

DISTANCE AND CONTEMPORANEITY IN EXPLORING THE PRACTICE OF STATES: THE BRITISH ARCHIVES IN RELATION TO THE 1957 OMAN AND MUSCAT INCIDENT

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The international lawyer needs, as much as the diplomatic historian, to understand State conduct and this means having reliable access to State intentions. These remain, in principle, State secrets except in so far as the State itself chooses to disclose them, or when recalcitrant officials leak them, or journalists otherwise come improperly or irregularly on State intentions. There is a second equally important problem, especially concerning the analysis of contemporary events, and that is to know whether one can be sure of the factual circumstances which are supposed to justify the invocation of a norm. Based on archival records in the UK Foreign Office (FO) which are here revealed for the first time, the present article focuses on the active FO discussions in July and August 1957 about the best way to present the UK's relations with Oman and Muscat internationally, when an Arab block of States, led by Egypt, tried to place (what it called) UK armed aggression against Oman on the agenda of the Security Council. The legal advice of Francis Vallat and Sir Gerald Fitzmaurice played a considerable part in these discussions which reveal a vision of governmental structures for dealing with international relations which appear very much a hangover from the period of the High Renaissance. Secrecy is prized as the most reasonable option when it comes to providing public explanations of State conduct. Without consistent and comprehensive access to the governmental policy-making process in which government international lawyers may also have a significant input, it is impossible to assess the process of decision-making in such a way as to determine exactly how international law is being interpreted, applied, followed or ignored.

I. STATE PRACTICE

It is very difficult to discuss contemporaneous events for a number of reasons. The main one is the fact that those involved are usually still alive and may continue to be engaged in the very same events that are ongoing. Perspectives and opinions about the best course of action will remain openly contested. Furthermore, there will not usually be agreed objective and detached sources from which one can draw to determine the nature of the events. There will be much fresh, first-hand testimony, but it will be conflicting. Where official events are concerned, and State practice falls under this rubric, there will not be direct access to primary source material, and, indeed it may be wondered whether the very idea of primary source material itself is becoming archaic in the post-modern age of political spin. Contemporary events will be important to those still engaged and passions will run high in attempting to discuss them. At the same time the objective, detached, perhaps officially agreed records for the description of the events will not be available and there will be no final authority to adjudicate contesting versions of the events.

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All of this impinges directly on the practice of the international lawyer in at least two respects. The international lawyer needs, as much as the diplomatic historian, to understand State conduct and this means having reliable access to State intentions. These remain, in principle, State secrets except in so far as the State itself chooses to disclose them, or when recalcitrant officials leak them, or journalists otherwise come improperly or irregularly on State intentions. Such well-known problems pose for the theory of State practice the temptation to avoid the psychological or intentional element of State practice when collecting and analysing it. I suggest that it is a remedy a lot worse than the disease.

There is a second equally important problem with the analysis of contemporary events in which States participate, and that is to know whether one can be sure of the factual circumstances which are supposed to justify the invocation of a norm. Perhaps the most usual example is where a State alleges that it has intelligence information (which it cannot disclose for fear of endangering sources, *etc*) that another country constitutes an imminent threat justifying pre-emptive actions.

International Law is supposedly based upon the practice of states. Whether this is simply a matter of assessing the development of a new rule of general customary law or more specifically a matter of assessing the attitude of a particular state to the application of the evolving law to itself, orthodox doctrine still supposes that the practice will have two elements, the material practice of the state and a psychological element which evidences the intention of the state and the way in which it makes clear whether it is following a rule, or somehow, creating a rule as a matter of legal obligation. Therefore, in principle, the international legal practitioner should expect to become embroiled in all the problems of contemporary history writing.¹

An authoritative recent representation of the debates about the two elements which make up customary law, material practice and the subjective element, is Mendelson's article "*The Subjective Element in Customary International Law*".² He raises the important question of whether, in order to assess the subjective element of custom, it is necessary to know the inner workings of a state bureaucracy. States do not have minds of their own, "...and in any case, since much of the decision making within government bureaucracies takes place in secret, we cannot know what States (or those who direct or speak for them) really think, but only what they say they think. There may be something of an exaggeration here. In some instances we can discover their views because the opinions of their legal advisers or governments are published. [Footnote: Though admittedly this is done only on a partial and selective basis and often only long after the event; and though it must also be conceded that the opinion of a government legal adviser does not invariably become that of the government...]" After these important deliberations, Mendelson writes that it is better to speak of the subjective rather than the psychological element of custom "... for it is more a question of the *positions* taken by the organs of States about international law, in their internal processes [Footnote: Including the communications of governments to national legislatures and courts, and the express or implicit *prise de position* about rules of international law by national courts and legislatures in the exercise of their functions] and in their interaction with other States, than of their *beliefs*."³

The *United Kingdom Materials on International Law* (until recently, edited by the late Geoffrey Marston) have been available in the *British Yearbook* annually since 1978. Marston has followed what is called the *Model Plan for the Classification of Documents concerning State Practice in the Field of Public International Law*, adopted by the Committee of Ministers of the Council of Europe in its Resolution (68)17 of 28 June 1968. This was

¹ Anthony Carty & Richard Smith, eds., *Sir Gerald Fitzmaurice and the World Crisis: A Legal Adviser in the Foreign Office (1932-1945)* (The Hague/London/Boston: Kluwer, 2000) at 23-27.

² M. H. Mendelson, "The Subjective Element in Customary International Law" (1995) 66 *Brit. Y.B. Int'l L.* 177.

³ *Ibid.* at 195-196.

amended by Recommendation (97)11 of 12 June 1997, following General Assembly Resolution 2099(XX) on technical assistance to promote the teaching, study, dissemination, *etc* of international law. The changes are not significant, and the essence of Marston's approach is that he sets out, as Mendelson has put it "... positions taken by organs of States about international law, in their internal processes and in their interaction with other States..."⁴

What will be attempted here is to analyse further the implications of these activities with respect to a single significant issue, the use of force by Britain in international relations, with respect to one incident as offering a pivotal precedent, the Oman and Muscat Incident of 1957 and the rule of international law with respect to intervention in a country at the request of its government. However, before considering the case-study in some detail, some general remarks can be made about the significance of penetrating the *bowels of the State*. In strict legal terms, the issue can arise in distinct ways. It may be a matter of determining whether Britain is observing or violating a rule of law. Alternatively this may be a matter of assessing what contribution Britain is making to the development or clarification of the law, where it is taken to be uncertain. In either case, it is not enough simply to know what *verbal positions* British state organs take up. It is necessary to know what Britain *has actually done*. The discrepancy will arise where the British *positions* are either not true or not the whole truth. But it need not even be so black and white morally. It may simply be that without the full picture, the actions of a State, such as the UK, may be unintelligible.

II. THE PRACTICAL REQUIREMENT OF SECRECY

In an article published in 1986, a Foreign and Commonwealth Office (FCO) Legal Adviser drew attention to the fact that "informal agreements" played a large part in British foreign relations.⁵ The basic principle is that a state is free to deny itself the advantages of concluding a legally binding treaty in order to benefit from the advantages of concluding informal instruments. Security and defence issues are not the only issues covered, but it is clear that the advantage here is the flexibility which comes from secrecy. This background will usually be relevant to cases involving the use of force, as there will be agreements between the UK and its allies that are not public knowledge, or there may be relevant agreements even if the UK is not itself formally a party to them. This was the case with Oman and Muscat in 1957.

To present the issue in a wider context, one might take a well-known and still uncertain case, the US bombing of Libya in 1986 from bases within the UK. The terms under which the US enjoys the use of military bases within the UK are known only to be the subject of informal agreements or even understandings. With the US bombing of Libya from British territory, one question was whether the UK had the full legal power to permit the US action. The UK did not try to claim that the US had acted independently of it, but supported US action, again relying upon undisclosed intelligence information that there were very specific Libyan targets engaged in terrorist activity. The information could not be disclosed for fear of jeopardising sources. The Prime Minister, in an emergency debate in the House of Commons on 16 April 1986, affirmed that her legal advice was that the bombing targets chosen were permitted by Article 51 of the UN Charter, as a matter of an inherent right of self-defence against armed attack.⁶

⁴ *Ibid.* See further, Geoffrey Marston, "The Evidences of British State Practice in the Field of International Law" in Anthony Carty & Gennady Danilenko, *Perestroika and International Law, Current Anglo-Soviet Approaches to International Law* (Edinburgh: Edinburgh University Press, 1990) 27 at 35, saying that parliamentary sources predominate in the *UK Materials on International Law*, *i.e.* positions taken by Ministers before Parliament. He points out that only rarely is material made available here which has not already been released to the public.

⁵ Anthony Aust, "The Theory and Practice of Informal International Instruments" (1986) 35 *I.C.L.Q.* 787.

⁶ See Anthony Carty, "The UK, the Compulsory Jurisdiction of the ICJ and the Peaceful Settlement of Disputes" in Carty & Danilenko, *Perestroika and International Law*, 129 at 131-3. Aust's 1986 *International and Comparative Law Quarterly* article is discussed here.

It was argued, however, in the House of Commons debate, that she should be obliged to demonstrate, with relevant evidence before the Security Council, that Article 51 had been observed. This would mean producing concrete evidence that, at the least, without an air strike there would be planned raids from specific camps, putting British citizens at risk. The Foreign Secretary, Sir Geoffrey Howe, himself a Q.C., argued in reply that the right of self defence includes the right to destroy or weaken one's assailants, to reduce his resources and to weaken his will so as to discourage and prevent further violence.

The argument by the Foreign Secretary was, to repeat the point, presented in a context where the information which was supposed to ground the threat or risk and the justification for military action could not be disclosed because it would jeopardise sources of intelligence information. There was effectively a claim to determine unilaterally the scope of international obligations with respect to restraint on the use of force, not only with respect to the extent of the norm but also the factual context of its application.

Such resort to arguments about the necessity of State secrets leaves the UK open to the types of charges levied against it in works such as Curtis' *The Ambiguities of Power* and the successor volume, *The Great Deception, Anglo-American Power and World Order*.⁷ Curtis' view is that Britain has a clear foreign policy aim, which it follows in concert with the United States. This aim is to preserve as much as it can the economic, political and military advantages which it possessed at the time of the Empire. In his analysis, Britain continues to be largely successful in the pursuit of this policy in the Middle East, especially in the Gulf, and in Southeast Asia. Military interventions, whether covert or open, and support for friendly regimes, particularly military and other security training, will be attuned to the need to preserve these interests. Obviously, the language of international law is a potentially useful propaganda weapon in the hands of opponents and so no useful purpose is served by an explicit and provocative disregard of it.

Therefore the British rhetoric is one of continued commitment to the principles of the UN Charter, *viz.*, above all, non-intervention in the internal affairs of other countries, respect for human rights and democracy, and priority to the peaceful settlement of disputes. *Positions* in accordance with these principles will be declared in international fora and even in public debates within national fora. The actual practice is difficult to put together because it remains largely secret and one obtains only sporadic glimpses of it.

III. IMPLICATIONS FOR THE DEVELOPMENT OF CUSTOMARY LAW ON THE USE OF FORCE: THE EXAMPLE OF OMAN AND MUSCAT (1957)

What are the implications of these polemics for attempts to assess what contribution Britain is making to the development of international customary law on the law relating to the use of force and the right of intervention at the behest of a friendly government? For instance, the 1986 *United Kingdom Materials on International Law* contain a document produced by the Planning Staff of the FCO in July 1984, entitled "Is Intervention Ever Justified?"⁸ The question is how, or even whether, such a document is to be read critically, *i.e.* how to assess the relationship of the document to an inevitably largely hidden practice. For instance, in paragraph II.6, intervention under a treaty with, or at the invitation of, another state is mentioned. If one state requests assistance from another, then clearly that intervention cannot be dictatorial and is therefore not unlawful. In 1976, the Security Council recalled that it is the inherent right of every state, in the exercise of its sovereignty, to request

⁷ Mark Curtis, *The Ambiguities of Power, British Foreign Policy since 1945* (London: Zed Press, 1995); Mark Curtis, *The Great Deception, Anglo-American Power and World Order* (London: Pluto Press, 1998).

⁸ Geoffrey Marston, ed., "United Kingdom Materials on International Law" (1986) 57 *Brit. Y.B. Int'l L.* 487 at 614-620.

assistance from any other state or group of states. An example of such lawful intervention at the request of states might be the British aid to Muscat and Oman.

Curtis comments on this incident as follows. Oman requested British military aid to quell a revolt in the north of the territory in the summer of 1957. In fact, in Curtis' view, Oman was a *de facto* client state controlled by Britain as much as any former colony. Its armed forces were commanded by British officers under the overall control of a British general. The Ministries of Finance and Petroleum respectively and the Director of the intelligence service were British. Banking and the oil company management were controlled by the British. The country was desperately poor, with infant mortality at 75%. The Royal Air Force and the Special Air Service together struggled until 1959 to put down a revolt against these conditions. Oman continued after its suppression to serve British financial and other interests very well. Extensive bombing of villages was an integral part of this campaign. At one point, the British Political Resident recommended that the villages should be warned that unless they surrendered ring leaders, they would be destroyed one by one, *etc.*⁹

The FCO paper fully recognises the complexity and controversy surrounding this area of law. It continues, on mentioning Oman in 1957, to say in paragraph II.7 that international law does prohibit interference (except maybe humanitarian) when a civil war is taking place and control of the state's territory is divided between warring parties. At the same time the paper claims that it is widely accepted that outside interference in favour of one party to the struggle permits counter-intervention on behalf of the other, as happened recently in Angola.

Before considering what a closer examination of the Archives might reveal about the Oman Incident, it might be interesting to consider some reactions in the academic community to Curtis' work. The reception of *The Great Deception* in a review in *International Affairs* is pointed. The review begins: "This book does not explain, so much as to seek to condemn..." Curtis supposedly implores his readers to extricate themselves from the view of establishment scholarship which includes the vast majority of academics. One might imagine Curtis scouring the archives looking for evidence to incriminate British and American policy makers. He often refers back to his earlier book *The Ambiguities of Power* where the sources are often personal recollections or references to other secondary works. If his sources are so accessible, why then have only a tiny minority of other scholars been able to see the story this way. The reviewer concludes by exhorting Curtis to "... be more measured in his judgments, show more sensitivity to complexities and moral dilemmas that confront policy-makers, and offer some more viable alternatives to the policies he so roundly condemns..."¹⁰

There was a very full discussion within the Foreign Office in July and August 1957 about the best way to present the UK's relations with Oman and Muscat internationally, when an Arab block of States, led by Egypt, tried to have what it called UK armed aggression against Oman placed on the agenda of the Security Council. Legal advice by Sir Gerald Fitzmaurice and Francis Vallat played a considerable part. The Foreign Office was reacting to arguments put forward in a particular context, a UN forum. Arab States, backed by the Soviet Union, wanted to have British military action in the Sultanate characterised in UN Charter language as constituting aggression against the independent State of Oman, coming from British forces in Muscat.

IV. FITZMAURICE'S AND VALLAT'S LEGAL ADVICE

The advice from Vallat for the benefit of the Secretary of State was that intervention, at the request of the Sultan of Muscat, to put down an insurrection by tribes in Oman was

⁹ *The Ambiguities of Power, British Foreign Policy since 1945, supra* note 7 at 98-99.

¹⁰ Alan Dobson, "The Great Deception (Book Review)" (1998) 74 *International Affairs* 923 at 923-924.

legal. Intervention is wrongful but that only refers to dictatorial interference, not assistance or cooperation. Oppenheim gives numerous examples of military assistance to maintain internal order, including Portugal in 1826, Austria in 1849, Cuba in 1917 and Nicaragua in 1926-1927.¹¹

Fitzmaurice is more explicit about the importance of the status of Muscat and Oman. Oman is not an independent State. In the international legal sense, it is not a State at all, but merely part of Muscat and Oman. The Imam of Oman exercised no territorial sovereignty. There are no frontiers between Oman and any other State or between Oman and Muscat. An agreement, known as the *Sib Agreement*, was reached in 1920. During the negotiations in 1920, a request for independence was completely rejected. The Agreement worked well until 1954. The Sultan's sovereignty was recognised by the Imam, in that external affairs remained in the hands of the Sultan, *i.e.* concerning individuals and their lawsuits with foreign administrations. The Imam's adherents relied upon passports issued by the Sultanate. Judgments of the Muscat Appellate Court were accepted in the interior. An attempt to assert independence in 1954 failed. No State had regarded "Oman" as a sovereign State independent of Muscat until the Saudi and Egyptian intrigues which followed a Saudi incursion into neighbouring Buraimi in 1952.¹²

This presentation of the situation was successful when the UK argued it before the Security Council. Sir Pierson Dixon mirrored the legal advice closely. There could be no aggression against the independent State of Oman because none existed. The Sultan of Muscat and Oman had his sovereignty over both recognised since the 19th century. Egypt and other countries claim that the independence of Oman was reaffirmed in the 1920 *Treaty of Sib*. This Treaty granted the tribes of the interior a certain autonomy but did not recognise Oman as an independent State. This request was refused by the Sultan. Also the agreement was not a treaty, but merely an agreement between the Sultan and his subjects. Sir Pierson Dixon followed Fitzmaurice's line very closely about the later marks of sovereignty. He concluded by saying the UK's action in supporting the legitimate Government of Muscat and Oman had been in the interests of stability of this area. If the subversion there had not been checked, the consequences might have been felt beyond the Sultanate and would not have been to the advantage of any of the countries in the region that signed the letter to place this issue on the agenda of the Security Council.¹³

The vote against putting the matter on the agenda was five to four, with two abstentions.¹⁴ Only the Philippines denied the legality of an intervention at a request of a government. The Soviet Union confined itself to generalities about the oppression of the national liberation movement of the Oman people. There was little stress on the argument about outside intervention in Oman, except from France, which led the vote against adopting the Arab item on the Security Council agenda. The UK itself played it down because it did not want to exacerbate its relations with Saudi Arabia.¹⁵ An item to this effect was circulated to all the British embassies in the Middle East. Although the UK knew of the Saudi involvement, a higher priority had to be given to drawing Saudi Arabia out of the Soviet and Egyptian sphere of political influence.¹⁶ This goal would have been lost if one had entered into specific detail about Saudi subversive activities. Instead the legality of a response to an invitation for assistance was stressed.

At the same time Ehili Lauterpacht gave a full account of the events in the *International and Comparative Law Quarterly*.¹⁷ The account reproduced a statement by the Foreign

¹¹ UK, Foreign Office, FO/371/126877/EA1015/89.

¹² UK, Foreign Office, FO/371/126887/EA1015/365.

¹³ UK, Foreign Office, FO/371/126884/EA1015/282(A), 20 August 1957.

¹⁴ UK, Foreign Office, FO/371/126884/EA1015/283, 20 August 1957.

¹⁵ UK, Foreign Office, FO/371/126878/EA1015.

¹⁶ See also G. Nolte, *Eingreifen auf Einladung* (Berlin: Springer Verlag, 1999) at 86-89.

¹⁷ Ehili Lauterpacht, "Contemporary Practice of the United Kingdom" (1958) 7 I.C.L.Q. 99 at 99-109.

Secretary in the House of Commons in July 1957. It followed the same lines as Sir Pierson Dixon's UN presentation, stressing the invitation from the Sultan. He emphasised the importance for Britain's reputation in the region, that it responded to its implicit obligation to protect the rulers of sheikdoms under British protection from attack. There was a direct British interest and the House did not need to have stressed the importance of the Persian Gulf. The fact that dissidents had received assistance from outside the territories of the Sultan was briefly mentioned. The Joint Under-Secretary of State at the Foreign Office also made a statement concerning the right to send arms to support a ruler upon invitation. The UN had not been informed directly because it was an internal matter. Finally, a note was sent to the Soviet Government. The latter alleged Britain had recognised the independence of Oman in an agreement and had now invaded the territory of Oman and evaded responsibility for this aggression by blocking discussion at the UN. The British response was that the district of Oman had been an integral part of the dominions of the Sultan of Muscat and Oman since the middle of the 18th century and had been recognised as such in a number of treaties between the Sultan and foreign Powers. The UK's action was a response to a direct request on the occasion of an internal uprising stimulated from outside the country. There was no question of UK aggression against Oman and, of course, it had never recognised the independence of the Oman area in any treaty.

Lauterpacht himself offered an extensive note on the law on intervention, suggesting a limit to the right to intervene by invitation where a revolt had reached the point of intensity that recognition of belligerency would be permissible. He commented briefly from the answers in the House of Commons, that the insurgents did not represent any substantial dissentient proportion of the inhabitants of the area subject to the rule of the Sultan and that, in any event, they were stimulated and supported in their rebellion by foreign elements. Lauterpacht finally reiterated the international treaty practice evidencing the Sultanate's independence. However, he did add two points. In an agreement in 1891, the Sultan pledged not to alienate his dominions save to the British government, thereby giving the latter a direct interest in anything affecting the territorial integrity of the Sultanate. Lauterpacht concluded, further, that its independence was in no way compromised by the undertaking of the Sultan, given in 1923, that he would not grant permission for the exploitation of petroleum in his territory "without consulting the Political Agent at Muscat and without the approval of the High Government of India". In a footnote, Lauterpacht remarked that the rights under this agreement cannot properly be said to have lapsed with India's independence. Nor can it be said that India succeeded to these rights. The term "Government of India" was a mere administrative convenience.

V. PRESSURE FOR PUBLIC DISCLOSURE: SIR RONALD WINGATE'S COUNSEL

However, further pressure came upon the Foreign Office from quite a different source: the domestic media, in particular an article in the *Guardian* of 7 August 1957. Pressure grew within the UK, in the media and through questions in Parliament, to uncover what the exact relationship between HMG and the Sultan of Muscat and Oman was. Here, the picture which emerged in Foreign Office discussions was quite different from the public face at the UN. A focus for discussion was whether to publish the *Sib Agreement* which appeared to define the relations within the Sultanate. This was thought not advisable, as the more the history and operation of the agreement was explored, the clearer it would become that the only coherence and stability that the Sultanate enjoyed came from British support at every level. The British Political Agent, now Sir Ronald Wingate, who had effectively written both sides of that Agreement, was still alive in 1957.

In September 1957, Sir Ronald came to see officials in the Foreign Office. He explained to Foreign Office officials, in particular a Mr. Walmsley, that the Western concept of sovereignty was meaningless in the region. The Walis, whom the Sultan maintained in

Oman, did nothing and could not be said to constitute a token of government. The entire Sultanate of Muscat and Oman was, for all practical purposes, not administered. The situation there in 1954, as in 1920, could be compared to the Scottish Highlands before 1745. The Sultan was completely dependent on Britain and powerless outside a few coastal towns. Wingate commented upon a copy of Dixon's speech to the Security Council. He said that he could see nothing wrong with it, except that he would have expressed himself more frankly. The immediate comment of Walmsley was that while one might speak reasonably to reasonable people, it was impossible to concede any point unnecessarily in the UN.¹⁸

Wingate made a further detailed comment on the *Agreement of Sib* and Sir Pierson Dixon's speech. Treaties concluded by the Sultan did not mean he had any effective sovereignty over an undefined area. His power had always extended only to a few coastal towns and it would be impossible to hold that the Sultan exercised any sovereignty over the interior between 1913 and 1955. Indeed the interior tribesmen, who hated the Sultan, could have driven him into the sea had it not been for a strong battalion of imperial troops. This policy cost the UK a lot and served no purpose. It had been there in the 19th century to keep the French out and to combat the slave trade. Both reasons were long defunct. In 1920, Wingate, as Political Agent, undertook to reorganise the Sultanate, putting Egyptian personnel in charge of administration. He, Wingate, and not the Sultan, refused to acknowledge the independence of Oman. He refused to recognise the Imam of Oman as Imam because of the religious significance of such an act. It would have given the Imam authority over the whole Sultanate. However, the Imam remained as head of the tribal confederation. The agreement recognised the facts of the situation in a way that permitted Muscat and the coastal Oman on the one side, and the tribes of the interior Oman on the other, to exist as separate self-governing units. No question of allegiance to the Sultan arose. What the Sultan did in 1955 was not to reassert his authority but to take over the interior by armed force. This could be justified as necessary for the security of the coastal regions. However, one also had to be careful about how to deal with the extraordinary rise in the Sultan's revenues, derived presumably from oil exploration rights which he had granted in the interior tribal areas, and which necessitated the provision of security for the drilling parties in the tribal territories.¹⁹

Wingate's comments were relevant to the advisability of publishing the *Sib Agreement* as a way of silencing British media controversy about the status of the Sultan, in particular the article in the *Guardian* of 7 August 1957. It was thought that, on balance, publication would merely show how uncertain the situation in Muscat and Oman was, although selected journalists were shown the agreement on a confidential basis. A further detailed internal FO reading of the *Agreement of Sib* revealed that it was difficult to use. The difficulty of the Agreement was that it made no mention of sovereignty for either side, so officials reasoned that they would have to elaborate a thesis that the Sultan's authority was implicitly assumed and that the burden of proof would be on Omanites to show they had any corresponding sovereignty. The whole question was that much more prickly because of a British Administration Report which appeared on a FO Confidential Print on the Buraimi. "...The Agreement of Sib virtually establishes two states, the coast under the Sultan, and the interior, that is Oman proper, under the rule of the Imam...The tribes and tribal leaders having attained in their own eyes complete independence..."²⁰ The best one could make of this would be to stress the words "virtually" and "in their own eyes". The Sultan's interpretation of this agreement was equally valid. There was a consensus that this was also the direction of Wingate's commentary.²¹

¹⁸ UK, Foreign Office, FO/371/126887/EA1015/371.

¹⁹ UK, Foreign Office, FO/371/126829: FO Confidential Note on the Agreement of Sib, and Sir Pierson Dixon's Speech in the Security Council of 20/8/1957, prepared by Sir Ronald Wingate.

²⁰ UK, Foreign Office, FO Confidential Print on the Buraimi at 157.

²¹ UK, Foreign Office, FO/371/26882/EA1015/235.

A further difficulty is that while Wingate's report as Political Agent states categorically that the demand for the independence of Oman was refused, it also makes a number of uncomfortable points, if one had to rely upon it by publishing it. He denigrated the unparalleled degree of ineptitude of the Sultan and even worse, his despatch made the following "acid remarks" on British policy: "... Our influence has been entirely self-interested, has paid no regard to the peculiar political and social conditions of the country and its rulers and by bribing effete Sultans to enforce unpalatable measures which benefited none but ourselves, and permitting them to rule without protest, has done more to alienate the interior and to prevent the Sultans from re-establishing their authority than all the rest put together ..."²²

One might try to say that the Agreement had been violated, and ceased to exist by virtue of the subversion coming from Oman and so it was quite pointless to produce it. However, if one attempts to argue that the balance of the Agreement has been destroyed by the aggression of the Imam Ghalib and treats the Agreement as no longer valid, to do this "... we should have to explain how completely he was in the pocket of the Saudis, and this would conflict with the Secretary of State's decision that at present we must avoid attacking the Saudi Government over Oman ..."²³

Therefore, it can be argued that in 1957, the senior Foreign Office officials did not think that there was any realistic way in which they could present publicly what they understood to be happening in the Sultanate of Muscat and Oman, other than in the Charter language of friendly states and supporting internal order within them. In fact there was no State other than what Britain undertook to maintain, but the alternative would be for Saudi Arabia, Egypt and eventually the Soviet Union to occupy a space if Britain were to vacate it. Dorril explains at length that further insurgency against the Sultan in the late 1960s convinced the Wilson Government of the need for change, and the Conservative Government gave the go-ahead at the end of June 1970. It was agreed to replace the Sultan with his English-educated and more competent son. It still took until 1975 to defeat Chinese and Soviet-backed insurgency.²⁴

It is ironical that assessments of Curtis and Dorril, that the Sultanate was so misgoverned in the years before the 1970 coup, are part of the implicitly official UK view of that period from the hindsight of post-coup developments. The two authors rely upon much secondary evidence, as the Chatham House reviewer complains, but the secondary evidence is a book called *Oman: The Making of a Modern State*, by John Townsend and published in 1977.²⁵ Townsend was economic adviser to the Oman Government from 1972 to 1975. Curtis quotes him as arguing that, after the regime change, the Sultan's response to the rebels in the 1960s was not an alternative program with proposals for reform or economic assistance, but simply the use of even greater force.²⁶ By 1970, that policy promised to lose the Sultanate to communist-backed forces. This was not acceptable. Furthermore, with the Shell-owned Petroleum Development (Oman) oil company producing oil in commercial quantities by 1967, there was plenty of domestic revenue to allow scope for a more pragmatic social policy.

VI. THE INTERNATIONAL LAWYER'S PERPLEXITY

For the perplexed international lawyer, the question that is most pressing is whether and how the Charter paradigm and language for the analysis and understanding of international

²² UK, Foreign Office, FO/371/26882/EA1015/235(A).

²³ *Ibid.*

²⁴ Stephen Dorril, *MI6: Fifty Years of Special Operations* (London: Fourth Estate, 2000) at 729-735.

²⁵ John Townsend, *Oman: The Making of a Modern State* (Croom Helm: St. Martin's Press, 1977).

²⁶ Mark Curtis, *Web of Deceit: Britain's Real Role in the World* (London: Vintage Press, 2003) at 279.

society can retain not merely formal validity but also a significant impact upon the forces at work in that society. Perhaps the least that one can say as an international lawyer is that *positions* taken up by the UK, or for that matter any other government, cannot be taken at face value, or even be treated with anything other than complete scepticism. Without consistent and comprehensive access to the governmental policy-making process in which government international lawyers may also have a significant input, it is impossible to assess the process of decision-making in such a way as to determine exactly how international law is being interpreted, applied, followed or ignored.

The difficulty has already been seen to lie in part with the continuing and presumably inevitable secrecy of diplomacy where strategic interests are engaged. This is, in effect, to acquiesce to the vision that governmental structures for dealing with international relations remain a hangover from the period of the High Renaissance. A typology of this world is provided by Jens Bartelson in his *A Genealogy of Sovereignty*.²⁷ The so-called modern state arising out of the wars of religion of the 16th and 17th centuries is traumatised by its bloody foundation and hence silent about its origins. It becomes the subject of Descartes' distinction between the immaterial subject and the material reality which it observes, classifies and analyses. Knowledge supposes a subject and this subject, for international relations, is the Hobbesian sovereign who is not named, but names, not observed, but observes, a mystery for whom everything must be transparent. The problem of knowledge is the problem of security, which is attained through rational control and analysis. Self-understanding is limited to an analysis of the extent of the power of the sovereign, measured geo-politically. Other sovereigns are not unknown "others" in the anthropological sense, but simply "enemies", opponents with conflicting interests whose behaviour can and should be calculated.

So, mutual recognition by sovereigns does not imply acceptance of a common international order, but merely a limited measure of mutual construction of identity resting upon an awareness of sameness, an analytical recognition of factual, territorial separation. The primary definition of state interest is not a search for resemblances or affinities, but a matter of knowing how to conduct one's own affairs, while hindering those of others. Interest is a concept of a collection of primary, unknowable, self-defining subjects, whose powers of detached, analytical empirical observation take absolute precedence over any place for knowledge based on passion or empathy.

However, a more precise paradigm suitable for a situation which may be peculiar to North-South relations is suggested by Robert Cooper's *The Breaking of Nations*.

VII. CONCLUDING REMARKS: TOWARDS A MORE PRECISE PARADIGM

Cooper denies the universality of international society and divides it into three parts, the pre-modern, the modern and the post-modern. The United Nations is an expression of the modern, while failed States come largely within the ambit of the pre-modern. This means, on a practical level, that the language of the modern UN does not apply to pre-modern States. This is not to say the Charter is violated in that context. It is simply conceptually inapplicable.²⁸

The pre-modern refers to the pre-modern, post-imperial chaos of Somalia, Afghanistan and Liberia. The State no longer fulfils Max Weber's criterion of having a legitimate monopoly on the use of force. Cooper elaborates upon this with respect to Sierra Leone.²⁹ This country's collapse teaches three lessons. Chaos spreads (in this case, to Liberia, as the

²⁷ Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995), especially chapter 5.

²⁸ Robert Cooper, *The Breaking of Nations, Order and Chaos in the Twenty-First Century* (London: Atlantic Books, 2003), especially 16-37.

²⁹ *Ibid.* at 66-69.

chaos in Rwanda spread to the Congo). Secondly, crime takes over when the State collapses. As the law loses force, privatised violence enters the picture. It then spreads to the West, where the profits are to be made. The third lesson is that chaos as such will spread, so that it cannot go unwatched in critical parts of the world. An aspect of this crisis is that the state structures themselves, which are the basis of the UN language of law, are a last imperial imposition of the process of decolonisation.

The modernity of the UN is that it rests upon State sovereignty and that in turn rests upon the separation of domestic and foreign affairs.³⁰ Cooper's words are that this is still a world in which the ultimate guarantor of security is force. This is as true for realist conceptions of international society as governed by clashes of interest, as it is for idealist theories that the anarchy of States can be replaced by the hegemony of a world government or a collective security system. I quote: "The UN Charter emphasizes State sovereignty on the one hand and aims to maintain order by force."³¹

It is because the world is divided into three parts that three different security policies will be followed.³² Europe is a zone of security beyond which there are zones of chaos which it cannot ignore. While the imperial urge may be dead, some form of defensive imperialism is inevitable. All that the UN is made to do is to throw its overwhelming power on the side of a State that is the victim of aggression.³³ Cooper generally counsels against foreign forays. European humanitarian intervention abroad is to intervene in another continent with another history and to invite a greater risk of humanitarian catastrophe.³⁴ However, the three lessons of recent State collapse in Sierra Leone and other places cannot be ignored. Empire does not work in the post-imperial age, *i.e.* the acquisition of territory and population. Voluntary imperialism, a UN trusteeship, may give the people of a failed State a breathing space and it is the only legitimate form possible, but the coherence and persistence of purpose to achieve this will usually be absent. There is also no clear way of resolving the humanitarian aim of intervening to save lives and the imperial aim of establishing the control necessary to do this.³⁵ While Cooper concludes by saying that goals should be expressed in relatives rather than absolutes, his argument is really that the pre-modern and the modern give us incommensurate orders of international society.

This brings one back to the conversation between Walmsley and Wingate in the Foreign Office in 1957. After reading Dixon's address to the Security Council, Wingate said he would have expressed himself more frankly. Walmsley replied that one could speak reasonably to reasonable people, but that at the UN it is better not to make unnecessary admissions. I think that is where Britain still remains, except that the world in which Britain operates today has become infinitely more dangerous. Is it not time for a rethink of the nature of reasonableness?

³⁰ *Ibid.* at 22-26.

³¹ *Ibid.* at 23.

³² Unfortunately, time does not permit further discussion of post-modern Europe.

³³ *Ibid.* at 58.

³⁴ *Ibid.* at 61.

³⁵ *Ibid.* at 65-75.

