

Detention in the ‘war on terror’: legal norms, strategic cultures and the future of the transatlantic security community

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ABSTRACT:

The status and the treatment of detainees in the ‘war on terror’ is one of the major contentious topics in current transatlantic relations. This article aims to explain the reasons for transatlantic disunity on this issue as well as to assess its impact on the stability and the persistence of the transatlantic security community. I argue that divergent strategic cultures are the main source of transatlantic differences in attitudes towards the question of detainees. In particular, strategic culture affects the way in which foreign policy elites and the military perceive of the threat emanating from transnational terrorism and the adequate response to it. These perceptions, in turn, influence a state’s approach to legal provisions pertaining to detainees. Given this close relation between strategic cultures and detention policy, any attempt to work towards a transatlantic rapprochement on this issue will have to take into account more comprehensive differences concerning threat perceptions and the nature of military operations in response to those threats.

Introduction

The western response to 9/11 started with a forceful reaffirmation of the transatlantic security community's¹ close ties: for the first time in 52 years, NATO invoked Article V of its defence charter, thereby indicating the readiness of all NATO member states to regard 9/11 as an attack on the alliance. It did not take long, however, until this transatlantic unity began to dwindle. In its military response to 9/11, the US preferred 'coalitions of the willing' over the established transatlantic security framework within NATO (cf. Rees, 2006: 112ff.). In 2003, with the US-led war against Iraq, it seemed that the traditional transatlantic security cooperation had reached a historical low point – not least due to the disunity among the European governments on whether or not to support the war (cf. Cox, 2005: 217).

Against this background, some observers argued that the main challenge for the transatlantic security community was the US' post-9/11 preference for unilateral action and/or flexible bilateral cooperation (cf. Rees & Aldrich, 2005: 914, Berenskoetter, 2005: 84ff.; Risse, 2003: 16; Daalder, 2003: 154). However, it soon became evident that it was not only the institutional framework of the transatlantic security community that was apparently on the verge of unravelling, but also its underlying set of shared norms and values. In particular, this pertained to the status and the treatment of detainees in Afghanistan and Iraq.

At the beginning of 2002, it first became apparent that the question of detainees might develop into an issue when the Bush administration decided that neither Al-Qaeda nor the Taliban would be granted Prisoner of War status when captured in Afghanistan (Shanker & Seelye, 2002), whereas its European partners involved in the Operation Enduring Freedom (OEF) had a different view. However, transatlantic differences in approaches to the law of armed conflict are not new² and the experience of previous joint military operations had shown that these differences could be worked out quite pragmatically. Consequently, apart from some critical statements from the European side of the Atlantic, the issue did not receive much attention. This, however, changed when allegations of the mistreatment of detainees in Abu Ghraib, Guantánamo and

¹ Emanuel Adler and Michael Barnett (1998: 30) define a security community as a transnational region of states 'whose people maintain dependable expectations of peaceful states'. Such an entity rests on three factors: a set of shared norms and values, a pattern of social and economic interaction and the existence of a multilateral institutional framework (cf. Risse, 2003: 6ff.).

² Most notably, all European states ratified Additional Protocol I (1977) to the Geneva Conventions, whereas the US refused to do so. See Aldrich (1991).

elsewhere became public in 2004. At that point, European governments became very alert to the issue of detainees in Afghanistan and Iraq and came to regard it 'as illustrative for differences in standards that circumscribe the potential for closer transatlantic cooperation' (Rees, 2006: 115) in the effort to combat terrorism.

Where do these cracks in the normative foundation of the transatlantic security community stem from? And how will they affect its stability and persistence? In this paper, I will argue that the contrasting US and European approaches to the treatment of detainees in the so-called 'war on terror' can be attributed to differences in their respective strategic cultures. In particular, I will show that a state's past military experience has a decisive impact on how its political and military elites perceive the nature of military operations in the framework of the 'war on terror', e.g. as an entirely 'new' kind of war, as a number of counter-insurgency campaigns or as 'policing' by military means. These perceptions, in turn, affect a state's approach to the status and the treatment of detainees in the 'war on terror'.

The article provides a comparative study of the US-American, British and German approach to the legal provisions pertaining to detainees in the light of each state's respective strategic culture. It is based on an analysis of official documents such as military doctrines, field manuals and official speeches as well as in-depth interviews with policy-makers and senior military staff in the three countries. The *US' strategic cultural approach* to the 'war on terror' (summarised under the heading of '*new war*') is built on the assumption that the 'war on terror' is an entirely new kind of war. Viewed from this perspective, it is difficult to apply the law of armed conflict (LOAC) most part of which was drafted 30 or more years ago to this new war – not least because the opponent would take advantage of any legal constraints western states subject themselves to. In order to retain and/or to regain its military advantage, the US should work toward a relaxation of legal standards, in particular those pertaining to detainees, the argument goes. *British strategic culture* ('*hearts and minds*'), by contrast, is built upon a long historical experience of unconventional warfare. Thus British policy and military elites tend to conceive of the 'war on terror' as a series of counter-insurgency campaigns. The underlying idea of the British approach is that particularly in counter-insurgency campaigns, respect for the LOAC in general and the lawful treatment of detainees in particular are crucial in winning the hearts and minds of the local populace. *German strategic culture* ('*policing*') is characterised by the belief that the 'war on terror' – as almost every other military

operations Germany is currently involved in – is best perceived as a kind of ‘international police action’. In contrast to the US approach, adherents of this perspective argue that this type of armed conflict is insufficiently legally regulated. They tend to perceive terrorism suspects as a kind of ‘international criminals’ who fall somewhere in between the provisions of the LOAC on the one hand and domestic law and international human rights law on the other.

The remainder of this article is divided into four sections. In the next section, I will discuss theoretical approaches that seek to account for the current tensions in transatlantic relations with respect to the question of how well they explain the transatlantic conflict over the issue of detainees. The third part will be devoted to an inquiry into the US’, the UK’s and Germany’s approach to the issue of detainees in the ‘war on terror’ in the light of their respective strategic cultures. In the fourth part I will examine how these divergent strategic cultures might affect the stability and persistence of the transatlantic security community. In the conclusion, I will summarise my argument and my findings.

Explaining the cracks in the normative foundation of the transatlantic security community

The majority of scholars studying the development of the transatlantic security community after the end of the Cold War have concentrated on the shift in the global distribution of power this historical event implied. An alternative approach seeks to explain tensions in transatlantic relations by focusing on the divergent impact 9/11 had on either side of the Atlantic. Yet others point out the relevance of domestic politics in both the US and Europe in order to explain the current cracks in the normative foundation of the transatlantic security community.

Unipolarity

The tensions that have developed within transatlantic relations since the end of the Cold War are often attributed to the shift in the distribution of power this event implied. The end of the Cold War is either regarded as giving rise to a ‘unipolar moment’ (Krauthammer, 1990) in global history or as the passage to a long-lasting

and stable unipolar world order (Wohlforth, 1999).³ Against this background Robert Kagan (2002, 2003; cf. Daalder, 2003: 151) argues that it is this historical shift towards unipolarity and the huge power disparities between the US and Europe that cause differences in their respective strategic cultures and thus shake up the normative foundations of the transatlantic security community.⁴ Simply put, Kagan holds that after the end of the Cold War, Europe retreated from global power political ambitions into a ‘world-apart status’ (Kagan, 2002: 23), whereas the US was left alone with ‘the burden of maintaining global security’ (ibid: 25). From this perspective, one could explain the transatlantic rift concerning detainees in the ‘war on terror’ by pointing out that the Europeans, unwilling to use military force beyond their own borders, can afford to indulge in the niceties of the LOAC, whereas the US, being the primary target of globally operating terrorism networks, is forced to retain its freedom from legal restrictions in order to be able to effectively combat this opponent.

There are, however, two sets of problems with this explanation: firstly, European states *are* projecting military force beyond their borders, both in Afghanistan and Iraq. In fact, their very involvement in these military operations makes the issue of detainees so contentious, as joint military operations with the US confront Europeans with the problem of how to safeguard interoperability while at the same time adhering to their legal obligations. Secondly, and more importantly, Kagan’s notion of ‘strategic culture’ ultimately reduces the latter to a function of a state’s power resources. While these certainly affect strategic culture, the concept of strategic culture covers a far broader range of aspects, such as an actor’s past military experiences, its civil-military relations and its broader political system and culture (cf. Johnston, 1995; see also below). Moreover, the current debate about the status and the treatment of detainees was preceded by a less acrimonious but nonetheless long-standing divergence on the topic beginning with the US’ refusal to ratify the 1977 Additional Protocol I to the Geneva Conventions – at a time when the world order was essentially bipolar.

³ For a slightly different approach, see Samuel Huntington, who argues that the post-Cold War order is ‘a strange hybrid, a uni-multipolar system’ (1999: 36). According to Huntington, it is precisely this hybrid condition that gives rise to tensions in transatlantic relations.

⁴ See also Rosemary Foot, who gives the unipolarity argument a constructivist twist by stating that the US used the images of Guantánamo and Abu Ghraib as a symbolic representation of unrestrained power, ‘as a *political* version of military ‘shock and awe’ tactics, above all to demonstrate mastery over the enemy and to try to intimidate would-be terrorists, their sympathizers or other opponents’ (2006: 138).

The impact of 9/11

A second line of argument holds that the terrorist attacks of 9/11 had a different impact on either side of the Atlantic. Being the direct target of the attack, the US quite naturally had the strongest reaction to it, the argument goes: 'Because America and Europe experienced 11 September differently, their policy convergence on dealing with the threat represented by these attacks has been tactical rather than strategic' (Daalder, 2003: 157; cf. Moravcsik 2003: 76; Katzenstein, 2002: 7). According to this perspective, transatlantic differences in the threat perception lead to divergent responses to the threat, including the question of how to deal with detainees in the 'war on terror'.

While it is certainly true that different threat perceptions are part of the reason why European states and the US address the issue of detainees in different ways, it would miss the point to ascribe them to the experience of 9/11 alone. Threat perceptions and strategic choices build upon experiences an actor made with threats and opponents in the past rather than being conditioned by one single event. Actors tend to perceive threats through the lens of past experiences (cf. Gray, 1981: 35; Snyder, 1977: 16).

Domestic politics on either side of the Atlantic

A third approach to explaining cracks in the normative foundation of the transatlantic partnership concentrates on domestic forces within the US, European states and/or the EU foreign policy establishment. According to Thomas Risse, 'it is domestic politics, stupid!, rather than structural changes in the international system that has made the Atlantic a wider ocean' (2003: 17). Risse depicts the first Bush administration as comprising three branches: a moderate branch committed to traditional conservatism headed by figures such as Colin Powell and supported by the US military, a branch of offensive realist neoconservatives such as Dick Cheney and Donald Rumsfeld and, finally, a group of liberal neoconservatives committed to regime change policies such as then Undersecretary of Defense Paul Wolfowitz (ibid: 11-12). 9/11, Risse argues, shifted the domestic balance of power towards the liberal neoconservative branch and their ideal of promoting democracy and human rights, if necessary by military means (ibid:13). The consequences this shift in US-American domestic politics had for transatlantic relations are exacerbated by the fact that the Europeans do not speak with one voice either. Rather, they are divided between 'Gaullists', 'Atlanticists' and

'liberal internationalists', all of whom are, however, more oriented towards multilateral approaches to world politics than their US-American counterparts (ibid: 15).

This approach is promising inasmuch it highlights the impact of domestic power shifts on threat perceptions and security policy. Yet it is problematic to directly apply it to the transatlantic split over detainee policy. Firstly, in the case of detainees, it was the offensive realist neoconservatives, Donald Rumsfeld and Dick Cheney, who were most influential in developing the US-American detainee policy, and not so much the liberal neoconservatives around Paul Wolfowitz. Secondly, it is again highly unlikely that changing governing coalitions completely reverse existing orientations with respect to the treatment of detainees. They might modify them, but they are not able to completely replace them.

Taking strategic culture seriously

According to Alastair Johnston's definition, strategic culture is a system of meaning that encompasses first, general assumptions about a state's security environment pertaining to 'the role of war in human affairs', 'the nature of the adversary and the threat it poses' and 'the efficacy of the use of force'; and second, more specific assumptions 'about what strategic options are the most efficacious for dealing with the threat environment' (1995: 46). As such, it also includes specific approaches to and interpretations of the law of armed conflict, inasmuch as the latter consists of constitutive and regulatory norms aimed at governing the conduct of armed conflict (cf. Farrell 2005).⁵ Strategic culture is more than an intervening variable mediating between the hard facts of balance-of-power politics and strategic behaviour (cf. ibid: 41). It is a system of meaning through which actors perceive and communicate about those hard facts in the first place. In this way, it is constitutive of an actor's security environment. That is not to say that objective realities and hard facts do not exist; rather, in order to become intelligible to actors, they necessarily have to enter the realm of language and symbolic representation: 'The policymaker, the military

⁵ On the difference between regulatory and constitutive norms in security cultures, see Katzenstein (1996: 18ff.). Constitutive norms pertain to an actor's identity, whereas regulatory norms aim at constraining their behaviour. The law of armed conflict covers both aspects inasmuch as it defines categories of actors in war (combatants and civilians) and aims at regulating their respective behaviour.

professional, and the concerned citizen, cannot approach contemporary challenges in a strategic cultural void' (Gray, 1999: 60).

The main users and reproducers of strategic culture are military and foreign policy elites, with the broader political public as an 'ideational milieu' that demarcates the broader boundaries of possible strategic postures (Lantis, 2002a: 108f.). Military and foreign policy elites can use strategic culture in an instrumental way; however, it is not entirely at their disposal. Rather, by using it, they become entangled in pre-existing structures of meaning (cf. Farrell, 2005: 458f.).

Strategic culture is semi-permanent, meaning that it is a relatively inert system of meaning perpetuated by military and political organisations, but it is also to some extent open to change, albeit change will take place incrementally and at a slow pace (Gray, 1999: 52; Snyder, 1977: 9). External shocks are one possible source of change (cf. Lantis, 2002a: 111). At the same time, it is plausible to assume that changes in domestic power relations may lead to modifications of a state's strategic culture.

Finally, there is no deterministic causality between strategic culture and strategic choices. Strategic culture provides a pattern of perception and communication through which actors make sense of their security environment and through which they justify their strategic choices. It thereby limits available ways of framing situations and options of action, but it does not determine them (cf. Yee, 1996). Given that strategic culture is closely linked to institutional memories of the military and the state's organisational foreign policy infrastructure, it emphasises historical experience stored in those organisations, more precisely, the lessons those organisations learnt from historical experiences and the way in which they reinterpret them in the light of new events.

Detention in the 'war on terror'

In January 2002 the US administration determined that the 1949 Geneva Conventions would apply neither to Al-Qaeda nor to the Taliban in Afghanistan.⁶ Twenty days later, on 7 February, George Bush was forced to revise that decision after both France and the UK had threatened that they would not allow their forces to turn over Al-Qaeda or Taliban fighters captured in Afghanistan to the US authorities should the US

⁶ For the legal reasoning behind that decision, see John Yoo, Memorandum for William J. Haynes II 'Application of treaties and laws to al Qaeda and Taliban detainees', 09/01/2002, in Greenberg & Dratel (2005: 38-79).

government stick to its decision. As a consequence, Bush declared that while the Geneva Conventions would apply to the Taliban, they would not apply to Al-Qaeda and neither the Taliban nor Al-Qaeda would be granted prisoner-of-war status (Shanker & Seelye, 2002; Greenwood, 2002: 316). As a matter of policy, however, detainees would be treated humanely. European governments, in contrast, left no doubt that they did not intend to relax the legal provisions pertaining to detainees in the 'war on terror'. Concerning the question of whether captured Taliban and Al-Qaeda fighters would be granted prisoner-of-war status, they argued that this had to be determined on a case-by-case basis rather than by a general presidential verdict (cf. Garraway, 2004: 113ff.).

While it was not generally disputed that the applicable law of armed conflict allows for the category of 'unlawful combatants' not entitled to prisoner-of-war status and the privileges attached to it, the US administration was criticised for assuming that this category of fighters would not enjoy *any* legal protections under the LOAC (cf. Roberts, 2007; Greenwood, 2002). The provisions specified in Article 75 of the 1977 Additional Protocol to the Geneva Conventions are widely regarded as reflecting customary international law concerning minimum standards pertaining to battlefield detainees (cf. Roberts, 2002: 23). In addition, most states would agree that detainees have certain non-derogable rights deriving from international human rights instruments – a view the US apparently does not share (cf. Garraway, 2006: 38ff.).

The question of the *status* of detainees in the 'war on terror' is crucial inasmuch as it affects three particularly contentious aspects of their *treatment*. Firstly, there is the question of how detainees can be tried and for how long they can be held without trial. The US announced to try detainees before military commissions, whereas most European states were deeply suspicious of this option and would have preferred trials before either international war crimes tribunals or domestic civil courts (Garraway, 2004: 119). Until 2006, however, the US failed to set up the military commissions it had promised. In large parts, this was due to difficulties in gathering evidence against the detainees that could be used before such commissions (Roberts, 2007; Golden, 2004b). This, in turn, triggered the question of for how long detainees could be held without trial. Many lawyers argue that even if detainees do not enjoy the protections of the prisoners-of-war status, they can only be detained until the termination of hostilities (Dinstein, 2004: 50). The US, however, seems to imply that some of them have to be held indefinitely (White, 2005).

Secondly, there was the question of which interrogation techniques were permitted. In a memorandum of 1 August 2002 US Assistant Attorney General, Jay S. Bybee, restricted the definition of torture to physical pain ‘equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death’ and mental pain ‘result[ing] in significant psychological harm of significant duration’.⁷ According to this definition, interrogation techniques the European Court of Human Rights (ECHR) determined to be prohibited⁸, such as isolation, sleep deprivation and wall standing, would be permitted for use by US personnel on detainees in the ‘war on terror’.⁹

The third issue relates to the question of ‘extralegal renditions’, that is, the transfer of detained persons to other states. According to Article 49 of the Fourth Geneva Convention, protected persons must not be removed from the occupied territory and transferred to another state – for instance, Guantánamo Bay in Cuba, or to any other place where legal provisions pertaining to the treatment of detainees were less likely to be enforced. Given that the US administration did not consider Al-Qaeda members to be protected by the Geneva Conventions, the US’ legal position was that they could be removed from Afghanistan when captured there. In Iraq, the situation was slightly different, since the US accepted that the Geneva Conventions would apply in that theatre. Yet the Bush administration reinterpreted them so as to render the removal of ‘unlawful combatants’ from Iraq admissible (Pearlstein 2006: 1262).¹⁰

Whilst policy-makers on the European side of the Atlantic made clear that they did not share the US’ approach to detention in the ‘war on terror’, they largely avoided to voice too strong criticisms of it – at least in public. The British government raised the issue in its diplomatic relations with its US counterpart only in connection with the British citizens held in Guantánamo. When asked about the detention policy in Afghanistan in the House of Commons, Geoff Hoon, then Secretary of Defence ‘stated that he had no doubt that the US was acting in accordance with international law’ (Happold, 2004: 630). In Germany, it was mainly the Bundestag that –

⁷ Jay S. Bybee, Memorandum for Alberto R. Gonzales ‘Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A’, in Greenberg & Dratel (2005: 172).

⁸ Ireland v. The United Kingdom – 5310/71 [1978] ECHR 1, 18/01/1978.

⁹ Cf. ‘Working Group on Detainee Interrogation in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations’, 04/04/2003, in Greenberg & Dratel (2005: 340ff.).

¹⁰ See Jack Goldsmith, Memorandum for Alberto R. Gonzales ‘Permissibility of Relocating Certain “Protected Persons” from Occupied Iraq, 19/03/2004, in Greenberg & Dratel (2005: 366-380).

apparently not very successfully – called on the German government to publicly condemn the US’ approach to detention in the ‘war on terror’.¹¹ Within the framework of military operations, however, the issue of detention did not seem to raise any doubts on transatlantic military interoperability in the early years after 9/11. Non-US OEF troops operating in Afghanistan handed over detainees to the US – simply because the US was the only nation running detention facilities in that theatre.¹²

While the Europeans largely neglected the issue of detainees in the early phase of the operations in the ‘war on terror’, they became very alert to it after allegations of ill-treatment of prisoners in Abu Ghraib and Guantanamo became public in 2004. It also became clear that with the expansion of NATO’s International Stability and Assistance Force (ISAF) to the whole of Afghanistan starting in 2005, ISAF troops would have to handle more detainees than before. As a result, ISAF changed its detainee policy (cf. Dempsey, 2005). Memoranda of Understanding (MOUs) concluded between ISAF members and the Afghan government in 2005 and 2006 rule that detainees have to be handed over to the Afghan authorities within 96 hours after their arrest. While this step put states participating in ISAF into a legally safe position, it led at the same time to a ‘Babel-like set of arrangements and agreements in present-day Afghanistan’ (Roberts, 2007: 200). Initially, NATO had attempted to negotiate a joint agreement covering all NATO member states. This, however, failed due to disagreement over the provisions the joint MOU should include. In particular, there was disagreement over the question of whether MOUs should prohibit the transfer of detainees from Afghan custody to third states, i.e. also to the US. The British MOU does not rule out that possibility but requires ‘prior written agreement of the UK’¹³, whereas the German MOU forbids any relocation of detainees from Afghanistan.¹⁴

Around the same time, allegations about a CIA-run systematic programme of ‘extralegal renditions’ of terrorism suspects became public (cf. Grey, 2006), which

¹¹ See, for instance, Antrag der FDP-Bundestagsfraktion ‚Für die Einhaltung der grundlegenden Menschenrechte und Grundfreiheiten in Guantanamo Bay‘, 10/12/2003; URL <http://dip.bundestag.de/btd/15/021/1502175.pdf>.

¹² The situation in Iraq was different inasmuch as UK forces had their own detention facilities there.

¹³ Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Islamic Republic of Afghanistan concerning Transfer by the United Kingdom Armed Forces to Afghan Authorities of Persons Detained in Afghanistan, Appendix 3 to the House of Commons Select Committee on Foreign Affairs Second Report, July 2006.

¹⁴ Interview Bundesministerium der Verteidigung (BMVg), Bonn, 04/04/2007.

once again increased the attention to the issue of detention. On the one hand, commissioned reports by the Council of Europe (cf. Marty, 2006, 2007) charged European states of tacit complicity in abductions of their own citizens by the CIA, thereby calling into question the Europeans' attempts to delineate their approach to detention in the 'war on terror' from the US' practice. On the other, in some states these charges resulted in activities by courts or parliaments, which tried to firm up the legal bases of their states' detention policy.

In the meantime, the US also partly revised its detainee policy. This mainly resulted from pressure exerted by human rights NGOs and UN bodies and by decisions by US domestic courts (cf. Foot, 2006: 140). After a number of Supreme Court decisions challenging the US' position on detention in the 'war on terror'¹⁵, on 17 October 2006 the US government adopted the 'Military Commissions Act', which provides a clearer legal framework for the handling of detainees in the 'war on terror' (Roberts, 2007: 200), but has also been criticised for restricting the rights of the judiciary to review the government's detainee policy (Shane & Liptak, 2006). Changes in the US' detainee policy are also reflected in the 2006 Army Field Manual on the treatment of detainees, which states that detainees have to be treated in accordance with the Geneva Conventions.¹⁶ The Army Field Manual, however, only applies to US military personnel, not to the CIA. The CIA's standards for detention and interrogation are determined by presidential executive order, which need not to be made public (Smith, 2007).

US strategic culture and the treatment of detainees: 'New War'

Two aspects of the US' strategic culture are of particular importance when it comes to explaining the US' detainee policy in the 'war on terror'. Firstly, the US' strategic culture is mainly concerned with conventional warfare. Secondly, and related, after 9/11 there was a strong tendency in parts of the Bush administration to regard the 'war on terror' as an entirely new kind of war and as completely different from how war had been fought in the past. This, in turn, led to the assumption that the law of

¹⁵ Hamdi v. Rumsfeld (2004), concluding US citizens in the 'war on terror' are to be granted habeas corpus rights; Rasul v. Bush (2004), concluding non-US nationals have habeas corpus rights, and, finally, Hamdan v. Rumsfeld (2006), ruling that the US' military commissions violate Common Article 3 of the Geneva Conventions.

¹⁶ Field Manual No. 2-22.3, 'Human Intelligence Collector Operations', Army Headquarters, Washington, DC, September 2006.

armed conflict, most parts of which had been drafted 30 or more years ago would not be applicable to the 'war on terror'.

The US' experience in Vietnam and the eventual failure of its campaign there are widely regarded as an illustration of its forces' inability to adapt to the requirements of unconventional warfare. John Nagl (2005), for instance, argues that the US military's fixation on big, conventional wars prevented it from learning the right lessons early on in the campaign and therefore eventually failed. The US' implementation of a refined counter-insurgency doctrine in El Salvador in the 1980s proved to be less than a success (Schwarz, 1991) and according to Bruce Hoffmann (2004), counter-insurgency campaigns continue to be the US military's weakness.¹⁷ The US forces' persistent focus on conventional war led to a general lack of subtlety in their approaches to unconventional campaigns. This is mainly reflected in their use of massive firepower, the heavy reliance on technology and, in the field of intelligence, a clear preference for technical intelligence (TECHINT) over human intelligence (HUMINT) (cf. Thornton, 2007: 150ff.). Moreover, when it comes to HUMINT, the US army intelligence forces' interrogation training and technique before 9/11 was mainly geared towards a conventional opponent in a Cold War scenario. The techniques taught and used aimed at extracting information about the location and designation of massed enemy forces (Mackey, 2005: 45). Consequently, US army interrogation personnel had virtually no training in unconventional scenarios and were unprepared for the opponent they are facing in the 'war on terror'. In addition, they were understaffed, overwhelmed with large numbers of detainees of questionable intelligence value and under huge pressure to produce results (ibid.). This, in turn, led some of the army interrogation personnel to adopt techniques that came close to crossing the boundaries of the Geneva Conventions (ibid.).

This bottom-up challenge to the Geneva Conventions coincided with a more forceful, top-down policy to relax the legal provisions pertaining to detainees. The justification for this move usually starts with the assumption that the 'war on terror' is an entirely new kind of war. As President Bush explained shortly after 9/11, 'the mindset of war must change. [...] It is a different type of battlefield. It is a different type of war.'

¹⁷ Recently, however, there has been some change in the US' approach to counter-insurgency. Notably, the new joint Army and Marines counter-insurgency field manual by Gen. David Petraeus heavily draws upon British counter-insurgency doctrine, but also the Marines' own experience and doctrine. See David H. Petraeus and James F. Amos, 'Counterinsurgency', FM 3-24 (Washington, DC: Headquarters Department of the Army, 2006). Cf. also Chin (2007).

(quoted in Younge, 2001).¹⁸ Against this background, the 1949 Geneva Conventions were assumed to be outdated (cf. Wippman, 2005).¹⁹ Moreover, as the opponent itself is said to show scant regard for the LOAC, binding US forces to its provisions would not only unduly restrict their military efficiency, but would also provide no disincentive for the opponent to engage in unconventional tactics (Yoo and Ho, 2003: 10). This is not entirely new to US strategic thinking. The US' main objection to the 1977 Additional Protocol I was that it grants too much legal protection to unconventional forces (Aldrich, 1991). After 9/11, however, this strategic reasoning seems to be amplified in parts by a perception of the opponent as 'uncivilised' in contrast to the 'civilised' western forces (cf. Mégret, 2006).²⁰

On the whole, though, the idea of holding detainees in a legal grey zone is a relatively new element in US strategic thinking and it was by no means unanimously shared within the administration and the military. On the contrary, it was initially mainly promoted by Vice-President Dick Cheney and a small group of White House counsels (cf. Golden, 2004a). Donald Rumsfeld and the Pentagon became involved only later (Golden, 2004b), whereas Secretary of State Colin Powell criticised the government's plans for putting US soldiers at risk of being ill-treated as well when captured in the 'war on terror'.²¹ A second major source of challenge for this new perspective on the detention was parts of the military itself, that is higher-ranking officers and Judge Advocate Generals (JAGs). Their professional training and ethic before 9/11 was based on compliance with the Geneva Conventions and human rights law. The new strategic reasoning promoted by parts of the Bush administration clearly clashed with the officers' more inert set of norms (cf. Pearlstein, 2006: 1276). Their ability to influence the US' detainee policy in the 'war on terror' proved to be limited, however – not least due to the primacy the US grants to civilian control over the military (ibid: 1278).

UK strategic culture and the treatment of detainees: 'Hearts and Minds'

¹⁸ Bush, in turn, is echoed by Gonzales in one of his memoranda to the president: 'As you have said, the war against terrorism is a new kind of war.' Memorandum by Alberto R. Gonzales 'Decision re Application of the Geneva Convention on Prisoners of War to the Conflict with Al Qaeda and the Taliban', in Greenberg & Dratel (2005: 119).

¹⁹ Interview US delegate to NATO Headquarters, Brussels, 09/02/2007.

²⁰ 'You have people with absolutely no morale. [...] Just no rules, no anything, just savagery.' Interview US delegate to NATO Headquarters, Brussels 09/02/2007.

²¹ See Colin L. Powell, 'Draft Decision Memorandum for the President on the Applicability of the Geneva Convention to the Conflict in Afghanistan', in Greenberg & Dratel (2005: 122-125).

British strategic culture is often depicted as diametrically opposed to the US-American one, in particular when it comes to unconventional campaigns (Kaldor, 1999; Mockaitis, 1995). In contrast to the US' record of failure in this field, the British are frequently perceived as champions in this discipline. This is clearly exaggerated, given that also the British failed in some of these campaigns (Palestine, Aden), or had at least difficulties in adapting to the requirements of the conflict environment (Cyprus, Northern Ireland). However, British counter-insurgency doctrine is widely considered superior to other nations' approaches to this type of conflict, even though the British not always succeed in properly implementing it.

The British strength in unconventional campaigns is mostly regarded as a legacy of its colonial history: 'Imperial policing, intrastate security, and counterinsurgency have been considered normal roles for the British Army [...] for most of its history it has viewed its expeditionary role to fight on continental Europe as aberrant and peripheral.' (Cassidy, 2005: 58). This history had a major impact on shaping the British counter-insurgency doctrine. Its main tenets are an integrated civil-military approach and an emphasis on political and economic reform, a philosophy of minimum necessary force, i.e. the use of military force with restraint, and, finally, a high degree of flexibility and adaptability through decentralised command and control structures (cf. Nagl, 2005; Cassidy, 2005; Thornton, 2004). The key objective of this approach is to divide the civilian populace from the insurgents – winning the civilian populace's 'hearts and minds' – and thus to cut off the insurgents from the supportive environment they need in order to survive. A central concern in counter-insurgencies from the British point of view is intelligence: information about who actually is a civilian and who is an insurgent or a terrorist. This approach places a premium on human intelligence acquired from local informants (Mockaitis, 2003: 28). It does not preclude captured suspected insurgents or terrorists from being interrogated. Yet it seems that even in the field of interrogation, the British approach is geared towards unconventional campaigns and places more emphasis on establishing the detainee's identity and its role in the insurgency than the American pre-9/11 one with its focus on conventional 'full unit designations' (cf. Mackey, 2004: 47).

This approach to unconventional war coincides with a strong awareness of the strategic disadvantages of disregarding legal provisions pertaining to the treatment of detainees. This is a lesson learned from one of the cases in which the implementation of British counter-insurgency doctrine was less than perfect: Northern Ireland. After

the Provisional IRA (PIRA) had started a bombing campaign in 1970, the British government decided to resort to internment in order to counter that campaign. During interrogation, internees were exposed to coercive techniques the ECHR later ruled to constitute inhuman and degrading treatment. Although these techniques proved tactically successful in the sense that even the fear of being subjected to them made internees talk, they were strategically disastrous in that they increased the support for the PIRA and undermined the legitimacy of British Army, both domestically and internationally (cf. Thornton, 2007: 91ff.).

One could be inclined to conclude that the resort to coercive interrogation techniques resulted from the British failure to properly implement their counter-insurgency doctrine – that it was effectively a deviance from British strategic culture. This, however, would overlook the fact that coercive interrogation techniques also have a history that goes back to British colonial campaigns (ibid: 94).²² Thus, in the 1970s they were still part of the UK's historical repertoire of unconventional warfare, albeit not a central one and certainly a highly controversial one. The experience of the Northern Ireland campaign resulted in a partial rupture within British strategic culture inasmuch as it illustrated that coercive interrogation techniques could not survive in the era of mass media and Britain's integration in effective supra-national human rights regimes such as the ECHR.

By now, however, the lesson learned from the Northern Ireland campaign is firmly embedded into British strategic culture in general and into the British approach to detention policy in particular. In the public discourse on detention in the 'war on terror', the 1978 ECHR ruling serves as a benchmark for permissible interrogation techniques.²³ Although there were attempts to question the applicability of the law of armed conflict in the framework of the 'war on terror' (cf. Reid, 2006), there seems to be a broad consensus that treating detainees in accordance with legal standards is important not only for legal and moral reasons, but also for strategic ones: to do otherwise helps the insurgents and undercuts the legitimacy of the counter-insurgency

²² To do justice to the British military, however, it should be noted that a number of high-ranking officers opposed the 1971 internment in Northern Ireland, which was promoted mainly by politicians (Thornton, 2007: 92).

²³ See, for instance, United Kingdom Parliament Joint Committee on Human Rights, Nineteenth Report, 08/09/2004. Interview former UK government official, London 23/01/2007.

as well as it fails to provide a role model for creating rule of law structures in states affected by the insurgency.²⁴

German strategic culture and the treatment of detainees: 'Policing'

German strategic culture is traditionally characterised by anti-militarist sentiments, a certain suspicion against the use of the military in combat roles for the purpose of achieving foreign policy goals, a firm commitment to multilateralism and the desire to legally regulate all aspects of the use of military force (Longhurst, 2004; Lantis, 2002b). The end of the Cold War arguably prompted certain changes in Germany's approach to the use of military force. The main tenets of its strategic culture, however, remain largely intact and had a conceivable impact on the German approach to the treatment of detainees in the 'war on terror'.

German anti-militarist sentiments and Germany's restraint in using military force are deeply rooted in its history and its role in both World Wars. Throughout the Cold War, the Bundeswehr's purpose was strictly defensive and it was firmly embedded in the transatlantic security framework. With Germany's participation in NATO's 1999 Kosovo air campaign, Allied Force, German military forces for the first time in post-1945 history were deployed in a combat mission. While this development indicates a certain change in post-Cold War German strategic culture, its impact should not be exaggerated. Changes took hold mainly among political elites who remain, however, aware of the political constraints posed by the broader political public and its continued endorsement of anti-militarist values (cf. Lantis, 2002b).²⁵ In addition, even among political elites, there was only a fragile and incomplete consensus on the use of military force in the aftermath of Kosovo (Longhurst, 2004: 78). Germany's overall reaction to 9/11 and to the US' 'war on terror' seemed to confirm rather than revoke existing strategic cultural patterns (ibid: 151). The threat of international terrorism was perceived as an issue of law enforcement rather than war (Katzenstein, 2002), although military 'policing' could play a role in that.

There are some persisting tenets of German strategic culture that continue to shape German strategic discourses about the 'war on terror'. Most importantly, German

²⁴ Interview security expert, Colchester 26/02/2007; Interview security expert, Shrivenham, 08/03/2007.

²⁵ While a majority of German MPs, for instance, support Germany's continued involvement in NATO's ISAF mission in Afghanistan, polls indicate that by the end of 2006, almost two thirds of the German population wanted German troops to be withdrawn as soon as possible (Dempsey, 2007a).

strategic culture is centred on a broadened notion of security that emphasises aspects such as human security and a strong concern for human rights rather than being focused on traditional threats. Moreover, its commitment to multilateralism remains unaltered or even firmed up in the aftermath of 9/11. Finally, German strategic culture continues to be 'legalistic' in the sense that almost all aspects of Germany's use of military force are highly legally regulated. The soldiers themselves are bound more tightly to the norms and values of German Basic Law than to command obedience (Longhurst, 2004: 42). Germany's participation in planned or ongoing military missions is often discussed in terms of the legality of the mission in question rather than its political desirability or the prospects for strategic success.²⁶ In addition, Germany often acts as a main sponsor of new treaties and conventions in the realm of the LOAC, such as the Landmine Convention, the International Criminal Court (ICC) and the efforts to restrict the use of cluster munitions, and it is prone to criticising countries which are not supportive of these projects such as the US.²⁷

The endorsement of a broadened notion of security in conjunction with a deeply rooted suspicion against German involvement in combat missions among the broader public resulted in a propensity among German political elites to label all missions German troops are involved in as peacekeeping and/or policing missions, even though both ISAF and OEF clearly go beyond that (cf. Dempsey, 2007b). This, in turn, leads to insecurities among German political elites and military personnel as to the legal framework applicable in such missions. It is argued that policing and peacekeeping operations do not qualify as international armed conflict and that they are accordingly insufficiently regulated by the existing provisions of the LOAC, even though the missions are to be conducted in its spirit (cf. Dreist, 2006). These insecurities extend to the status of detainees in the war on terror, with the general trend being to regard them as criminals that need to be treated at minimum in accordance with a state's domestic laws and international human rights law.²⁸ In stark contrast to the US' attempts to relax the LOAC's provisions in the 'war on terror', German policy makers and military personnel ask for the development of an international legal framework applicable in these 'policing' missions. Their concern, however, does not reflect

²⁶ The PDS/The Left party, for instance, who opposed Germany's contribution to OEF and ISAF brought a case before the German Constitutional Court claiming that the deployment of German troops in Afghanistan violated both German Basic Law and the LOAC. See *Organstreitverfahren der PDS/Die Linke gegen die Bundesregierung*, Berlin, 16/03/2007.

²⁷ Interview BMVg, Bonn, 04/04/2007.

²⁸ Interview BMVg, Bonn 04/04/2007.

considerations of the strategic advantage of playing by the legal rules, as in the British case. Rather, it is an expression of a more principled belief in the need for legally regulating all aspects of the use of military force.

Differences in strategic cultures and the future of the transatlantic security community

The preceding section has shown that transatlantic differences concerning the treatment of detainees in the ‘war on terror’ are closely related to differences in strategic cultures. The US’, Britain’s and Germany’s approach to the treatment of detainees are integrated into their respective patterns of strategic culture. In particular, historical experiences stored in political and military organisations of a state tend to affect the way its political and military elites perceive not only of new security challenges, but also of the nature of the military responses to them. In this perspective, it was mainly the perception of the ‘war on terror’ as an entirely new kind of military conflict that led parts of US’ political and military elites to question the applicability of the LOAC to detainees captured in that conflict. This perception was not shared by their British and German counter-parts, who tend to regard the ‘war on terror’ as series of counter-insurgency campaigns (in the British case) or as ‘international police actions’ (in the German case). In both perspectives, treating detainees in accordance with the LOAC is viewed as vital, either for strategic reasons or for more principled convictions about how the use of military force should be regulated.

Emphasising the extent to which existing strategic cultures affect the development of strategic solutions to new challenges, i.e. the issue of detainees in the ‘war on terror’, is not to say that other aspects do not have any impact. Rather, the case of the US is a good example of how aspects such as a state’s relative power position, the experience of 9/11 and domestic political changes can influence strategic cultures. The US is clearly in a powerful position to challenge existing legal provisions pertaining to the treatment of detainees. In so doing, it might even be able to influence the emergence of new customary rules. Yet mere power cannot account for the possibility a state chooses in dealing with security challenges. Similarly, the experience of 9/11 probably added to the US’ perception of transnational terrorism as a new type of threat. However, this perception in itself is to a certain extent conditioned by the strong focus on conventional campaigns within the US’ strategic culture. Finally, the

case of the US and its approach to the treatment of detainees in the ‘war on terror’ is also an example for how shifts in domestic power relations interact with strategic culture. The legal thinking behind the US’ attempt to relax the legal provisions on detention is clearly attributable to certain figures within the Bush administration, but the policy itself had to be implemented by a wider range of policy makers and the military. The way they received this approach was arguably mixed. On the one hand, military personnel directly concerned with detainees apparently lacked appropriate training for detainee handling in unconventional campaigns and welcomed the relaxation of standards that seemed to make their work more difficult. On the other, higher-ranking military staff and JAGs, trained in compliance with the Geneva Conventions, tried to resist changes in the approach to detention imposed by policy makers.

Determining the sources of transatlantic differences regarding the treatment of detainees in the ‘war on terror’ is important because it allows us to draw conclusions concerning the persistence of the transatlantic security community. It seems to be clear that the current differences regarding the issue of detainees have clearly undermined its internal cohesion as well as the external perception of unity. Given ongoing court reviews of the US’ detainee policy and the US military’s current rapprochement to the British counter-insurgency doctrine, it is possible that the US will slightly change its approach to the issue of detention in the near future. However, an unconditional return to the status quo ante is unlikely. Considering the European side of the Atlantic, it seems implausible to assume that the UK or Germany could come to endorse the US’ approach – not only because this would not fit their respective strategic cultures, but also because they are embedded in legal regimes that would sanction such a move, such as the ECHR and the ICC.

NATO would be the natural venue for working out differences concerning the treatment of detainees. Ideally, NATO would function as a forum in which member states could not only discuss the issue of detainees as such, but could also exchange their views on current threat perceptions and reach agreement on the nature of ongoing military operations. Such a broad approach seems to be necessary given that narrow problems such as the treatment of detainees are embedded in more comprehensive differences in strategic cultures. Yet NATO’s achievements in this respect are not overwhelming so far. After the initial failure to develop a joint detainee policy in Afghanistan, NATO members seem to back away from tackling

this 'hot potatoe' up-front. The problems related to it, however, continue to exist, and unless a viable solution is found, the issue of the treatment of detainees will remain one of the primary challenges to persistence of the transatlantic security community.

Conclusion

This article aimed to explain transatlantic differences in detainee policy in the 'war on terror'. I argued that existing approaches seeking to account for the emergence of transatlantic tensions within the past decade insufficiently explain the cracks in the normative foundations of the transatlantic security community that appeared with respect to the treatment of detainees. As discussed in the preceding sections, neither the unipolar distribution of power in the international system nor the divergent experience of 9/11 nor differences in the ideological orientations of ruling coalitions on both sides of the Atlantic can fully account for this phenomenon. Instead, I argued that differences in strategic cultures have the greatest impact on a state's approach to the issue of detainees in the 'war on terror'. The other aspects mentioned do have an impact; however, this only comes about to the extent to which and in the way in which they are perceived and communicated *via* the lens of strategic culture.

I analysed the way in which the US', British and German strategic culture influenced the three countries respective approach to the issue of detainees in the 'war on terror'. As a semi-permanent structure of meaning, strategic culture affects the way in which states perceive of new security challenges and how they react to them. US strategic culture is traditionally focused on conventional threats and operations. 9/11 and the subsequent 'war on terror' was perceived as an entirely new type of conflict in which existing provisions on the treatment of detainees seemed difficult to apply. Consequently, the US administration worked towards a relaxation of those standards. British strategic culture, by contrast, grants a far greater importance to unconventional campaigns. The British counter-insurgency doctrine emphasises the need to treat detainees in accordance with existing legal standards in order to win the 'hearts and minds' of the local populace and as a first step towards implementing rule of law structures. German strategic culture is guided by the idea that military operations in the 'war on terror' are best perceived as policing by military means. German policy and military elites are generally led by the desire to legally regulate the use of military force and consequently call for the development of a new legal framework for these policing actions.

Given this close relationship between strategic cultures and detainee policy, any attempts to resolve transatlantic tensions over the issue of detention should take into account more comprehensive differences concerning threat perceptions and the nature of military operations in response to the threats. To date it is unclear, however, in which institutional framework an exchange on such topics could take place. In the absence of such a venue or mechanism, more cracks in the normative foundations of the transatlantic security community are likely to occur.

References

- Aldrich, George H., 1991. 'Prospects for the United States Ratification of Additional Protocol I to the 1949 Geneva Conventions', *American Journal of International Law* 85(1): 1-20.
- Adler, Emanuel & Michael Barnett, 1998. 'A Framework for the Study of Security Communities', in Emanuel Adler & Micheal Barnett, eds., *Security Communities*. Cambridge: Cambridge University Press (29-65).
- Berenskoetter, Felix Sebastian, 2005. 'Mapping the Mind Gap: a Comparison of US and European Security Strategies', *Security Dialogue* 36(1): 71-92.
- Cassidy, Robert M., 2005. 'The British Army and Counterinsurgency: the Saliency of Military Culture', *Military Review* May/June: 53-59.
- Chin, Warren, 2007. 'Examining the Application of British Counterinsurgency Doctrine by the American Army in Iraq', *Small Wars and Insurgencies* 18(1): 1-26,
- Cox, Michael, 2005. 'Beyond the West: Terrors in Transatlantia', *European Journal of International Relations* 11(2): 2003-233.
- Daalder, Ivo H., 2003. 'The End of Atlanticism', *Survival* 45(2): 147-166.
- Dempsey, Judy, 2007a. 'Amid Escalating Violence in Afghanistan, Rising Opposition in Germany to Military Mission', *International Herald Tribune*, 19 August.
- Dempsey, Judy, 2007b. 'Keeping Peace Abroad a Tough Sell in Germany', *International Herald Tribune*, 9 August.
- Dempsey, Judy, 2005. 'Rice and NATO to Set Rules for Afghan Force', *International Herald Tribune*, 7 December.
- Dinstein, Yoram, 2004. *The Conduct of Hostilities under the Law of International Armed Conflict*. Cambridge: Cambridge University Press.
- Dreist, Peter, 2006. 'Die Rolle des Rechtsberaters im Prozess der Ziel- und Wirkungsanalyse', in Holger Zetsche & Stephan Weber, eds., *Recht und Militär. 50 Jahre Rechtspflege der Bundeswehr*. Baden-Baden: Nomos (93-107).
- Farrell, Theo, 2005. 'World Culture and Military Power', *Security Studies* 14(3): 448-488.
- Foot, Rosemary, 2006. 'Torture: the Struggle over a Peremptory Norm in a Counter-Terrorist Era', *International Relations* 20(2): 131-151.

- Garraway, Charles (2006). “‘England Does Not Love Coalitions’”: Does Anything Change?’, *Israel Yearbook on Human Rights* 36: 29-42.
- Garraway, Charles (2004). ‘Interoperability and the Transatlantic Divide – a Bridge over Troubled Water’, *Israel Yearbook on Human Rights* 34: 105-126.
- Golden, Tim, 2004a. ‘After Terror, a Secret Rewriting of Military Law’, *New York Times*, 24 October.
- Golden, Tim, 2004b. ‘Slow Pace of Pentagon’s Courts Set Off Friction at White House’, *New York Times*, 25 October.
- Gray, Colin S., 1999. ‘Strategic Culture as Context: the First Generation of Theory Strikes Back’, *Review of International Studies* 25(1): 49-69.
- Gray, Colin S., 1981. ‘National Styles in Strategy: the American Example’, *International Security* 6(2): 21-47.
- Greenberg, Karen J. & Joshua L. Dratel, 2005. *The Torture Papers. The Road to Abu Ghraib*. Cambridge: Cambridge University Press.
- Greenwood, Christopher, 2002. ‘International Law and the “War against Terrorism”’, *International Affairs* 78(2): 301-317.
- Grey, Stephen, 2006. *Ghost Plane. The Inside Story of the CIA’s Secret Rendition Programme*. London: Hurst.
- Happold, Matthew, 2004. ‘The Detention of Al-Qaeda Suspects at Guantanamo Bay: United Kingdom Perspectives’, *Human Rights Law Review* 4(1), 57-76.
- Hoffman, Bruce, 2004. *Insurgency and Counterinsurgency in Iraq*. Santa Monica, CA: RAND.
- Huntington, Samuel P., 1999. ‘The Lonely Superpower’, *Foreign Affairs* 78(2): 35-49.
- Johnston, Alastair Ian, 1995. ‘Thinking about Strategic Culture’, *International Security* 19(4): 32-64.
- Kagan, Robert, 2003. *Of Paradise and Power. America and Europe in the New World Order*. New York: Knopf.
- Kagan, Robert, 2002. ‘Power and Weakness’, *Policy Review* 113: 3-28.
- Kaldor, Mary, 1999. *New and Old Wars. Organized Violence in a Global Era*. Oxford: Polity Press.
- Katzenstein, Peter J., 2002. *Sonderbare Sonderwege: Germany and 9/11*. AICGS/German-American Dialogue Working Paper Series. Washington, DC: American Institute for Contemporary German Studies.

- Katzenstein, Peter J., 1996. *Cultural Norms and National Security: Police and Military in Postwar Japan*. Ithaca, NY: Cornell University Press.
- Krauthammer, Charles, 1990. 'The Unipolar Moment', *Foreign Affairs* 70(1): 23-33.
- Lantis, Jeffrey, 2002a. 'Strategic Culture and National Security Policy', *International Studies Review* 4(3): 87-113.
- Lantis, Jeffrey, 2002b. 'The Moral Imperative of Force: The Evolution of German Strategic Culture in Kosovo', *Comparative Strategy* 21(1): 21-46.
- Longhurst, Kerry, 2004. *Germany and the Use of Force*. Manchester: Manchester University Press.
- Mackey, Chris, 2005. *The Interrogator's War. Inside the Secret War Against Al Qaeda*. London: John Murray.
- Marty, Dick, 2007. *Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Member States: Second Report*. Report for the Committee on Legal Affairs and Human Rights. Strasbourg: Parliamentary Assembly of the Council of Europe.
- Marty, Dick, 2006. *Alleged Secret Detentions and Unlawful Inter-State Transfers Involving Council of Europe Member States*. Report for the Committee on Legal Affairs and Human Rights. Strasbourg: Parliamentary Assembly of the Council of Europe.
- Mégret, Frédéric, 2006. 'From "Savages" to "Unlawful Combattants": a Postcolonial Look at International Law's "Other"', in Anne Orford, ed., *International Law and Its Others*. Cambridge: Cambridge University Press (265-317).
- Mockaitis, Thomas R., 2003. 'Winning Hearts and Minds in the "War on Terrorism"', *Small Wars and Insurgencies* 14(1), 21-38.
- Mockaitis, Thomas R., 1995. *British Counterinsurgency in the Post-Imperial Era*. Manchester: Manchester University Press.
- Moravcsik, Andrew, 2003. 'Striking a New Transatlantic Bargain', *Foreign Affairs* 82(4): 74-89.
- Nagl, John A., 2005. *Learning to Eat Soup with a Knife. Counterinsurgency Lessons from Malaya and Vietnam*. Chicago, IL: The University of Chicago Press.
- Pearlstein, Deborah N., 2006. 'Finding Effective Constraints on Executive Power: Interrogation, Detention, and Torture', *Indiana Law Journal* 81: 1255-1295.
- Rees, Wyn, 2006. *Transatlantic Counter-Terrorism Cooperation. The New Imperative*. London: Routledge.

- Rees, Wyn & Richard J. Aldrich, 2005. 'Contending Cultures of Counterterrorism: Transatlantic Divergence or Convergence?', *International Affairs* 81(5): 905-923.
- Reid, John, 2006. 'Twenty-First Century Warfare – Twentieth Century Rules', *RUSI Journal* 151(3): 14-16.
- Risse, Thomas, 2003. *Beyond Iraq: The Crisis of the Transatlantic Community*. AICGS/German-American Dialogue Working Paper Series. Washington, DC: American Institute for Contemporary German Studies.
- Roberts, Adam, 2007. 'Torture and Incompetence in the "War on Terror"', *Survival* 49(1): 199-212.
- Roberts, Adam, 2002. 'Counter-terrorism, Armed Force and the Laws of War', *Survival* 44(1):7-32.
- Schwarz, Benjamin, 1991. *American Counterinsurgency Doctrine and El Salvador. The Frustrations of Reform and the Illusions of Nation Building*. Santa Monica, CA: RAND.
- Shane, Scott & Adam Liptak, 2006. 'Detainee Bill Lifts Bush's Power to New Heights', *New York Times*, 30 September.
- Shanker, Thom & Katharine Q. Seelye, 2002. 'Behind-the-Scenes Clash Led Bush to Reverse Himself on Applying Geneva Conventions', *New York Times*, 22 February.
- Snyder, Jack L., 1977. *The Soviet Strategic Culture: Implications for Limited Nuclear Operations*. Santa Monica, CA: RAND.
- Thornton, Rod, 2007. 'Getting it Wrong. The Crucial Mistakes Made in the Early Stages of the British Army's Deployment to Northern Ireland (August 1969 to March 1972)', *Journal of Strategic Studies* 30(1): 73-107.
- Thornton, Rod, 2004. 'The British Army and the Origins of its Minimum Force Philosophy', *Small Wars and Insurgencies* 15(1): 83-106.
- White, Josh, 2005. 'Detainees Face Limited Access to Courts', *Washington Post*, 24 December.
- Wippman, David, 2005. 'Introduction: Do New Wars Call for New Laws?', in David Wippman & Matthew Evangelista, eds., *New Wars, New Laws? Applying the Laws of War in 21st Century Conflicts*. Ardesley, NY: Transnational (1-28).
- Wohlforth, William C., 1999. 'The Stability of a Unipolar World', *International Security* 24(1): 5-41.

Yee, Albert S., 1996. 'The Causal Effect of Ideas on Policies', *International Organization* 50(1): 69-108.

Younge, Gary, 2001. 'Bush Talks of a "Different Kind of War"', *Guardian*, 21 September.