international society? No society can be sustained without a reasonable consensus on *what* constitutes appropriate conduct, and *who* has the authority to enforce such standards. To invoke a Wittgensteinian theme, the members of a society need rules in order to know 'how to go on'. States need rules to tell them what actions are legitimate and which are prohibited, and they need rules to tell them 'who can act and in what kinds of social and political activities'.<sup>40</sup>

To probe this issue further, let us reflect on the main legal rules that are thought to be constitutive of the late modern international order. Three of these can be traced back to the classical European system: these are 'the sovereign equality of states, non-intervention in the affairs of other states, and good faith' [*pacta sunt savanda*]. The other five principles belong to the UN system: they include: 'the self-determination of peoples, [the] prohibition on the threat or use of force, [the] peaceful settlement of disputes, respect for human rights, and international cooperation'.<sup>41</sup> Perhaps the most important of these constitutive rules is the non-use of force, a rule that is undergoing significant challenge in the post-9/11 era.

The UN Charter establishes strict guidelines on the use of force. Article 2(4) prohibits the threat or use of force against other member states. There are only two exceptions to this general prohibition: where force is used in self defence (Article 51) and when force is authorized by the Security Council passed under a Chapter VII resolution. The long 19 months after 9/11 have seen a significant challenge to the traditional interpretation of these rules. Two particular challenges stand out: first, the meaning given to 'self-defence' by members of the society of states; and second, the use of force against Iraq by the US/UK/Australian 'coalition of the willing' without a clear mandate from the Security Council.

The right to self-defence has been claimed by states and their legal representatives over many centuries. Where the rule is more ambiguous is in the case of pre-emptive military action. By the early 19th century, customary international law recognised a limited right of pre-emptory self-defence where such action can be shown to be necessary and proportionate.<sup>42</sup> Although the use of force after 1945 has been justified in these terms, such justifications have not found favour among international lawyers or among states. In light of the current case, a good example here is Israel's destruction of the Iraqi nuclear reactor in 1981: its claim of self-defence was rejected by other states on the grounds that an attack was not imminent. Indeed, the whole idea of pre-emption is contrary to Article 51 of the UN Charter which legitimates individual and collective self-defence in circumstances where 'an armed attack against a Member of the United Nations' occurs.

In the aftermath of September 11, the US found itself in the unusual position of hearing that its justification for force on self-defence grounds was approved by other actors in international society. Part of this is explained by a political context of great sympathy towards the people of the United States. There were vigils of remembrance in most parts of the world, even in the supposedly satanic streets of Tehran. The other explanation for how it was that an expansive account of self-defence attained legitimacy in international society rested on some careful legal footwork. Rather than claiming that self-defence enabled a legitimate armed response to terrorists – an argument that again runs counter to established restrictive interpretations of self-defence<sup>43</sup> – the US broadened the target to include the government of Afghanistan that had maintained a 'close alliance' with al-Qaeda.<sup>44</sup> While al-Qaeda was known to operate in many states, the idea of harbouring required the active support of the host state. The other important qualification to the claimed right of self-defence was that this was only to be applied 'in situations where the terrorists had already attacked the responding state'.<sup>45</sup> All in all, these legal arguments served to calm the nerves of other members of international society who had previously been ill disposed to attempts to stretch the meaning of self-defence.

The fact that the wider society of states accepted the legality of the US position suggests that at this point the hyperpower was acting within the boundaries of international society. In the immediate aftermath of the terror attacks, when faced with a new context, the society of states consented to a new interpretation of the rules. Such consent was conspicuously absent in the diplomatic rounds leading up

to the war against Iraq. What was at stake was nothing less than the credibility of the UN Security Council as the organ with the authority to maintain international peace and security.

Although few outsiders were aware of it at the time, in the days after 9/11, leading Pentagon officials began to plan Gulf 2. On 12 September, Bush held a key National Security Council meeting in the Cabinet Room of the White House. Secretary of Defense Donald Rumsfeld and his deputy Paul Wolfowitz posed the question whether the US was going after the perpetrators of terrorism broadly conceived or whether the focus should be on al-Qaeda. His opposite number in the State Department, Colin Powell, argued that it would be better to proceed cautiously so as to maintain the support of domestic and international public opinion. Powell won the argument on the day, but Rumsfeld's belief that 9/11 presented an opportunity to go after Saddam was an intuition whose time would come.<sup>46</sup>

By the time of the State of the Union address in January 2002, the die had been cast. The challenge facing the international community was to persuade an instinctively unilateralist President to put his case to the UN Security Council. In the summer of 2002, there were intense discussions within the Republican administration, and between Washington and London, about the right course to take. The doves won the day. On 12 September, President Bush threw down a challenge to the Security Council: either it dealt with the 'grave and gathering danger' or it stood aside and watched a coalition of the willing disarm Iraq.

Between 12 September and 8 November, the permanent five engaged in intense debate about the wording of the disarmament resolution. What became 1441 was a classical example of the art of diplomatic ambiguity: the French did not get a clear statement that a second resolution would be required before force was authorized, and the US did not get the automaticity it was looking for. The Inspectors went back into Iraq on November 27. The head of the inspection team, Hans Blix, presented successive reports to the UNSC about how far Iraq was complying with the 'active cooperation' demanded in 1441. By early 2003, the build-up of American and British forces was reaching the levels required by the military chiefs for the invasion of Iraq. This heightened the belief, felt in Paris, Berlin, and Moscow, that the inspections regime was a sideshow, a simple pretext for war.

On 7 March, following another inconclusive report by Hans Blix, Jack Straw tabled a resolution giving Iraq 10 days to disarm voluntarily or be disarmed forcefully. The UK actively sought the support of the 'swing six' on the Security Council, having already got the support of Spain and Bulgaria. It was reported in *The Guardian*, albeit by an unnamed British official, that the US 'did not make much effort' to win over the undecided. By contrast, France maintained an intense dialogue with Angola, Cameroon and Guinea, assuring them that there would be no point in voting in favour as France would veto it anyway.<sup>47</sup>

By 17 March it had become clear that the resolution would not be passed, and it was withdrawn by the US and the UK. This was a massive blow for the UK government, given how much political capital had been invested in a second and

enabling resolution. From the beginning of the year, it had been felt by many members of Blair's cabinet that 1441 did not give sufficient authority for war.<sup>48</sup> This was certainly the view of former Labour foreign secretary, Robin Cook MP, who resigned his cabinet post in protest against his leader's statecraft. In an article written the day after, Cook stated that he had resigned because a fundamental principle of Labour's foreign policy 'had been violated'. As the following quotation makes clear, Cook believed that Gulf War 2 posed a threat to the idea of a society of states based on binding legal obligations: 'If we believe in an *international community* based on *binding rules* and institutions, we *cannot* simply *set them aside* when they produce results that are inconvenient to us.'<sup>49</sup>

Cook's statement begs the question whether the rules laid down in the UN Charter had in fact been broken by the US-led coalition. There is no doubt that the use of force lacked consensus in every international regime, from NATO to the non-aligned movement (whose 114 states voted on a resolution opposing force in February 2002).<sup>50</sup> But was it illegal? On this question legal opinion remains divided. The debate about legality that took place in Britain serves as a good illustration. In a letter signed by 16 academic lawyers (including Professor James Crawford and Professor Vaughan Lowe), the legality of the case for war was categorically rejected. Neither resolution 1441, nor any prior resolution 'authorises the proposed use of force in the present military circumstances'.<sup>51</sup> Military action requires, the 16 reminded us, that the Security Council give its express assent: it was transparently evident that no such view predominated in the Council.

The legal advisors to the US and UK governments did not share this view. In the words of the US State Department, William Howard Taft IV, there was 'clear authorization from the Security Council to use force to disarm Iraq'. 'The source of this authority,' he went on, 'is UNSCR 678' that was agreed prior to the Gulf War of January 1991.<sup>52</sup> The Blair government's legal counsel, the Attorney General Lord Goldsmith, took the same position. In a Lord's debate on 17 March, he argued that '[a]uthority to use force against Iraq exists from the combined effect of resolutions 678, 687 and 1441'.<sup>53</sup>

There are two difficulties with this position. In the first instance, is it reasonable that resolutions passed 12 years ago remain alive in the sense that they can become the justification for UN enforcement action today? As two Australian lawyers put it, the US / UK / Australian position is like saying 'we much prefer what the Security Council said about the first Gulf War and we'll pretend that it applies to unforeseen events 13 years later'.<sup>54</sup> Second, the Attorney General's deliberation is problematic because it appears to put him in the position of adjudicating whether Iraq is in non-compliance with 1441.<sup>55</sup> While favourable to the interpretation of 1441 found in diplomatic circles in London and Washington, it is clearly not a view that the 'non-nyet-nein' alliance shared. Given that 1441 had presented Iraq with one final opportunity to comply with the demand to disarm, the question of 'material breach' is one that the Council had to decide on the basis of the evidence put before them by the inspections team; it was not an issue to be decided by lawyers working for members of the UNSC.

What does this disagreement over the legality of the use of force against Iraq tell us about the state of international society? One answer, given by Bull, is that such difference of opinion over the interpretation of rules is to be expected. To this he adds two crucial qualifications. First, 'such rules are not infinitely malleable'. Second, they circumscribe the range of possible justifications that states can resort to in order to give pretexts for their actions.<sup>56</sup> In Nicholas J. Wheeler's book *Saving Strangers*, this latter point was elevated to a key test for whether or not a particular practice was regarded as acceptable. The point for Wheeler is that 'actions will be inhibited if they cannot be legitimated'.<sup>57</sup>

The war in Iraq poses a serious problem for those who propose that rules act as a constraint on behaviour. From the moment when the possibility of taking out Saddam Hussein was first mooted on 9/12, right up to the date when war commenced, the US Government appears not to have been 'inhibited' by the lack of legitimacy of such action (neither does the UK government despite its greater vulnerability to retaliatory moves on the part of other states). Even if a legal case can be made for using force to uphold Security Council resolutions – an example of the malleability suggested by Bull – it would be very hard to sustain the argument that such an action was thought to be legitimate given the complete absence of consensus that such conduct was appropriate. Such a position was not lost on the UN Secretary General, Kofi Annan, who noted on 10 March that if action was taken without the authority of the Council, 'the legitimacy and support for any such action will be seriously impaired'.<sup>58</sup>

Finding themselves in a situation in which an action is patently not inhibited by the absence of legitimation, constructivists fall back on the important subsidiary claim that rule breaking will incur certain costs.<sup>59</sup> On another day, perhaps in another issue-area altogether, the offending state will be made to pay a price. There are two difficulties with this argument. First, which state gets to be labelled a rule breaker? And which rule is being disregarded? In the case of the Iraq war, it would appear that Germany and Turkey are more likely to pay a price for disregarding the rule of alliance cohesion; this seems a safer bet than the US having to make future concessions to make up for its choice of going to war without explicit UN authorization. Second, while there are sometimes costs for rule breaking, we should not ignore the benefits that such deviant behaviour can bring. What immediately springs to mind here is the possible future economic gains – for major US corporations in particular – to be made from postwar reconstruction.

Defenders of international society argue that the existence of international legal rules is the best indicator of the presence of society.<sup>60</sup> The discussion above seems to suggest that the war on terror has brought into question the extent to which the rules prohibiting the use of force continue to attain legitimacy. Although the analysis presented above is far from exhaustive, it does lend support to Michael Byer's claim that 'an imperial system of international law' has been summoned into existence in the wake of 9/11.<sup>61</sup> Unless the US and its willing allies can persuade other members either to *consent* to new rules or *exempt* the US from breaches of existing ones – then such an arrangement will be operating outside of international society.

## Conclusion

The history of international society is written in terms of the progressive expansion of a state-based order to encompass all the world's population and territory. Is it possible that, after three centuries of integration, the boundaries of international society might be contracting? The argument presented above suggests that in the course of the war on terror, the United States stands in opposition to international society as understood by classical English School writers.

I presented two clusters of reasons for this tension. First, if we look at the dynamics of international society at the beginning of the 21st century, we find many abnormalities. In a system characterized as anarchic, order requires a stable distribution of power and a commitment on the part of the great powers to manage the system. An anarchical society therefore requires some inequality but not to such an extent that, in Vattel's words, one state is able to 'lay down the law to others'. The actions of the US in the build-up to the war against Iraq suggests that it is both willing and capable of laying down the law to those it sees as rogue states, even when it has conspicuously failed to persuade others on the UNSC of the rightness of its cause.

It is plausible to argue that cooperation among great powers is not a necessary condition for international order. The Cold War is an example where there was little evidence of concerted action but a fragile international society was able to persist because of a general balance of power that dictated mutual respect for strategic parity and a broad agreement on the respective spheres of influence. A key characteristic of the post-9/11 order is the absence of effective countervailing institutions against the hyperpower: a situation exacerbated by the fact that maintaining such an imbalance has become a goal of US grand strategy.

The combination of the growth in US military power and its post 9/11 doctrine of pre-emption together signal the emergence of an imperial authority that is hostile to many of the norms and values associated with the UN system. This does not mean that the US will oppose the rules and institutions of international society in all respects but it will retain an option to disregard the rights of other members. Like a suzerain power, it sets its own legal and moral standard, and admits to no external sources of authority. In this fluid world of society and hierarchy, the right of states to remain neutral should no longer be taken for granted. In the wake of the Bush doctrine, non-intervention has become something of a relic of the 1945–2000 order. The hyperpower will not allow neutrality if such a stance clashes with its national security interests: the logic of independence has been replaced by the logic of getting on-side.

The existence of hierarchy does not mean the end of international society. In part this is because the hyperpower will continue to engage with other sovereign states in accordance with certain settled norms, particularly in relation to low politics issues. The motivation to cooperate on trade stems from the extraordinary high levels of economic and financial integration on which American prosperity depends. But over questions about vital national interests, concerned with the use

of force and the management of world order, we see that hierarchy represents a threat to international society and a source of ongoing tension.

At the outset, it was noted that Bull believed the 'revolt against the West' constituted a grave threat to international society. This should not obscure the recognition that he was also conscious of the dangers of the most powerful states in the world acting as though they had complete 'freedom of manoeuvre'. However, on a strict reading of *The Anarchical Society* it would seem that Bull would not have thought that the society of states today was 'deformed',<sup>62</sup> so much as in retreat. 'How many states have to have contracted out of international society,' Bull asked, 'before we can say that it has ceased to exist?'<sup>63</sup>

The answer provided in this essay is 'one'. In the analysis of the US in relation to the 'rush to war' against Iraq, I showed that the leading state in the world has, for the moment, contracted out of international society. Between 11 September 2001 and 20 March 2003, the US appears to be playing by different rules. As we have seen, four factors in particular can be seen as contributing to the interpretation of the US as a hyperpower that is incompatible with the rules and institutions that are said to be binding on members of international society. First is the emergence of a highly permissive understanding of the right of self-defence that enables the US to intervene militarily in the affairs of states that it regards as a threat to its security. Second is the related argument that pre-emptive action is legitimate even when no imminent threat has been demonstrated; such a doctrine is likely to cause great insecurity and fear, and as a consequence, be detrimental to international order. Third, the hyperpower is against extending either of these justifications for the use of force to others (as the US response to North Korea's claim of a right of pre-emption made clear).<sup>64</sup> Fourth, the US continues to regard domestic legal restraints on international action as being more important than international law. These factors together suggest that a fault line has opened up between the US and international society today.

Under what circumstances might the US rejoin international society? One obvious incentive would be if there were changes in the global equilibrium such that the US was no longer the preponderant power. This was Burke's fear about British hegemony. 'I dread our own power and our own ambition,' he wrote; 'it will one day produce 'a combination against us which may end in our ruin.'<sup>65</sup> That said, there must be a doubt that the empire of circumstance alone will bring the US back in. A new balance of power might be brought about relatively easily in a multipolar order, but in a hierarchical one, as Europe is discovering, the costs of balancing are higher than democratic societies are willing to bear. Perhaps a more plausible response would be to argue that, in an age of asymmetric warfare, the hyperpower could be restrained by a combination of fatigue and vulnerability.<sup>66</sup> Despite the often-stated claims by the Bush administration that they are 'winning' the war on terror, the patience of civil society is likely to run out well before the flags are unfurled for the victory parade.

Such forces for continuity should not be underestimated. As Martin Wight said of the threat posed by the French Revolution, European international society

proved to be more resilient than many had feared. That said, this article was prompted by the thought that the English School never adequately addressed the question when the decline of international society was such that a different kind of order could be said to have taken its place. The argument cautiously outlined above is that 9/11 crystallized the moment when the hyperpower and the institutions of international society started to pull in opposite directions. A combination of raw power and a culture of exceptionalism are sufficient to propel the hyperpower to the boundary of international society. Will it turn inwards and work with other sovereign states to shore up the rules and institutions? Or will it see its interests furthered by being unconstrained by international rules?

To the extent that the US manages international order on Hobbesian principles, in which it is above the laws it creates and enforces, it will occupy the position as the leading state in a hierarchically ordered system that stands outside international society. To the extent that the US manages order on the Lockean principle of creating and enforcing laws to which all sovereigns consent to and are bound by (including the hyperpower), then it is inside the boundary of international society. The moment for the English School to confront the relationship between society and hierarchy is upon us.

## Notes

- 1 The title for this essay is an amendment of Hedley Bull's 1962 British Committee paper 'Society and Anarchy in International Relations', published in Herbert Butterfield and Martin Wight, (eds) (1966), *Diplomatic Investigations*. London: George Allen and Unwin. I would like to thank Mick Cox for suggesting this piece. In the course of drafting the article, I benefited from many conversations with colleagues. Ian Clark made a number of important interventions early on; Richard Devetak's visit to Aberystwyth was an occasion to discuss the state of international society and much else besides – he also provided valuable written comments, as did Andrew Linklater. Nick Wheeler was generous in talking through some of the theoretical moves in the argument as well as providing detailed feedback on an earlier draft. The responsibility for the errors is all mine.
- 2 Martin Wight (1966) *International Theory: The Three Traditions*. Edited by Gabriele Wight and Brian Porter. Leicester: Leicester University Press, p.6.
- 3 Evident in journalistic writings – such as Gwyn Prins (2003), 'Farewell to the Old World'. *The Guardian*, 15 March, p.28. See also various contributions to Ken Booth and Tim Dunne (eds) (2002), *Worlds in Collision: Terror and the Future of the Global Order*. London: Palgrave.
- 4 For an overview of the development of international norms, see Chris Brown (2002) *Sovereignty, Rights and Justice*. Cambridge: Polity.
- 5 Hedley Bull (1977) *The Anarchical Society: A Study of Order in World Politics*. Basingstoke: Macmillan, p.258.
- 6 Here and elsewhere in the article, I am using the term 'international society' in the classical English School sense (what I have labelled elsewhere as a legitimist model). This is not to imply that this is the only interpretation; rival understandings such as that offered by realists or critical theorists would interpret the relationship between international society and hierarchy differently. For a working through of these contending views, see Tim Dunne (2001) 'Sociological Investigations: Instrumental, Legitimist and Coercive Interpretations of International Society', *Millennium* 30:1, pp.67–91.
- 7 Bull (1977) *The Anarchical Society*, p.46.
- 8 Kenneth N. Waltz (1979), *Theory of International Politics*. New York: McGraw-Hill, Chapter 6.
- 9 Bull, (1966) 'Society and Anarchy', pp.48–51.

- 10 This phrase is Stanley Hoffmann's. See his essay 'International Society' in J. D. B. Miller and R. J. Vincent (eds) (1999), *Order and Violence: Hedley Bull and International Relations*. Oxford: Clarendon Press, p.26.
- 11 See Andrew Linklater (1990), *Beyond Realism and Marxism: Critical Theory and International Relations*. London: Macmillan.
- 12 Bull (1977) *The Anarchical Society* (p.41)
- 13 In fairness to Bull, he recognized that if one of the superpowers 'won' the Cold War struggle, this would put the victorious state in a position of dominance such that 'it might threaten not only the independence of some states but the survival of the system of sovereign states itself'. Bull, 'World Order and the Super Powers and World Order', in Carsten Holbraad (ed.) (1971), *Super Powers and World Order*. Canberra: ANU Press.
- 14 Vattel, quoted in Watson (1992), *The Evolution of International Society*. London: Routledge, p.203.
- 15 David Armstrong (1993) *Revolution and World Order: The Revolutionary State in International Society*. Oxford: Clarendon, p.32.
- 16 Andrew Hurrell (1996) 'Vattel: Pluralism and its Limits' in Ian Clark and Iver B. Neumann (eds), p.240.
- 17 In the words of the Treaty of Utrecht, of 1713. See Armstrong (1993), *Revolution* p.34.
- 18 The relationship between hierarchy, power and institutional order is explored in Ian Clark (1989), *Hierarchy of States: Reform and Resistance in the International Order*. Cambridge: Cambridge University Press, see especially Ch.5.
- 19 Stephen D. Krasner (1999) *Sovereignty: Organised Hypocrisy*. Princeton New Jersey: Princeton University Press: this book exposes the normative contradictions in the sovereign states system. While Krasner broadly examines the contradictions in the sovereignty regime within the core of the system, Edward Keene shows the dual nature of international society in terms of the norms that prevailed within Europe and between Europe and the non-European world. See his intriguing argument set out in (2002) *Beyond The Anarchical Society: Grotius, Colonialism and Order in World Politics*. Cambridge: Cambridge University Press. One other text illustrates the relevance of the boundary question within and between international societies: Barry Buzan (2004, forthcoming), *International Society and World Society: English School Theory and the Social Structure of Globalisation*, especially Chapter 7.
- 20 Robert Kagan (2002) 'Power and Weakness', *Policy Review* No.113 (2002), web edition, [www.policyreview.org/JUN02/kagan\\_print.html](http://www.policyreview.org/JUN02/kagan_print.html), p.3.
- 21 Or what the former French foreign minister, VÉdrine, termed *hyperpuissance*. Kagan (2002), 'Power and Weakness', p.5.
- 22 Josef Joffe (2003) 'Continental Divides', *National Interest* (Spring), p.160.
- 23 See Michael W. Doyle (1986), *Empires*. Ithaca, New York: Cornell University Press, p.30
- 24 US Department of State (2002), 'Bush Signs the Joint Resolution Authorizing Military Force in Iraq', 16 October, p.2. <http://usinfo.state.gov/topical/rights/law/02101603.htm>.
- 25 Raymond Aron (1975), *The Imperial Republic: The United States and the World 1945–1973*. London: Weidenfield and Nicholson.
- 26 These two faces of American power are neatly captured by Richard Crockatt in his (2003) *America Embattled: September 11, Anti-Americanism and the Global Order*. London: Routledge. See especially, Chapters 1 and 2.
- 27 Michael J. Glennon, 'Why the Security Council Failed' (2003), *Foreign Affairs* May/June 82:3, p.29.
- 28 Stephen Peter Rose (2003), *National Interest* (Spring) p.131.
- 29 Document written by Paul Wolfowitz and Lewis Libby, quoted in George Monbiot, 'Why can't liberal interventionists see that Iraq is part of a bid to cement US global power', *The Guardian*, 11 March 2003, p.21.
- 30 Neta C. Crawford (2003) 'The Best Defense: The Problem with Bush's "Preemptive" War Doctrine', *Boston Review* (February/March issue) <http://Bostonreview.mit.edu/BR28.1/Crawford.html>, p5.
- 31 Gregg Easterbrook, 'American Power Moves Beyond the Mere Super', *The New York Times*, 27 April 2003, <http://www.nytimes.com/2003/04/27>
- 32 New York Times, 'Full Text: Bush's National Security Strategy', 20 September 2002, web edition. <http://www.nytimes.com/2002>
- 33 Nicholas J. Wheeler (2002), 'The Bush Doctrine: The Responsibilities of Sovereignty or a Revolutionary Challenge to the Principles of International Order', unpublished paper presented in Washington, 14–15 November.

- 34 Martin Wight equated this judgement with international legitimacy. See Wight, 'International Legitimacy' (1972), *International Relations* 4, p.27. Wide issues relating to legitimacy are discussed in Ian Clark, 'Legitimacy in a Global Order' (2003, forthcoming), *Review of International Studies*. Special Issue.
- 35 Pierre Hassner (2002) 'The United States: The Empire of Force or the Force of Empire', *Chaillot Papers* No.54. Paris: Institute for Security Studies.
- 36 Ironically, such words could equally have been said by the great defenders of the Roman empire such as Cicero or Seneca. Philip Zelikow (2003), 'The Transformation of National Security: Five Redefinitions', *The National Interest* No. 71 (spring 2003): 19. Hardt and Negri demure from talking about an *American* empire but instead deploy the idea of empire (without an definitive article). The US is crucial to the formation of empire but empire is not reducible to it. Michael Hardt and Antonio Negri (2002), *Empire*. Boston: Harvard.
- 37 Hardt and Negri (2000), *Empire*.
- 38 Bull (1977), *The Anarchical Society*, p.13.
- 39 Andrew Hurrell (2002) 'There are no rules (George W. Bush): International Order after September 11', *International Relations* 16.2. I am grateful to Richard Devetak for pointing out that Bush made this comment in a press conference in reply to a question regarding the tactics of US forces in the war on terror.
- 40 Hurrell (2002) 'There are no rules', p.186.
- 41 Taken from Antonio Cassese *International Law in a Divided World*, quoted in Anthony Clark Arend (1999), *Legal Rules and International Society*. Oxford: Oxford University Press, p.131.
- 42 This was the sentiment of US Secretary of State Daniel Webster in correspondence with Lord Asburton over the 1837 Caroline incident in which British forces took control of an American steamboat, set it alight and cast it over the Niagra Falls. The intention of Webster was to restrict the criteria for what was to count as a legitimate instance of pre-emptive war; yet National Security Advisor Condoleeza Rice used the case as a justification for the administration's attempt to widen what is permissible under the pre-emption rule. This point is made in Crawford (2003) 'The Best Defense', p.2.
- 43 Christine Gray (2000) *International Law and the Use of Force*. Oxford: OUP, pp.117–18.
- 44 Fred Halliday's description, in his (2002) *Two Hours that Shook the World: September 11, 2001, Causes and Consequences*. London: Saqi Books, p.42. The link between the Taliban and Afghanistan is very clear in the letter submitted to the UNSC by John Negroponte, the US Permanent Representative at the UN, on 7 October 2001. See UN Doc. S/2001/946 at <http://www.un.int/usa/s-2001-946.htm>.
- 45 Michael Byers (2003) 'Preemptive Self-Defense: Hegemony, Equality and Strategies of Legal Change', *The Journal of Political Philosophy*, 11.2, p.8.
- 46 These details can be found in Bob Woodward (2002) *Bush at War*. New York: Simon and Schuster, pp.58–9.
- 47 BBC News, 'Moscow and Paris Show their Hand', <http://newsvote.bbc.co.uk>. 12/03/03.
- 48 Michael White, Ewen MacAskill, Patrick Wintour, 'Stick with the UN on Iraq, Cabinet Warns Blair', *The Guardian*, 15 January 2003, p.1.
- 49 Robin Cook, 'Why I had to leave the cabinet', *The Guardian*, March 18 2003, emphasis added.
- 50 Glennon (2003) 'Why the Security Council Failed', *Foreign Affairs*, 82.3 (May/June 2003), p.21.
- 51 Professor Ulf Bernitz et al., 'War would be illegal', *The Guardian*, 7 March 2003, p.29.
- 52 US Department of State 'Washington File' website. 'International Law influences Government Legal Work, Taft Says', <http://usinfo.state.gov/topical/rights/law/03032202.htm>. Text of William Howard Taft IV, before the National Association of Attorneys General, Thursday, 20 March 2003.
- 53 Patrick Wintour, 'Attorney general rules that attack is lawful', *The Guardian*, 18 March 2003, p.9.
- 54 Chris Maxwell and Hilary Charlesworth (2003), 'War May be a Crime', *The Australian*, 24 March. [www.theaustralian.news.com.au/printpage/0,5942,6175804,00.html](http://www.theaustralian.news.com.au/printpage/0,5942,6175804,00.html)
- 55 In Lord Goldsmith's submission to Parliament he argued that 'It is plain that Iraq has failed so to comply and therefore Iraq was at the time of resolution 1441 and continues to be in material breach.'
- 56 Bull (1977) *The Anarchical Society*, p.43
- 57 Nicholas J. Wheeler (2000) *Saving Strangers*. Oxford: Oxford University Press, p.296. Here Wheeler is not only drawing on insights from Bull but also from the work of Quentin Skinner. Note that there is a methodological conundrum implicit in this claim: to protect the hypothesis,

one would need to show counter-factually how inaction on the part of state x resulted from a conscious realisation that their preferred conduct (i.e. intervention) was not thought to be legitimate in the eyes of other members of international society.

58 BBC Website, 10 March 2003.

59 This is Nick Wheeler's astute formulation.

60 See, for example, Anthony Clark Arend (1999) *Legal Rules and International Society*. Oxford: Oxford University Press, p.193.

61 Michael Byers (2003) 'Preemptive Self-Defense: Hegemony, Equality and Strategies of Legal Change', *The Journal of Political Philosophy*, 11.2.

62 A theme explored by Andrew Hurrell in 'Order and Justice: What is at Stake' in Rosemary Foot, John Lewis Gaddis and Andrew Hurrell (eds) (2003), *Order and Justice in International Relations*. Oxford: Oxford University Press.

63 Bull (1977) *The Anarchical Society*, p.249.

64 The Deputy Director of the North Korean Foreign Ministry, Ri Pyong-gap, warned that '[P]reemptive attacks are not the exclusive right of the US'. Jonathan Watts (2003), 'N Korea Threatens US with First Strike', *The Guardian*, Feb. 6 2003, <http://www.guardian.co.uk/Print/0,3858,4599574,00.html>

65 Edmund Burke, quoted in Hassner (2002), *The United States*, p.46.

66 This argument was suggested by Andrew Linklater.