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War, Trade and the Construction of the International

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**WAR AND TRADE SYMPOSIUM
OPENING REMARKS:
WAR, TRADE, AND THE CONSTRUCTION OF
THE INTERNATIONAL**

*Nathaniel Berman**

Welcome to the first panel of this symposium on “War and Trade.” Our panel, entitled, “The Use of Force and International Trade: Complementary or Competing Legal Regimes,” follows in the wake of Duncan Kennedy’s timely and provocative keynote address yesterday evening on Iraq. As one of the co-organizers of this symposium, I would like very briefly to lay out some of the background ideas that guided us in putting it together.

This symposium originated in our desire to deploy critical thinking on some of the conventional wisdom about the international situation since 1989. Almost all observers seem to agree with the proposition that “international-law-has-been-fundamentally-changed-by-post-Cold-War-developments.” However, not everyone agrees on precisely which developments have so thoroughly challenged the traditional structure of international law. And, above all, far too little thought has been given to the relationship between the various sources of the putative challenge to international law.

In conventional debate, there are two leading candidates for the source of this challenge. The first is the dramatic transformation in the military and security arenas—in short, the changing nature of war; the second is economic globalization and the dominance of the neo-liberal economic model—in short, the changing nature of trade.

Let us first consider the war side. A number of rather heterogeneous phenomena are often cited as provoking the destabilization of the traditional conceptualizations of war by political actors, as well as by scholars of international law and international relations. For example, the past sixteen years have seen the proliferation of civil wars and ethnic conflicts rather than traditional armed conflicts between states. They have also been a time of the emergence of vast American military predominance (a phenomenon perhaps now rendered uncertain by events in Iraq). Finally, it has been a period of a medley of other challenges to traditional images of war, such as military privatization, transnational terror networks, and the specter of the proliferation of weapons of mass destruction. On the economic side, we have neo-liberal economic globalization, powerful

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transnational economic networks, and trade liberalization, coordinated to some extent by the WTO and other international financial institutions.

Both sets of phenomena, those on the war side and those on the trade side, have been said to weaken sovereignty, to render obsolete a number of hoary doctrines of international law, and to make international governance both indispensable and incredibly difficult. The proliferation of "new kinds of war" and the globalization of the economy are both said to destabilize the way in which the international system was anchored in sovereign states and to diminish the autonomy of states to set their own policies. This untethering of the world from its traditional moorings seems to create power-vacuums on a number of levels, vacuums filled by a variety of new actors: powerful state militaries and economies, international organizations like the UN and WTO, and non-state actors like multinational corporations and transnational military groups. As at all times when it has seemed that "all that is solid melts into air," powerful new actors seem once again to be emerging with a variety of projects for restructuring the world in their image.

Nevertheless, I believe that no persuasive account has emerged of the relationship between changes in the military and economic arenas, or even a rigorous accounting of the many possible similarities and dissimilarities between them. And, therefore, over the course of today's symposium, I expect that many of the speakers are going to be proceeding on the basis of a different set of assumptions about such questions than in more conventional discussions. While not all speakers will agree with what follows, I would like to sketch some of the key disagreements that many of us have with more familiar accounts.

First of all, I think many of us are going to challenge the supposed novelty of these allegedly "unprecedented challenges to international law." For example, was it always true that sovereignty played the stabilizing role that the conventional account attributes to it? Or has sovereignty itself always been a contested political instrument, sometimes reinforcing disparities in both military and economic arenas, sometimes serving as a basis for challenging those disparities, sometimes producing stability, sometimes producing instability? And above all, to the extent that it has provided stability, has the legal concept of sovereignty not often ended up reinforcing Western power in relationship to the rest of the world whether in the form of overt, classical colonialism, or in other, more subtle, contemporary forms of domination? And, finally, when compared with the forcible wrenching of non-Western economies and resources into the service of Western economic expansion in the sixteenth through nineteenth centuries, might not today's supposed "un-

precedented economic globalization” appear as something of a historical epiphenomenon?

Secondly, I think many of us proceed from different starting points in understanding the relationship between war and trade than those that inform conventional discussions of the topic. In classical discussions of the topic, we would expect to find questions like the following: do trade links have a generally peacemaking effect, or do they tend to bring economic competitors into conflict, including military conflict? The first view, the one that proclaims the peaceful and even peacemaking nature of trade, is often associated both with the classical liberalism of the nineteenth century and with the contemporary “liberal peace” school. The second position, focusing on the dark, dangerous, bellicose nature of trade, is often associated with classical Marxism, especially in the form that it took in the early twentieth century in diagnoses of the causes of World War I. By contrast, I would expect that for many of the symposium participants, these kinds of broad debates have been displaced in varying degrees by situating the war-trade conundrum in relationship to specific patterns of the distribution of power and wealth among states, regions, and populations.

From this alternative optic, before asking about the generally pacifying or militarizing effects of trade, one would first ask the question, “war and trade among whom?” In particular, one would pay close attention to the differences in relations among different Western states, differences between intra-Western relations and relations between Western states and others, and differences in the way Western economic and military dominance has been exercised in different parts of the world. I also expect that many of the speakers in this symposium would view the traditional positions in these debates as often having radically underestimated the complexity of the historical phenomena. On the liberal side, this underestimation often takes the form of a tendentious, biased, or, alternatively, overly uniform, definition of fundamental terms like “state” or “liberal state” —or even “peace.” The “liberal peace” school, for example, seems ill-equipped to come to terms with concepts like that of “structural violence” or “permanent aggression” familiar to theorists of colonialism and neo-colonialism. Conversely, Marxist and other leftist frameworks often exaggerate the coherence or unity of the self-interest of states and economic actors, often failing to consider the tensions among those interests, their ambivalence, and the shifting and inconsistent ways in which those interests affect policy positions.

I now wish to sketch some background hypotheses about how things might look if one approached these questions from a more critical perspective. In particular, I want to use the optic of looking at the way in

which the relationship between war and trade has been handled in the policy-making circles of Western centers of power both recently and in the historical past. This sketch is necessarily going to be reductionist and tendentious, for I will analyze Western policies on these issues over the past couple of centuries as divisible into two broad impulses—the “drive to incorporate” and the “desire to quarantine.” In this analysis, I draw heavily on the work of Mark Duffield,¹ though I depart from him in a variety of ways and absolve him entirely from the reductionist quality of the following analysis.

The “drive to incorporate” refers to the urge to incorporate the non-Western world into the Western military and economic system. This drive may take the form of using military power to drive the non-West into the Western economic system. Conversely, it may take the form of using economic power to drive the non-West into the Western military system. By contrast, the “desire to quarantine” refers to the aspiration to cordon off, as far as possible, the non-incorporated world so as not to disrupt military and economic relationships in the West. The drive to incorporate and the desire to quarantine are thus opposite policy impulses—though actual policy in any given period may reflect an ambivalence about the non-West and hence may oscillate between the two impulses. I caution to add that these positions are not necessarily associated with predictable political positions. Each one has been identified at various times with the political left and the political right.

The drive to incorporate was, of course, most starkly embodied in classical colonialism. As one of our symposium participants, Antony Anghie, has written, “Trade and civilization have been the principal justifications for the colonial project through the centuries.”² Anghie has demonstrated in great detail³ the ways that modern international law from its inception, as well as colonialist practice, made war and peace dependent on submission by non-Europeans to certain kinds of European economic activity.

As I have mentioned, this kind of thinking was not always associated with the political affiliations that one might expect. For example, classi-

1. See generally MARK DUFFIELD, *GLOBAL GOVERNANCE AND THE NEW WARS: THE MERGING OF DEVELOPMENT AND SECURITY* (2001). Certain aspects of Duffield’s analytical framework dovetail with my work on the relationship between the early and later parts of the interwar period. See Nathaniel Berman, *Between “Alliance” and “Localization”: Nationalism and the New Oscillationism*, 26 N.Y.U. J. INT’L L. & POL. 901 (1994).

2. Antony Anghie, *Civilization and Commerce: The Concept of Governance in Historical Perspective*, 45 VILL. L. REV. 887, 896 (2000).

3. See generally ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2005).

cal European colonialism was, at times, the project of the left—at least the center left, often called the “socialist left” in the late nineteenth and early twentieth centuries. Perhaps even more surprising to non-specialists, colonialism was, at times, opposed by the traditionalist right wing, concerned with colonialism’s negative effect on social and economic hierarchy in Europe as well as in the places that the Europeans were trying to colonize, such as India. Thus, at some moments, incorporationism was a European center-left project and quarantine a right-wing project. At other times, of course, colonialism was the project of the right wing and opposed by those on the social democratic left who were concerned by its negative effect on the resources available to build the welfare state at home.

I now shift from classical colonialism to rather more recent times. During the Cold War, the drive to incorporation characterized policy on both the military and economic planes. Such policies took a number of different forms. At times, incorporation into the Western economic trading system was a reward given to countries in exchange for military alliance, or in exchange for other kinds of military actions, such as the adoption by target countries of repressive measures in relationship to their own population. Conversely, at other times military alliance was a reward given in exchange for economic and trading benefits. Here too we find unpredictable political associations and ambiguities. For example, a tight link between trade ties and military alliance was often a liberal Democratic project in the United States. Thus, in the John F. Kennedy administration, there was a close link between the “Alliance for Progress,” a trade and development economic project, and military alliances against the left in Latin America. The rejection of incorporationism and a move towards a desire to quarantine became a populist and left project in the wake of Vietnam, and re-emerged later in the Naderite left.

The first phase of the post-Cold War period, from 1989–2001, saw both continuities and discontinuities with the Cold War. On the one hand, Cold War-style drives to incorporate the rest of the world both militarily and economically continued in relationship to certain countries and at certain times. On the other hand, the desire to quarantine prevailed in relationship to other countries and at other times. The vicissitudes of foreign policy debates in the Democratic Party can be viewed as an oscillation between these drives. Some Democrats were incorporationists in both the trade and military arenas, favoring both economic globalization coordinated by institutions like the WTO and military interventions like those in Haiti and Kosovo. Others only favored incorporationism in the economic arena, preferring policies of quarantine in military matters. The change in policy toward the Balkans between 1992 and 1995 may be

viewed as a gradual move from quarantine to incorporation. Still a third sector of the Democratic Party sought quarantine in both economic and military matters, in the form of economic protectionism and hostility to military intervention abroad.

Despite these complexities, one may draw a rough contrast between the Cold War and post-Cold War periods. The Cold War protagonists operated on the basis of a drive to incorporate as much of the globe into their respective camps as possible. By contrast, post-Cold War Western policy often seemed based much more on a willingness to measure interests in peripheral areas on a case-by-case basis, particularly from a security-based optic. When peripheral regions were perceived as presenting security threats, the drive to incorporate often prevailed on both military and economic fronts. When peripheral regions were perceived as not presenting security challenges, and this was often the case in relation to Africa, Western powers sought to wall off those areas from disturbing the military and economic relationships in the center. The security focus of much of this case-by-case evaluation, and the disagreements on what conclusions to draw from such a focus, go far to explain the oscillation between interventionism and non-interventionism during the 1989–2001 period.

After 9/11, one might have predicted that the new conditions of global fracturing and competition would unambiguously revive the predominance of the “drive for incorporation” characteristic of much of the Cold War. Indeed, some very influential opinion-makers of the “liberal peace school,” such as the journalist Tom Friedman and his academic homologues, urged that post-9/11 policy be structured by a tight link between security and trade—a very similar approach to that which prevailed during the Cold War. Others, for example those in the extremist Buchananite right wing, urged that 9/11 indicated that the United States should seek to quarantine itself from the rest of the world. Such observers argued that the United States should continue the stance proclaimed by the 2000 Bush campaign in rejecting incorporationism either on the security or economic planes, or both.

The militarization of U.S. policy after 9/11 reshuffled many of the expectations inherited from the policies and practices of the late 1990s. For example—a very striking and central example—the move from imposing sanctions on Iraq to invading Iraq was clearly a move from quarantine to incorporation. The Bush sector of the American right wing converted from neo-isolationism to a kind of grotesque transmogrification of Wilsonian internationalism. In this light, it is not surprising that many of the prominent initial actions taken by the U.S.-occupation administration in Iraq, the Coalition Provisional Authority, focused on making Iraq into an extreme example of economic neo-liberalism. These measures entailed

abolition of barriers to foreign investment and to foreign trade, and making Iraq generally available for incorporation into the Western economic system—for example, facilitating its eventual entry into the WTO.

And with these reflections, I conclude this extremely schematic sketch of an alternative framework for thinking about the relationship between war and trade in Western policy circles over the past couple of centuries. I think that something like this framework will inform many of the talks that you will hear today. Of course, since this is a meeting of international *law* scholars, I expect that most of the actual talks will not be at this broad level of historical speculation, but rather at the level of the detail of legal regimes. For example, I would expect the speakers to address the similarities and dissimilarities between the international legal regimes for trade and war at the level of doctrinal and institutional detail. Similarly, I would expect them to address, at a micro-level of historical and regional specificity, the question of whether the international legal regimes for trade and war facilitate each other, or compete with each other. And, finally, I would expect them to address the question of whether the international legal regimes for trade and war have similar or dissimilar impacts on the unequal global distribution of power and wealth.

In general, I expect that these analyses will examine the way particular legal regimes operate, and the way particular legal rules provide background norms against which both military and economic activity takes place. Moreover, I expect today's speakers to address the ways legal discourse plays an ideological role in society at large, legitimating the deployment of economic and military power, making unjust distributions of power and wealth seem natural or inevitable, and foreclosing the imagination of alternative ways of making the world.

The need for more complex analyses of the relationship between war and trade should be particularly compelling for specialists in international *law*. Both trade and war have often been viewed as quasi-natural, pre-legal phenomena, or, alternatively, as extra-legal phenomena in relationship to which law can only play an ineffective or counterproductive role. Yet the events of our era have demonstrated powerfully that law is thoroughly implicated in structuring both economic and military activity. Indeed, they have shown that trade and war as we understand and practice them are inconceivable without the background framework provided by law. Law is deeply involved in the construction of the difference between trade and war, both at the level of general conceptions of the two spheres, and at the level of the changing policies designed to manage their inter-relationship.

At the broadest level, the hypothesis guiding my own participation in this project is that the notion of “the international” as we know it might be an artifact of legal constructions of the relationship between war and trade. These constructions are historically contingent, politically contestable, and often incoherent or internally contradictory. And yet, it is precisely by identifying their malleability that we might regain hope of imagining new ways of organizing the world even in the deepening gloom of the times in which we live.

On a final note, whether or not all the participants in the symposium will recognize the assumptions I’ve outlined here as guiding their own work, I can confidently say one thing: the talks you will hear today will not be lacking in challenges to the conventional wisdom on these topics, in intellectual and historical depth, and, above all, in legal, political, moral, and even aesthetic imagination.