



CENTER FOR INTERNATIONAL SECURITY AND COOPERATION

CISAC's Annual Drell Lecture

“The Politics and Ethics of Nonproliferation”

Transcript of Remarks as Delivered

by

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With an Introduction by Scott Sagan

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CHAIR SCOTT SAGAN:

Good afternoon. I am Scott Sagan, the director of the Center for International Security and Cooperation, known as CISAC, at the Freeman Spogli Institute for International Studies here at Stanford. On behalf of CISAC, I want to welcome all of you to the annual Drell Lecture featuring Father Bryan Hehir. I am pleased that Sidney Drell, in the front row here, the founding co-director of CISAC for whom this lecture is named, is here with his wife Harriet.

CISAC is Stanford's research center devoted to the study of international security, conducting research on cutting edge topics, entering into public policy debates and training the next generation of specialists in international security. The Drell Lecture was established in 1994 by Bud and Cicely Wheelon to honor Professor Drell upon his retirement at Stanford. Bud Wheelon and Sid Drell, both physicists, made tremendous contributions to national security during the Cold War by providing technical innovation in the areas of intelligence and arms control.

Our speaker this afternoon also has provided crucial guidance to the nation on matters of war and peace. Throughout a career that has combined religious service with public service, Father Hehir has been a leading voice promoting clarity and consistency in our thinking about the complex ethical dimensions of nuclear weapons. He is currently the Parker Gilbert Montgomery Professor of the Practice of Religion and Public Life at Harvard University, and also serves as the secretary for social services and the president of Catholic Charities in the Archdiocese of Boston. In the 1980s, as the head of the Department of Social Development and World Peace for the U.S. Conference of Catholic Bishops, Father Hehir led the bishops in writing the historic 1983 pastoral letter which criticized and objected to the then-current existing U.S. nuclear weapons doctrine and urged the United States and the world to halt the nuclear arms race and to work towards nuclear disarmament.

Father Hehir has continued to provide thoughtful guidance as well in his books, including *The Moral Measurement of War: A Tradition of Continuity and Change*; *Military Intervention and National Sovereignty*; and *Just War Ethics Revisited*. We are fortunate to have Father Hehir speaking to us today on "The Politics and Ethics of Nonproliferation." Please hold your questions until the end of his talk when we will have a question-and-answer session. Please join me in welcoming Father J. Bryan Hehir.
[APPLAUSE.]

FATHER J. BRYAN HEHIR:

Thank you very much, Scott. Let me begin by expressing my appreciation to you and to CISAC for the invitation to give this Drell Lecture. Stanford for me is almost like a second home, because I have been invited often here, always treated well, always stimulated intellectually, always challenged in everything one engaged in here. CISAC was the principal reason for my acquaintance with Stanford over the last 20 years, and in a sense today is a bit of a reunion. Bud and Cicely Wheelon, Bill and Lee Perry, Sid and Harriet Drell—we were all part of a group called the Aspen Strategy Group where much of my education on the intricacies of national security came about. Scott Sagan was a graduate student at Harvard doing an extraordinary job on the book *Living with Nuclear Weapons* at the same time that the bishops were writing their pastoral letter.

So for all of these reasons, it's a great pleasure to come back, but there's a unique pleasure in being asked to give the Sidney Drell Lecture. I regard it as an honor and a privilege both because of the company that has gone before me in this lectureship and because of the honoree. Sid Drell asked me last night when we first met, or how we met. It was when the bishops were drafting their pastoral letter, and all of a sudden one day in my office my secretary called in casually and said, "McGeorge Bundy is on the line." If you had been a graduate student at my time at Harvard, Bundy's reputation for slicing and dicing sloppy arguments was legendary, and no one wanted to be submitted to that, so I picked up the phone with some trepidation about what he would think about the letter. He said two things. He said, "First, I think the bishops have a gripe and I'll be glad to help you in any way I can." Then he said, "The best way I can help you is to introduce you to Sidney Drell." He said, "He's the best man in the field on the intersection of science, technology and arms control."

I came to learn that Mac Bundy was right on that question. I then came to learn the enormous respect in which Sid Drell was held in his professional discipline of physics, but most importantly, through that professional encounter, I came to know Sid and Harriet Drell and their families and have the privilege of counting them among my closest friends.

And so I come to talk to you on the question of the politics and ethics of nonproliferation. I need to narrow this broad topic. I will talk about the proliferation of nuclear weapons, even though nonproliferation encompasses chemical, biological, nuclear and now strategic delivery vehicles. More precisely, I will talk about the proliferation of nuclear weapons and I will try to grasp what I see as a central piece of the ethical problems in this broad framework. The piece I wish to concentrate on is the relationship of the principle of nonintervention and the policy of nonproliferation, and I will try to use that central relationship to examine the broader question.

More precisely, I will try to proceed through the lecture in the following way. First, some remarks on ethics and war in general, secondly, examining the principle of

nonintervention and nonproliferation as they have evolved in the last 15 years, and thirdly, trying to use the “just war” ethic as a framework for systematically relating these two major dimensions of world politics.

First, a word on ethics and war in general, and in the age in which we now live. The ancient ethic of war, the so-called “just war” ethic dates from the Roman Empire, and in our time when we are still debating what empire means and perhaps describing the United States as one of them, the just war ethic is still part and parcel of the debate about politics, strategy and ethics. Synthetically stated, the ethic argues that some uses of force are morally acceptable but not all uses of force. It then tries to judge which uses of force are morally acceptable by asking questions about ends for which force is used, means by which it is used, the intention which drives policy, and the consequences that follow from different forms of the use of force. The ethic is a two-dimensional ethic. It is meant to be a policy ethic which can engage the discussion of politics and strategy, but it is also meant to be a personal ethic, to guide the conscience of citizens, then those who serve the state in military and diplomatic service.

This ancient ethic, which had seen so many wars and so many forms of governance, met a qualitatively new challenge with the coming of the nuclear age. The qualitatively new challenge was not simply the destructive power that was unleashed as we unlocked the power of the atom. That was the leading edge of the challenge. But the further we got into the nuclear age, the intricacies of deterrence, the relationship of offensive and defensive means of war, all of these posed authentically new questions to the ancient ethic. It, indeed, helped to bring the question of the ethics of war back to center stage, both in the general public and in a quite extraordinary burst of literature from the 1960s through the end of the century.

Now, when the nuclear age burst upon us and challenged us politically, strategically and morally, the focus of attention among the strategists and the ethicists was on the policy and the arsenals of the superpowers. Nonproliferation I think in the early days of the Cold War was regarded as a vital but secondary issue. But the collapse of the Cold War at the end of the 1980s, the end of the Cold War as the context for a nuclear world, brought the issue of proliferation of weapons to the center of the strategic and ethical agenda. To some degree, the main problem moved from a superpower problem to a systemic problem, from the problem of how the U.S. and the Soviet Union dealt with each other to the question of what it would mean to have a globe proliferated with weapons of mass destruction. So by the end of the Cold War, a new question emerged at the center—the proliferation of weapons of mass destruction and what to do about them.

Then the period from 1990 to 2005 I think brought even greater complexity to the question of nonproliferation. It was less danger now of catastrophic damage being done to the world, but there was greater moral and political complexity, so by the end of the

decade of the 1990s and on into the beginning of this century, I think one would have to say that the agenda for the ethic of war required that we address three legacies, each legacy an unfinished question, each legacy a distinct complicated problem on its own, but the really interesting thing was that the three legacies, while independent and complex in themselves, on occasion came together to form a whole greater than each of its parts.

There was first the legacy of the Cold War. The legacy of the Cold War were weapons of mass destruction which continued to exist after the war for which they were produced no longer existed. So now we deal with weapons of mass destruction in a new setting.

The second legacy was the legacy of the 1990s, the debate about intervention, military intervention, within the borders of a sovereign state.

Third, the third legacy of the new century was the legacy of terrorism, and what was the appropriate response to it, politically, strategically and morally?

Three distinct questions—weapons of mass destruction, intervention and terrorism. But at the heart of these three questions lies the issue of nonproliferation. This is not the only place where the three come together. If you look at the Iraq debate, the Iraq debate appealed to weapons of mass destruction, argued that there was a right to intervention, and argued thirdly that what clearly made that right necessary was the way terrorism could relate to weapons of mass destruction.

So Iraq brought these three legacies together into one problem, but nonproliferation does also. The way we think about each of these affect our overall judgment on nonproliferation.

So I'm trying to take as the focus of the rest of my remarks how one of these questions, the principle of nonintervention and the debates that have occurred on it relates to the policy of nonproliferation addressing weapons of mass destruction and terrorism. In fact, over the last 15 years, both the principle of nonintervention and the policy of nonproliferation have manifested a complex changing distinct narrative, but they have been parallel narratives, discussions about intervention in some quarters, discussions about nonproliferation in others. I seek to chart the changes in each discussion and then try to bring the two together.

First, the principle of nonintervention. Like the ancient ethic of war, this is also an ancient and central idea in world politics—not quite as old as the just war, but certainly more visible in recent centuries. The principle of nonintervention is at the heart of the foreign policy debate today. Many of us who argued for reasons for intervening in the 1990s were then criticized if we did not agree with the intervention in Iraq, so there are different kinds of intervention, and sorting them out is part of the discussion. In my view, to evaluate nonintervention, you have to do it in a three-step grid. Your conception

of political community is the beginning point—what is the community at stake; secondly, the use of force and your general ethic of the use of force; and then thirdly, your conclusion about the legitimacy of intervention.

To give you a sense of the complexity of this principle, let me quickly offer three snapshots historically of how the judgment of intervention has changed. The first is the medieval model of politics. The medieval model in ancient Europe often called the *respublica christiana*. It was a political community suffused with strong normative themes shaped by faith and ethics, and in that context the ethic of war was a penal ethic. Since the community presumably had a single normative view, when someone broke the rules, the rest of the community was mobilized in the style of a posse to go after the lawbreaker. This is the way Thomas Aquinas treats the just war. And in that setting, a unified political community and a penal model of war, in that setting intervention was a duty.

Indeed, one of Aquinas's predecessors, St. Ambrose of Milan, once said the following: "He who knows that evil is being done and does nothing about it is equally guilty with the evildoer." Think about that. I always understood Ambrose was a saint. I never wanted him to be secretary of state, for me had a doctrine of universal intervention—universal intervention, intervention as a duty.

The medieval model collapsed by the 14th century and between the 14th and 17th century, there emerged what we today call "the Westphalian order of world politics." Here the concept of political community is not the unified *respublica christiana*; it is the sovereign state, which emerged in this period. And, in the Westphalian model, the ethic of war in the first instance was regarded as the prerogative of the prince, the *droit de guerre*. To be a sovereign was to have the right to use force. This, of course, was contested on moral grounds, but the moralists of the just war doctrine had to retreat from many of the restraints of the Middle Ages because they did not have the political consensus to support strong restraints.

So with the sovereign state and a more limited ethic of war, one of the ways in which the peace of sovereign states was to be kept was by the principle of nonintervention. Nonintervention now became the duty, the accepted idea among states because how else would you keep states out of each other's business, and since every state claimed the right to go to war without any authorization from above, secular or religious, you clearly wanted to reduce the reasons that states could claim as justification for war. So within the space of three centuries, four centuries at most, you go from a duty of intervention to a duty of nonintervention.

The moralists never fully accepted that notion because a duty of nonintervention in absolute terms allows terrible things to happen inside political communities, and no one else is responsible for it.

The Westphalian model maintained its structure up through the middle of the 20th century. The third model is the U.N. Charter. The U.N. Charter acknowledges sovereign states as the basic unit of world politics, but it places sovereign states within the framework of the Charter, and the Charter sets some limits on sovereignty. The Charter has its own ethic of force which is reinforced by modern just-war doctrine, which argues for a narrow range of legitimate uses of force, primarily defense of oneself or others, or when consensus can be achieved action under the Charter to fulfill the obligations of Chapter 7, to meet threats against peace and security. But, while there is an ethic of war clearly defined to prevent aggression, it is much less clear about intervention. The bow to sovereignty that exists within the Charter yielded in the immediate period of the Charter's existence a clear statement of nonintervention.

So, with that background—intervention as a duty, nonintervention as a duty, and then sovereignty but still nonintervention—we entered the 1990s. We entered the 1990s and things changed dramatically for people who studied politics, ethics or strategy. For 50 years the proper nouns that had dominated our discourse were Washington, Moscow, Berlin, London, Bonn, Paris, Tokyo, Beijing. All of a sudden in the 1990s the proper nouns changed. Now the nouns were Rwanda, Sierra Leone, Haiti, Bosnia, Kosovo. Now it was no longer catastrophic damage that we feared. Now it was primitive violence within states. Now it was no longer how you prevented catastrophic damage. It was what you would do about creeping chaos.

And the world didn't really know what to do about creeping chaos for many reasons. Part of them old-fashioned reasons of realism, no vital interests in Rwanda, no immediate response to it. But there was also the normative question. Intervention was regarded as a threat to order, particularly military intervention, and so we moved through the 1990s almost stumbling from case to case, whether it was politics and strategy, wondering what to do next, or the ethics of the question. Faced with the primacy of intrastate violence, not interstate violence, we struggled with the question of is intervention a duty, a right, or the breaking of politics and law in our form of world polity?

The dynamic of the debate moved in a given direction. Increasingly both moralists and lawyers were willing to make exceptions to the rule of nonintervention. The structure of the argument moved this way. You begin with the presumption of nonintervention, because that principle is valuable in world politics. It is a principle that attracts the support of unlikely allies. Realists like nonintervention because it keeps order. Liberals like nonintervention because it provides space for self-determination, and small states of which the world is filled like nonintervention because they remember the remark of the great Australian political scientist Hedley Bull who said, "Large states don't worry about intervention because large states are not intervened upon." So the consensus around nonintervention is something that demands respect, but an absolute rule of

nonintervention does not demand respect. And so while the presumption is for nonintervention, the need is to define exceptions which can override the presumption.

By the end of the 1990s, I think three were clear. Genocide was a reason to override nonintervention, ethnic cleansing was a reason to override nonintervention, and failed states were a reason to override nonintervention. But there were two outlying cases on which there wasn't consensus. Ordinary human rights violations, a perverse phrase if there ever was one, but what I mean by it is you don't want to argue that there should be military intervention every time there are human rights violations, at least if you read Amnesty International you don't want to do that, for war would be pervasive. And more importantly, the question remained if you override nonintervention for genocide, ethnic cleansing and failed states, what should you do with weapons of mass destruction and proliferation? Should you override nonintervention in that name? In summary then, by the end of the 1990s there was an emerging consensus about nonintervention but no final policy, and the debate was overtaken by terrorism.

Now, let me turn to nonproliferation, and then come back and relate the two. The policy of nonproliferation illustrates its own evolution. Three periods can be distinguished: Cold War and nonproliferation, from the late '60s until 1990; the post-Cold War and nonproliferation, from 1990 to 2000; and then terror and nonproliferation from 2001 to 2005. The way we dealt with nonproliferation in the outset of the Cold War and up through the end of it was what might be called the "grand bargain." It was a bargain between the superpowers and the rest of the international community, or more precisely, between the nuclear powers and the rest of the international community. The content of the bargain involved Articles I–III of the Non-Proliferation Treaty, nuclear states would not share nuclear weapons with others; non-nuclear states would not accept them, but non-nuclear states would not suffer because there would be rewards for signing the treaty, especially access to nuclear power. And Article VI pledged the superpowers to level the field, if you will, by arms control and possibly disarmament.

The results of this grand bargain were impressive. John Kennedy in the early '60s expected 16 nuclear states by 1975. By 1990 we had five plus three aspirants that were always mentioned—India, Pakistan, and Israel. Today we have 188 states that are signatories to the treaty. It was a diplomatic regime. That is to say, it was about incentives and inducements and sanctions, but at least in my reading, not primarily about the use of military power to enforce the reading. It was diplomatic, I think.

The post-Cold War period, from 1990 through 2000, in fact was a time of some change. First of all, nonproliferation surfaced as the primary nuclear issue. Secondly, at the U.N., there were changes. The extension of the nonproliferation regime in 1995 was a clear victory. There was new commitment by the nuclear states about what they would do again to deal with the treaty that I will describe shortly as inherently flawed, and then in 1992,

the members of the U.N. Security Council asserted that weapons of mass destruction constituted a threat to peace and security that fell within the ambit of Chapter VII of the Charter, so the U.N. Security Council presumably was authorized to act, and this implied the use of force.

In terms of U.S. policy in the 1990s, there was a move to complement nonproliferation with counter-proliferation, to supplement nonproliferation if you will, a change because the world had changed and because of the U.S. role in the system. But when you put these two moves together, one of the interesting things it seems to me is that there's a rising salience of military threat and military options that are now embodied in nonproliferation policy. There's a tilting of nonproliferation away from primarily a diplomatic regime to a regime that has much more dimensions of coercion.

Now, this can open up to two different roads of reflection. On the one hand it can be seen as a further institutionalization of both legitimacy and enforcement located in the U.N., which undoubtedly it seems to me should be welcome. It also, however, can be seen as authorizing independent states to take military action to enforce the treaty.

So then we come to nonproliferation and terror. After 9/11, nonproliferation becomes in U.S. policy a dimension of the war on terror. I think it is fair to say that it not a universally shared conception of where nonproliferation should fit, but I think it is an accurate description of where it fits in U.S. policy. Nonproliferation became located in a larger strategy, and that strategy was defined by the famous national security statement of 2002. That strategy defined the basic threat in the world that the U.S. faced and others, according to the U.S., the basic threat was a combination of radicalism and technology. Translate that as terrorism and weapons of mass destruction. The premise of the document was that U.S. power, its primacy of power, created unique responsibilities. It then went further to argue that those unique responsibilities yielded self-defined duties, which the U.S. would define, but which the document seemed to expect that others would agree with. The challenge that was described was a challenge in which deterrence had been eroded, diplomacy had limited capacity and therefore there was a need for a change in strategy, both in fighting terror and in nonproliferation. At the core of the strategy lay preemption. Preemption of course has been much debated, and I will add nothing to the debate. It is important to distinguish preemption and prevention. Lawrence Freedman calls them both controlling strategies but of a different kind. Preemption is anticipatory response to an imminent danger. Preventive war is response to a speculative danger, and as Freedman puts it, unless you can make your case very clearly, it is hard to distinguish preventive war from aggression.

The distinctive strategy of 2002 it seemed to me was not that it talked about preemption, a tactic that was known in classical military doctrine, but rather that it raised preemption to the level of a doctrine, and when the leading state in the international system argues

that it now has the right and the duty to invoke preemption that borders on prevention, it is not simply what we will do that is at stake, but what kind of precedents we set for others. Henry Kissinger in an article in which he defended the Bush Doctrine after having said it was revolutionary and contrary to international law, then defended it but closed his article by saying of course, if others adopt this policy, it will be a big problem. That is precisely the point about precedents.

The style of the strategy was unilateralist and interventionary. Iraq was the expression of the substance and style of the policy in which nonproliferation was addressed militarily, legitimation rested with the sovereign judgment of a single state, and Iraq was seen as a precedent for other cases. So we come to the open policy question, the double debate of the 1990s on nonintervention on the one hand and nonproliferation on the other has now come together. We have expanded the notion of intervention, many of us arguing for it in 1990, and we have enhanced the military dimension of nonproliferation policy. So the policy question is should military intervention be recognized morally, legally and politically as the justifiable exception to the principle of nonintervention? The question that lay opened at the end of the '90s has now come back, and the issue is an issue of not only how you judge the case but how you set precedence.

So how should we think about this? Let me turn to the just-war doctrine so I can close my remarks, using it as a framework to relate the two pieces of this argument—nonintervention and proliferation.

First, how to evaluate the nonproliferation regime itself, its very character. I suggest that from the beginning there was an original tension in the nonproliferation regime, between the rights of sovereignty and the threat of nuclear weapons. Technically, all states were formally equal as sovereign states, but we were clearly asking some states to forego the very thing that often in the minds of many constitutes sovereignty, the right to use force and to accumulate the resources to use force according to the age in which one lives. The basic premise of the treaty was a restriction of sovereignty in support an aggregate goal of systemic safety. Inequality was to be accepted by many in the name of the stability and safety of all, and if they signed on, their security was guaranteed and rewards would be given.

Now, at the heart of the treaty in ethical terms was a saving grace, the principle of consent when freely consented to this inequality if you will, and restriction on sovereignty, and there was the right of withdrawal. The treaty it seems to me has a limited moral character. It is fragile and flawed but clearly defensible, and it is defensible because of the unique nature of these weapons and the consequence of their use. But we should remember it is fragile and flawed.

The question, then, is, Does the fragile character of the regime justify resort to force to maintain it? It is one thing to say a treaty or a regime is flawed. It's another thing to say

you now can use military force in support of it and to maintain it, and at the heart of this question lies intervention.

The 1992 U.N. security statement drew an analogy I think between going nuclear and committing aggression. Both of them were regarded as causes for the U.N. to take action including military action. Indeed, the '92 statement it seems to me of necessity argued that in the face of proliferation, the U.N. would have the right to use force and the right to intervene. What questions should we ask about this increasingly military component to nonproliferation, and expanding the right to intervention within states to uphold an order which is defensible but also fragile?

The classical just-war questions are what I will conclude with. First, how to determine just cause when there is reason to act? The problem here is not simply about the urgency of systemic safety and the nature of nuclear weapons. The problem is what constitutes a trigger, just cause, to act? Is it the intention of the state to go nuclear? Is it when they begin to plan? Is it when they produce? Is it when they deploy? Or is it some of those plus the nature of the regime? And if we invoke the nature of the regime, how far do we move in that direction? How many regimes are untrustworthy?

Secondly, the question of authority and legitimacy. The primary locus of authority to call into action enforcement of the treaty lies with the U.N. Security Council. That I think is clear in the treaty, and in the '92 statement. But what of the rule of individual states, or collectivities of states like NATO acting? Here we have the echoes of the debates of the '90s—Kosovo, no legitimation from the U.N. but just cause to act and action by an alliance. If legitimacy rests with the Security Council, is there any reason to expand at least legitimacy to individual states or coalitions of states? Do nuclear states have a presumptive legitimacy as guardians of a fragile, flawed order?

Thirdly, the last resort test. This is always a test in just war to try to avoid the final step to war. In cases of humanitarian military intervention, there is an urgency to act. Rwanda showed it. In cases of nonproliferation it seems to me the last resort test can be more stringent. We have time and can use a mix of means, incentives, sanctions as well as threats of coercion.

Fourthly, the proportionality test. The definition of this is if you're going to use force, you should not cause more harm than good, than doing the good you seek to do. But there's a tension here among three elements. There's increased institutionalization of enforcement, which I regard as positive; there is systemic safety, which is a reason to consider the use of force; but there is on the other hand, this tilt of the system toward war, either through the U.N. or through individual states.

Finally, there is the means test. I think primarily this is about constraining any use of force to non-nuclear means.

So those are the questions I would put before I would justify intervention by military means to deal with proliferation. In summary, I think the presumption of nonintervention holds in this case, that there ought to be very stringent tests for any exception, that multilateral authorization is necessary, and that the proportionality test will depend greatly on how these other tests unfold and are passed. That leaves, for all of us, complex cases but I am sure you can test me on those further than I might want to be tested. So I will cease and desist here.

Thank you. [APPLAUSE.]

CHAIR: Thank you very much, Father Hehir. We have microphones scattered throughout the audience. If you'd like to ask a question, please come up to the microphone. I will call on you, and if you could identify yourself and your affiliation before asking the question, it would be appreciated. Come to either side or the middle, please.

QUESTION: [INAUDIBLE] , petroleum engineering here at Stanford. I think the obvious question is this—the morality of nonintervention with respect to the intervention in Iraq.

CHAIR: For those who could not hear, how do you test the morality or immorality of intervention and weapons of mass destruction concerns with respect to Iraq. Father Hehir said he would be questioned on specific cases. You were absolutely right.

Fr. HEHIR: How insightful I was! Well, let me first clear the ground a bit. I was, at least insofar as it was useful at all, I argued in a number of pieces throughout the 1990s for expanding the reasons for overriding nonintervention. And so I was on record as arguing that you should relativize the nonintervention principle and relativize sovereignty, so relativization was not meant to eliminate either but it was meant to reduce in a sense their weight. So when it comes to Iraq, the transition between the '90s and Iraq of course is that 9/11 and Afghanistan, I'm just sort of taking it through the steps. My view is that the terrorist attack was a conscious meditative attack across an international boundary against civilians and it was therefore a just cause, and the reaction against both al Qaeda and the Afghan government I think was justified. That does not mean that every reaction against a government where terrorists reside necessarily is justified but in that case, I thought it was. So now one comes to Iraq. I say these things to say that I am not disposed to oppose all interventions, but I thought the Iraqi

intervention—the best way I can put it is I think it was conceived in confusion, carried forward by arrogance and has issued in chaos. [APPLAUSE.] That is my general judgment—I mean, I really mean each of those. I mean, I think it was conceived in a conception of what was possible through the use of force that was not well grounded. We now know that the pieces that were tried to be put together, each of them are challengeable—weapons of mass destruction, ties to terrorism. There was a human rights argument to deal with Saddam Hussein and perhaps a human rights argument to deal with him under humanitarian and military intervention, but clearly, you simply confuse the argument if you say that the invasion to Iraq was a humanitarian military intervention. I think it was carried forward in arrogance because taking the world into war without being able to persuade the world that it ought to go it seems to me smells of arrogance, and I think the chaos is self-evident.

QUESTION: Bill Walster, Sun Microsystems. Do you believe that torture is justifiable in the interest of getting information in order to decide about intervening, proactively or preemptively, or whatever?

Fr. HEHIR: Yeah. Again I'll sort of explain myself at each point. If you hold the just-war doctrine, there are different ethical systems that feed into it, but the way I hold it, there are some principles that are, what would be called in modern moral philosophy, deontological principles—they do not admit of exceptions. That's opposed to principles that are based on calculation of consequences. You need both of them in the just-war doctrine, but if you hold to certain principles of having deontological or intrinsic character, then I think you have difficulty justifying torture on any grounds. It is a direct assault on the dignity of the human being. Now, let us be very clear. We're talking about world politics here, not tennis, and so therefore there is tough questioning that goes in warfare, and tough questioning that goes on in terms of insurgency, so I don't mean to appear naïve, but I think there are lines that have been crossed and again, without being able to make the case because I'm not an international lawyer, but I think the whole classification process that went on by the U.S. Government about who we could hold and under what conditions, it is a classic example of a slippery slope. You start defining things in a certain way, then you start moving. I have enormous respect for the U.S. military. I have taught them in various ways for 20 years. I think

they are highly professional group of people, and I think it is wrong to impugn the whole military on the basis of Abu Ghraib, but it is not wrong to impugn a policy that makes that kind of slippage easy.

QUESTION: Ron Hassner, CISAC affiliate. I'd like to pull you back to this issue of Iraq and probe you a little more on the difference between the justice of, *jus ad bellum*, the justice before taking action and *jus in bello*, the actual manner in which action is executed because you missed those two both in your talk and in your response to the first question. Some 20 years ago, the state of Israel took an action that was against Iraq. One could argue the first clear intervention on [. . . END OF SIDE ONE] that I think we would be hard bent to say was not in retrospect a good idea, even though people are not yet lining up on the Menachem Begin's grave to whisper thank-yous, I think it wasn't in retrospect such a bad idea, and I think we would think that because it was a pinpoint action cleanly executed, very little collateral damage and resulted in an outcome that everybody except for Saddam Hussein seems to have benefited from. This suggests to me that the problem with the war in Iraq is not so much a problem of overall questions of justice, of may or may one not intervene, but a question really of execution. We screwed it up in actually executing the action. If we could have done it in an elegant pinpoint fashion, as had occurred 20 years ago, I don't think anybody in this room would have objected to it.

Fr. HEHIR: I have to disappoint you. I object to both of your points.

QUESTION: Good, I was hoping you would.

Fr. HEHIR: I do not think Orsoac was a good idea. I did not think so at the time, and I do not think so now. And it is precisely the burden of what I've tried to explain that when you license individual states in a world filled with weapons of mass destruction in various ways, I do not think it's a good idea, so I didn't then, I don't now, and while several of the people who are defenders legitimately of the war in Iraq, David Brooks is before me three days of the week arguing that it's all about execution. I was opposed to it from the outset, root, branch, entirely before they got to execution, so I must confess—I mean, I understand your position, perfectly legitimate on both points, but at least for me, neither of them are persuasive.

QUESTION: Thank you very much for a very thoughtful talk. I'm Tino Cuéllar, Stanford Law School and CISAC. I want to actually follow-up on Professor Hassner's question by asking you the question perhaps in a slightly different way and broader way. We think about how to deal with an international threat and we consider just-war theory. Of course we can decide that there are circumstances where we should go to war, but that leaves a separate question about military action, intelligence action, covert action short of war, and the question I guess if you think about it generally would be the following. Any time that we engage in war, just any time we engage in economic sanctions, we're imposing a collective sanction on entire nations. When and how should we make the choice to engage in targeted action that can remove individuals from power, perhaps to make it a little bit less dramatic that maybe you can stop quite short of execution in a different context, in the context of ending someone's life, but that nonetheless violates the sovereignty principle and yet allows us to potentially avoid the catastrophic consequences of war.

Fr. HEHIR: Well, my answer to that grows out of a consequentialist calculus, that is to say I think there is great wisdom in the executive order that I think is still in place in the U.S. Government, that the assassination of leaders of countries when we are not at war with them I believe is prohibited. I think on a consequentialist basis, which may not be the strongest basis for the argument but I'll make it at that level, I think it is good law and policy, because the problem is that I understand your point that it's better to take, you know, it's a biblical claim it's better for one man to die for the people, but that doesn't solve the problem. One of the functions of just war involves declaration. Now declaration today does not have the same meaning that it once had. But the function of declaration of the use of force is that you are willing to put on display before your own citizens and the world the reasons why you are now going to enter another country and exercise coercion, and it seems to me that kind of activity is never explained until at least afterwards, post factum. That I find troubling in a world of sovereign states, so I understand the point but it is really a consequentialist argument from your side, it's a consequentialist argument from my side, again about precedence and the way you contain sovereign states without centralized political authority.

QUESTION: I'm Whitfield Diffie from Sun Microsystems. Your last remark prompts me to say that the book I'm sure you've read called *The Fine Art of Declaring War* that contains the statement the declaration establishes the political legitimacy of the war, and I was hoping I could get you to comment in that vein. I opposed the war for two reasons, neither of which was that I foresaw it was going to go so badly. I didn't. The first was that I thought we would better have served the cause of peace by following the lead of the Security Council than by demonstrating that the U.N. could not control a giant state, but second that no war in my lifetime has so required declaration as this war because we were expanding the notions of why we should go to war which seems to me to be the point that you've been addressing.

Fr. HEHIR: Well, first I have to confess I haven't read the book, so it's time to be honest. Secondly, declaration is problematical today to some degree. I mean, the old-fashioned notion of formal declaration I can understand why states do not use that. Indeed, thirdly, I would say, you know, in defense of the Administration, they put the issue to the Congress, the Congress gave them a blank check. You can argue about what the Congress should have done, but the Administration did not go surreptitiously to war. You can argue about what information was presented, and we're doing that in post hoc fashion now, but the fact of the matter is let us not let the Congress off the hook. They wrote a blank check for this war, and only now are having their second thoughts about it, and we'll see where those lead. But I do think that there was—in fact there was quite an explanation of why we were going to war. We might now think that the explanation was built on sand, but it wasn't as if they didn't say what they were going to war for, and again, you know we ought to be I think as honest as we can with each other. The president of the United States ran on the Iraq war in 2004 and got reelected, so I mean it isn't that it hasn't been explained. It's just maybe that the critique wasn't made sufficiently.

QUESTION: David Banius [sp?] from Connecticut State University. My question is you were talking about the past. You were talking about facts of the past and how important the past is. It seems to me that we do know a little from the past, and you were talking about proliferation and talking about why we went to war. It seems to me from what happened after September 11th that most politics, you know, people have their strong, [power from the

states?]) with their own agenda which means there were many questions of why we would go to war and at the end of the day we went without having those questions answered, you know, that we want to talk. It seems to me that they are just following their personal agenda and not something else [INAUDIBLE. . . . passed all these laws and? INAUDIBLE].

Fr. HEHIR: Okay, let me try and get at that. I think it's true that there was—the question was that people gave lots of reasons for going to war but the public I think generally didn't understand it, I think was the gentleman's question and that the impact of 9/11 made people fearful so you said you had to go to war and people said we have to go to war. I'm partially with you, not totally though. I do think there was quite an extended debate. Again, you can talk about the quality of the debate, but there was an extended debate around this question, and I was surprised myself that there was this sense that we were setting a precedent and having set that precedent lots could flow from it. That was my concern always with Iraq, that it would be a precedent for further actions in the future. I think that there was a debate. I don't think it's easy to citizens to get inside it. I think now in retrospect as you say we learned from the past. But the fact of the matter was I don't think it was lack of time to have the debate. I think we didn't have it well enough, and I think the Congress was a case study of the failure of the rest of us to surface that debate and drive it forward in a way that it wasn't driven.

CHAIR: Let me ask a follow-on question here, and then hope that we can have some questions not just about Iraq but others, so this will be the last Iraq question.

Fr. HEHIR: This is called intervention. [LAUGHTER.]

CHAIR: For a just cause. Two of our speakers here at CISAC and Stanford last year were Condi Rice and Hans Blix. And they made very different arguments about the war. Dr. Rice, as is very common in the administration now, moved away from the WMD intervention argument to say this was a perfect storm, everything lined up. There were human rights violations, a government that had invaded its neighbors and concerned about WMDs so this was justified on these broad criteria. It seems to me that that is exactly the wrong thing to be saying if you're concerned about precedents

and setting them because that means the U.S. and other countries can intervene for a variety of reasons in the future. Dr. Blix, on the other hand, argued as he did in front of the U.N., that Saddam Hussein had not come clean on his weapons of mass destruction program, and that maybe the United States Government was wrong in its assessment but that Saddam was like a man who put up a sign saying “Beware of Dog” in front of his house when he did not have a dog. And that therefore, some form of intervention, not necessarily the one that was chosen, was legitimate in order to prevent the dog that that man claimed he had had, in order to prevent other states from putting up signs saying “Beware of Dog,” we have weapons of mass destruction and have not come clean with our commitment. Do you agree with Dr. Blix that some form of intervention might be justified if somebody is in apparent violation of their nonproliferation agreements, and have not come clean in terms of letting full inspections?

Fr. HEHIR:

Well, let me take both, because I think Secretary Rice’s—again, that was the privilege I had when I first came to CISAC was to meet her and have known her at a distance for a long time, but I think in the way you phrase the argument, I think there’s a principle of medieval logic that says a collectivity of reasons does not improve the final conclusion. [LAUGHTER.] And that it is cleaner to have a single reason that goes right through from beginning to end and there’s a clear connection between the case being made and the conclusion drawn. So I think the collectivity argument is weak, is inherently weak, and therefore not wise to use. Now, in terms of Hans Blix, obviously, obviously if you oppose Iraq it is not to make a case for Hussein. That’s first. Secondly, there were pieces in place that were attempting to be interventionary of a certain kind. They needed to be either strengthened or reinforced. But the argument it seemed to me that was being made that war was the only way to deal with him, and secondly, that he was so crucial in the war on terror. Now, that moves away from your question just a bit, but that he was so crucial in the war on terror that it had to be fought. The second argument I always thought was wrong, at least in my mind, that it was not crucial to the war on terror to take down Iraq, or to start a war of the proportion that Iraq would be. Your point, though, that if someone seems to be not living up to their nonproliferation—

CHAIR:

Someone has violated their —

Fr. HEHIR: Violated.

CHAIR: —nonproliferation agreement. We knew Saddam did in '91.

Fr. HEHIR: Right.

CHAIR: And then is suspected of continuing to violate and won't let inspections in, kicked the inspectors out—

Fr. HEHIR: Right.

CHAIR: —that is the just cause for some form of intervention, not necessarily the one we did.

Fr. HEHIR: Well, when you say some form, you mean some form of military intervention.

CHAIR: . . . The United Nations forcing Saddam to have inspections, under the threat of use of force if those inspections were not held, the use of force as a further force was implicit, even in the United Nations.

Fr. HEHIR: That's true, that's true. But it, I mean my general sense is I draw a big line between other forms of intervention and the ultimate Iraq deal. That's the first, the use of force. Secondly, calling that use of force in, I think the thrust of what I've tried to say is I have very limited grounds to do it, very limited grounds to do it. Breaking the obligations of the treaty which, again, it goes back to my trigger, back to my trigger. How far up the ladder do you have to go in order to say it is now time to use force. And my sense with Iraq was a continued mix of containment, which I know has been thrashed regularly, a continued pressure on inspection, which he would deny, in the context of the wider framework of the war on terror is what I would have stayed with for a much longer period of time.

QUESTION: [INAUDIBLE.] My question has a prelude to that. And then I will [INAUDIBLE] question. The prelude is that two weeks back, my niece asked me how would the car engine start, and immediately I thought about the chemical reaction in the battery and the electric forms in mechanical and combustion and all that. And I did not know how to answer a little niece, all of that. My wife came to my rescue by saying, "Oh, you just push the key into

the ignition and turn on.” [LAUGHTER.] The question is, Is it true that the proliferation and the use of force happen when there is a desire, a benefit, a capacity, and knowing or feeling that you can get away with it, then no matter what is said, it’s going to happen. Thank you.

Fr. HEHIR: I take it what you mean is those things you mentioned, a desire, a capacity and nobody else is going to oppose you is what leads to proliferation? Is that—?

CHAIR: Recent use of force, and that the just-war theory is irrelevant because people don’t pay attention to it.

Fr. HEHIR: Well, of course that is an ancient argument against an ancient ethic, which really says that human nature will find its own way in spite of norms, but I’m just sort of committed by dress and other things to a proposition that that’s not how the world runs. [LAUGHTER.] But I admit I have to keep making the case.

QUESTION: We can’t really seem to get away from Iraq. I want to ask you about the ethics—

CHAIR: Could you introduce yourself?

QUESTION: I’m Burt Richter of Freeman Spogli Institute and SLAC. I want to ask you about the ethics of not going to war. Iraq and Saddam Hussein lost the war in 1991. They invaded another country, they were expelled, sanctions were imposed, and those sanctions beggared the population, destroyed a culture, left in control a tiny minority government where the people had no power to expel them themselves, and had one continued with the kind of sanction regime that we had used up to that time, the situation for the population would only get worse and worse. So if you do not allow intervention in the sense of going into remove such a regime, what do you do then, and how do you morally justify imposing those kinds of suffering on the big population?

Fr. HEHIR: Well, I think three things. First of all, you raised the first war in ’91. I think that was a justified use of force against aggression. I think secondly, you’re right about the way sanctions function, not only in Iraq but in Haiti also, and we learned a lot during the 1990s. During the Cold War sanctions looked always appealing because they were less than war which risked catastrophic damage.

When we tried to use them, we found them a blunt instrument and in many ways you can argue that they attacked the principle of noncombatant immunity because they attacked civilians. That still leaves the third question, though, that whether in the case of Iraq the massive use of force that we needed in order to go in there was justified proportionately over against inadequate sanction regime, inadequate in the way it was executed and the way it was in place. I think there have been attempts to rethink how you use sanctions and how you employ them and I think it still would have been better to keep fooling with the sanction regime or moving it around or trying to enhance it before we went to war. In other words, I understand your point. There are times when it's morally wrong not to go to war. I thought Rwanda was morally wrong not to go to war. We were morally wrong not to go to war in Rwanda. But sort of frustration with the sanction regime, plus the argument that he had not lived up to the U.N. sanctions. The problem with that one, just in passing, the problem I have with that one was that when you couldn't convince the same body that made the regime that they would support you now, you were not on great ground, I mean retrospectively. So I'd still, it's not a perfect case by any means, but I still think proportionately, which I think was the thrust of your argument, proportionately the degree of suffering, the degree of disruption and the length of time that may follow from this, I still find it unpersuasive as an argument that we needed to remove him as an absolute essential element. So I take your point. It's we count the consequences differently.

QUESTION:

Bud Wheelon, retired bureaucrat. I'd like to respond to the guidance to move beyond Iraq. It seems to me that two things have happened. . . . I wanted to move beyond Iraq as the chairman asked us to do. Two things have happened in the last three years it seems to me. One is that we have set a new precedent, whether it was a good idea or not to, and two, we have damaged our own credibility about the allegations for taking that. What does this betoken for the future? Let's look down the next decade or two. Where do you see this taking this?

Fr. HEHIR:

Hmm. Well, let me try and think about that for just a minute. I guess what I was trying to do in the lecture was to highlight that some very fundamental rules about, rules or structures about international relations are in a process of evolution and change, and that was going on prior to 9/11, and it was both frustrating and

interesting, it really was a significant moment in the way world politics was moving. The structure of power had changed. It was no longer bipolar. It seemed to me the academics, those of us never got an agreement on what it was that when it wasn't bipolar we had this debate about intervention, we had changes with the nonproliferation centrality forced us to rethink that question. All of that was going on. And so it was a complicated but interesting time. Then 9/11 in a sense blew apart the framework, and it became the lens through which you looked at all of world politics. Understandably at first, but to go to your question about where we're headed, I think now as a result of the—not a result of the war on terror, but as a result of the Iraq debate. I think we have a highly fragmented international community, we've got a very fragmented U.S. community, we've got questions about credibility of information, which is hard enough in international relations to trust, and now there is this pervasive distrust. You put all of those together and it's not you're trying to wind the clock back to where we were and pick up on these themes, although I think we have to pick up on every one of the themes, but we're in a sense set back as we try to set some basic rules of international politics. We've been set back by the fragmentation in the system within the lead country in the world. We are not having, I think, a very impressive debate about foreign policy in the United States today. I think that's a modest statement, and that's a big problem when the United States is what it is in world politics. So fragmentation within and abroad, lack of trust—I think we're at a point where we're going to have to rebuild from square one on not every aspect of international relations but on some of these important questions. I think intervention now becomes once again a sort of bad word, just in toto, when I don't think you can treat it that way. Some interventions are necessary, other interventions ought not to be undertaken, but I think we've sort of, we've muddied the discourse as well as trust and we're still faced with fundamental questions that need address.

SIDNEY DRELL: Going further away from Iraq. Into this marvelous discussion and analysis of what we do at the intersection of intervention, nonintervention and nonproliferation. We've only been in the nuclear domain, and I'd like to know how in your thinking issues may differ when we talk about, say, biological weapons or chemical where the information of who has them and who doesn't is so clouded and we know, we can learn so much less about them.

Fr. HEHIR: Sid Drell is a respected friend who always finds the vulnerable point in any argument I make. This one I really have to disappoint you on. I purposefully limited this because I don't control that other debate intellectually. I mean, there's just is, there is so much I don't know, particularly by the biological that I don't think I have anything really useful to say and therefore if I tried to say useless things, I'll simply expose myself. . . . Bill Perry I'm sure could instruct me, but I just do not control that material in a way that I would hazard a guess.

QUESTION: Martha-Helene Stapleton, SRI International. I wanted to ask you about nonproliferation in the context of Pakistan or Iran's nuclear program and given national pride, financial incentives, the difficulty in distinguishing between dual use, who is entitled to the pursuit of nuclear technology, and what conditions do you think may be used to limit which states qualify? . . . Who is entitled to pursue nuclear technology and what conditions may be used to limit which states qualify?

CHAIR: Who's entitled to receive nuclear technology—to receive it or to produce it, did you say?

MHS: Either one. . . . Of Iran and Pakistan.

Fr. HEHIR: Well, when I try to think about this problem, I think you have to start with the sovereign equality of nation states, and so you have to start with an argument that if you live in the nuclear age, in one sense, in principle, any sovereign state has, in principle, the right to pursue access. I immediately want to cut that argument off having established it. I don't want to pursue that logic in a linear fashion, but I think I want to start that way, because if you don't start that way, then you simple inherit the logic of the treaty, and the logic of the treaty is there are sovereign states all equal but they're not equal in a very fundamental way. The world's divided into nuclear and non-nuclear, and then we start from there. So I want to start back saying that the non-nuclear states have accepted a restriction on their sovereignty as part of a grand bargain of systemic safety for them and for us. Secondly, having said that, I then think that the production of fissionable materials and other things is part of a problem of nonproliferation so that I want to set limits on that also, so I want again to cut across this sovereign equality. But we've got to do it in such a way that we provide appropriate rewards, if you

will, and procedures for preventing that access or stopping it that are regarded as legitimate, if you will—legitimate legally, politically, morally. Then you begin to say, well, what procedures would be regarded as legitimate? And that's where I'm pretty strong on saying a nonproliferation regime has to be primarily a diplomatic regime. Now diplomacy without force ultimately collapses so I'm not saying there is *never* military force, but I would say that starting where I begin, you have to go a long, long way before you say it is time to use military force to prevent them from doing that. So who has the right? In theory I think you have to start just conceptually saying everybody does? Then you want to narrow the right down, and I think the bargain the Nonproliferation Treaty tries to strike is the legitimate bargain, but it has to be constantly updated and it has to be implemented with exceeding sensitivity to what I would I call its flawed character as well as its necessary character.

QUESTION: Thank you for a very thoughtful—

CHAIR: Can you identify yourself?

QUESTION: Sig Hecker, CISAC. I want to take you a step beyond starting an unjust war and ask you does history teach us anything about how you right an unjust war.

CHAIR: R-i-g-h-t, not w-r-i-t-e.

Fr. HEHIR: Well, . . . I'm trying to think of, since you pushed it historically how I would choose cases that illustrated. I'm not sure I can do that on my feet, but let me talk about it analytically. I mean I think if you're convinced that there was lack of justification in resort to force in the beginning, then I think there ought to be some acknowledgment of that. I think secondly when you find yourself in the middle of a war that was unwisely started or unjustly started, you do face a new question. Because I opposed the war from the beginning, I do not simply think you can just leave. I do think you can admit what you did, and admit it clearly to your own people and to others, but then having admitted that, then we have to deal, the logic shifts to a consequentialist mode of argumentation, and then you can begin to ask, you know, in a sense how do you get from here to there recognizing that the steps that got you to here were flawed, mistaken, wrong, however you put it. So I think if you, as I say, if you're convinced it was wrong, the best thing to do

is to say it. The second thing to do is to recognize and to say also that a second wrong doesn't make the first one any better. So then the question is how do we think wisely about where we are and how we get from here to somewhere else, which is necessitated by the fact maybe that we shouldn't have been here in the beginning.

CHAIR: I'm going to give Dr. Bill Perry the last question, so Bill?

BILL PERRY: Bill Perry, CISAC and School of Engineering. Now Bryan, in your truly excellent talk, you quite appropriately drew a sharp line between the use of military force and all other actions you might take. . . . Among those other actions prominently stands diplomacy. My reading of history is that diplomacy often has been most successful when it was coercive diplomacy. That is, diplomacy that threatened the use of force.

Fr. HEHIR: Yes.

BILL PERRY: Now my question to you, then, is what side of this line do you put coercive diplomacy? Is it on the side of use of force or is it on the other side? Because understand, when you threaten the use of force you have to be prepared to use it.

Fr. HEHIR: Yes. I think actually coercive diplomacy still lies on the side of a line that is called diplomacy, but I take your point that if you make the threat in some circumstances you've got to be willing to use it, so then you cross the line, but coercive diplomacy because you're absolutely right, there is no diplomacy without the possibility of force in an anarchical world. I accept that. My concern was the way I think nonproliferation has tilted toward more and more invocation of military options, and so I don't like the drift, but because I don't like the drift doesn't mean I never would use it and secondly, I think coercive diplomacy still fits in my conception of diplomacy, because it identifies the terms under which you will then cross the line and that's really what is both good strategy and good ethics is about.

CHAIR: Let us before concluding thank three individuals. First we should thank Bud Wheelon for endowing this lecture series, so Bud, thank you very much. [APPLAUSE.] Second, we should thank Sidney Drell for both inspiring this lecture series but also for all the wonderful work he did both for the U.S. Government as a consultant and at SLAC and as the founding director of CISAC.

Thank you, Sid. [APPLAUSE.] And last of course, please join me
in thanking Father Bryan Hehir for an excellent talk.
[APPLAUSE.]