

# Police power, all the way to heaven

## *Cujus est solum* and the no-fly zone

**Mark Neocleous**

What is a no-fly zone? Formally, it is a prohibition on flying in order to call a halt to hostilities in the region, usually enacted in aid of a group or groups which might otherwise suffer violence. When the Libyan civil war broke out in early 2011 one of the first demands made by several political actors of varying political persuasions was for a no-fly zone. The debate surrounding this continued until the passing of United Nations Security Council Resolution 1973, on 17 March 2011, imposing a no-fly zone over Libya. This was one in a growing line of no-fly zones imposed for ‘humanitarian reasons’ by the ‘international community’. The ‘humanitarian reasons’ are important, since, although within the Security Council the case was made by major military states such as the USA, the UK and France, the decision had wider support from those progressives and radicals who have insisted on an international ‘responsibility to protect’ (‘R2P’ in its increasingly popular formulation in International Relations) or to intervene in support of democratic resistance movements, and which often follows calls from within those same movements. With this ‘humanitarian’ rationale, the no-fly zone appears to be a form of geopolitical action with widespread appeal. This was the case in Libya, has been the case in the debate about a no-fly zone in Syria in 2013, and was true of previous no-fly zones such as those imposed over Iraq (in 1991, expanded in 1996 and lasting until the US-led invasion of the country in 2003), and Bosnia (in 1992–95).

Yet is ‘military intervention’, ‘humanitarianism’ or even, for that matter, ‘military humanism’,<sup>1</sup> the best way of thinking about the no-fly zone? How might we understand the no-fly zone better from a radical perspective? Steps towards this goal have been made by an important body of work within critical geography, in which the no-fly zone has been framed as a question of ‘territorial integrity’, ‘vertical geopolitics’ and a ‘crisis in aerial sovereignty’.<sup>2</sup> In so doing, the

approach overlaps with the way the subject has been framed in international law and strategic studies.<sup>3</sup> However, to understand the no-fly zone we need more than discussions of ‘sovereignty’ and ‘territoriality’, whether these are in crisis or not. Rather, I suggest that we need to think of the no-fly zone as a form of police power.

One of the remarkable features of contemporary official discourse concerning air power is that it openly looks back to and seeks to learn from the use of air power in colonial pacification campaigns of the 1920s, and is often clear about the reason for so doing: the use of air power between the wars is widely held to be a model for contemporary counter-insurgency strategies.<sup>4</sup> I have elsewhere shown that this is because from its very inception the use of air power in the colonies was structured around the police concept, and have suggested that this fact should be important to how we understand contemporary air power.<sup>5</sup> Here, I aim to develop that argument in terms of the no-fly zone. This requires situating the no-fly zone within a much longer and wider historical debate about ‘international police’ and, in particular, the central space in which such police operates: the air. The ‘space’ of police has historically been the city, as Foucault once suggested,<sup>6</sup> but the space of *international* police is the air. At the very least, the no-fly zone needs to be understood as one of the manifestations of this international police power.

At the same time, however, focusing too heavily on the international issues surrounding ‘territorial integrity’ and ‘vertical geopolitics’ obscures what is probably a far more challenging fact, and thus a far more challenging issue for radical politics: that no-fly zones are now a fundamental mechanism of police power per se, and not just internationally. As such, we need to consider the no-fly zone as a key transformation in the zone of engagement of police power, and to connect this transformation with the rise of that other

key technology of air power, the drone. Most of the critical literature and radical commentary on drones says next to nothing about no-fly zones, and part of the implication of my argument here is that this is a major oversight. Indeed, one of the implications of my argument is that however profound the transformation in the space of power that the drone is, one cannot fully understand this transformation and its future possibilities without connecting it explicitly to the no-fly zone as police power.

### **'That's the way you do a no-fly-zone'**

What is a no-fly zone, then? This question really cannot be answered without addressing a prior question: who controls the sky? But this question of sovereign control raises some complicated historical and conceptual issues concerning who *owns* the sky;<sup>7</sup> sovereignty needs to be understood through the lens of property.

In their classic texts on English law, both Chief Justice Edward Coke and Sir William Blackstone comment on two cases in 1598 and 1610 involving English landowners successfully suing their neighbours for building houses that overhung the line of their own properties. For Coke, the building of a balcony which extends over the line of a neighbouring property is impermissible, for 'the earth hath in law a great extent upwards, not only of water as hath been said, but of ayre and all things even up to heaven'. For Blackstone the cases show that 'land hath also, in its legal signification, an indefinite extent, upwards as well as downwards ... therefore no man may erect any building, or the like, to overhang another's land... The word "land" includes not only the face of the earth, but everything under it, or over it'.<sup>8</sup> As Coke notes and Blackstone repeats, a property in land meant that one owned the air directly above it, and this was the basis of the doctrine *Cujus est solum ejus est usque ad coelum*: 'whoever owns the land owns it up to the sky', or 'whoever owns the soil, it is theirs all the way up to Heaven'.

The principle *cujus est solum*, as it became known, remained firmly established all the way through the centuries.<sup>9</sup> It took a jolt with the emergence of air balloons first flown in France in 1783, which, as well as generating a discussion about their military potential, also generated heated legal debate about whether the flight of a person in an air balloon constituted a trespass on the property beneath. This led to the first air laws, introduced in the form of police regulations for Paris. But the principle *cujus est solum* otherwise seems to have remained intact until the twentieth century. In a book titled *Air Sovereignty*, published in

1910, J.F. Lycklama a Nijeholt found that the principle *cujus est solum* appeared in some form or another in the key legal treaties of most states, that it had the support of many a legal scholar, and that the few legal cases there had been across Europe also held to that view.<sup>10</sup> The French Civil Code, for example, held that 'the ownership of the soil carries the ownership of whatsoever is above and beneath it', while the German Civil Code of 1900 included the principle that 'the right of an owner of a piece of land extends to the space above the surface'. So when Louis Blériot flew across the English Channel in 1909 and pilots started flying at 20,000 feet in 1913, lawyers were still trying to make sense of the legal implications by discussing Coke and Blackstone, and by citing cases dealing with disputes over balconies and tree branches. Yet as the technology of air power progressed, that situation changed, as the concern shifted from individual property rights to state sovereignty and territorial control.

States first began to develop formulations which allowed for commercial flying over space that was owned as property by individuals by limiting the height at which individuals might claim an interest. Thus the German Civil Code of 1900 just cited also included the claim that the right of the owner did not 'forbid interference which takes place at such a height or depth that he has no interest in its prevention'. Likewise the Swiss Civil Code of 1907 held that although 'the ownership of the soil implies the ownership of all that is above and below the surface', it does so only 'to such a height and depth respectively as the owner may require'.<sup>11</sup> But what about the state's rights? Does a *state* have the sovereign right to cordon off airspace as its *own* property? Legal opinion at the time was clear. Aside from the technical issue that if individuals genuinely claimed sole right over the airspace above their property then air power could not be developed, it was also thought that 'by giving such a right to a landowner, the State says that it considers *itself* sovereign over the airspace'.<sup>12</sup> A 1910 conference held in Paris to consider flight regulation saw most states claiming absolute vertical sovereignty in precisely this way.

This then generated a new and far more compelling question: if the state controlled the airspace above its territory, could other states travel across or through that same space? The question took legal and political theory back three centuries to the debate about the 'free seas'. (It is the reason we speak of 'aeronautics' and why so much of the vocabulary of the air replicates that of the sea: pilots, ports, stewards, and so on.) There are two ways of understanding the 'aerial ocean', as French lawyer André Blachère put it in 1911: 'On

the one side is the sovereignty of the State – integral and egotistical – on the other side the still imprecise rights of the international community’.<sup>13</sup> Blachère’s comment identifies the key issue concerning the legal status of air space at that point: on the one hand, an argument for freedom of the air; on the other hand, an argument for national sovereignty over that same air.

In the years prior to the First World War international lawyers struggled to reconcile the principles of state sovereignty and the international freedom of the air. An International Juridical Congress for the Regulation of Aerial Locomotion held in Verona in 1910 resolved that, on the one hand, ‘the atmosphere above the territory and territorial waters is to be considered territorial space subject to the sovereignty of the State’, but also held that, on the other hand, ‘in territorial space, the passage and circulation of airships should be free, except for regulations necessary to protect public and private interests’. A similar tension emerged from a congress of the Institute of International Law held the following year: ‘International aerial circulation is free’, the Institute argued, ‘except for the right of the subjacent States to take certain measures to be determined, in view of their own security and that of the persons and property of their inhabitants.’<sup>14</sup> And similar positions with the same tensions emerged from meetings of the International Juridical Committee on Aviation held in Paris in 1912, Geneva in 1913 and Frankfurt in 1913. Thus the freedom of the air (as ‘common property’) was somehow limited by the security and sovereignty of the state over the air above its territory (as its own property), but no one knew just quite how or where or when. One solution was to slice the airspace such that the state might claim right of sovereignty up to a certain number of feet that could in theory be made the state’s property. This had the advantage of replicating the law of the ocean, which had divided the sea into a territorial zone surrounding the land and a further zone of ‘international waters’. It thus satisfied the demand for both state sovereignty and the ‘free air’. But this had some practical defects, concerning how to measure the distance and whether the distance that might seem appropriate now would seem less appropriate with the development of better technology. At which point, World War I broke out.

The outbreak of the war temporarily put paid to the principle of the international freedom of the air. If before the war that principle had been both desirable and possible, the military use of air power during the war swept aside the claim for international freedom of the air. ‘The neo-Grotian claim, that air by its nature could not be possessed, virtually disappeared’, notes

Banner. ‘As the nations of Europe battled for control of airspace, it was clear that air not only *could* be possessed but that it had to be possessed if a country hoped to defend itself against attack’.<sup>15</sup> Thus Article 1 of the Paris Convention Relating to the Regulation of Aerial Navigation (1919) opened as follows: ‘The High Contracting parties recognise every Power has complete and exclusive sovereignty over the air space above its territory.’ The International Commission for Air Navigation created by the Convention was meant to be a component part of the structures of international order created at the same conference, including the League of Nations, and disputes regarding the Convention were to be settled by the Permanent Court of International Justice. It meant that following World War I the international order had settled on the principle that sovereign states had the right of eminent domain over their territory and thus the right to exclude foreign aircraft from the skies above the land. The principle underlying the system of air travel, and thus by extension the principle underlying the system of air power, was that a nation had complete control over its own airspace.<sup>16</sup> This was confirmed in the 1944 Convention on International Civil Aviation held in Chicago, which held that ‘every state has complete and exclusive sovereignty over the air space above its territory’ and that other states may use this space only with that state’s consent. International lawyers quickly confirmed the principle, claiming it as a fundamental tenet or well-recognized rule of international law.<sup>17</sup> The international agreement by the end of World War II was clear: sovereignty extended into the sky.

Nonetheless, the central tension from decades before remained. As much as the state owns and controls the ‘fly-zone’ above its territory, the rapidly developing technology of air power seemed to offer new possibilities for capital, for transport and for international order, but presupposed the need to fly across and through the zone in question. This tension was compounded by the fact that even if sovereign ownership of the sky above the territory had been conceded, it was never quite clear what ‘sky’ actually meant and thus where the ‘fly-zone’ ended. The vertical limit of state sovereignty was unsettled, and remains so: there is no agreed delineation between what might count as a state’s territory and what might count as free outer space. As Dean Reinhardt recounts, many articles were written on the subject in the 1950s, not only because the ‘space age’ was dawning but also because in 1956 the USA had begun a programme of releasing unmanned high-altitude balloons. Designed ostensibly to conduct atmospheric research, the US

Air Force was also launching similar balloons in intelligence-gathering operations, as well as using high-altitude aircraft for the same purpose, such as the Lockheed U-2 to fly missions over the Soviet Union. In one famous case, a U-2 flown by Gary Powers was brought down over the Soviet Union on 1 May 1960, raising once again the question of 'roof' on the territorial zone: just where did sovereignty stop? A fair number of air theorists and military strategists expressed the opinion that the USA had not violated the sovereignty of the Soviet Union, citing a number of reasons: that 'air sovereignty' had not been clearly defined; that sovereignty should be based on effective control but that this must by definition be lacking above a certain height; and that the formal boundary between sovereign 'air space' and non-sovereign 'outer space' is (and would remain) a 'never ending dispute' in international law.<sup>18</sup>

Committees of the United Nations would thereafter debate the exact height to which such sovereignty extends, and a convention seems to have emerged around the idea that a 'sovereign ceiling' of some sort exists, though no height has ever been agreed. Some claim that it should be the height at which an object enters into orbit and thus somewhere between 70 km and 160 km, itself quite a large span. The 'aeronautical ceiling theory' places the maximum altitude for aircraft at around 80 km, while space activities cannot be carried out below approximately 120 km, and so halving the distance would place the 'ceiling' at approximately 100 km above the earth's surface. Others, such as the equatorial states which signed the Bogota Declaration of 1976, claim sovereignty up to the geostationary orbit, which is 36,000 km. Indeed, 'between 1957 and 1960 alone the proposals made ranged from 20 km to 1,500,000'.<sup>19</sup> What is agreed on is that despite the complex intertwinement of air law and space law, in the former the principle of sovereignty is paramount, whereas in the latter 'effective control' and sovereignty are impossible to effectuate.<sup>20</sup>

What this also means is that when one hits 'outer space', 'free space' begins. Significantly, according to the two key UN Treaties in this area, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (1967), and the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (1979), 'outer space' is defined in international law as 'not subject to national

appropriation by claim of sovereignty' and is thus 'the province of all mankind' or 'the common heritage of mankind', though these terms have never been defined. About this we might make two observations in passing. The first is that it is recognized that a space exists somewhere *above territory* and *beyond sovereignty*, though precisely where nobody knows. The second observation is that the implication of the 1967 and 1979 treaties is rather telling: the common heritage of mankind, beyond sovereignty, lies in outer space; in other words, the common heritage of mankind remains out of the reach of more or less the whole of mankind.

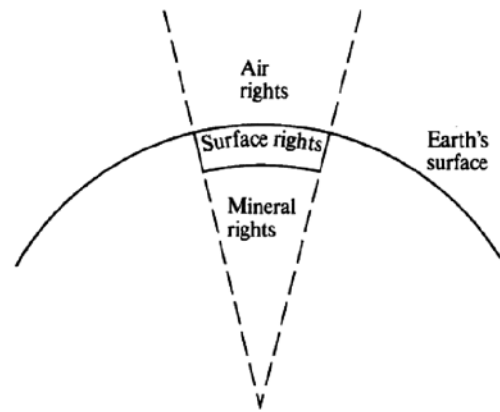
I will return to the question of sovereignty and space shortly, but for now we can note that the problem identified by political geographers and international lawyers remains: regardless of precisely where, vertically, sovereignty ends, surely any aerial military intervention infringes the logic of sovereignty? Surely the logic of such intervention requires other states to fly under the state's territorial roof, regardless of where that roof might be said to be? And surely this is nowhere clearer than in the no-fly zone, which not only allows aircraft of other states the right to fly but simultaneously denies a sovereign state the use of its own airspace? Such questions are even more pressing when one realizes that the legality of no-fly zones is muddy at best.<sup>21</sup> At worst, the legality is non-existent.



Even the Secretary General of the UN considered the no-fly zones over Iraq to be illegal.<sup>22</sup> (In contrast to UN Security Council Resolutions 781 and 816, which prohibited flights over Bosnia and Herzegovina in 1992, Resolutions 678, 687 and 688, passed the year before, authorized member states to use force in Iraq but did not specifically mention no-fly zones.) There is therefore no doubt that the no-fly zone violates ‘territorial integrity’ and constitutes a ‘crisis in aerial sovereignty’. But there is a more telling point to be made.

Given that airspace is considered territory and that the purpose of a no-fly zone is to restrict not only movement in the airspace but also movement on the ground, the no-fly zone is a de facto occupation: a form of ‘air occupation’, as one US Air Force document puts it.<sup>23</sup> By undermining a state’s borders, attacking a state’s sovereignty and occupying the territory, the no-fly zone *is an act of war*. Liberal interventionists, pacifists and some radicals like to ignore or deny this, citing humanitarian reasons for the introduction of the zones and holding rather desperately to the line that the absence of ‘troops on the ground’ means that it is neither an aggressive act nor an occupation, but a comment by the US Secretary of Defense during the US intervention in Libya in 2011 makes the point: ‘Let’s just call a spade a spade’, said Robert Gates, the Secretary in question, ‘a no-fly zone begins with an attack on Libya to destroy the air defenses.’ The point concerned not just Libya, but no-fly zones in general. ‘That’s the way you do a no-fly zone. And then you can fly planes around the country and not worry about our guys being shot down. But that’s the way it starts.’<sup>24</sup> In other words, the first act in a no-fly zone is the classic act of air power – a bombing campaign – to destroy the military capability of the state which in theory controls the territory of the ‘zone’ in question. This is why most generals are usually honest enough: ‘you have to take out their air defences. You also have to make sure they can’t manoeuvre – which means you have to take out their tanks, and their armoured personnel carriers and all the other things that are actually doing the damage ... you would be going to war.’<sup>25</sup> Or again, put even more bluntly: ‘if we choose to conduct a no-fly zone, it’s essentially an act of war.’<sup>26</sup>

Yet the fact that the no-fly zone is so widely treated as an act of ‘peacekeeping’ rather than war is heavily dependent on the fact that such zones are an exercise of police power. Here the fact that the no-fly zone is presented as a *prohibition* on flying is important. The fact of ‘prohibition’ was more readily apparent from the no-fly zone’s precursor, air interdiction. ‘Air



interdiction’ took its name from a term that came into the language in the sixteenth century. An interdiction is a prohibition, and a military interdiction is the attempt to prohibit the enemy from engaging in the war, such as by cutting off weapons, food and information. Colonel John Warden III, widely regarded as the leading US air power strategist in the last twenty-five years, makes the point that although ‘the history of interdiction is as long, and nearly as important, as the history of battle’, the ‘advent of the airplane ... added a new dimension to this form of warfare’.<sup>27</sup> In military parlance ‘interdiction’ very quickly became ‘air interdiction’, defined as ‘an effort on the part of air forces primarily ... to deny an enemy materiel and human resources that it needs to carry on the war. The purpose of interdiction is simply to isolate the battlefield.’<sup>28</sup> The idea of ‘air interdiction’ came to the fore in the extensive air campaign carried out during the US war in Korea. This fact is important for two reasons. First, it reinforces the point just made: that an air interdiction (and the no-fly zone) is never simply a prohibition on all flying but involves extensive bombing of targets within the zone by those imposing the prohibition. Second, and more important, is the term stressed by the USA in describing its military ‘intervention’ and interdiction in Korea: it was a ‘police action’.<sup>29</sup>

Now, on the one hand, this term was meant in the broadest sense of air power as a form of police power that had been developed through colonial campaigns of the 1920s: the police action in question involved extensive bombing combined with an attempt at constituting a new social order.<sup>30</sup> On the other hand, however, when the USA described its air interdiction as a police action it was acting on what had been a key idea of liberal internationalism for the previous twenty-five years, and we need to say something about this liberal internationalism to grasp the historical background and conceptual foundation of the no-fly zone.

## The problem of the century

In 1930 a book appeared titled *The Problem of the Twentieth Century* by Lord Davies. It is no longer widely read, but in its day it was a text of profound importance. Davies was a Liberal politician, active supporter of the League of Nations and founder of the League of Free Nations, and he presents the problem of the twentieth century: 'insecurity'. According to Davies, insecurity is the national experience of international disorder, and a breach of one nation's security by another is, in effect, a hostile act likely to result in a state of war. Since security in general requires police, so the insecurity posed by war in the twentieth century is said to require 'international police'.<sup>31</sup> Over some 800 pages Davies then seeks to 'gauge the policing requirements of the world'. Such requirements depend on good national police forces. But just as domestic police must be 'ready to aid the civil authority in repressing disorder' by repressing strikes, ending lock-outs, clamping down on 'industrial warfare', as well as otherwise 'restraining the propensities of evil-doers', so the international police must 'stand guard over the treasure-house of civilisation, sternly suppressing breaches of the peace [and] deterring the would-be aggressor from the crime of war'. In other words, what applies in the class war should apply in international war: peace demands police.<sup>32</sup>

Davies's book was a major contribution to a proliferation of proposals for international police between the wars. This was the heyday of a new 'liberal internationalism' distinct from and explicitly opposed to socialist internationalism, at the heart of which was a belief in air power and the logic of police. Davies's book was so important because, rather than advocate the abolition of air power as a technology of war, it incorporated the bomber into liberal internationalism by adopting air power as a force for police.<sup>33</sup> The airplane 'will become the decisive weapon of the future', Davies claimed, due to its 'unique position ... as a policing agency'. 'The potentialities of the air, when they are developed for policing purposes, are so immeasurable that the strength of this [peaceful] arm may be increased rather than diminished.'<sup>34</sup>

The same argument, give or take a few minor differences, underpinned the whole of this new internationalism.<sup>35</sup> It can be found in a whole host of other publications, including J.M. Spaight's *An International Air Force* (1932), James H. Ashton's *International Police Force* (1932) and, following the resolution passed by the Labour Party at its 1933 Annual Conference calling for an international police force, a pamphlet by Clement Attlee titled *An International Police*

*Force* (1934). Attlee's argument was published by the New Commonwealth Society, established by Davies in 1932, which also published a series of pamphlets on the topic.<sup>36</sup> Other publications include two chapters on an 'international air police force' in the collectively authored volume *Challenge to Death* (1934), W. Bryn Thomas's *An International Police Force* (1936), another work by Davies titled *Nearing the Abyss* (1936) on a European Air Police Force, and Squadron-Leader E.J. Kingston-McCloughry's *Winged Warfare: Air Problems of Peace and War* (1937). Major conferences were held on the subject and the British Labour Party manifesto of 1935 also proposed 'the creation of an international air police'. So common was the issue that by the end of the decade Gallup was running opinion polls asking people whether they favoured an International Police Force, a British historical drama documentary was produced titled *The Conquest of the Air* (1940) which treated air power as largely civil and essentially peaceful, and *Fortune Magazine* ran a whole issue (March 1941) on 'Air Power as World Power'. 'It became fashionable to speak of an "International Police Force"', one history of the United Nations puts it, adding that 'the abbreviation "IPF" was used as if it were as generally known as "UN" is today'.<sup>37</sup>

The intensity of the debate about international police through air power did not subside through World War II; indeed, it intensified. A sample of work might include Ely Culbertson's *Total Peace* (1943), William Bishop's *Winged Peace* (1944), Allan Michie's *Keep the Peace through Air Power* (1944), all of which held that international aviation will 'police the world'. This was reiterated in J.M. Spaight's *Bombing Vindicated* in 1944, in which the 'police bomber' saves civilization, J.F. de Barros Pimentel's *The International Police: The Use of Force in the Structure of Peace* (1944), James T. Shotwell's *The Great Decision* (1944), Julia E. Johnsen's compilation of essays by figures such as Quincy Wright and Lord David Davies, run together as though they were a single text, titled *International Police Force* (1944), and Eugene E. Wilson's *Air Power for Peace* (1945). Before his death in 1944 Lord Davies produced a short book *The Seven Pillars of Peace* (1945) in which Kant and Sir Robert Peel are brought together in an argument for an international police force founded on air power as the basis of a new perpetual peace, and one finds the same idea in Laski's *Reflections on the Revolution of Our Time* (1943), in reports from within the aviation industry (T.P. Wright, *The Organization of an Airforce for International Policing*, 1943) and in a series of meetings

held by the Chatham House Aviation Group through 1943. The theme also permeates popular culture, such as Walt Disney's propaganda film *Victory through Airpower* (1943), and articles in *Reader's Digest*, *Time Magazine* and *Popular Science*. All of which might explain why, at the Dumbarton Oaks Conference in August 1944 – known for the emergence of the 'four policemen' which would emerge to institute the new world order – 'air power' and 'international police' were commonplace terms and usually spoken of in the same breath.

### Universal monarchy begins at home

This account above has been necessarily terse and perhaps too sweeping, but hopefully the point is clear: by the close of World War II it was widely held that the new capitalist world order could only be achieved through an international police; the logic of this police established a political foundation for overriding the logic of national sovereignty; and what would count as 'international police' was dependent – conceptually, strategically, geopolitically, legally – on the nature and existence of air power. The no-fly zone needs to be understood as part of this long trajectory of air power as police power.

If the legality of the no-fly zone is muddy, then, it is because its roots lie in police, and thus come with all the legal muddiness of police powers. This is also why the guiding principle of such zones is *order* rather than *law*: police power exists for the fabrication of order, not the exercise of law.<sup>38</sup> The no-fly zone, in other words, is a form of police power for the building of international order, a technology for coercively compelling states to behave in certain ways; an exercise of war power without a declaration of war. The idea that international police might be realized through air power presupposes that sovereignty must give way to order, and holds in reserve the possibility that however much a sovereign entity might resist intervention enacted in the name of this order, the requirements of international peace – that is, police – demand it.

'International police' can of course mean many things. This is why the scholarship on the topic is remarkably varied, covering police forces working across different nations, comparison of such forces and national police agencies, state collaboration over crime and terrorism, the international activities of organs such as the CIA or the FBI, UN peacekeeping, the law and order functions of organizations such as the EU, the control of post-colonial orders, military intervention, humanitarian intervention, military-humanitarian intervention, the use of military power

in aid of civil government, and usually a combination of two or more of these.<sup>39</sup> The tensions between these different conceptions of 'international police' lie at the heart of a profound instability in the idea.

One can see this instability in various 'future world order' models and 'world peace' projects which occupy the liberal mind but which, in the form of a new 'cosmopolitan democratic governance', have become de rigueur among some thinkers on the left. These invariably follow the same pattern: principles are proposed around which mankind should organize for peace (minimizing violence, maximizing well-being, respecting human rights, and so on), to be realized through an international governance structure (World Assembly, Central Coordinating Council, World Grievance System, World Economic System, and so on), but the whole model often ultimately turns on the police idea. The 'domestic analogy' in IR – that encourages us to think of international peace, security and order as somehow analogous with domestic peace, security and order – is to all intents and purposes a police analogy.<sup>40</sup> Yet rarely is any substance given to this police idea. Either it is assumed that we know what 'international police' would do because we already know what 'police' does, or the issue is raised only to be dropped. 'Of course, the idea of a new democratic international assembly is open to a battery of objections commonly put to similar schemes', notes David Held in his articulation of cosmopolitan governance. 'Would there be a centralized police?', he asks. No answer is given.<sup>41</sup>

This instability in the concept of international police is why, despite decades of writing on the subject, its critical examination encounters nothing essential at all. Like police power in general, it is formless and intangible, and yet the history of liberal internationalism means that it nonetheless also has an all-pervasive, ghostly presence.<sup>42</sup> I am suggesting that the no-fly zone be understood as a manifestation of this ghostly presence, a rare moment in which the intangible becomes briefly tangible. But note: its intangibility as international police power is quickly overtaken by the tangibility of the war power of the sovereign states imposing the zone. Danilo Zolo once suggested that any 'police operation' carried out by a supranational organ claiming a monopoly of force is destined to take on all the connotations of war,<sup>43</sup> and we have already noted that the no-fly zone is an act of war. But, conversely, we might say that any 'war operation' carried out by a supranational organ claiming a monopoly of force is destined to take on all the connotations of police. This also applies to the no-fly zone.

Here, the no-fly zone needs to be understood as running alongside and as part of the increased use of drones. When in March 2011 the UN declared a no-fly zone over Libya, it was pretty quickly followed by the use of drones in the region. This is not surprising, since the drone technology not only takes air power to a new level of sophistication, but it does so as the perfect technology of police power.

I suggested above that the no-fly zone needs to be understood as a fundamental tool in the process of 'air occupation' and cited a US Air Force document which used this phrase. But the document in question was in fact making a point about drones. It is the combination of the drone and no-fly zone that offers new possibilities for occupation and control of the air zone, and thus the territorial zone in general. And this occupation has the potential to be both *perpetual and universal*. 'A writer in a German military review predicted [in 1784] that the first nation to occupy and control the air would be in a position to impose *Universal-monarchie*, which was the eighteenth century's way of saying global dominance', notes Lee Kennett.<sup>44</sup> The combined power of drones and no-fly zones means that this imposition has more or less arrived. This was the point foreseen by the very first air theorists, from Billy Mitchell's claim that the nation which controls the air 'may be able to control the whole world more easily than a nation has controlled a continent in the past', a step towards 'world dominion', Major Seversky writing about the 'global command of the air', and Alan Cobham's suggestion that 'the nation that controls the air will control the earth'.<sup>45</sup> It is perhaps also the point revealed in the new slogan launched by the US Air Force in 2008: 'Above All'.

Yet this argument has a further twist. One of the problems in trying to understand no-fly zones as a threat to 'territorial integrity' or a crisis in 'aerial sovereignty' is that these treat the no-fly zone as purely an issue in geopolitics. In one sense this is not surprising, since it is the no-fly zones over Bosnia and Libya that have received most media attention. But this sidelines a remarkable fact: just as drone technology is now far more widely used for police purposes on the domestic front, so the same is true of the no-fly zone; *universal-monarchie* begins at home.

No-fly zones were declared over the USA after the attacks on 11 September 2001 and have since been declared following other attacks (such as the one declared over Boston after the bombings there during the 2013 marathon), but they are now enacted for a whole host of events in that country: for major political summits such as the NATO summit in Chicago in

2012, for major sporting events, during presidential visits to towns and cities, during the transportation of hazardous substances, dealing with disaster zones (such as the one declared for Mayflower, Arkansas, in April 2013 following an oil spillage there, and which is managed by ExxonMobil) and in police hunts for missing children. A no-fly zone was also imposed over the areas in which Chelsea Clinton's wedding and Michael Jackson's funeral took place. The increase in such 'temporary' no-fly zones is huge. (In June 2011 alone the US Federal Aviation Authority announced at least forty temporary no-fly zones, the details of which it has since removed from its website, and the fact that they could be declared and then removed before any scrutiny or challenge is telling.) Yet the increase needs to be connected to the Air Defence Identification Zone (ADIZ), established in 2003 to restrict air traffic around Washington (a circle of 30 miles radius with Reagan Washington National Airport at the centre). The status of that zone was changed in February 2009 from a *temporary* 'flight restriction' zone to a *permanent* 'Special Flight Rules Area' (SFRA). This shift is the first of what is certain to become a trend for no-fly zones, since we have already witnessed the permanence of the SFRA over Washington being matched by the permanence of other zones elsewhere: over the houses of ex-presidents, over nuclear plants, over airports. It is a trend that continues a much wider process at the heart of bourgeois state power, in which the temporary security measure and emergency police power become permanent.<sup>46</sup>

In the UK a similar practice has emerged. Following the no-fly zone imposed over London in September 2001, further zones were put in place: over Manchester for the Labour Party conference in 2006, over cities whenever a terror alert is raised (such as over Leeds and Luton in July 2005 and Birmingham in April 2009), over the south-east of England during 2012 (for the Olympics and other sporting events such as the Wimbledon tennis tournament). Permanent no-fly zones now exist over power stations such as the one at Dungeness and over the Farne Islands (a once temporary zone, now permanent). While debate was taking place in spring 2013 about the possible introduction of a no-fly zone over Syria, no-fly zones were declared for Belfast for the G8 summit and for Hertfordshire to secure the Bilderberg Group, which was meeting in Watford.

The beauty of such zones for the state lies in being able to embrace a key functionality of police power: on the one hand, a permanent police presence over/in some areas of sovereign territory; on the other hand,



the possibility of other zones being introduced with immediate effect, on a temporary basis, subject to change with very little notice, and very easily made permanent. In tandem with the drone, the no-fly zone has constituted air space as a fundamental zone of engagement for police power, and will continue to do so in ways which will pose major problems for any counterstrategies (against drones, against no-fly zones, against police power). The no-fly zone's realization as international police thus needs to be understood as part of its function as perpetual and universal police. Far from being a crisis in aerial sovereignty, the no-fly zone is in this context the realization of sovereignty as bourgeois order: police power, all the way to Heaven.

## Notes

1. Noam Chomsky, *The New Military Humanism: Lessons from Kosovo*, Common Courage Press, Monroe ME, 1999.
2. For example, Eyal Weizman, 'The Politics of Verticality', *openDemocracy*, April–May 2002; Stephen Graham, 'Vertical Geopolitics: Baghdad and After', *Antipode*, vol. 36, no. 1, 2004, pp. 12–23; Alison Williams, 'Hakumat al Tayarrat: The Role of Air Power in the Enforcement of Iraq's Boundaries', *Geopolitics*, vol. 12, no. 3, 2007, pp. 505–28; Alison J. Williams, 'A Crisis in Aerial Sovereignty? Considering the Implications of Recent Military Violations of National Airspace', *AREA*, vol. 42, no. 1, 2010, pp. 51–9; David L. Butler, 'Technogeopolitics and the Struggle for Control of the World's Air Routes, 1910–1928', *Political Geography*, vol. 20, no. 5, 2001, pp. 635–58; Stuart Elden, 'Territorial Integrity and the War on Terror', *Environment and Planning A: Society and Space*, vol. 37, no. 12, 2005, pp. 2083–104; Peter Adey, *Aerial Life: Spaces, Mobilities, Affects*, Wiley–Blackwell, Chichester, 2010, pp. 77–8.
3. This focus on the no-fly zone builds on a wider body of geographically oriented work on war, law and the space of air power in general, including Caren Kaplan, 'Mobility and War: The Cosmic View of US "Air Power"', *Environment and Planning A* 38, 2006, pp. 395–407; Eyal Weizman, *Hollow Land: Israel's Architecture of Occupation*, Verso, London, 2007; Stephen Graham, *Cities Under Siege: The New Military Urbanism*, Verso, London, 2010; and a series of articles by Derek Gregory, available at <http://geographicalimaginations.com>. The issue of *Theory, Culture and Society*, vol. 28, no. 7–8, 2011, also contains some of this work, as does Peter Adey, Mark Whitehead and Alison J. Williams, eds, *From Above: War, Violence and Verticality*, Hurst, London, 2013.
4. Timothy P. McIlmail, 'No-Fly Zones: The Imposition and Enforcement of Air Exclusion Regimes over Bosnia and Iraq', *Loyola of Los Angeles International and Comparative Law Review* 17, 1994, pp. 35–83; Michael N. Schmitt, 'Clipped Wings: Effective and Legal No-fly Zone Rules of Engagement', *Loyola of Los Angeles International and Comparative Law Journal* 20, 1997–98, pp. 727–89; Alexander Benard, 'Lessons from Iraq and Bosnia on the Theory and Practice of No-fly Zones', *Journal of Strategic Studies*, vol. 27, no. 3, 2004, pp. 454–78.
5. David J. Dean, *The Air Force Role in Low-Intensity Conflict*, Air University Press, Maxwell Air Force Base, Alabama, 1986), reprinted several times since; Zalmay Khalilzad and Jeremy Shapiro, eds, *Strategic Appraisal: United States Air and Space Power in the 21st Century*, RAND, Santa Monica CA, 2002; Lin Todd et al., *Iraq Tribal Study: Iraq Al-Anbar Governorate*, US Department of Defense, Washington DC, 2006; Erik K. Rundquist, *Desert Talons: Historical Perspectives and Implications of Air Policing in the Middle East*, Maxwell Air Force Base, Alabama, 2009; JSCSC in Partnership with Serco, *Research Guide Series: Air Policing during the Inter-War Years*, Shrivenham, 2011.
6. See Mark Neocleous, 'Air Power as Police Power', *Environment and Planning D: Society and Space*, vol. 31, no. 4, 2013, pp. 478–93, which relies and builds on broader claims in Neocleous, 'The Police of Civilization: The War on Terror as Civilizing Offensive', *International Political Sociology*, vol. 5, no. 2, 2011, pp. 144–59. The much wider argument appears in *War Power, Police Power*, Edinburgh University Press, Edinburgh, 2014.
7. For example, Michel Foucault, 'Space, Knowledge, and Power' (1982), trans. Christian Hubert, in *The Foucault Reader*, Penguin, Harmondsworth, 1984.
8. Stuart Banner, *Who Owns the Sky? The Struggle to Control Airspace from the Wright Brothers On*, Harvard University Press, Cambridge MA, 2008.
9. Sir Edward Coke, *The First Part of the Institutes of the Lawes of England*, Societie of Stationers, London, 1628, ch. 1, sect. 1; William Blackstone, *Commentaries on the Laws of England*, Volume 2: *Of the Right of Things* (1766), University of Chicago Press, Chicago, 1979, p. 18.
10. Yehuda Abramovitch, 'The Maxim "Cujus est solum ejus est usque ad coelum" as Applied in Aviation', *McGill Law Journal*, vol. 8, no. 4, 1962, pp. 247–69; Banner, *Who Owns the Sky?*, pp. 100–101.
11. J.F. Lycklama a Nijeholt, *Air Sovereignty*, Martinus Nijhoff, The Hague, 1910, pp. 34–5, 40–42, 73–4.
12. Abramovitch, 'Maxim "Cujus est solum"', p. 266; Banner, *Who Owns the Sky?*, pp. 110–15; G.S. Sachdeva, 'Sovereignty in the Air – A Legal Perspective', *Indian Journal of International Law*, vol. 22, nos. 3 and 4, 1982, pp. 396–421; 396, 403.
13. Nijeholt, *Air Sovereignty*, p. 34, emphasis added.
14. André Blachère, *L'Air: Voie de Communication et le Droit* (1911), cited in Banner, *Who Owns the Sky?*, p. 56.
15. Both cited in Banner, *Who Owns the Sky?*, pp. 60–61. See also Jean A. Martial, 'State Control of the Air Space Over the Territorial Sea and the Contiguous Zone', *Canadian Bar Review* 30, 1952, pp. 245–63; Alan P. Dobson, *Peaceful Air Warfare: The United States, Britain, and the Politics of International Aviation*, Clarendon Press, Oxford, 1991, p. 6.
16. Banner, *Who Owns the Sky?*, p. 63; Sachdeva, 'Sovereignty in the Air', p. 410.
17. William Latey, 'The Law of the Air', *Transactions of the Grotius Society* 7, 1921, pp. 73–87.
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19. Dean N. Reinhardt, *The Vertical Limit of State Sovereignty*, LL.M. thesis, Institute of Air and Space Law, McGill University, June 2005, pp. 33–4; Robert F.A.

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19. Oduntan, 'Never Ending Dispute', p. 81.
  20. I.H.Ph. Diederiks-Verschoor, *An Introduction to Space Law*, Kluwer Law International, The Hague, 1999, pp. 3–4, 5–6, 17–18.
  21. For example: McIlmail, 'No-Fly Zones', p. 83; Schmitt, 'Clipped Wings', pp. 736, 739; Adey, *Aerial Life*, p. 77. More recently regarding Libya, see Jeremiah Gertler et al., *No-Fly Zones: Strategic, Operational, and Legal Considerations for Congress*, Congressional Research Service Report 7–5700, Washington DC, 18 March 2011, pp. 3–4.
  22. 'They offer no legitimacy to countries sending their aircraft to attack Iraq', Boutros Boutros-Ghali said. 'Does that mean they are illegal?', he was asked. 'They are illegal', he replied. Interviewed by John Pilger, in *The New Rulers of the World*, Verso, London, 2003, p. 79.
  23. The phrase is from Bruce W. Carmichael et al. *Strike-Star 2025*, Research Paper Presented to Air Force 2025, August 1996, pp. viii; available at [www.au.af.mil/au/2025](http://www.au.af.mil/au/2025).
  24. Cited in David E. Sanger and Thom Shanker, 'Gates Warns of Risks of a No-Flight Zone', *New York Times*, 2 March 2011.
  25. General Sir David Richards, interviewed in the *Daily Telegraph*, 17 July 2013.
  26. General Martin Dempsey, chairman of the Joint Chiefs of Staff, in June 2013, concerning the situation in Syria, cited in Phil Stewart, 'US Military Chief Recommends Bolstering Lebanon, Iraq Forces', *Reuters*, 26 June 2013.
  27. Colonel John Warden III, *The Air Campaign: Planning for Combat*, Pergamon-Brassey's, Washington DC, 1989, p. 71.
  28. General Jacob E. Smart, in *Air Interdiction in WWII, Korea, and Vietnam: An Interview with General Earle E. Partridge, General Jacob E. Smart and General John W. Vogt, Jr.*, Office of Air Force History, Washington DC, 1986, p. 16.
  29. President Truman, 'President's News Conference', 29 June 1950.
  30. See Neocleous, 'Air Power', and *War Power*, for elaboration.
  31. Lord Davies, *The Problem of the Twentieth Century: A Study in International Relationships*, Ernest Benn, London, 1930 (rev. edn 1934), pp. 25–7, 379, 425.
  32. *Ibid.*, pp. 160–61, 404, 425, 484, 555, 703–4.
  33. There is a longer history of the term 'international police', such as that articulated by Theodore Roosevelt in his corollary to the Monroe Doctrine and which reinforces its association with wars of occupation, but the idea could not fully take off until the development of air power. Having said that, we should note that a significant feature of Roosevelt's conception of international police was its roots in the idea of police power as the fabrication of social order and the pacification of the working class. For fuller discussion, see Neocleous, *War Power*, ch. 6.
  34. Davies, *The Problem*, pp. 367–8, 396, 475–6, 487.
  35. David Edgerton has shown this at length over several works, from an early essay 'Liberal Militarism and the British State', *New Left Review* 185, 1991, pp. 138–69, to the more recent *Britain's War Machine: Weapons, Resources and Experts in the Second World War*, Penguin, London, 2012, pp. 7, 147–52.
  36. These include *Why a World Police Is Inevitable* (1934, reprinted 1937); *The Relations Between Disarmament and the Establishment of an International Police Force* (1935); *A Plan for the Organisation of a European Air Service* (1935); *The First Stage in International Policing* (1935); *An International Police Board* (1935); *Military Force or Air Police* (1935); *Theory and Practice of International Policing* (1935); and *The Functions of an International Air Police* (1936); and *World Police for World Peace* (1936).
  37. D.W. Bowett, *United Nations Forces: A Legal Study of United Nations Practice*, Stevens and Sons, London, 1964, p. 328.
  38. Mark Neocleous, *The Fabrication of Social Order: A Critical Theory of Police Power*, Pluto, London, 2000, pp. 95–118.
  39. For example, see David H. Bayley, 'Policing: The World Stage', in R.I. Mawby, ed., *Policing across the World: Issues for the Twenty-first Century*, UCL Press, London, 1999; Mathieu Deflem, *Policing World Society: Historical Foundations of International Police Cooperation*, Oxford University Press, Oxford, 2002; Beth K. Greenier, *The New International Policing*, Palgrave Macmillan, Basingstoke, 2009; Peter Andreas and Ethan Nadelman, *Policing the Globe: Criminalization and Crime Control in International Relations*, Oxford University Press, Oxford, 2006; Ben Bowling and James Sheptycki, *Global Policing*, Sage, Los Angeles, 2012.
  40. Grenville Clark and Louis B. Sohn, *World Peace through World Law*, 2nd edn, Harvard University Press, Cambridge MA, 1960, p. xxix; Hidemi Suganami, *The Domestic Analogy and World Order Proposals*, Cambridge University Press, Cambridge, 1989, pp. 23, 28–9; Chiaro Bottici, *Men and States: Rethinking the Domestic Analogy in a Global Age* (2004), trans. Karen Whittle, Palgrave Macmillan, Basingstoke, 2009, pp. 4, 7, 77.
  41. David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*, Polity Press, Cambridge, 2004, p. 274.
  42. This is Benjamin's point about the police power in 'Critique of Violence' (1920–21), trans. Edmund Jephcott, in *Selected Writings*, Volume 1: 1913–1926, ed. Marcus Bullock and Michael W. Jennings, Belknap/Harvard University Press, Cambridge MA, 1996, p. 243.
  43. Danilo Zolo, *Cosmopolis: Prospects for World Government*, Polity Press, Cambridge, 1997, p. 113.
  44. Lee Kennett, *A History of Strategic Bombing*, Charles Scribner's Sons, New York, 1982, p. 2.
  45. William Mitchell, *Winged Defense: The Development and Possibilities of Modern Air Power – Economic and Military*, G.P. Putnam's Sons, New York, 1925, pp. 25–6; William Mitchell, *Skyways: A Book on Modern Aeronautics*, J.B. Lippincott, Philadelphia, 1930, p. 256; Major Alexander P. de Seversky, 'What is Air Power?' (1955), in Eugene M. Emme, ed., *The Impact of Air Power*, D. Van Nostrand, Princeton NJ, 1959, p. 201; Sir Alan Cobham, English aviator commenting in 1927, cited in Thomas Lowell, *European Skyways: The Story of a Tour of Europe by Airplane*, Houghton Mifflin, New York, 1927, p. 90.
  46. See Mark Neocleous, 'Whatever Happened to Martial Law?', *Radical Philosophy* 143, May/June 2007, pp. 13–22; *Critique of Security*, Edinburgh University Press, Edinburgh, 2008, pp. 39–75.