

Does "Infinite Justice" lead to enduring War?

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Olaf Dilling Does "Infinite Justice" lead to enduring War? [1] In one of his speeches the President of the United States of America took the responsibility to free the world from all globally operating terrorist groups. Honestly, is a realistic end to such a task foreseeable? Or does the former Operation „Infinite Justice“, which was recently renamed „Enduring Freedom" lead to infinite or enduring war? [2] The commitment of the American people in the military action responding to the terrible terrorist attacks on the WTC and the Pentagon is reflected in the provisional code-name of the operation itself: Operation „Infinite Justice", as well as in the new official name „Enduring Freedom"(1) . The contrast to the relatively neutral or even playful name "Operation Desert Storm" of the Gulf War of 1991 is obvious. That strong emotional note, is, after what has happened, as such bound to find support throughout the world. But beyond that the provisional name – which I will stick to in my analysis, as the first spontaneous reaction seems to speak more openly – carried also other connotations. [3] One connotation was at once noticed by muslims, when the name was first made public on Wednesday one week after the attacks. According to their belief (not to mention the Jewish or the Christian belief) infinite justice is a divine attribute. It can not be achieved by human beings or worldly institutions. In a more or less secular and pluralistic society like our modern western civilisation, this may be just a matter of respect for religious feelings of minorities. Accordingly, as the US Secretary of Defence, *Donald Rumsfeld*, was confronted with this by a journalist, he stated that certainly „the United States does not want to do or say things that create an impression on the part of the listener that would be a misunderstanding" . [4] So, how could "Infinite Justice" be understood in the right, *i.e.* its secular sense? Obviously its meaning oscillates between that of the implementation of justice without political borders and that of the realization of a perfect ideal of justice. [5] The first concept, that of a globalized fight against terrorist groups is a consequent answer to the globalization of terror, which became most evident with the terrible WTC-Massacre. The terror was brought from the outermost periphery, the mountainous and devastated regions of Afghanistan, to its center, the symbolic "heart" of the global economic system. [6] In the last decade we have been testimonies that the classic Public International Law eroded bit by bit. After the end of the Cold War humanitarian interventions into sovereign states became possible and found wide acceptance within the international community. But there are two features of "Operation Infinite Justice", that seem to differ from those precedents: First, there is no clear evidence, that one or more subjects of International Public Law are responsible for the attacks. Secondly, as far as the plans of the Pentagon are known, the military response will not focus on one state only, but be directed against any state who supports terrorist groups operating in a global range. [7] Strangely enough the rhetoric style, the metaphors and categories of the speeches about "Operation Infinite Justice" quite stick to the old pattern of war and peace, which belongs to the context of classical International Public Law. As if there were not only the taliban regime or Osama bin Laden or his terror networks, but a veritable subject of Public International Law responsible for the attacks, and – after a long but successful war – ready to end it with its signature under the peace treaty. [8] Just as Globalization of commerce lead to the erosion of the sovereignty of the state, and in the consequence of the Public-Private-Divide, the recent examples of a globalization of terror leads to the erosion of that between war and peace. Who can still tell under those circumstances the difference between (exterior) defence and interior security?(3) The deconstruction of the rules of classic Public International Law left a legal vacuum on a global scale, which shall now be filled with „infinite justice". But, can justice fulfill the function of law in that context? [9] A common definition of the law in contrast to justice could be, that the law is formalized, *i.e.* more or less clearly defined by abstract rules, while justice arbitrarily breaks the limits of a generalized consideration to respect the situation of the individual in every aspect. While justice is tailored, law comes off-the-shelf, to put it figuratively. Infinite justice would then be an arbitrary normative perspective not at all limited by general rules.(4) This makes acts of justice much more flexible than legal norms, which is apparently an advantage in a rapidly changing world. But at the same time, the arbitrary acts of justice have not been passed through the process of generalization, which functions as a test for their intersubjective acceptance. [10] Therefore, an act of justice is an individual „norm" in two respects: It is the way an *individual* observer evaluates an *individual* case in a normative way. Of course it is always possible that individuals evaluate a case congruently. In the immediate aftermath of the World Trade Center attacks one could see the world united in disdain. Even the joy of Palestinian kids in the streets of Jerusalem seemed more like an example of manipulative media reports than anything else . But the bigger the social or cultural differences are, the less is the possibility to find congruent individual valuations. The world has been united in disdain about the terror, but it will no longer be united if it comes to the consequences. [11] Since times of the blood feud there have been various strategies to overcome the dangers of private justice out of bounds. According to *René Girard* this was the function of the ritual sacrifice in archaic societies.(6) One of the revolutionary thoughts of Jesus and his Apostles was the belief in triumph of mercy over justice, which could perhaps in modern categories be interpreted as self-reflection in the medium of moral judgements. A common topos of late renaissance and baroque art has been the allegoric image of Justice and Peace, depicted as sisters embracing each other.(7) [12] The most efficient and unprobable strategy to settle violent aspects of justice was the evolution of the state in early modernity. With the state as point of reference and as a quasi-transcendent guarantor of peace, society could externalize conflicts and conflict solution, without having to fear an infinite chain of acts of violence within society. But

this old concept of externalization does not seem to be feasible on a global level. Still people seem to undervalue the dangers of justice untempered, as they remain to take the benefactions of the modern state for granted, without noticing its loss of power. [13] On a global level peace can only be achieved, if public international law is not replaced by individual concepts of justice. What we accordingly need is not infinite justice, but new general rules for international armed conflicts. This seems to be a vain wish: the generalization of rules needs precious time. Time, of which we have nothing to lose being under a serious threat of global terrorism. The result is, that we must establish the rules while acting. [14] This requires a broad basis of action and should not and cannot be achieved by the USA alone. But also, it cannot be achieved by the UNO alone. The quest for justice limited by the necessity to pass it through a test of interculturality calls for a global policy network, which is capable of acting – and not ponderous as the UNO – , yet seeks to integrate as many actors from as many cultures as possible. In the last weeks, the USA seem to have made positive efforts in that direction. "For the re-named operation "Enduring Freedom" the western allies should be well aware that a broad, intercultural coalition is needed. The unspeakable statement of Berlusconi and the fact, that Bundeskanzler Schroeder pleads for a re-evaluation of the conflict in chechnya may not be reasonable steps in that direction."(8)

(1) http://www.defenselink.mil/news/Sep2001/t09252001_t0925sd.html - Secretary of Defense *Donald H. Rumsfeld*, DoD News Briefing, Tuesday, Sept. 25, 2001 - 12:18 p.m. EDT.

(2) http://www.defenselink.mil/news/Sep2001/t09202001_t920ruma.html - Secretary of Defense *Donald H. Rumsfeld*, DoD News Briefing, Thursday, Sept. 20, 2001 - 12:01 p.m. EDT.

(3) In that context the discussion has to be seen, which followed a statement of the German Federal Secretary of the Interior *Otto Schily* about the use of the *Deutsche Bundeswehr* (German Federal Armed Forces) also for inner security, see: http://www.zeit.de/2001/39/Politik/200139_schily.html.

(4) For a corresponding concept of justice see: Derrida, Jacques, *Force de loi. Le fondement mystique de l'autorité* in *Deconstruction and the Possibility of Justice*, 11 *Cardozo L. Rev.*, July/August 1990, numbers 5-6, New York, esp. the chapter about the first aporie.

(5) The rumours, that the footage were 10 years old, thus fake in the very strict sense of the word (see: http://news.bbc.co.uk/1/hi/english/world/americas/newsid_1561000/1561199.stm.) had at least some truth in it. In making the receiver insecure about what he had seen, they showed the deceptiveness of pictures torn out of context and may initialize reflection about the influence of the observer on the observed.

(6) Girard, René, *La violence et le sacré*, Paris 1972.

(7) See: http://www.kfki.hu/~arhth/html/la_hire/peace_ju.jpg, <http://sunsite.dk/cgfa/g/p-giaquinto1.htm>.

(8) <http://www.sueddeutsche.de/aktuell/sz/oldarticle81516.php>