
*Non-intervention,
self-determination
and the 'new world order'*

JAMES MAYALL

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Has the Kurdish crisis changed the rules of the game on non-interference in the domestic affairs of sovereign states? No, writes James Mayall. The Western allies were forced to intervene to protect the Kurds because Western media attention to their plight threatened the political dividends they had secured from the Gulf War. But though the New World Order rhetoric promising new support for human rights is without substance, the Kurdish situation will stand as a precedent of a kind for international protection of oppressed national minorities, if a similar situation recurs. However, the principle of self-determination is still unwelcome in the International community.

There seems to be no little need that the whole doctrine of non-interference with foreign nations should be reconsidered, if it can be said to have as yet been considered as a really moral question at all.¹

For more than a hundred years, liberals have dreamed of a reformed international society. According to this vision, states would be protected from aggression by a working and workable system of collective security, and the democratic and human rights of their citizens would be guaranteed by the evolution of a genuine (and preferably self-policing) international civil society.² For most of the period since 1945, liberal values were championed by one side in the Cold War, but in reality the international system was both defined and maintained by the rivalry of the two superpowers and their respective alliances. Throughout this period, the role of the balance of terror—whether in maintaining or threatening international peace and security—remained the dominant and most fiercely argued question in world politics.

Ostensibly, the most consistent public support for the ideal of liberal international society came from the Third World. A large group of non-aligned, mostly ex-colonial, states asserted the continuing relevance of the principle of non-interference in the domestic affairs of other states. Since many

¹ J. S. Mill, 'A few words on non-intervention', *Dissertations and discussions* (London, 1867), pp. 153-78.

² This elusive idea is described by Adam Roberts in his 1991 Martin Wight memorial lecture, 'A new age in international relations?' published in this issue of *International Affairs* (see pp. 509-525). Referring to developments in Europe, he spoke of 'a civil society of civil societies with sovereignty fraying at the edges'.

of their governments were despotic tyrannies, their public commitment to the liberal vision failed to impress any but the most gullible of their Western supporters. The activities of the major powers were consequently not seriously constrained. Non-alignment was undoubtedly a sensible foreign policy stance for some countries, but it was not a viable means of transcending power politics in general.

The end of the Cold War has reopened the question of how domestic and international politics should be related. So long as the two superpowers could cooperate in facilitating political settlements in Third World conflicts—as in Southern Africa—it was possible to believe that the established principles of liberal international society were finally being upheld and reinforced. After all, what was essentially involved was the negotiated withdrawal of foreign interference in civil conflicts, and support for the efforts of local protagonists in reaching political settlements based on constitutional principles. Moreover, at the centre of the great transformation in the Soviet Union and Eastern Europe, the commitment to liberalize and democratize society was in the first instance a response to internal demands for reform, rather than external harassment or pressure. Once Gorbachev had made it clear that he would not intervene to save East European governments from their democratic opponents, the way was opened for a much more liberal interpretation of the Helsinki Final Act than his predecessors had been willing to contemplate after 1975. Self-determination and human rights could now be honoured in the same way as in the West, without risk of interference from Moscow. At the same time there was no sentiment, on either side of the old East-West divide, in favour of revising those parts of the Helsinki accord which entrenched the principles of inviolability of frontiers and territorial integrity.³

Externally, the cooperation between the five permanent members of the Security Council, which began during the closing stages of the Iran-Iraq War, had at last established the preconditions for a working collective security system, broadly along the lines envisaged in the UN Charter. The coalition assembled under American leadership following Saddam Hussein's invasion of Kuwait in August 1990 held together, despite internal strains, throughout the recent Gulf crisis. That it was able to do so was partly because its mandate was defined by the Security Council strictly in terms of Chapter VII of the UN Charter: coalition forces were empowered to force Iraq out of Kuwait, not to overthrow the Iraqi regime. There were those who interpreted the Security Council resolutions more broadly, but the general view appears to have been that Saddam Hussein's government was protected by Article 2(7) of the Charter, like any other member of the United Nations (with the possible exception until recently of South Africa). Even so, the worldwide resurgence of constitutionalism could not but effect this first major test of the 'New World Order'. There was something deeply anomalous about the mobilization of so

³ Articles III and IV. For text, see James Mayall and Cornelia Navari, eds., *The end of the post-war era: documents on great-power relations, 1968-75* (Cambridge: Cambridge University Press, 1980), pp. 293-344.

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a people the most attracted to good use of free institutions, the military strength of another nation down is not to disturb the balance of freedom in a country dependent and violently disturbed.⁴

It is not immediately obvious that the Kuwaiti case, although it fits the Kuwaiti case, although it committed itself to elections, has been accomplished. The Iraqis have a democratic, multi-party system, and lifting of economic sanctions.

It is too early to say whether liberalization of society in Iraq is probably justified. In Iraq, it demonstrated spirited determination of institutions of a genuine civil society for this, deeply embedded in the culture, remains as inherently unlikely as it was when Mill (in taste) between the appropriate and those between these states. The implications for international relations in the East. For example, it should be discovered by the World Bank that structural adjustment and economic growth can only be achieved with good governance.

Mill was untroubled by the intellectual heirs. Independent institutions are the greatest blessings of civilization, where these attributes would be free institutions. Elsewhere he should have been accomplished, recognizable today, in the South and Asia. Wherever powerful and within a single polity, they are gain preferential access to state

⁴ Mill, 'A few words on non-intervention'.
⁵ Ernest Gellner, 'Islam and Marxism'.
⁶ J. S. Mill, *Representative government*, ch.

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awesome a force to protect the independence of a small patrimonial state whose hereditary rulers had recently suspended the democratic rights of their own subjects.

John Stuart Mill, in his essay on non-intervention, wrote in 1867 that:

a people the most attracted to freedom, the most capable of defending and making good use of free institutions, may be unable to contend successfully for them against the military strength of another nation much more powerful. To assist a people thus kept down is not to disturb the balance of forces on which the permanent maintenance of freedom in a country depends, but to redress that balance when it is already unfairly and violently disturbed.⁴

It is not immediately obvious that this famous defence of liberal intervention fits the Kuwaiti case, although—under pressure—the ruling family has now committed itself to elections once the immediate tasks of postwar recovery have been accomplished. The Iraqi government has also pledged itself to introduce a democratic, multi-party constitution,⁵ presumably in an effort to secure the lifting of economic sanctions.

It is too early to say whether the aftermath of the war will include a genuine liberalization of society in Kuwait, let alone Iraq, but a measure of scepticism is probably justified. In neither country has the population previously demonstrated spirited determination to defend (or even create) the free institutions of a genuine civil society. There may be good and sufficient reasons for this, deeply embedded in the structure of Arab society and Islam,⁶ but it remains as inherently unlikely that a people can be made 'free' against its own inclinations as it was when Mill distinguished (rather complacently for modern taste) between the appropriate rules governing relations between civilized states and those between these states and barbarians. If true, this observation may have implications for international society beyond the present crisis in the Middle East. For example, it should introduce a note of caution into the optimistic discovery by the World Bank and the International Monetary Fund that structural adjustment and economic recovery in many Third World countries can only be achieved with good (i.e. democratic) governance.

Mill was untroubled by the relativist doubts that cloud the vision of his intellectual heirs. Independence and nationality, he believed, were among the greatest blessings of civilization, but only if society had evolved to a point where these attributes would support, rather than subvert, the development of free institutions. Elsewhere he makes it clear that, ideally, cultural assimilation should have been accomplished under autocracy.⁷ The reason is instantly recognizable today, in the Soviet Union and Europe as much as in Africa and Asia. Wherever powerful and unassimilated national communities must coexist within a single polity, they are likely to use the institutions of democracy to gain preferential access to state power (and the patronage that goes with it) at

Navari, eds., *The end of the post-war era*: ridge University Press, 1980), pp.

⁴ Mill, 'A few words on non-intervention', p. 176.

⁵ *The Times*, 5 May 1991.

⁶ Ernest Gellner, 'Islam and Marxism: some comparisons', *International Affairs* 67: 1, Jan. 1991, pp. 1-6.

⁷ J. S. Mill, *Representative government*, ch. 16.

the expense of their ethnic rivals. The competition to establish their respective national rights is likely to prove sufficiently ferocious to ensure that any commitment to uphold the merely human rights of all citizens will remain theoretical.

Mill may have correctly foreseen the predicament of many contemporary states, but his implied solution—the maintenance of liberal empire—is no longer available. It is in this context that it is worth reflecting on the wider implications of the international responses to the current Kurdish crisis. Is there an international obligation to assist the Kurds? If there is, must we acknowledge a similar obligation to protect other national groups which are similarly oppressed by their own governments? Indeed, will international action to enforce respect for fundamental human rights become an established feature of the 'new international order'?

Before addressing these questions directly, it may be useful to recall the present status that the principle of national self-determination enjoys within international society. Its elevation to the apex of political values at the 1919 Paris Peace Conference notoriously created as many problems as it solved. The League of Nations Covenant provided for the protection of national minorities, in an effort to deal with the awkward fact that the national and political maps of the new Europe could not be made to coincide. However, the concept of minority rights was a casualty of the fascist era and did not survive in the 1945 UN Charter. In its place, the right of self-determination of all peoples was acknowledged as an inalienable human right, while all the members of the United Nations signed the Universal Declaration of Human Rights. The sovereign state and the self-determining individual triumphed in the new formulation; the idea that a minority group could possess rights was eclipsed.

If we take state practice as our guide, it is clear that the international community subscribes to a highly conventional interpretation of the principle of national self-determination. It has been accepted as a synonym for West European decolonization in Asia, Africa, the Caribbean and the Pacific, and the transition to majority rule in South Africa. It cannot be invoked—at least not with any hope of securing widespread support—by dissatisfied minorities within existing states. The fiction that these states, the majority of which are in fact multinational, have exercised their right to self-determination at some point in the past is vigorously upheld by the sovereign governments of great and small powers alike. It is also reflected in the preference for territorial over social classifications in contemporary political language, as, for example, in the repeated but inaccurate references to 'the Iraqi people' by British and American politicians during the recent crisis.

It should be said that there are compelling practical, even moral, reasons in favour of the conventional interpretation. In a recent speech the British Foreign Secretary explained the conventional view in a way which illustrates both its attraction and its vulnerability from a moral point of view:

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⁸ Speech given by Douglas Hurd, Lord *uti possidetis* ('as you now possess') is applied by the International Court of provides that states will not challenge independence from colonial rule.

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There are occasions, as today, when the world calls out in anger and shared sorrow against cruelty and suffering within states and we, the diplomatic profession, have to work out... what should that response be.

It does not mean, in my view, choosing, imposing, sustaining governments from outside their country... Nor does that response mean, in my view again, redrawing boundaries. We all know that boundaries can be artificial, they can be inconvenient, but those of us who have studied these matters know that when the countries of Africa became independent they laid down in the Organization of African Unity the wise principle that despite the artificiality, despite the inconvenience of the boundaries between nation states in Africa, those boundaries should be respected for the common good. That is a principle which we in Europe have laid down again in recent times as we have reflected on and acted on the needs and anxieties of Central and Eastern Europe, and now also even more recently in the Middle East although there are many disputes and differences, there is common ground that the boundaries between nation states should be respected unless even greater chaos were to come upon us.

One can conceive that *well-defined entities* like the Baltic Republics could reach independence through negotiation but we have all learned enough, perhaps particularly between the two Great Wars of this century, about the dangers of trying to right wrongs by meddling with boundaries.⁸

There are two features of this statement worth noting. The first is the frank, if tacit, admission that public opinion can force governments into actions which are possibly against their own instincts and in dubious accord with the established rules of international relations. The question then becomes whether such departures from traditional practice will lead to a change in the rules, or on the contrary will be treated as exceptions which uphold their general validity. I will return to this question shortly in connection with the international plan to provide a safe haven for the Kurds within Iraq.

The second noteworthy feature is the way in which the Foreign Secretary relaxes the commitment to territorial integrity to allow for the possibility that the Baltic republics may negotiate their way to independence. It is possible to conceive of several criteria that might be invoked to justify treating the Baltics differently from other would-be secessionist groups. Perhaps the Foreign Secretary had in mind the brief period of independence and international recognition between the wars, before their forceful incorporation into the Soviet Union by Stalin. Alternatively, it may be said that the statute of limitations, which effectively upholds the principle of *uti possidetis*⁹ in international law, does not hold for land-grabs carried out since 1919. Indeed the British government, like the American, never accepted the legality of their incorporation. Perhaps the Baltics are singled out for purely practical reasons, reflecting a judgement by Western governments that to allow them a special status now will check, rather than accelerate, the disintegration of the Soviet Union and the right-wing backlash against perestroika and glasnost.

⁸ Speech given by Douglas Hurd, London, 10 Apr. 1991. *Verbatim Service* VS008/91. My emphasis.

⁹ *uti possidetis* ('as you now possess') is a doctrine formulated in Central and South America but now applied by the International Court to Africa and thought to be of general application. The doctrine provides that states will not challenge the boundaries they succeed to at the moment of their independence from colonial rule.

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The list could easily be extended. However, the point is that the Foreign Secretary did not give his reasons for treating the Baltic republics differently from other well-defined secessionist groups. It is true that he referred to negotiation, but then not only would the Baltics have no chance at all of securing independence by any other route, but there is nothing in international law to suggest that the international community could have any legitimate objection to a negotiated settlement of any other secessionist conflicts. If the Ethiopian government agreed to the independence of Eritrea, or the Sudanese agreed to partition the country between North and South, this would clearly fall within their sovereign competence. The possibility of legitimate secession, therefore, cannot be confined to the Baltic republics. It follows that we have to ask whether, in general, there are circumstances in which foreign powers should take a stand on civil conflicts, despite their commitment to uphold Article 2(7) of the UN Charter.

To return to the questions raised earlier. First, is there an international obligation to assist the Kurds? When President Bush suspended Operation Desert Storm at midnight on 27 February 1991, the official view was that the mission—to clear Iraq out of Kuwait—had been accomplished. Western leaders made no secret of their hope that the Iraqi people would exact their own revenge on Saddam Hussein, but they were adamant that the coalition would not attempt to impose a political settlement within Iraq. Indeed, when Shiites in the south and Kurds in the north rebelled against the central government, the US administration decided not to intervene to prevent Baghdad using combat helicopters against the insurgents.¹⁰ Coalition forces thus stood by while Saddam Hussein re-established control of the rebel areas. This was predictably followed by a mass exodus of refugees towards Turkey and Iran. The official answer to the first question was initially unequivocal, namely that the international obligation did not extend beyond repelling aggression.

At the beginning of April, this position changed—not because of a reassessment of international obligations towards those who have had their fundamental rights systematically abused, but because the attention devoted by the Western media to the plight of the Kurds along the Turkish border threatened the political dividends that Western governments had secured from their conduct of the war itself. It seems that the official answer to the second question—Will action to protect the Kurds create a precedent for similar action on behalf of other oppressed national minorities?—is also likely to be negative. Despite the intervention by ECOWAS (the Economic Community of West African States) in the Liberian civil war from August to December 1990, no one has suggested a major international effort to create safe havens which would allow those driven into precarious exile in Guinea and Sierra Leone to return to their homes in safety.

¹⁰ *International Herald Tribune*, 28 Mar. 1991. There seems to be some doubt as to whether Washington first warned the Iraqi government against using helicopters as well as fixed-wing aircraft and then decided against acting on this warning; or, as seems more likely, failed to proscribe their use in the first place.

In his address to Congress enthusiastically about the prospect of the Gulf War. He quoted Mill, which 'the principles of justice are strong', adding that it would be a Cold War stalemate, is possible in a World in which freedom and justice are the rights of nations.¹¹ In reality, there is no doubt that it has begun to impose significant constraints on the other hand, regardless of the obligations of governments to act in the interest of supporting the proposition, that it should have a similar set of circumstances in which a plan should be accepted as a

It is Mill, once again, who made the argument was addressed to the British Indian Princely States, about

A civilised government cannot always content itself with the repelling of aggression. After a longer, or shorter, time, it may choose to conquer them, or to assert its authority, so that they gradually sink into a state of dependence. When they arrive, they are indeed no longer setting up and putting down the government, but to lean on it, that it has become

More pointedly still, he defined

The act by which the Government fulfils the obligation it has contracted towards a tolerable government, far from being called, was a criminally tardy course

The parallel is, of course, not perfect, although we may note that the UN operation in the Gulf was not the work of Edward Heath, did so partly to counter collective imperialism. It is a measure of the weakness of the Western democracies (the teeth) the Ba'athist tyranny in Iraq, that it is enough nonetheless.

If therefore an international intervention is essentially because the coalition has failed to reduce the country to chaos

¹¹ Official text, United States Information Agency

¹² Mill, 'A few words on non-intervention'

¹³ Mill, 'A few words on non-intervention'

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In his address to Congress on 6 March 1991, President Bush spoke enthusiastically about the prospect for a New World Order in the aftermath of the Gulf War. He quoted Winston Churchill in describing this order as one in which 'the principles of justice and fair play...protect the weak against the strong', adding that it would be 'a world where the United Nations, freed from Cold War stalemate, is poised to fulfil the historic vision of its founders. A World in which freedom and respect for human rights find a home among all nations.'¹¹ In reality, there is little evidence to suggest that human rights law has begun to impose significant limitations on the exercise of sovereign power. On the other hand, regardless of the motives that eventually compelled Western governments to act in the Kurdish case, a strong argument can be advanced supporting the proposition that this action was indeed an international obligation, that it should have been extended earlier, and that if, but only if, a similar set of circumstances was to arise in the future, the Kurdish safe haven plan should be accepted as a precedent.

It is Mill, once again, who provides the basic sketch of this case. His own argument was addressed to the relationship between the British Raj and the Indian Princely States, about which he writes as follows:

A civilised government cannot help having barbarous neighbours: when it has, it cannot always content itself with a defensive position, one of mere resistance to aggression. After a longer, or shorter interval of forbearance, it either finds itself obliged to conquer them, or to assert so much authority over them, and so break their spirit that they gradually sink into a state of dependence upon itself; and when that time arrives, they are indeed no longer formidable to it, but it has had so much to do with setting up and putting down their governments, and they have grown so accustomed to lean on it, that it has become morally responsible for all evil it allows them to do.¹²

More pointedly still, he defended the conquest of Oude by insisting that:

The act by which the Government of British India at last...assumed the power of fulfilling the obligation it has so long before incurred, of giving to the people of Oude a tolerable government, far from being the political crime it is so often ignorantly called, was a criminally tardy discharge of an imperative duty.¹³

The parallel is, of course, not exact. Empire is no longer an acceptable political form, although we may note that some of those who opposed the United Nations operation in the Gulf, for example the former British Prime Minister Edward Heath, did so partly on the grounds that it represented a new form of collective imperialism. It is also the case that the Soviet Union must share with the Western democracies the responsibility for propping up (and arming to the teeth) the Ba'athist tyranny in Iraq during the Cold War. But the parallel is close enough nonetheless.

If therefore an international obligation to assist the Kurds exists, it arose essentially because the coalition had inflicted such devastation on Iraq as to reduce the country to chaos, making rebellion all but inevitable. Moreover,

¹¹ Official text, United States Information Service (US Embassy, London), 7 Mar. 1991.

¹² Mill, 'A few words on non-intervention', pp. 168–9.

¹³ Mill, 'A few words on non-intervention', p. 170.

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after the war, Western leaders encouraged the Iraqi people to overthrow Hussein.¹⁴ It is true that they did not explicitly promise coalition support to any rebellion and that, in appealing to the Iraqi people to do the job themselves, they chose to ignore the communal and ethnic divisions of Iraqi society. But they cannot have expected the Kurds, with their long history of national revolts, and virtually hopeless diplomatic prospects, to have exercised restraint.¹⁵ To have done so, at a time when 'Iraqis' were being encouraged from Washington to overthrow their government, would have been tantamount to admitting publicly what the rest of the world has apparently long believed, namely that the Kurds have no chance at all of achieving their national aspirations. In the mid-1970s, when there was no talk of a new international order, a Kurdish insurgency had been supported manipulatively by the Americans and the Shah of Iran for reasons of realpolitik.¹⁶ The initial willingness of the major coalition partners to abandon the Kurds to their fate seems to have been motivated by a similarly cynical refusal to accept moral responsibility for an evil which, in Mill's terms, they had done much to bring about.

What then are the wider implications of the Kurdish revolt for the new order? Two points are perhaps worth making in conclusion. First, it would be imprudent in practice, and wrong in theory, to generalize from the international obligations towards the Kurds in favour of an international enforcement mechanism for human rights wherever they are abused. It would be imprudent because, however desirable such enforcement might be, the system would be unlikely to attract either the degree of public support or the resources to make it credible. It would be wrong in theory because the obligation towards the Kurds does not arise merely from a general principle of human solidarity. Nor can it be derived from stretching the analogy with Mill's argument to a point where the West as a whole stands in the same relation to the Third World as the British Raj to the Indian Princely States. It arises as a result of the attribution of responsibility for the consequences of specific acts.

Secondly, extreme care will be required in handing over responsibility for Kurdish security to the United Nations. This is clearly desirable, particularly if the dangers of an anti-American backlash are to be avoided in the Middle East; and if the Gulf episode as a whole is to mark the opening of a period of international cooperation, albeit on a more modest scale than the President's inflated rhetoric suggests. But the Kurds are unlikely to feel secure in their traditional homeland, whatever deals necessity forces on them, so long as the ruling group (itself a minority) in Iraq is not deterred militarily from tearing those deals up whenever circumstances permit. A lightly armed UN police force

¹⁴ 'But there's another way for the bloodshed to stop, and that is for the Iraqi military and the Iraqi people to take matters into their own hands to force Saddam Hussein the dictator to step aside and to comply with the UN and then rejoin the family of peace-loving nations': Bush, remarks made to the American Academy for the Advancement of Science, 15 Feb. 1991: *Financial Times*, 16-17 Feb. 1991.

¹⁵ See David Bradshaw, 'After the Gulf War: the Kurds', *The World Today* 47: 5, May 1991, pp. 78-80.

¹⁶ See L. C. Buchheit, *Secession: the legitimacy of self-determination* (New Haven, Conn., London: Yale University Press, 1978), p. 119.

would be unlikely to project the Helsinki process, once it merely by confidence-built signature on the Final Act of the Union. In this way, the international agenda by the international agenda by a credible Middle East settlement. But nothing short forces from Iraq without p

¹⁷ Cf. letter to *The Times* from Major 'In a chaotic situation such as persons soldiers in blue berets, or policemen troops with tank and artillery support by either of the factions they are nations providing elements of the murdered at will.'

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New Haven, Conn., London:

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would be unlikely to provide this security.¹⁷ It is worth recalling that in Europe, the Helsinki process, once it was allowed to develop, was greatly facilitated not merely by confidence-building measures in the military sphere, but by the signature on the Final Act of all the major Western powers and of the Soviet Union. In this way, the internal conditions of European states were placed on the international agenda by common agreement. The prospects for achieving a credible Middle East settlement along the same lines are virtually non-existent. But nothing short of it will allow the full disengagement of coalition forces from Iraq without putting Iraqi Kurds and Shiites at grave risk.

15 May 1991

¹⁷ Cf. letter to *The Times* from Major-General H. M. Tillotson, 1 May 1991:

'In a chaotic situation such as persists in parts of Lebanon and now appears in Iraq, lightly armed soldiers in blue berets, or policemen, are incapable of protecting civilians against regular or irregular troops with tank and artillery support. Worse still, they are vulnerable as objects of political coercion, by either of the factions they are supposed to keep apart, against the Security Council or any of the nations providing elements of the force. On the ground, UN troops can be humiliated and even murdered at will.'

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