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**THE WAR ON TERROR, ITS IMPACT ON THE SOVEREIGNTY OF STATES, AND ITS IMPLICATIONS FOR HUMAN RIGHTS AND CIVIL LIBERTIES**

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## **(I) The geo-strategic situation after September 11, 2001: the emergence of the United States as global hegemon**

Since the United States has embarked upon the “global war on terror,” following the events of September 11, 2001, a new geo-strategic situation has begun to evolve. As the only superpower, the United States claims supreme authority for all measures related to the ongoing anti-terrorist campaign; it does not accept any arbiter – such as the United Nations – in regard to the determination of an actual terrorist threat. As part of the ongoing anti-terrorist struggle, the United States – termed by some analysts as “hyperpower” – has asserted its global hegemonial position in a way not seen since the end of history’s great empires. At the same time, the US establishment tries to deny the real hegemonial status by claiming that the United States – in the words of Lawrence H. Summers, then Deputy Secretary of the Treasury in the Clinton administration – is the “first non-imperialist superpower.”<sup>1</sup>

The unipolar world order that has existed since the collapse of the Soviet bloc – in the course of the events of 1989 –, has now been transformed, post-September 11, 2001, into an order that divides the world along the lines of loyalty – or allegiance – with the United States as the imperial hegemon. This situation has brought about a kind of new *bipolarity* of a hierarchical or moral order, which is somewhat juxtaposed with the actual political and military *unipolarity*. The new order’s maxim, repeatedly proclaimed by US President George W. Bush, is that of “Either you are with us or you are against us!” – *tertium non datur*. Smaller and medium-size countries, particularly the economically weaker ones, have to swear the “oath of allegiance” lest they will be marginalized in the global interplay of forces or – even worse – subjected to punitive measures such as economic *sanctions* the scope and intensity of which will be determined by the hegemon alone. In this way, the United States acts as judge in its own cause and places itself outside – indeed *above* – international law.

The events since September 11, 2001 have not only aggravated the global imbalance in terms of political and military power; the American policies have marginalized, to a large extent, the United Nations Organization and thus have seriously undermined the international rule of law in general. The United Nations has indeed been pushed to the sidelines and cannot act anymore according to the Charter’s doctrine of *collective security*, which since the end of World War II was and still ought to be the core element of the multilateral international order represented – or advocated, to be more realistic – by the world organization. The United

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<sup>1</sup> Quoted according to Thomas G. Moore, “In Pursuit of Open Markets: U.S. Strategy in the Asia-Pacific,” chapter “A Tale of Two Hegemons,” draft paper, p. 5, published by the Stanley Foundation at [www.stanleyfoundation.org](http://www.stanleyfoundation.org) (2000).

Nations Security Council is now used as a tool to *legitimize* wars (euphemistically termed “armed enforcement measures”) that are actually decided elsewhere. If formal authorization cannot be obtained, the United States will resort to *unilateral measures* – ironically carried out in the name of the “international community.” This is again being documented in the present (2002) war strategy against Iraq.

As the sole superpower, the United States arrogates to itself the right to act *on behalf* of mankind – a right that is, under the Charter of the United Nations, exclusively reserved to the Security Council, and that may only be invoked, in conformity with the regulations of Chapter VII of the UN Charter, in cases when international peace and security are threatened.

Particularly since the end of the Cold War, the United States has demonized as “rogue states” countries that do not submit themselves to its hegemonial claims, and has systematically engaged in a kind of “imperial policy of double standards,” a policy which is characterized by self-righteousness and ideological zeal. Even the main ideologist of the supposed post-Cold War “clash of civilizations,” Samuel Huntington, felt obliged to acknowledge the widespread disillusionment with this fact: “While the United States regularly denounces various countries as ‘rogue states,’ in the eyes of many countries it is becoming the rogue superpower.”<sup>2</sup>

By acting unilaterally in the name of the “international community,” the United States circumvents the procedural safeguards for multilateral enforcement action as they are set out in the United Nations Charter, specifically in Chapter VII. In real terms, the United States acts on behalf of the group of Western states<sup>3</sup> – indeed only on behalf of just a few Western states, when it comes to practicing the new doctrine of “preventive war” (or “pre-emptive strikes”) as part of the global “war on terror.” This *fait accompli* completely and finally abolishes whatever traces of a *separation of powers* may have existed, on the transnational level, for enforcement measures in the field of “collective security.”

The concept of “preventive war,” as advanced in the new strategic doctrine of the United States, is not in any way compatible with the United Nations Charter. The Charter explicitly and unequivocally bans all uses of force in international relations except in self-defence or by way of a Chapter VII resolution of the Security Council. Furthermore, the new doctrine of preventive defence constitutes a serious violation of general international law as it has existed since the abolishing of the *jus ad bellum* after World War I. In reality, the doctrine

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<sup>2</sup> “The Lonely Superpower,” in: *Foreign Affairs*, March/April 1999, vol. 78, no. 2, pp. 35-49; p. 42.

<sup>3</sup> Even Huntington admitted this fact in his in 1999 essay: *op. cit.*, pp. 40f.

opens the gates to arbitrariness and anarchy in the relations between states. A country that wages a preventive war acts as judge in its own cause and thereby defines, all by itself, the criteria of a “threat” to its national security and also determines the actual “threat level.” According to the UN Charter, however, the Security Council alone has the right to decide on the international use of force – and the Council can exercise this collective right only *after* it has determined that a threat to international peace and security, emanating from a certain country, exists.

In spite of its incompatibility with the international rule of law, the doctrine of preventive war is now forcefully advanced and vigorously propagated by the United States. One of the implications of the propagation of this doctrine is that the present global order, dominated by the United States, is falling back to a state of unchallenged imperial power – resembling, in fact, the worst period of European nation-state imperialism. The 19<sup>th</sup> century order of European imperial powers was indeed an *anarchic* system, oriented towards the unrestricted exercise of national sovereignty. Until recently, it was thought to have collapsed with the end of World War I and to have been replaced – in the wake of World War II – by a new system based on the principle of the sovereign equality of states. However, at the beginning of the 21<sup>st</sup> century, the war on terror has initiated a kind of *retrogressive* development of international relations. The unilateral measures taken by the United States may have triggered a sequence of events that will be hard to control – lest to reverse – for the *real* international community, namely that represented by the United Nations Organization.

Even at the present stage of *launching* (not yet implementing) a new defence doctrine, the advancing of the concept of preventive war by the United States constitutes an extremely serious *precedent*: other countries may feel tempted, even encouraged, to follow suit and advance their own doctrine of preventive strikes, so as to settle scores with their adversaries. The precedent will not just be created *after* the first preventive war may have been waged by the United States; the propagation of the doctrine as such amounts to a serious precedent in international law. International lawlessness – anarchy in the relations between states, not witnessed since the end of Europe’s old imperial order – may be the ultimate consequence of this development. The “New World Order” announced in 1991 by President Bush senior may now develop into a system in which power and revenge reign supreme and where those who are militarily weaker will be at the mercy of the great powers – or, more likely, of the only superpower.

The new strategy of the United States, post-September 11, not only has effectively undermined the United Nations Organization and its system of collective security (which helped preserve global peace since the end of World War II); this strategy now threatens the very sovereignty of smaller and medium-size states. Those states are faced with the alternative either to subject themselves to the hegemonial power and to that power's strategies, including the war on terror, or to risk being sidelined, even declared "enemies of humanity" – with all the consequences that this may entail, particularly for those states' economic relations. In the *unipolar context* of the present power constellation – that has existed since the end of the Cold War, but has been aggravated further since the events of September 11, 2001 –, this predicament has become much more serious than it would be in the framework of a *bipolar power balance*, such as it existed during the Cold War period.

Well before the recent tragic events, Samuel Huntington – somewhat self-critically in regard to the US position – diagnosed this unilateral tendency as an element of the new world order: "American officials quite naturally tend to act as if the world were unipolar. They boast American power and virtue, hailing the United States as a benevolent hegemon. They lecture other countries on the universal validity of American principles, practices, and institutions."<sup>4</sup>

Under the present circumstances, national sovereignty – though "guaranteed" by the United Nations Charter – has been reduced to a state's freedom to *define* itself vis-à-vis the only superpower. In the context of that power's war on terrorism, the options available to politicians on the national level are rather limited. In the final instance, they are only left with the alternative of either opposing the "forces of evil" or joining them – to ironically paraphrase the newspeak of the global superpower –, without any right to participate in the determination of the concepts of "good" and "evil."

In addition to these implications on the levels of international law and multilateral organizations such as the United Nations, the war on terror has served to further strengthen the hegemonial role of the United States (that was already noticeable before September 11, 2001) *far beyond the Western hemisphere*. Under the cover of counter-terrorism, this global campaign has helped the United States to advance different strategic agendas in various regions of the world.

One of those agendas is aimed at the control over natural resources that are of strategic importance for the US economy; hence the "preventive war" strategy in regard to Iraq, targeting, in effect, that country's vast oil reserves. Another agenda, for instance, relates to

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<sup>4</sup> Op. cit., p. 37.

specific geopolitical strategies in a region vital to US national interests such as South-East Asia, and in particular the Philippines. In the global interplay of forces, this region has special strategic importance for the United States. One of several relevant factors, in this regard, is that of *deterrence* vis-à-vis the People's Republic of China. This was highlighted in a study of the RAND Corporation, prepared for the US Air Force and published in 2000, on "The Role of Southeast Asia in US Strategy Toward China." The actual geo-strategic designs of the United States, resulting, *inter alia*, from this traditional interest of containment vis-à-vis China, are emphasized in Peter Symond's comprehensive analysis on South East Asia as "second front" in the US war on terror: "The September 11 attacks were seized upon by the White House and the Pentagon to press ahead with long-held plans to reverse the decline of the US military presence in the region and to aggressively assert US economic and strategic interests."<sup>5</sup>

On the level of political or mass psychology, the war on terror, as it is presently being waged by the United States, may also serve – or express – a certain collective "desire for revenge" resulting from the September 11 tragedy – which comes to bear even if the actual war operations target *innocent civilians* (as is the case, in many instances of so-called "collateral damage," in the course of the ongoing Afghanistan campaign) or may, in the future, target a *country* that is in no way related to the September 11 atrocities (such as Iraq). For this purpose, irrational sentiments of the general public are being stirred up and deliberately exploited.

Apart from these short-term political and psychological effects, one of the undeclared, but nonetheless far-reaching goals of the war on terror may be to make the United States' hegemonial rule virtually *immune* from criticism. Whichever country opposes the war is portrayed as belonging to – or sympathizing with – an "axis of evil," as an enemy of the "just world order" represented by the United States as self-appointed guardian of human rights and democracy, in short: as an enemy of humanity. Similarly, political leaders of countries not submitting to United States leadership may be vilified as international outlaws.

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<sup>5</sup> Peter Symonds, "Why has South East Asia become the second front in Bush's ,war on terrorism'?" *World Socialist Web Site*, 26 April 2002, [www.wsws.org](http://www.wsws.org).

## (II) The impact of the “war on terror” on the status of citizens on both sides of the new divide: “free world” vs. “terrorism”

The global strategy described above in its political and legal implications has also a serious impact on civil society in general. The strategy implemented under the slogan of the “war on terror” not only limits the collective freedom of states as main actors in international relations; it is also detrimental to individual human rights and fundamental freedoms of citizens everywhere. It affects not only the rights of citizens in the states targeted by the US war on terror, but also those of citizens in the United States and in countries that define themselves as allies of the global superpower, such as the Philippines:

- (1) In “targeted” countries such as Afghanistan (until the establishment of a pro-US government), Iraq, or other Muslim nations, citizens have often become – or may become – victims of an indiscriminate use of force, for which the euphemistic term of “collateral damage” is applied. In reality, the citizens of those countries are *hostages* in the United States’ war against the government of their own country.
- (2) In “allied” countries outside the Western hemisphere – as in the Philippines, for instance – the US war on terror may further aggravate internal tensions, ethnic rivalries, existing social problems, etc. The declaration, by the US administration, of certain groups and movements as “terrorist” may have a detrimental impact on the political situation in various ways:
  - a. This measure interferes with the respective country’s sovereignty;
  - b. it makes eventual peace efforts in the country more difficult, if not impossible;
  - c. it has a detrimental effect on the civil liberties of that country’s citizens – as they may be under pressure not to deal with certain groups, not to express certain political views, sympathies, etc. In general, such a measure seriously restrains the political process in a given country.

In regard to “allied” countries, the war on terror may further complicate their relations with neighbouring countries, forcing upon the former an agenda that may not always be compatible with regional peace and stability. Military operations – portrayed as joint “manoeuvres” – in allied countries, whether against insurgents, social resistance movements, or other armed groups, may further exacerbate existing conflicts instead of solving them, and may create turmoil and social unrest

instead of pacifying the country. All of these factors are detrimental to the basic human rights of the citizens in the country concerned.<sup>6</sup>

- (3) In the United States proper and in its “allied” countries in Europe, the war on terror has had a negative impact on traditional civil liberties that are perceived, in the West, as achievements of Enlightenment and as common heritage of mankind – such as freedom of expression, freedom of information, protection of the private sphere, etc. The citizens’ rights are threatened in various ways:
- In the name of the “war on terror,” extraordinary security measures are being taken which constitute an intrusion into the personal sphere of citizens and, in some areas, have reached an intensity that would otherwise be attributed to a totalitarian system.
  - There exists an increasing pressure, upon each citizen, to conform to the general (governmental) views about terrorism and the latter’s evaluation as a threat to Western society as such. If a citizen does not conform, he will be punished by societal “marginalization.” In the case of intellectuals, this implies that access to the mainstream media is regulated on the basis conformity / non-conformity with “official” public opinion. What results from this is a kind of “forcible consensus” on the country’s foreign policy and strategic affairs.
  - Entire population groups – defined according to religious, racial, ethnic criteria – are being discriminated against. (There is no time here to relate all the stories on what Muslims, Arabs, Asians, generally: non-whites have suffered in the United States as a result of the publicly cultivated stereotypes in regard to the terrorist threat.) What we witness today is a form of collective punishment of entire population groups, reminiscent – at least in its basic intent, if not in actual detail – of the treatment of the Japanese residents of the US during the Second World War. This corresponds, on the international level, to the increasingly discriminatory treatment of the countries of the South since the events of September last year.

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<sup>6</sup> For more details see the lecture by the author on “International Terrorism: Causes and Solutions” delivered at the National Police Commission of the Philippines (NAPOLCOM), Manila, 12 March 2002.

- In addition to the forms of political and social discrimination referred to above, systematic discrimination takes hold in the field of judicial procedures (in regard to the detention of and criminal proceedings against individuals belonging to the above-mentioned population groups). A special form of judicial discrimination of non-US nationals occurs on the territory of a US military base outside the United States. The setting up of so-called “military commissions” with the purpose to detain and try foreigners, suspect of terrorist acts abroad, on the base at Guantanamo (Cuba) is not only in violation of the US constitution, but constitutes a serious breach of the Third Geneva Convention of 1949. Through these “emergency procedures,” a basic principle of the rule of law, namely that of the separation of powers, is being systematically violated. The military commissions were created by Presidential order, which means that judicial authority is exercised by the executive branch.<sup>7</sup>
- There exists also a serious impact on civil liberties on the “meta-level”: At least in the United States, it has become increasingly difficult for citizens to stand up against those restrictions or violations of basic human rights. Citizens risk a wide range of “social sanctions” – such as the loss of job opportunities, damage to their professional career, etc. – if they raise their voice against those abuses. There is an overall pressure to conform – lest one faces the danger of being stigmatized as “unpatriotic” or un-American by self-declared “patriotic” media and individual zealots. What happens now, drastically reminds us of the excesses of the McCarthy era of the Cold War.
- Furthermore, these events and practices have had a very serious impact on press freedom and freedom of expression in general. In their coverage of the “war on terrorism,” the US media, to a large extent, act like extensions of the information branch of the government. In the strict sense of the word, there are virtually no independent mainstream media in the United States – when it comes to issues of national security and “strategic” interests, as defined by the Administration.

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<sup>7</sup> See *Military Order – Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism*. Executive Order dated November 13, 2001, 66 Fed. Reg. 57833 (16 November 2001).

This development has led to an erosion of the democratic system in general. As evidenced in the recent moves of the executive branch in regard to a so-called “preventive” war against Iraq, the legislature is being more and more sidelined when it comes to the issues of war and peace. The Congress risks becoming a “rubber stamp institution” for legitimizing the President’s war plans; it is urged to approve a kind of omnibus resolution that gives the President nearly unrestricted powers to wage war and frees him, nearly completely, from parliamentary control over the actual conduct of a war.

Through the mainstream media, public opinion is streamlined in such a way that the citizens support, more or less uniformly, the government’s positions and strategies. They are virtually denied the knowledge of possible alternatives to the executive branch’s policies. In fact, the 21<sup>st</sup> century “war on terror” seems to become the high time for the “*manufacture of consent*” as described by the American communication expert Walter Lippmann – well before World War II – as one of the essential ingredients of the American version of liberal (representative) democracy.<sup>8</sup>

### **(III) Political and social implications of and alternatives to the global war on terror**

The erosion of civil liberties on the national level corresponds to the marginalization – or undermining – of national sovereignty in the relations between states. These processes are two sides of the same coin; they can be seen as corollary of the self-assertion of a superpower through the “war on terror” – the strategic aim of which is to make that power’s global position unchallenged for the foreseeable future.

The developments described above have a lasting negative effect on the real international community – as distinct from the imaginary one that is constantly being invoked by those who conduct the war on terror, supposedly in the name of that very community. Some of these effects are, for instance, large-scale political and social destabilization in geo-strategically sensitive regions; the impossibility of sustainable social and economic development; new divisions of society and political systems – internally and externally – along religious, racial, ethnic lines; economic deprivation of the masses of the people in the affected regions; marginalization of existing international structures (such as the United

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<sup>8</sup> Walter Lippmann, *Public Opinion. With a New Introduction by Michael Curtis*. New Brunswick, N.J. (USA): Transaction Publishers, 1991.

Nations) that have helped, so far, to preserve a kind of co-existence among peoples and states. The overall effect is that the *collective* future is much more uncertain than in previous periods of history – in regard to the prospects of economic and social development as well as in regard to the stability of sovereign states and entire regions.

The global war on terror, waged by one major power – with other states following albeit reluctantly – not only has had the above-described serious impact on the sovereignty of states and citizens alike, on national as well as on individual rights; this new kind of war may, if not accompanied by a comprehensive social, economic and political strategy for the eradication of the root causes of terrorism, lead to a considerable increase of terrorist incidents. Thus, it may defeat its own purpose in the long term.

There should be no misunderstanding in regard to the basic ethical approach of our analysis. However “noble” and morally legitimate a goal may be, its pursuit does never justify the use of terrorist means – whether by individuals or by states. What is urgently required – if one seriously intends to develop a comprehensive strategy against terrorism – is a precise, legally consistent definition of terrorism, one that allows to distinguish terrorist acts from acts of legitimate resistance, in conformity with the rules of international humanitarian law.<sup>9</sup>

Furthermore, the problem faced by states consists in walking the fine line between “adequate” forms of counter-terrorism, compatible with the rule of law on the national and international level, and a “war on terror” that, in its actual conduct, defeats the very anti-terrorist purpose.

Countries that are committed to uphold human rights and the rule of law everywhere, have to accept that their behaviour will be judged according to these standards. This maxim was clearly described in a recent declaration of the Pugwash Conference: States, in their struggle against terrorism, have to apply “effective but measured responses to neutralize terror groups that neither contravene civil liberties and individual rights nor exacerbate the socio-economic-political-religious fissures that are the breeding grounds of terrorists.”<sup>10</sup>

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<sup>9</sup> The author tried to elaborate the basic elements of such a conceptual distinction in his Centenary Lecture at the Supreme Court of the Philippines (12 March 2002). See “The United Nations, International Rule of Law and Terrorism,” in: Hans Koechler, *Manila Lectures 2002. Terrorism and the Quest for a Just World Order*. Manila: Foundation for Social Justice, 2002, pp. 1-28. For the distinction between acts of terrorism and acts of resistance see also Hans Koechler (ed.), *Terrorism and National Liberation. Proceedings of the International Conference on the Question of Terrorism*. Frankfurt a.M./Bern/New York: Peter Lang, 1988.

<sup>10</sup> Pugwash Meeting No. 269, 51st Pugwash Conference on Science and World Affairs: “Challenges for Peace in the New Millennium,” 12 - 16 March 2002, Agra, India, Report on Working Group II: *Transnational Security Issues*, Rapporteur: Jeffrey Boutwell, [www.pugwash.org](http://www.pugwash.org).

If one is seriously and genuinely concerned about human rights, civil liberties, and fundamental freedoms, one has to give priority to the *eradication of the root causes of terrorism*. This implies that one has to develop a comprehensive economic and social strategy for sustainable development, including measures for the alleviation of poverty and social injustice on a global scale, with a view to their eventual eradication. One may refer here to the rather blunt assessment by Noam Chomsky: “Drain the swamp and there will be no more mosquitoes.”<sup>11</sup>

In order to be credible and effective at the same time, the “war on terror” not only must respect the sovereignty of states and the basic rights of citizens everywhere; it must be complemented by a “war on injustice” within the framework of a global development strategy. Such a strategy cannot be determined and implemented unilaterally, but has to be pursued within the multilateral framework of the United Nations.

Not only has the “war on terror” to be based on a clearly defined concept of terrorism and to be conducted in such a way that it does not itself resort to terrorist means; it has to be integrated into a comprehensive socio-economic policy that is oriented towards a *just and balanced international economic order*,<sup>12</sup> one that will make the incidence of terrorist acts less likely and will finally erode the social basis of support for such acts.

In order to achieve this far-reaching goal, the “war on terror” has to be conducted “in good faith” and has to be brought back to the framework of collective security as defined in Chapter VII of the Charter of the United Nations Organization. If global anarchy is to be avoided, this war must be conducted multilaterally – and not unilaterally “with multilateral pretence.”

This requires no less than the self-declared guarantors of human rights and democracy – the United States and her allies – beginning to respect the freedom and sovereign equality of *all* nations and peoples, large and small. Only such an attitude will generate the solidarity and support that are needed for a sustained – and sustainable – anti-terrorist effort.

If, however, the only superpower-cum-self-declared guardian of global freedom *rejects* equality and partnership as common guidelines of international relations, if the only superpower insists conducting this global effort in a strictly unilateral manner, disregarding the United Nations Organizations and the basic rules of international law, then President

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<sup>11</sup> Title of his article in *The Guardian*, UK, 9 September 2002.

<sup>12</sup> For the basic elements of such an economic order see Hans Koechler (ed.), *The New International Economic Order. Philosophical and Socio-cultural Implications*. Studies in International Relations, III. Guildford: Guildford Educational Press, 1980.

George W. Bush's recent dictum about the war on terror may become a frightening reality – not only for the people of the United States, but for all citizens of our global village: “There’s no telling how many wars it will take to secure freedom in the homeland.”<sup>13</sup>

It is the noble duty of all who are committed to the goals of the United Nations Charter to help in working out a *peaceful alternative* to terrorism as well as to the global war on terror. If the root causes of terrorist acts are ignored and if the problem of terrorism is merely portrayed as one to be handled through military and security measures, the present tensions and conflicts may well lead to a state of *permanent war* affecting all nations on the globe. In this kind of world war, if it ever materializes, there can be no winner. All nations, large and small, will lose. International peace and security, as defined in the United Nations Charter, can only be preserved through a *comprehensive* approach, integrating development and security strategies according to goals to be agreed upon among equal partners. These are the dictates of morality and of common sense, inherent in all religious traditions and beliefs, and shared by all people of good will.

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<sup>13</sup> Speech of President George W. Bush delivered at a fundraising lunch in Pittsburgh, Pennsylvania on 5 August 2002. Quoted according to Anthony Shadid, “US rebuffs second Iraq offer on arms inspection,” in: *The Boston Globe*, 6 June 2002.