

Introduction to International Relations

Lecture 11: Just War and International Law

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Overview. Does might make right? Should it? We examine some thorny normative questions of international relations. We study the ideas of just wars and just conduct of war, and apply it to several current (painful) issues. We then examine the ideas of international law and its enforcement. Among the most important concepts we find is the one of repeated interaction, which can help explain why the powerful do not routinely disregard international law and agreements as realists would suggest.

OUTLINE OF LECTURE 11: JUST WAR AND INTERNATIONAL LAW

1. The Melian Dialogue (416 B.C.)

- force: the ultima ratio?
- right exists only between equals?
- “can” vs. “should”
- universal moral values

2. Jus ad bellum

- a) just cause
 - economic causes (Marxism)?
 - communist cause (Leninism)?
 - religious causes (Christianity, Islam)?
 - self-defense (U.N. Charter, Article 51)
- b) right intention
- c) declared publicly by legitimate authority
- d) reasonable chance of success
- e) war is last resort (U.N. Article 33)

3. Jus in bello

- a) discrimination
 - who is a civilian?
 - is killing civilians never justifiable?
- b) proportionality (asymmetric casualty rates?)
- c) humane treatment of combatants and non-combatants
 - prisoners of war (Hague/Geneva Conventions)
 - laws of war (Red Cross/Crescent, impersonation, hostages)
 - law of neutrality (white flag)
 - atrocities, genocide (war crimes)
 - inhumane weapons (chemical/biological)

4. Enforcement of international law

- a) repeated interaction (self-enforcement under anarchy)
- b) avoid setting precedent (diplomatic immunity)
- c) costly reprisals (chemical weapons in WW2)
- d) reputation (U.S. vs. Iraq in 1990 and 2003)

1 Normative Questions

Our analysis thus far has mostly been value-free and amoral in the sense that when we discussed the use of threats and promises for coercive and reassurance purposes (bargaining), we mostly left issues of legality and morality aside. We tried to understand just how one might use force rationally in pursuit of given political objectives, and we noticed that credibility was central to the successful use of threats. On the other hand, we also noted the inherent tension between credible threats and reassurance strategies (security dilemma) that makes international politics so difficult, volatile, and sometimes quite unpredictable. Still, we took the realist view that force is the *ultima ratio*, the final arbiter, in world politics. When push comes to shove, whatever nice legalities exist would likely be brushed aside by the powerful actors.

1.1 The Melian Dialogue

This attitude is nicely summarized by Thucydides, the ancient Greek general and historian. Following the victory of the Greeks over the invading Persians (Medes) of Xerxes in 480-79 B.C., the Athenian democratic city-state began a rapid imperialist naval expansion that eventually brought it into open conflict with the other major Greek power, the land-based Sparta. Tensions mounted and in 431 B.C., the Peloponnesian War between the two alliances. The war lasted 27 years and ended with the surrender of Athens after it was devastated by starvation and plague, and (most importantly) after Sparta defeated its fleet at Aegospotami. During the war, Athens attempted to coerce various islands to join its league, in huge part because it needed the tribute (the war proved much costlier than anyone had planned for). One such attempt occurred in 416 B.C., when an Athenian expeditionary force landed on the island of Melos. Thucydides describes the encounter between the powerful Athenians and the besieged Melians.

The Melians are a colony of Lacedaemon [Sparta] that would not submit to the Athenians like the other islanders, and at first remained neutral and took no part in the struggle, but afterwards upon the Athenians using violence and plundering their territory, assumed an attitude of open hostility... The generals, encamping in their territory with the above armament, before doing any harm to their land, sent envoys to negotiate. These the Melians did not bring before the people, but bade them state the object of their mission to the magistrates and the few; upon which the Athenian envoys spoke as follows:

Athenians: Since the negotiations are not to go on before the people, in order that we may not be able to speak straight on without interruption, and deceive the ears of the multitude by seductive arguments which would pass without refutation (for we know that this is the meaning of our being brought before the few), what if you who sit there were to pursue a method more cautious still? Make no set speech yourselves, but take us up at whatever you do not like, and settle that before going any farther. And first tell us if this proposition of ours suits you.

The Melian commissioners answered:

Melians: To the fairness of quietly instructing each other as you propose there is nothing to object; but your military preparations are too far advanced to agree with what you say, as we see you are come to be judges in your own cause, and that all we can reasonably expect from this negotiation is war, if we prove to have right on our side and refuse to submit, and in the contrary case, slavery.

Athenians: If you have met to reason about presentiments of the future, or for anything else than to consult for the safety of your state upon the facts that you see before you, we will give over; otherwise we will go on.

Melians: It is natural and excusable for men in our position to turn more ways than one both in thought and utterance. However, the question in this conference is, as you say, the safety of our country; and the discussion, if you please, can proceed in the way which you propose.

Athenians: For ourselves, we shall not trouble you with specious pretences — either of how we have a right to our empire because we overthrew the Mede [Persians], or are now attacking you because of wrong that you have done us — and make a long speech which would not be believed; and in return we hope that you, instead of thinking to influence us by saying that you did not join the Lacedaemonians [Spartans], although their colonists, or that you have done us no wrong, will aim at what is feasible, holding in view the real sentiments of us both; since you know as well as we do that *right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must.*

Melians: As we think, at any rate, it is expedient — we speak as we are obliged, since you enjoin us to let right alone and talk only of interest — that you should not destroy what is our *common protection, the privilege of being allowed in danger to invoke what is fair and right, and even to profit by arguments not strictly valid if they can be got to pass current.* And you are as much interested in this as any, as your fall would be a signal for the heaviest vengeance and an example for the world to meditate upon.

The italicized passages are perhaps the most famous quotes of the matter around. The Athenians arguing that Melos should submit because it is weaker, and the Melians replying that they should not be forced to do so just because they are. The appealed to justice but also warned Athens that if it set an unjust precedent, then perhaps one day it will have to suffer the consequences when it is defeated in turn. In the end, the Melians refused the ultimatum, whereupon the Athenians stormed the city, destroyed it, murdered all men, and sold the women and children into slavery. The Melians proved right though: when Athens lost the war, Sparta dealt quite harshly with the city, ordering it to dismantle its walls (only protection), forbidding it from having a navy worth a dime, destroying its empire, and even overthrowing the democracy.

A strong ethical tension characterizes what one *can* do and what one *should* do, and world politics is perhaps most controversial of all. Should we use ethical and legal principles to guide our behavior or should naked raw power determine what is permissible? Does might make right?

Many social scientists are extremely reluctant to engage in ethical discussions or make moral judgments. In fact, our educational system discourages such proclivities even in students. This sort of attitude usually passes as modern and multicultural with the latter's emphasis on the fact that no single value system is dominant throughout the world, and therefore no ethical or moral precept would be shared across different cultures. The crucial next step in the reasoning is that all cultures are equally valid, and hence no one culture's values have any more right to exist than any other's. Everything is relative in this world, there are no absolute objective standards by which to judge. Therefore, one should not use one's morality to do so. The result is moral paralysis. This is most lamentable because a refusal to engage these thorny, painful, and difficult questions does not make them go away. Instead, it is most likely that they will be covered up and policy will be morally blind or else completely shackled. We shall not pretend to have answers here but we shall not flinch from reasoning that in many ways will prove to be politically incorrect, to say the least.

1.2 Iraqi Prisoner Abuse Scandal

Consider, for example, the recent disclosures of abuses of Iraqi prisoners by U.S. and British military personnel. While there can be no question about prosecuting and punishing the guilty, one should perhaps be quite startled by some of the following "conclusions" hurled at the U.S. by our very own anti-war activists, disgruntled Iraqis, and gloating Europeans, who use the incidents to argue that:

- America is no better than Saddam: he abused prisoners and so do we.
- Americans are hypocritical: they preach equality and justice but in fact are bigots, racists, and murderers when it comes to others.
- Americans stifle free speech and the media because they closed an Iraqi newspaper and the Pentagon tried to suppress the photos.
- The war was wrong because the American rule is just as oppressive as the regime it displaced.
- These incidents prove that the war was unjust.

These are all moral judgments, and one must address them squarely as such. The facts are (mostly) beyond dispute. It is not surprising that abuse occurred: remember the Zimbardo prison experiment? What is surprising (at least to me) is that the Pentagon did not take any precautions to avoid it. It appears that sexual humiliation is also an interrogation technique that is taught to both our and British intelligence services. Consider, though, the following facts:

- The abuses were disclosed, universally condemned, and the guilty will be punished. This is not something that could occur under anything but a democratic regime. That it is happening in a country that is still in the throes of civil insurgency is astounding.

- Humiliation is not quite the same as murder on mass scale. Unlike Saddam's torture chambers, it was not sanctioned, and it was not a matter of policy even if it was not as isolated as one would have hoped. It did not result in mass graves. There is no moral equivalency between American run prisons and the hell-holes under Saddam.
- Bush, along with other top officials, actually apologized for the abuses, a rarity in international diplomacy. This sort of action is not easy, especially for the leader of the world's leading democracy. And it has no parallel in any of the Middle Eastern regimes except Israel. Saddam did not bother apologizing for gassing Kurds, and slaughtering tens of thousands. Syria's Assad did not apologize for murdering entire villages and then leveling the ground with tractors. Jordan's Hussein did not apologize for persecuting Palestinians and killing thousands. There is no moral equivalence between an apology for a two dozen prison abuses and unabashed murder by the tens of thousands.
- One closed Iraqi newspaper out of several hundred is not stifling of the media. Again, one must compare current situation in Iraq not with a functioning democratic state but with what it used to be under Saddam and what its current non-democratic neighbors still are. Iraq is the only country in the Middle East beside Israel that has any media freedoms.¹
- The Pentagon did ask for the photos not to be shown because they would be too inflammatory. But it did not succeed. So much for conspiracy theories: the photos could not have come at a worse time for the administration. Just look at Bush's approval rating for handling Iraq: down to 49%. Pretty bad especially before an election.

One might ask another question too: Was it morally right to broadcast the pictures? They damage U.S. standing among Iraqis, inflame public sentiment, and endanger American troops and civilians there. They weaken public support for American presence in Iraq, a presence that is preventing a civil war from causing the slaughter of various ethnic and religious minorities. On the other hand, it is clear that such behavior cannot be tolerated: we cannot become what we seek to overcome. But at what price justice? I have no answer. However we must be prepared to deliberate this and accept the consequences of our ethical decisions.

Is there any place for normative questions in the world where force is the rule of "law"? That the American President found it necessary to apologize, that the Secretary of Defense should sweat it out in front of Senate Armed Services

¹I was listening recently to an interview with the editor of an Iraqi newspaper who resigned in protest after his newspaper came under pressure not to publish the pictures. They did publish them anyway and nobody sanctioned them for it. Still, the editor argued that this pressure was curtailing the freedom of the media! He resigned and established another newspaper. So much about suppression of liberties.

Committee, that there are serious calls for him to resign,² that the White House is coming under such intense pressure, all of these suggest that in the modern world, might does not quite make right. Indeed, there is a strong legalistic normative current in diplomacy that forces us to seriously consider ethical and moral dilemmas. We turn to the oldest one: is there such a thing as a just war?

2 Just War and International Law

We already briefly noted the idea of *just war* when we looked at reasons why violence will probably never go away as a regulator of human interaction. Even if it is not actually applied, it will always lurk in the background, structuring relationships through its latent use. Still, between the “all’s fair in war” realist position and “nothing is fair in war” pacifist one, there is a murkier middle ground that many thinkers have tried to understand. In short, many accept that force could be legitimately used in some, but not all, circumstances.

International law attempts to delineate what the acceptable bounds should be. It employs two related concepts: *jus ad bellum* are rules that cover justification of war — when it is permissible to wage war, and *jus in bello* are rules that cover the conduct of war — how it is permissible to wage it. That is, justice of war and justice in war.

2.1 Jus ad Bellum: Justice of War

Although American tradition really justifies only self-defense wars, the set of principles that determine whether a war is just or not is a bit broader.

To be deemed just, war can only be waged for a **just cause**. What one considers a just cause is bound to cause disagreement. For Marxists, a war undertaken to redress the unjust economic order is just. For Leninists, a war undertaken for the causes of communist revolution is just. For some religious (Christian and Muslim) thinkers, a war undertaken to convert unbelievers or exterminate infidels is just.

The one criterion that is widely accepted is *self-defense* against armed attack. This could be extended to cover defense of allies with whom there exists a formal alliance, and defense of a weaker actor under the principles of collective security (this may need to be authorized by a legitimate international organization). Somewhat more controversially, it may also extend to cover responses to requests for assistance made by a legitimate government. The right of self-defense against an armed attack is enshrined in the Charter of the United Nations (Article 51).

Further, some people insist that in addition to the just cause, a war must be waged with the **right intention**. If one is attacked and seeks to punish the attacker, then the war has a just cause and is waged with a just intention. However, if one is attacked and seeks to profit materially, then the war has a just

²A recent non-scientific CNN poll showed that 47% of 80,000 voters thought Rumsfeld should resign, and another 25% that Bush should fire him.

cause but since it is not waged with the right intention, it is no longer just. The U.N. Charter does not give any consideration to this idea.

One unresolved question is whether self-defense includes the defense of one's moral, ethical, or political values, that is, one's way of life, or just physical territory and resources. This immediately raises the specters of moral judgment and *humanitarian intervention*.

The next two criteria for a just war are that the war must be **declared publicly** by a **legitimate authority**. In our state system, the only legitimate authority comes from state sovereignty. This excludes terrorism, piracy, and private wars. Contrary to popular opinion, the public declaration does not have to precede the actual outbreak of war. It is quite common for a state to time its attack with the delivery of its official declaration of war. Sometimes (as in the case of Pearl Harbor), the declaration can come late. When success of military operations depends critically on strategic surprise, one can ill afford to alert the opponent of one's intentions.

Despite the widespread opprobrium that "sneak attacks" cause, they are in keeping with another requirement for just war: it has to have a **reasonable chance of success**. If defeat is almost certain, then war, no matter how just its cause, cannot be just for it will simply waste human life and resources. As the Athenians put it to the Melians, "you would have the advantage of submitting before suffering the worst, and we should gain by not destroying you." According to this principle, nothing is worth sacrificing human lives needlessly. Clearly, many would disagree with this: for the religious, dying rather than submitting to another faith may be preferable, and hence resistance would be just. For others, liberty overrides life, and it is just to perish in the cause of freedom.

Finally, to be deemed just, war must be the **last resort**. This is also in the U.N. Charter (Article 33), which enjoins all members to attempt to resolve their differences peacefully. War is not just until all possible alternatives to force — negotiations, mediation, arbitration — are exhausted. Because this demands various attempts to resolve the issue through negotiations (which may involve preparations for war as part of the bargaining process), the last resort principle may also conflict with the reasonable chance of success requirement.

2.2 Jus in Bello: Justice in War

Justice does not (or at least should not) stop with the outbreak of war. A war that is just can lose its status if conducted in an unjust manner. We have (hopefully) come at least some way from the Jesuit "the end justifies the means" principle. The principles that govern behavior of combatants during war are as important as the ones that determine whether the war itself is just. It is perhaps easy to see why: as Clausewitz noted, wars would, by their very nature, tend to become absolute in the sense that the use of force would be unlimited and guided only by the objective of military victory. However, we have seen that often this is not the case. Given the enormous destructive potential of any violent conflict, people have devised and, perhaps surprisingly, managed to adhere to a set of

rules governing even the chaos of warfare.

The first, and most common, is the principle of **discrimination**: violence should be directed toward the ones who are responsible for the wrong being redressed, and not against noncombatants caught in circumstances they are not responsible for. This basically means that deliberately targeting civilians directly is forbidden. Civilians are usually taken to include children, women, the elderly, and the sick. Men may not be regarded as civilians whether they are in or out of uniform on the grounds that they are all potential combatants. Further, people who sustain the war effort (e.g. factory workers) would not be regarded as civilians either.

This principle seems to imply that the deliberate killing of civilians is never morally permissible regardless of the ends it is designed to achieve. Hence, the Allied destruction of Dresden or the American nuclear bombing of Hiroshima and Nagasaki during the Second World War must be condemned on the grounds that they violated the principle of discrimination even though their authors sought to bring an end to the war by breaking the resistance of the enemy. This is the principle that is used to condemn Israel's responses to terrorism and the American occupation of Iraq: both cause civilian deaths.

Both conclusions are debatable. First, it is not at all clear that killing civilians cannot be morally justified. One must carefully weigh the worth of the arguments. In the Second World War, the German and the Japanese peoples enthusiastically supported their government's militarist policies. The public jubilation during victory celebrations is telling. One is hard pressed to argue that all civilians were innocents caught in the evil machinations of their governments. Given that this was the case, it is also extremely difficult to argue that the Allies had to sacrifice their own soldiers to spare these civilians if it was possible to end the war by other means.³

Second, there is a lot of difference between *deliberate* targeting of civilians and the *inevitable killing of civilians* during a course of war, something that is euphemistically called "collateral damage." Terrorists target civilians as a matter of policy, their intent is to cause pain and suffering regardless of whether the victims support the policies they want changed or oppose them. On the other hand, a government that minimizes collateral damage but ends up killing civilians cannot be said to have acted unjustly. There is no moral equivalence between terrorists who murder civilians and a government who kills civilians while trying to root out terrorists when the government is trying its best to minimize such innocent casualties. Hence, Iraqi terrorists blowing up crowded markets and murdering squares full of people on a religious celebration are

³As mentioned earlier, the bombing of Dresden was not completely against civilians: there were many legitimate targets in the city. It is worth noting that the Israeli Defense Force code actually does require soldiers to put themselves in harms way in order to protect innocent enemy civilians. This has no parallel in practices anywhere else in the world. An American soldier who kills enemy civilians by mistake is unlikely to be punished, but an Israeli soldier may well face a court marshal if he or she is believed to have had options that could have protected the civilians. Still, this is an exception.

not the same as American soldiers inadvertently killing innocent civilians while fighting these terrorists.

The second principle of justice in war is **proportionality**: the force used must be proportional to the wrong suffered, and so the resort to war cannot result in harm that would outweigh the legitimate aims that the actor pursues through fighting. Every serious thinker would recognize that wars, like individual actions, usually have both good and bad effects. Hence, every war should be expected to result in the deaths of innocents. The principle then requires that such by-product of legitimate conduct of military operations is not excessive.

This is in addition to the requirement of discrimination because it not only outlaws deliberate targeting of civilians but also limits the number of civilians that one may kill inadvertently during war. Hence, if a legitimate military target is situated in the middle of a city, it may be off limits if there is no way to destroy it without harming too many civilians. How many is “too many” is, of course, indeterminate. For some, even one is too many, for others, the admissible number would be proportionate to the importance of the military target, an approach that takes us into the grisly calculations of permissible killing.

It is best to discuss these issues and be prepared to face the music than leave such crucially important decisions to happenstance. The use of Agent Orange during the Vietnam War arguably violated the principle of proportionality because the good coming from revealing enemy forces was probably outweighed by the bad the toxic chemicals caused civilians and the environment. Similarly, dropping the second nuclear bomb without allowing sufficient time to the Japanese to react to the first also violated this principle.⁴

It is worth noting one common misconception that is often deliberately made with respect to the proportionality principle. The foreign media has bombarded their consumers with information about the asymmetric number of casualties resulting from American military actions in Iraq. So we hear that dozens of Iraqis get killed for every dead American. This makes the use of force seem disproportional and hence unjust. Leaving aside the repugnant implication that such a critic would only be satisfied if more Americans died in these encounters, one should still note several things.

First, the relatively small number of American soldiers who die in these incidents is not due to the Iraqis’ lack of trying but to the better training and weapons of the U.S. forces. That so few Americans die is a credit to our military. I am sure the Iraqis would love to be able to achieve a more “just” kill-ratio.

Second, it is the Iraqis who trigger these incidents and then seek to hide among innocent civilians using them as shields.⁵ Instead of raging against

⁴There are some arguments advanced to explain the timing (e.g. the Japanese did not believe the first blast was caused by a nuclear device, or they did not believe the Americans had more) but they are all invalid even if the Japanese command did these things. The decision to drop both bombs was taken in advance and it did not allow the second explosion to be conditional on reactions to the first. It is worth noting, however, that the decision to use the bombs had as much to do with the worsening relations with the Soviets (and their impending intervention in the Pacific War) as with ending the resistance of Imperial Japan.

⁵It is stunning to read that U.S. soldiers are condemned for destroying a mosque in which

American troops, one should perhaps rage against such cowardly tactics. On the other hand, it is worth noting that the tactics are quite smart. Because their enemy is an American army that is indoctrinated to minimize civilian casualties, Iraqis who hide among innocents achieve a deterrent effect: U.S. forces are far less likely to attempt to hunt them down out of fear of killing bystanders. Further, whenever the Americans eventually attempt to hunt them down, the resulting civilian casualties are great propaganda tool that can weaken the resolve in Western democracies by sowing the seeds of self-doubt and emboldening pacifist opponents. It is notable that Palestinian terrorists have used this double-benefit tactic with great success for essentially the same reasons.

Third, the number of “innocent civilians” that is routinely reported includes just about every Iraqi casualty, including the not so innocent ones who had shot at our soldiers seconds before getting themselves killed. Inflating the numbers is quite misleading and is always done for political purposes. One should be very suspicious of aggregate numbers in such situations. Not only are such numbers uncertain, but most often they are constructed in curious ways. For example, the commonly reported total number of Palestinians who have died in the current uprising includes the suicide bombers, bomb-makers, and terrorists who died in various accidents, all hardly innocent civilians. Similarly, our dead are soldiers we put in harm’s way trying to protect the civilians while being shot at by people who use these same civilians as shields.

Finally, there is another component to the “number of dead” calculation. Often one hears about the number of Iraqis who have died since the 2003 invasion. As we have seen, automatically blaming the U.S. for their deaths is wrong, but even if we grant that they died, at least in part, because of that invasion, the blame still cannot be ascribed solely to the U.S. Why? Because doing so would require an argument that demonstrates that in the absence of the American invasion these Iraqis would not have died. Now we are in very murky territory indeed because we all know that Saddam Hussein was a mass murderer (and so if the invasion had not occurred his regime would have tortured and murdered untold additional numbers of civilians), and because the U.N. sanctions themselves were causing a lot of misery to the Iraqis. Hence, if we have to compare the numbers, the relevant calculation would have to approximate the number of lives that would have been lost because the invasion did not occur. By a conservative estimate, Hussein murdered about 126,000 people in two decades, or about 6,300 annually. If the invasion had not occurred and his regime survived for another decade, the result would have been 63,000 more murdered Iraqis. Even blaming the total number of deaths squarely on the U.S. (the number as of today is about 20,000), we are still below the conservative estimate for Hussein’s regime. And in fact, the more correct comparison would be to count the deaths directly attributable to the invasion (which perhaps numbered, by exaggerated estimates, about 8,000). So it’s not as simple as some make it out to be.

enemy soldiers had barricaded themselves. As if we should risk our soldiers to preserve a pile of bricks, even if it is a nicely-arranged and very symbolic one.

The **humane treatment of enemy combatants and non-combatants** is another principle of justice in war. Torture is generally prohibited (although this proscription may not be as absolute as some may think) and it does not matter whether we are talking about a captured soldier or a civilian. The Hague and Geneva Conventions further require that prisoners of war be treated respectfully, they must be provided for and should not be abused. It is these norms that U.S. prison personnel has violated in Iraq, and they should be justly punished for it.

There are other various *laws of war*, such as prohibitions on attacking doctors, vehicles displaying the Red Cross, or people bearing a white flag. These are considered neutrals and using the designations as cover under which to initiate in violence is itself a violation of international law. In general, respect for neutrality is an essential principle itself. It is also not permissible to impersonate enemy soldiers, and one must ensure that his own soldiers all wear distinctive uniforms and identification tags. Inhumane weapons, such as poison gas, are also outlawed as is the taking of hostages.

Soldiers who violate any of these laws lose the protection accorded to them through the conventions and may be summarily executed when captured. Spies and terrorists are not protected by the laws of war and almost invariably face gruesome deaths upon capture or surrender. When leaders pursue actions that violate these laws — for example, by engaging in *atrocities* or *genocide* — they may become subject to tribunals where they are held individually accountable and get prosecuted for **war crimes**. These are broadly defined as *crimes against humanity* that occur during war (one can commit atrocities in peace as well). Currently, former Yugoslav President Slobodan Milosevic is on trial at the International Criminal Court in The Hague for his alleged masterminding of genocide in Bosnia, as well as war crimes in Kosovo and Croatia. Saddam Hussein is likely to face trial for his murder of thousands as well.

2.3 Enforcement of International Law

International law (like any law) is a curious thing: it has no meaning unless there is something to enforce it by punishing non-compliance. Domestically, law is enforced by the coercive power of the state. But internationally? Is there anything that can hold a powerful actor like the United States to observe any such laws? Clearly, there is no stronger actor that could threaten to punish non-compliance with force. Realists argue that the powerful observe the laws when it suits them and abandon them with impunity when it is no longer in their interests to uphold them. There is much to this view but it is short-sighted, and here's why.

First, punishment of non-compliance can come in the form of withholding future benefits, not imposing current costs. This is very important and is often neglected. It is a powerful concept that could explain why the strong often find it beneficial to defer to laws even if doing so may be costly. The basic idea here is that of **repeated interaction**: what we do today may have consequences

tomorrow. Among such consequences are future benefits that one might derive from continued cooperation with others. Hence, while one may be incapable with threatening to impose costs through force today, one may be quite capable with threatening to withhold benefits tomorrow.

For example, think back to the Prisoner's Dilemma that we used to help analyze the causes of arms races. The actors played the game once: they either built the fleets or did not. But Britain and Germany interact repeatedly, which means they can condition their behavior not just on expectations about what the other is going to do, but also on observations of what they other has already done. Such conditional strategies can help resolve some of the problems with cooperation. For example, suppose that each country commits to a strategy that specifies that it would not engage in military build-up as long as nobody else does, in which case it would build to the maximum capacity.

If both actors play such a strategy (called *grim trigger* because there is an action that triggers retaliation and the punishment is maximal), then neither would engage in an arms build-up. The status quo is unchanged and both can enjoy the benefits of cooperation. Should one of them attempt to alter it, then the outcome would be the costly arms race. Unlike our example where the game was played once, repeated interactions mean that the benefits of the status quo can be enjoyed for a long period of time and, conversely, an arms race, in addition to its direct costs, would also mean the loss of these benefits in the future. The combined direct costs and future losses may then be enough to deter attempts to build arms.

Among the most celebrated ideas in international relations theory is that repeated interaction can help establish cooperation in a world populated by entirely self-interested actors. The mechanism for doing that is exactly the one we just described: each actor is kept in check today by the *shadow of the future*. Temptations to deviate from cooperative behavior (e.g. temptations to circumvent international law) are deterred by threats to punish any such deviation by cessation of cooperation by others for some period of time. Hence, the costs of foregone future benefits outweighs the gains of present deviations, and even the powerful can be kept in check. Of course, this sort of logic has its limits (which we shall explore), and one cannot hope to prevent defections from cooperation when extremely strong temptations come along.

This is a startling result: cooperation under anarchy can be spontaneous in the sense that it can arise out of pure self-interest, which means that it is **self-enforcing**, which, you should recall, is the most important condition for any viable agreement in world politics. This conclusion has rather profound implications for social conventions as well. Many customs and habits we have today may have arisen due to successful coordination on such a self-enforcing equilibrium, what we would call an institution. (More on that later.)

Second, establishing a precedent may have detrimental consequences if it should encourage others to pursue actions contrary to our interests. Diplomatic immunity refers to the protection a state must guarantee to foreign diplomats.

One breaks such a precedent only at his own peril: failure to protect someone else's diplomat leads to inability to ensure the safety of one's own diplomats who now can be seen as legitimate targets. Without diplomatic immunity, the entire international system will collapse because communication would be extremely difficult. Another precedent that few have an interest in seeing re-established is the legality of territorial aggrandizement by force. It used to be fine to acquire land through conquest, but this is no longer so (since the U.N. Charter) although the rule does not apply to existing conditions... or else no country's territory would be legal!

Third, one may still impose great costs in reprisals even if he is comparatively weaker. The threat of reciprocal use probably inhibited the use of chemical and biological weapons during the Second World War even though both sides had vast quantities of such weapons. These considerations can also explain the restraint of the Iraqis despite widespread predictions that Saddam would authorize the use of chemical weapons once the Americans reach the outskirts of Baghdad. We also mentioned tacit restrictions on bombing targets during the Korean War. Further, it is possible that other actors join in the reprisals: when Jordan violated U.N. sanctions against Iraq, punitive actions were taken against it.

Fourth, reputation is important. Just witness the difference between the international support for the two wars against Iraq. In the first, Saddam was branded as aggressor, his actions were seen as illegitimate, and the United States was seen as acting in the common interest, the intervention of the international coalition it led was interpreted to uphold international law.⁶ As a renegade state, Iraq was isolated completely. Although Iraq's status of a pariah did not change between the wars, the reputation of the United States did when it was seen as disregarding everything in its pursuit of narrowly-defined national interests. Without the appearance of legality in the form of a U.N. resolution, the U.S. was deprived of international support. As the realists would predict, this did not affect its decision to go to war. However, it is important to realize that if this war had been coalitional as the first, it would have been much cheaper, and reconstruction perhaps less painful. In other words, the U.S. would have benefited from having its actions appear legal under international law. (It is not clear that they were not legal, but, again, appearances count in international politics.)

⁶It is perhaps interesting to note that Kuwait used to be part of Iraq and was only separated from it by the British (they granted it independence in the 1960s). Still, since Britain did that before the U.N. Charter that outlawed territorial acquisition by force, Iraq had no legal claim to Kuwait. The same reasoning applied to Argentina and the Falkland Islands, which is why Argentina found itself diplomatically isolated when it attempted to take them back by force. International law does not apply retroactively, there are many things that would be illegal if done today and that are still sanctioned by law because they were done yesterday.