

“Post” As Justification: International Law and Democracy-Building after Iraq

By Outi Korhonen

A. Introduction

The “post”-phase of a conflict has become the justification for both the possible action and the inaction of the Western states. It is not so much any longer that we would be averse to war in any circumstances, as the non-use of force principle in its absolute sense would require. Again, after a good fifty years of the UN and its *raison d’être* – the guardianship of peace – we seem to have arrived at an era where ideological contestation no more has the deterrent effect that it did during the Cold War and, consequently, there are cases of the use of force that are accepted and even regarded as just as long as they are quick. When looking back at the NATO bombings of FRY in 1999 as the response to atrocities in Kosovo many are able to accept that ‘though illegal they were legitimate’ in some sense. This is the conclusion irrespective of whether one, at the time, was for action or inaction. Such a ‘condoning condemnation’ has become the popular middle road as so many other paradoxes in world politics. Through the cases of Afghanistan and Iraq the paradox has gained in strength. Although there is quite strong and unequivocal opposition to the wars and a condemnation for their illegality, the political elite of the West seems to be quick in forgetting scruples and taking a keen interest in the “post”-management of the targets, *i.e.* the states that are about to be or already have been ‘bombed into the stone age’ or into shambles in any case. There is a general rush to the “post”-phase; both in the sense that the tacit requirement for the condoning condemnation is that the action be quick – the use of force should be very limited in time -- and, secondly, in the sense that already before the bombs fall (or during) the major reconstruction plans and projects are dealt.¹ This article outlines some points of critique that could be launched at the phase when the majority cannot be bothered to re-analyze the wrongs committed *ex ante*.

¹ See the USAid website; <http://www.usaid.gov/iraq/activities.html>

B. The “Post”-phase

The “post” as the justification for the use of force is nothing but the platitude of ‘the end justifying the means’ writ anew. The end justifying the means connotes a political realism with a teleological morality attached to it: One needs to sincerely believe in the moral righteousness of the goal, *e.g.* free market democracy and free international trade for all peoples, then proportionate means to arrive at such a goal are also justified. The realist element is that there seems to be an acceptance for the enforcement of the goal with superior power if the power in question sincerely believes in the goal. Those who oppose such a realism slip into the margins when it comes to the “post”-phase because the “post” is the phase that interests and matters. No-one wants to listen to the tedious ‘Jammer’ of the academics or other pessimists about the illegalities of the past. The “post” is big business ideologically and economically – and also administratively if “post”-conflict governance arrangements are made as in Kosovo, East-Timor, Afghanistan and Iraq recently.² Their budgets counted in hundreds of millions of dollars already in Cambodia in the early eighties and after the bombing of Afghanistan the World Bank announced a budget of two billion dollars for the first year. Today, countries that supported the US-led coalition in the war against terror in Iraq are rewarded with projects and contracts in the US-administered rebuilding phase. It is undoubtedly a great opportunity for a country’s scientists, entrepreneurs and administrators to be in charge of, *e.g.* the cultural heritage of the country where the Western civilization first started to emerge³ -- of course, the oil sector was the very first to be gulped by the US administration and industry. The countries who opposed or regretted the actions of the coalition do what they can to be involved in the “post”-phase. First, they sincerely believe that because a wrong was committed (by others) they need to be involved in correcting as much as possible through international involvement and, secondly and more realistically, they must see to their national interest in any international big business. For instance, France has always taken good care to be diplomatically and politically well represented in “post”-conflict international endeavors from Tangier to Saar, the EC/EU and Kosovo.⁴ Even tiny neutral countries, such as Finland, want their industry to win contracts. The lure of the USAid sub-contracting bids for the 2.4 billion dollars pledged⁵ for the reconstruction of Iraq

² See my previous publications on post-conflict administrations. Korhonen, Outi & Gras, Jutta, *International Governance in Post-Conflict Situations* (Helsinki 2001); Korhonen, Outi, *International Governance in Post-Conflict Situations*, 13 *Leiden J. Int’l L.* 495 – 529 (2001)

³ For instance, it was announced in the news June 2, 2003 that Italy as a coalition member was awarded the charge of the cultural treasures of Iraq during the US-led administration of the country.

⁴ See, Korhonen & Gras (*supra*)

⁵ Approved by US Congress as of May 27, 2003

cannot be ignored – and why should it. It is better to bid for the future contracts than to be naively bitter about some legal formality concerning the way in which the opportunities were created. In this sense, the attitude of many in the West does not come so far from the days of the nineteenth century colonialism.

I. What the "Post" Brings Ideologically?

At the End of History or at the Death of Ideology -- whichever inaccurate but very telling title one subscribes to – there is a growing belief in the Western governance and business circles that free market and trade are a social idea cleansed of ideological stains. Enriched with liberal democracy, they are a combination that sounds and seems to many to be a *value-free value* – another popular paradox.⁶ Free market and trade enriched with other liberal freedoms, the core civil and political rights⁷ seem to be about the liberty of the individual to do whatever she wants unconstrained by any outside power. The negative freedom (freedom from constraint) that they offer seems to be a value beyond question. However, as many a social philosopher and thinker has shown the other side of the coin is the positive freedom (the opportunity to do something) that does not always coincide with the former; *e.g.*, when a state engages in free international trade according to, *e.g.* the principle of comparative advantage, it might in fact be seriously crippling its industry and the opportunities of its citizens to diversify its home economy.⁸ There are many examples showing that free international trade or, at least, a quick and unconditional shift to it, does many things but guarantee a healthy socio-economic development.⁹ Despite this fact, we seem to believe that there is no choice to the trinity of free market, free trade and liberal democracy. The concept of democracy seems to be loaded with benevolence and the promise of the liberation of the subjects. When President G.W. Bush started the war in Iraq with the surprise strike named 'Decapitation' in his first press conference he proclaimed quite ominously: "Iraqi People, your day of liberation has come".¹⁰ Of course, President Bush did not think of those who were to become liberated from their earthly struggles altogether nor those who

⁶ Marks, Susan, *The Riddle of All Constitutions* (Cambridge 2000)

⁷ Rittich, Kerry, *Recharacterising Restructuring: Gender and the Legal Structure of Market Reform*, dissertation on file at Harvard Law School (1998), published as: *Recharacterizing Restructuring. Law, Distribution and Gender in Market Reform* (Kluwer 2002).

⁸ Gathii, James, *Corruption and Donor Reform: Expanding the Promises and Possibilities of the Rule of Law as and Anti-corruption Strategy in Kenya*, 14 *Conn.J.Int'l.L* 407 (1999)

⁹ *id.*

¹⁰ News March 20, 2003, CNN

felt that a lifting of the burden of one inadequate or even quite evil administration with violence would not in any manner guarantee less violence, more peace and freedom, more choice, more opportunities and, above all, more ownership to one's own society and its future to the Iraqi people. The problem in the giving of freedom and the installing of democracy from above is that they both tend to remain superficial. In terms of the social philosophers, they remain negative; there is no ownership by the people concerned and there is little substance.¹¹ The many "post"-conflict governance examples from the end of the nineteenth century to the League of Nations and the modern UN operations show that the representative bodies of the local populations often seem to be more for show than for real and the usual elections are often organized in conditions of haste, lacking information, political intimidation, boycotting, violence and general confusion.¹² The fact is that when freedom and democracy are installed on a people from above (if we assume that it were possible, at least theoretically) the latter become the targets and not the actors or the owners of these virtues. In addition, democracy and freedom are essentially internal, not external modalities of social existence. When they are introduced by a foreign source, in a foreign form they do not seem to take root nor flourish. For instance, in Cambodia, the UN administration (UNTAC) finally tacitly accepted the return to some aspects of the caste system because it was the only quick way to establish some sort of stability. In West Irian, the UN interim administration consulted the old assembly of the heads of villages in order to find out whether 'the people' wanted to join Indonesia. Even if these two are extreme cases, the consultation of the locals in building their future in a "post"-conflict governance phase has not been adequately solved in any case to date.¹³

II. New "Post"-Realism and the Law

The "post" as justification marks an international dimension of a new unipolar realism of the post-realist world.¹⁴ If realism meant national power politics and the prevalence of the national interest in all international affairs and post-realism began with interdependence and *detente*,¹⁵ the new power politics have taken a new realist

¹¹ Marks (supra)

¹² See Korhonen & Gras or Korhonen (supra)

¹³ See Korhonen & Gras (supra), at 112 – 118, 126 – 144

¹⁴ See Koskeniemi, Martti, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (Cambridge University Press, 2002); Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (Clarendon Press, 1995).

¹⁵ Higgins, Rosalyn, *Problems and Process: International Law and How We Use It* (Clarendon Press, 1995).

turn at an international meta-level: A great number of the powers of the West seem to accept the indirect message behind the words of President Chirac¹⁶ that the political system of the world is indeed unipolar to the point that there is no contestant that would believe to be able to change the course of the politics of the pole; this does not mean that one could not protest nor that protest would be futile but no one seriously believes that it would be possible to take the US on even politically and, therefore, other powers must be either willing coalition partners (e.g. Britain, Japan), silent observers (e.g. India) or diplomatically witty gentleman-critics (e.g. France).

The war against terror of the Bush administration is the current international line of the politics of the pole. In its crudeness, it nevertheless makes a superficial appeal to the law: Modifying the spirit of the UN Charter and the non-use of force principle, it makes a case of self-defense – pre-emptive self-defense, when attacking Iraq. In the case of Afghanistan, it also appealed to the right of retaliation of the September 11, 2001 bombings that were deemed an act of war against the US. When NATO attacked Yugoslavia for the sake of self-defending a non-member of the treaty alliance, *i.e.* Kosovo in 1999, there was a great debate about the use of the term 'proportionality' of the force; did the force need to be proportionate or not? In the present day, this term is absent from the War against Terror-discourse of the US and is replaced by the open declaration that 'overwhelming force' will be used to arrive at the goal – and the "post" – speedily and with minimal losses to self.

Thus, in the *Realpolitik* of the unipolar world the use of force by the pole seems to have become *overwhelming* when necessary for *pre-emptive* or otherwise widely interpreted *self-defense* or *right of retaliation*. Thus, it seems that commonplace legal language is used superficially with picking and choosing of terms that carry a powerful appeal – such as 'self-defense' (art. 51 of the UN Charter). They are combined with others that have nothing to do with the legal background (e.g. the UN Charter conditions) and indeed may undermine any justificatory force of the term initially used. This is the case when retaliation becomes an overwhelming use of force and a world-wide campaign instead of a proportionate one-time strike at an identified public enemy. In the case of the hunt of Osama Bin Laden and the decapitation of Saddam Hussain the private and the public are hopelessly confused; there is no right to self-defend with full-scale war against a State even if it harbors a criminal. A decapitation of a head of a State is also a very strange way of searching for and destroying any weapons of mass destruction. The superficial attempts to appeal to international legal justifications (self-defense, retaliation etc.) are undermined when the war operations openly concentrate on avenging and eliminating individuals

¹⁶ News releases of the meeting of Bush and Chirac 2 June 2003, BBC World & CNN

through attacking States – the public and the private acts and their targets are mixed in a messy, quasi-legal rhetoric. The evil individuals are found guilty of crimes against the US without any public trial and the peoples of the countries that – in all probability – harbor these public enemies face full-scale war against their State and an ensuing social chaos that threatens, if not outright destroys, their way of life.

The same superficial appeal to the law is also behind the constant reference to evidence and proof. The leaders of the countries in the Coalition of the Willing appealed to the proof and evidence in their possession. In the case of Afghanistan and also of Iraq the proof of the weapons of mass destruction or the evidence that uncovered the entire scheme of AlQaeda, Osama Bin Laden and the responsibility of the Taleban government of Afghanistan remained to a large extent classified information. This is perfectly understandable but it leads to false appearances if the proof is pretended to establish legality or any kind of due process. It has also recently turned out that high-ranking intelligence officers, of *e.g.* Australia, claim never to have possessed any proof and have watched with incredulity the way in which their reports have been translated to the press by their government.¹⁷ Parliamentary investigations into the intelligence used by both Presidents Bush and Blair have also started.¹⁸ In these circumstances, the appeal to legal proof and evidence is deprived of any objectivity. If proof is presented only to a few (even fewer than the entirety of the Security Council of the UN) and if, additionally, manipulations are known to occur, the claimed existence of such classified evidence does not buttress the *ex ante* justification for the use of force. In a world, where circles of the chosen ones grow narrower and the decisions concerning the use of force are made behind closed doors in the fortresses of the pole the pretences of legality tax on any remaining power of the international rule of law.

III. The “Post” as Carrot

The “post”-phase of a conflict is big business business-wise, too. The billions pledged for the reconstruction of Iraq worked as a carrot before and during the conflict, let alone when it is time to forget the legal formalities about who started what and with what grounds or mandates. The multimillion dollar projects awarded to private contractors by US development agencies soon after Baghdad fell are so large, multifaceted and without any realistic controls that nobody expects the contractors to be able to fulfill even half of what has been ‘agreed’.

¹⁷ News June 2, 2003 CNN & BBC World

¹⁸ News on June 5, 2003, *id.*

The problem for the industries in the other countries is that to be able to bid for the contracts one has to be rather familiar with US tender rules if, indeed, a tender process is organized. Often the projects are awarded without a proper tender process and, surprisingly, even the usually quite critical business circles seem to accept it without protest. The power of the "post" as justification for bending all kinds of due procedures, the aim of which is to create transparency and equality, seems to work on the private sector too. If a foreign entrepreneur happens to win a project, *e.g.* as a sub-contractor, the conditions are rather harsh; they have to fend for their own security, logistics, permits and insurances in a country that is under the control of the US military and allies. When writing this, the US has informed that the diplomatic representatives of non-occupying countries do not enjoy any usual protections or privileges if they enter Iraq. The common man, whether foreigner or Iraqi, is even worse off security-wise in the country.

Despite this, the opportunities of the reconstruction and the creation of a new economy out of the shambles of the past draws Western actors like flies. They all compete for general visibility and the manifold opportunities that the reconstruction of an entire country (from ideology to economy) presents. This applies to the international financial institutions from the World Bank and other development banks to the UN Specialized Agencies, other international organizations, and hundreds if not thousands of NGOs and experts, not to mention the industries.¹⁹ The media opportunities and the opportunities for the media itself, the career opportunities, the double to triple salaries, and the 'experience from the ground' give a boost everyone's business. The industries expect good profits out of the generous aid budgets and the rush with which they are dealt out. This is why the "post" works so well as justification – because it creates opportunities for everyone who matters. The fact that among the target population the unemployment rate tends to remain at well over 50% (Kosovo), if not at 80% (East Timor), a year after a conflict has ended, even when the reconstruction progresses fast by outside contractors does not inhibit the excitement.²⁰ The opportunities of the locals in a "post"-conflict phase do not seem to be easily created by the foreign governors, who seem to have their hands full with getting themselves organized – administratively and as concerns the big contracts.

¹⁹ The number of NGOs operating in Kosovo, a province of some 1 million inhabitants, in 2000 was counted some 700.

²⁰ Korhonen & Gras (*supra*)

C. The Possibilities of Critique at the “Post”

It certainly was clear to any enlightened critic before the Bush government’s campaign against ‘the axis of evil’ started and before the war in Iraq that little could be done in the face of the politics of the pole. Still, the little is not meaningless in that it uncovers some of the bases and sheds light on the false appearances masking the use of the questionable means. In addition, I propose that a critique directed at the “post” as the end that justifies and appears to legitimize many a questionable strategy would usefully enlighten ‘the age of the end of history’ or ‘death of ideology’ – mistakenly so called. I have already earlier put a series of eight rather general questions or dilemmas²¹ and I repeat them here to provoke a debate on the “post”-phase of the second war against Iraq.

I. Question One

The first question concerns the need to draw an international blueprint model for post-conflict governance in general. Would the existence of such a model make any difference in the way Iraq is reconstructed? It is clear that to be (politically) feasible such a model would have to be very loosely defined. Yet, without a model it is very difficult now to evaluate what the US and the coalition does in Iraq. On what basis can we really say that the establishment of the oil ministry first – when other countries are still far from daring to try any foothold and representation in the post-war Iraq – is odd. To create a post-conflict governance system from scratch is anything but easy and there certainly is no one right answer to the question how to reconstruct and reorganize a modern State in concrete terms. In the case of the oil of Iraq one can only make nasty guesses about the way in which the US chooses to administer it – it being known that Iraq is probably in the possession of the fields where a quarter of the world oil resources lie and the cost of the production of a barrel in Iraq is one twentieth of the cost of an American barrel, North Sea oil being slightly cheaper to produce than the American. With nasty guesses about the interests of the US and their advancement through the post-war governance of Iraq one does little in the way of pointing the post to the right direction. On the other hand, if there was an international blueprint for post-conflict administration and reconstruction, one could address, *e.g.* the needs for fairness and participation structures for the locals, organization of the administration and the bidding for the initial basic projects and advance the transparency of the flow of funds. Be there one or several models, a basis for critique and a constructive point of reference in the early

²¹ Korhonen & Gras (*supra*) and Korhonen (*supra*)

set-up phase of a post-conflict governance structure would buttress both internal and external evaluation of how it is done.

II. Question Two

The second question concerns the legitimacy debate on the post-conflict governance in general, in other words, the installation of (free market) democracy and free trade from above. What are the dangers of the ideology of compassion²² and the policing of the Third World and how could they be avoided? How could more ownership and opportunity in the reconstruction phase be created for the local people? How could one avoid over-externalizing tasks of governance and reconstruction? How could basic constitutional guarantees be obtained even during an interim foreign governance? What would be the accountability structure for the law-making, customs, currency and treaty arrangements undertaken in a post-conflict phase? Would there be a possibility for an international appeal body (a court) to hear complaints? Would an ombudsperson institution help? What kind of administrative review could be internationally arranged? In the Danzig and Saar administration under the League of Nations the Permanent Court of International Justice had a role as an instance of review.²³ It did not work too well but in the current operations the lack of any avenues for appeal and review is hardly a better option in terms of legitimacy of the whole endeavor. In the case of Iraq, such an international oversight may be very useful – if realistic – in terms of checking the politics of the pole and its proclaimed democratic aims in a concrete manner.

III. Question Three

The third question, which is somewhat moot in the case of the second war in Iraq, is the one concerning the form and contents of the mandate for post-conflict governance of a particular site. Still, the UN can most probably not be completely overstepped in the post-war reconstruction of Iraq and it will have to give some kind of mandate to its actors in the field. The largest problem of the mandates in international governance of post-conflict regions until the present date has been that they often end up with stimulating façade democracy through their over-ambiguous goals that tend to encourage quick fix-practices and a too-hasty adoption of complicated procedures imitating mature democratic multi-party politics. A question is

²² Pugh, Michael, *Peacebuilding as Developmentalism: Concepts from Disaster Research*, 16 *Contemp. Sec. Pol'y* 320, 338 (1995)

²³ Korhonen & Gras (*supra*), at 83 – 92

whether an UN (or other international organization) could mandate its own operators, at least, to advance some form of the division of power, the ways of local participation in their work and to identify the sectors and to describe the depth at which involvement in the society is desirable. Should outside administration concentrate only on law and order, take also the sectors of basic supplies – from electricity to water and roads -- or work on the welfare, education and employment sectors?

IV. Question Four

The fourth question concerns the need to create material and educate human resources for post-conflict governance. Significant efforts to this effect are already underway, e.g. within the EU. However, there is no agreement on whether and when these resources be utilized. Could they be utilized in Iraq? Who would decide on their use? It is, of course, unlikely that the US and its coalition partners would allow the EU to influence the “post” of Iraq in any way that the occupiers would not entirely control but maybe the time has come to discuss how to improve the efficiency of the resources used and the expertise of the personnel that is sent to the ground. In the past, the post-conflict governance missions have faced many kinds of criticism, also for culturally offensive practices and the general lack of knowledge of the history and ways of life of the people that they are administering. There have been cases of harassment of the local women by the various creeds of expatriates when cultural differences are great, not to mention the fact that the vast income gap between the opportunity-less locals and the hi-fly expatriates stimulates prostitution, smuggling and like phenomena.²⁴ In addition to these problems, the general efficiency of the administration suffers when its usually top-heavy structures are filled with people who have little knowledge or even willingness to consider the needs and beliefs on the grass-roots level. In Iraq, one can expect many of these problems because the experience that the locals have of the Americans and the attitude that they have *vis-à-vis* the desirability and undesirability of the American influence on their culture is, to say the least, mostly rather reserved. On the basis that was created by the actions of the coalition and the early days of the occupation of Iraq, much work and background knowledge is required of the foreign staff in order for them to be able to break the ice in a manner that would lead to genuine cooperation between the foreigners and the locals and, consequently, efficient use of the reconstruction resources for the good of Iraq.

²⁴ In regard of, e.g. Cambodia, see Korhonen & Gras (supra), at 142 – 143 and Findlay, Trevor, Cambodia, The Legacy and Lessons of the UNTAC, SIPRI Research Reports No. 9, at 152 (1995)

V. Question Five

The fifth question concerns the prioritization, or not, of the creation of opportunities for the locals in the immediate post-conflict phase. As stated earlier, the previous international experience shows that the astronomical unemployment rates of the local populations a year or even two years into the post-conflict eras correspond directly with the rise of criminality in the target societies. The local people have to find their livelihood in an economy that works on a completely artificial basis and in most complex and unhealthy ways in the post-conflict phase when a lot of loosely controlled foreign currency flows into the country. Transactions are made by foreign operators in cash, accounting is at nil, customs do not work and the expatriates enjoy salaries and benefits that make them able to buy whatever is on sale. These are the makings for the rapid growth of gray economy and worse. On the other hand, the rapid concentration of major resources on the operationalization of the local people in the governance and reconstruction of their own country might serve to buttress some social morality that would help in the fight against the influence of transnational organized crime. Also, the filling of the administrative vacuum in the long-term should be addressed from the very beginning with the establishment of training on the job (alongside foreign interim administrators) and more education preparing the previously non-privileged members of the society and other dissidents without proper education/experience for these tasks. To date, the industries winning reconstruction contracts have been averse to any requirements to employ a quota of local workers in their projects. Yet, such quota should perhaps be set to avoid the fact that in order to minimize all costs and maximize profits the private contractors even use other emigrant labor in their projects. There is also the question of what to do with ex-combatants, or in Iraq, with the Baath-party members. Are they simply wished away or let to slide into the margins of the society or expected to flee to other countries? Surely, none of these alternatives is very constructive. From the early phases, the post-conflict administration should seek ways to re-integrate all members of the society, desegregate, retrain and re-educate where necessary and also to combat the marginalization of the groups that usually suffer from a long-lasting oppression and conflict most – such as children and other non-combatants. The reconstruction scheme of Iraq by the USAid includes a Community Action Program (some 70 million dollars) and grants to the UNICEF and the WHO but the projects have no start date yet pending the organization of the prioritized sectors.

VI. Question Six

The sixth question concerns the ways in which the past and the future should be dealt by the outside administration. How should the post-conflict phase relate to the past of the society or the source of the conflict? Should it push the society as far as possible into the future direction or leave as many choices open as possible for the local democratic will to emerge? There are always needs of reconciliation, reintegration and community-building in a society that has become the target of post-conflict administration. The Iraqis have experienced two or more decades of very taxing conditions on their social life; the huge wealth brought by oil, the dictatorship of Saddam Hussein, the horrendous war with Iran, the first Gulf war, the heavy international economic sanctions, the deterioration of welfare and security until the war and the present occupation by Western Coalition of the Willing. The people can certainly not simply forget about the past and start from a clean slate. The post-conflict administrations usually, on the other hand, do not want to dwell in the past nor have they any means to heal past wounds. They want to look into the future: to rebuild, start electoral democracy, free market and international trade.

In the past post-conflict experiences the atmosphere on the ground has often remained tense for a long time, the rate of crime has risen high, violence has persisted and any form of healthy political life has taken a long time to emerge – much longer than the UN has usually had time to wait until the first elections. The ignored past has re-emerged as violent crime, low-intensity conflict, marginalization and lack of cooperation among the locals or *vis-à-vis* the internationals. The question is whether there are any means to advance reconciliation and the addressing of the past by the foreign administration. In Cambodia, almost two decades after the UN administration left, there was still need to address the past and trials of the past human rights violations were started with international support. In South Africa, the Truth and Reconciliation Commission was established immediately after the fundamental change of the rule. There are several opinions about the usefulness of such efforts but what is clear is that a traumatized society does not easily move into the future if the needs to settle with the ghosts of the past – at least in the form of land claims and human rights – are not met. I have suggested that in addition to the preparations for democratic polls, preparation committees should be set to look into land and property claims and the need for a truth and reconciliation-type commission (with international involvement) by the post-conflict administrations. In Iraq, such a work cannot be performed by the occupiers alone because the attack did not render them in a favorable position to turn later into neutral arbitrators.

VII. Question Seven

The seventh question is how a post-conflict administration could mitigate the problematic fact that the "external assistance often reinforces pre-disaster inequalities and structural problems".²⁵ How else would quick stabilization be achieved and looting be halted effectively, *e.g.* in Iraq, except by relying on those who are used to exercising political, economic or other authority in the society? The administrators naturally gravitate to consulting those locals that speak their language, have been consulted before, have an international background or have had access to Western education. They, obviously, are not the common people. The common people hide in their homes hoping that food and water will last until the streets are safe, as Iraqi citizens describe their present situation. For this reason the Brahimi report (2000)²⁶ suggested the drawing up of an international criminal code that could be brought into post-conflict societies. Although the suggestion focuses on a much more precise question, it carries many of the same possibilities and problems as the model of the entire administration discussed above. It would, however, make it considerably easier to administer justice and establish credible law and order in a society, the laws and enforcement mechanisms of which often remain a mystery to the foreign staff.

VIII. Question Eight

The eighth question concerns the continuity of international security guarantees and/or the exit strategy of an international/foreign governance mission. It is crucial to consider what comes after "post". The international and foreign post-conflict involvement changes the course of a society's life in a fundamental way. The amounts of money poured into it are huge and the projects realized will structure the landscape both concretely and figuratively speaking for a very long time. A considerable local source of income is built on servicing the expatriate community. Once it leaves, there will be a deflation of prices and the search of work for all those who were engaged by the interim service industry. The economy more generally has also started to function with considerable foreign aid and it needs to internalize all kinds of costs that it did not have once international financing focused on jump-starting it.

²⁵ Pugh (*supra*), at 339

²⁶ Brahimi Report, see Report of the Panel on United Nations Peace Operations, UN Documents A/55/305 – S/2000/809, and at http://www.un.org/peace/reports/peace_operations/docs/summary.htm

In the previous post-conflict regimes the problem has often been that there is a discontinuity between the international institutions that are involved in the “post” and in the “post-post” (after exit) phase. The role of the UN Special Agencies in a post-conflict administration may not be so high but after the exit of the Special Representative of the Secretary General with her staff the role of, *e.g.* the High Commissioner for Refugees may become quite crucial. The new staff representing an new actor on the field, of course, does not pick up where the interim administration left off but has to learn many things from the beginning. To avoid this problem, these agencies that are also interested in developing the region after the exit of the special administration would have to be as much involved and informed as possible from the very early stages. This is the case for Iraq too; in order for other actors besides the occupiers to be able to efficiently contribute and interact with the locals they would have to be involved and informed from the very beginning – starting from the granting of entry to their representations. After a post-conflict administration it is, of course, crucial that the society is not abruptly abandoned and left completely to its own devices. The civil intervention, just like the military preceding it, carries a huge responsibility in that it affects the society deeply and often much balancing of the unpredicted effects of the actions that were taken would greatly enhance the outcome and the future of the community.

D. Conclusion

Even with these constructive criticisms directed at the “post” the largest question still remains untouched. It is the place of the sovereignty in the new meta-Realist order. The more interventions – military, police actions, civil and political, democracy-building, humanitarian etc. – there are, the more questionable comes the status of the international legal *Grundnorm* of sovereignty. What has become of it in the trouble-societies and where does it vest in the post-conflict spots? In the times of the transnational civil society-hype it may sound quite out of date to inquire after sovereignty. Yet, sovereignty is not just a vestige of the old world.²⁷ It is also a way to identify power and point a finger at it when needed. It is a fact that in their post-situations, the international/foreign governors promulgate laws, administer justice, condemn criminals, conclude international treaties for the target country, but claim to possess no sovereignty – only ‘authority’.²⁸ They do not offer the usual sovereign privileges to foreign diplomats and they do not accept international accountability,

²⁷ As a conclusion of my studies on the international administrations from the nineteenth century until to date, I find that the earlier administrations (esp. under the League of Nations) sought to determine better the question of sovereignty, unlike the modern mandates. See Korhonen & Gras (*supra*), at 150

²⁸ Korhonen & Gras (*supra*) at 15 – 20, 150

e.g. in international tribunals. It has been said that the UN lost much of its authority with the second Iraq war because the US and its coalition partners broke against the monopoly of the Security Council and Chapter Seven of the Charter as the sole sources for the use of force in any justifiable way. However, it seems that also the UN itself has been engaged for some time in a practice, the post-conflict administrations, that eats on the very norm that grounds the Charter – the respect of sovereignty. The deeper and more frequent the interventions – military and civil – become, the more difficult it is to leave the spectators hanging on indeterminate positions towards sovereignty and the identity of power. In the case of Iraq the spectators are the other countries, who do not get into the post-conflict Iraq pending the approval of the occupying powers. In general, the spectators also include the locals, who wonder where to address the critique that they have of the way that they are governed. Even if the new democracy was to take root quickly, the locals could only vote for the local government that would get powers over the key sectors of the economy, at best, gradually. The international/foreign interventions of today thus remain without democratic checks and balances and with a large question mark behind the source of power and the site of sovereignty – a trend epitomized by the Coalition's actions in Iraq.