

***Britain's Global
Responsibilities: the
international rule of law***

Policy paper 74



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Executive Summary

Liberal Democrats believe in a consistent approach to international cooperation. We are supporters of international law, and of effective and inclusive international institutions. We have no illusions that the rules and institutions of global order are strong enough to meet the challenges that we and the people of other countries face; but we recognise that it is in our interests to work through the imperfect institutions we have, and to seek to strengthen them.

This paper addresses some of the major issues that challenge the ability of nations acting alone to deliver security, stability and prosperity. In particular it sets out in how international institutions and the international legal framework can be reformed in specific areas to better deal with those problems that do not respect national boundaries.

Delivering international security

Intervention

Liberal Democrats believe that intervention should always be a last resort where peace and security is threatened. Before it is considered we would ensure that:

- Strong arguments in a specific circumstance for preventive military action are brought to the Security Council where consideration should be given to the strategies of persuasion, negotiation, containment, or deterrence;
- The measures used to protect populations suffering large-scale human rights abuses by their own governments draw on all peaceful means, from humanitarian assistance and diplomatic pressure to targeted sanctions;
- In exceptional cases where the Security Council fails to act and where there is an overwhelming, widely supported and demonstrably legitimate case for intervention, states may be entitled to take proportionate measures to protect fundamental human rights.

Use of force

Liberal Democrats believe that strengthening the rules of international law governing the use of force is essential for enhancing international stability and include the following criteria:

- Responding to a threat to international peace and security, or actual or imminent large scale violations of human rights;
- With reasonable prospects of success in averting or halting the threat or crisis in question;
- Undertaken with a commitment to achieving long-term peace and stability.

Tackling global crime and terrorism

The globalisation of crime, particularly terrorism, has made cooperation among law enforcement agencies in different countries essential. The challenge is to build an effective framework to tackle multinational crime and terrorism which incorporates elements of accountability and legal redress. Liberal Democrats therefore propose:

- Encouraging UN member states to ratify all 12 international conventions against terrorism, and adopt the eight Special Recommendations on Terrorist Financing issued by the OECD;
- Working through international organisations to ensure that countries where terrorism originates have the capacity and the will to fight terrorist organisations;
- Keeping the effectiveness of the UN conventions under constant review in order to keep up with the latest innovations at national level in drugs policy and to allow those innovations to progress;
- Working towards the negotiation of a comprehensive international convention on money laundering;
- That the UK should ratify the Council of Europe convention on Action against Trafficking in Human Beings at the earliest opportunity, as a first step towards a much needed coherent European policy on trafficking.

Protecting human rights

Liberal Democrats believe that human rights represent fundamental standards of humanity and that all states have a duty to promote and protect human rights and fundamental freedoms. We believe respect for human rights is intrinsically linked both to development, and individual and collective security, which are mutually reinforcing. We therefore propose:

- Ensuring that the UN Human Rights Council fulfils its responsibilities and ensures that its members maintain the highest standards of human rights;
- Not allowing persons to be returned to a country where it is likely that they will be tortured;
- Implementation of EU wide regulations prohibiting the production and export of equipment which has no other use than for torture or inhumane treatment;
- A public inquiry with all necessary powers of investigation to inquire into the allegations of extraordinary rendition;
- That the UN Human Rights Council establish mechanisms to investigate, research and monitor the incidence of indefinite detention without trial around the world.

Delivering prosperity

Liberal Democrats believe that international law in the economic field has an important role to play both in delivering international objectives, and in helping to manage problems as they arise in the global economy. To achieve this we propose:

- A thorough re-evaluation of the governance of international finance;
- Reform of the WTO rules to make the system fairer both to the least developed and to middle income countries;
- A multilateral regulatory framework that will establish principles on the protection of the environment, whilst ensuring transparent, stable and predictable conditions that will encourage FDI, protect investors' investments. The negotiations for such a framework should be held under the auspices of the UN Commission on Sustainable Development with other multilateral agencies, such as the World Bank, fully involved;
- Reform of the IMF to render it more responsive, transparent and accountable.

- Transforming the World Bank from a development agency to a global club in which developing country beneficiaries and rich country benefactors have a sense of ownership and financial responsibility;
- Establishing a new International Financial Authority to coordinate aspects of the regulation of the international financial system;
- Incorporating adherence to the OECD Guidelines as a requirement of companies benefiting from markets opened up through the General Agreement on Trade in Services or our proposed new international investment agreement.

Liberal Democrats believe that the UK can play a vital role in corporate reporting standards for environmental, social and human rights impacts of their operations, both on staff and other stakeholders, just as they do their financial performance. We therefore propose:

- Supporting initiatives such as the Ethical Trading Initiative and the Fair Trade Foundation;
- Voluntary labelling schemes which inform customers about the conditions in which end products are produced;
- International policy dialogues aimed at implementing the World Summit on Sustainable Development commitments on corporate responsibility; and
- Supporting the UN Global Compact, an initiative which seeks to advance good corporate citizenship by encouraging companies to work with UN agencies, governments, labour organisations and civil society to advance universal principles in the areas of human rights, labour and the environment.

Corruption hinders development and should be tackled. Liberal Democrats would:

- Actively enforce the OECD Convention on Bribery and work to strengthen it to include the bribery of foreign political officials;
- Extend the application of domestic law to corrupt acts involving British nationals and companies operating abroad;
- Use the UK's Extractive Industries Transparency Initiative as a model for an EU initiative to require transparency of payments by EU-based multi-national companies; and
- Support the OECD Financial Action Taskforce's investigation into offshore financial centres. Britain has particular responsibilities here as many of the world's leading offshore centres are British territories.

Liberal Democrats believe that there remains a need for a body that brings together the key developed and developing countries to address the critical inter-dependency between trade, finance, the environment, the handling of pandemic diseases and economic and social development. One option may be to expand the role and remit of the G20 group of finance ministers, which currently brings together states collectively encompassing 80% of the world's population and 90% of its economic activity, with regular attendance by the IMF, World Bank, World Trade Organisation (WTO) and the EU.

Delivering sustainability

Liberal Democrats believe that multilateral action to negotiate more effective global rules is now essential to protect the global environment. The world has already passed an irreversible

threshold in terms of environmental damage. We believe that the EU's experience of strong cooperation, the sharing of sovereignty where it is in the collective interest, yet maintaining diversity is a useful model for achieving sustainable development. We will continue to work with our EU partners in this area and press for the development of integrated cross cutting and cross portfolio solutions, in particular:

- The proper implementation of environmental treaties and enhancing the effectiveness of international institutions in promoting environmental sustainability should be at the forefront of our environmental policies;
- The UK to seek to ensure that institutions and states treat poverty, infectious disease and environmental degradation as interconnected and overlapping threats. Environmental concerns should be factored into security, development or humanitarian strategies;
- The United National Environment Programme (UNEP) unlike many other important UN bodies is largely dependent on voluntary support. We believe that guaranteed funding would enable UNEP expand and improve the effectiveness of its activities;
- To reach agreement on a much more ambitious set of targets for the Kyoto Protocol's second commitment period and beyond. We believe that these should be calculated on the basis of the approach known as 'contraction and convergence', which reflects the extreme differences in emissions levels per head between nations. Under contraction and convergence all nations seek to reduce their levels of greenhouse gas emissions, and converge emissions levels towards a point where all citizens of the world are entitled to emit equal amounts.

Introduction

Why is it in Britain's interests to accept a global framework of rules?

1.0.1 We live in a world that is more open and more interdependent than it has ever been before. Globalisation has brought us many benefits, but it also poses complex challenges to nation states. The traditional distinction between domestic politics and international politics is breaking down as instant communications, globalised markets and climate change make it increasingly difficult for individual governments to achieve domestic goals without international action. Successive British governments have responded hesitantly. They have failed to take up the challenge of building a stronger international community based on agreed rules, including the rule of law, in which we learn to deliver stability, security and prosperity through cooperation. Instead they have sought to defend national sovereignty at the cost of a weaker international community, diminishing international influence and an inability to deliver on domestic objectives.

1.0.2 Liberal Democrats believe it is in Britain's national interest to cooperate with other states, within a framework of regional and global rules. We recognise that limits to British sovereignty are necessary in order to gain the benefits that stronger international laws bring to all. Promoting a peaceful international order and a prosperous and environmentally sustainable world justify sharing sovereignty with others.

1.0.3 Conservatives have traditionally opted to defend national sovereignty, even while attacking other states for not cooperating sufficiently with the United Kingdom. In practice, they accept the

dominance of American power as an alternative to building a stronger multilateral order in the European region and at the global level. They wish to exercise power through coalitions of the willing rather than through shared institutions. Conservatives have attacked the expansion of human rights law when it limits British sovereignty, objecting in particular to the jurisdiction of the European Court on Human Rights - even though this was founded largely on British initiative after the Second World War.

1.0.4 During his premiership Tony Blair has wavered between strengthening and weakening the rules of the international community. In his Chicago speech, in 2003, Tony Blair set out a powerful argument for concerted multilateral intervention to prevent humanitarian disasters and to rebuild failed states. We support the United Nations, while recognising its many imperfections and weaknesses, believe that it is the crux of international law, and we support proposals to reform its structure and strengthen its authority. When the UK held the Presidency of the G8 in 2005 both Blair and Brown called for a global partnership to tackle poverty and climate change, working through global institutions. Yet in practice the Labour Government has followed the lead of the Bush Administration in the United States. The Bush Administration has undermined established frameworks of international rules, including the Geneva Conventions; it has also resisted the further extension of international rules, particularly in combating the global threat of climate change. Over Iraq the Prime Minister took part in the US's 'coalition of the willing' in spite of the government's failure to persuade the majority of the UN Security Council of the case for intervention.

1.0.5 Liberal Democrats believe in a consistent approach to international cooperation. We are supporters of international law, and of effective and inclusive international institutions. We have no illusions that the rules and institutions of global order are strong enough to meet the challenges that we and the people of other countries face; but we recognise that it is in our interests to work through the imperfect institutions we have, and to seek to strengthen them. In a globalised economy, with instant communications and rapid travel, and with conflicts, crime, disease and pollution spilling across frontiers, we cannot pick and choose the challenges that we will work with others to meet. We must work together to deliver global public goods, in our shared interests.

1.1 International law, national sovereignty and the individual citizen

1.1.1 International law developed as a code of conduct among states, gradually extended to cover commercial transactions among companies. It did not traditionally apply to individual citizens within states, and was remote from their interests or understanding.

1.1.2 Globalisation, of communications, social interaction and markets, has led to increasing interaction between domestic and international law. The health of British supermarket shoppers depends increasingly on the enforcement of food hygiene rules in Thailand, Israel and Poland. The safety of British children depends on the observance of agreed standards in manufacturing toys in Chinese factories, and on the watchfulness of Dutch or Spanish customs officers in enforcing these rules when consignments of toys are first landed within Europe's single market. Millions of British citizens travelling or working abroad depend on international conventions and treaties for

protection. The development of international human rights law has now eroded the traditional defences of national sovereignty so that Heads of State such as Chile's former President Pinochet are subject to legal challenge when travelling abroad

1.1.3 Liberal Democrats welcome the extension of international law to hold individuals to account for crimes against humanity, as the logical extension of the principles applied in the Nuremberg Trials and codified in the Universal Declaration of Human Rights. We accept that this involves some limitation of national sovereignty, justifiable as contributing to the enforcement of higher standards of government, justice and human rights across the world.

1.1.4 We also recognise that international rules depend on mutual trust, mutual enforcement and reciprocity. If the British government, and British citizens, wish to enforce agreed rules on others, we must accept that the same rules bind us, and limit our own state sovereignty. If we expect to inspect elections in Russia or Ukraine, we must welcome inspection in our turn; and the same must apply to chemical factories and armaments production. If we wish our European partners to extradite suspected criminals and terrorists to answer charges in Britain, we must be willing to respond to their requests within similar guidelines and timescales. Britain's aim, as a long-established democracy respecting the rule of law, should be to demonstrate as meticulous an observance of international law as possible.

1.1.5 Sadly, there are regions of the world in which neither domestic nor international law are enforceable, and many states within which law is little protection against arbitrary government. Global institutions are inadequate, difficult to reform, and treated with limited respect

by many member states. International lawyers differ widely over the legality of actions that governments justify by referring to accepted principles of international behaviour.

1.1.6 The failures of international cooperation do not invalidate the case for working within international law and institutions. It is in Britain's national interests to work to build a stronger global order, resting on more effective international institutions and greater respect for the rule of law. There have been real advances in the extent of international rules, and their observance, in recent years, as well as some setbacks.

Global governance, resting on the rule of law, necessarily remains a long-term objective, attainable only through active cooperation with other like-minded states; but it should be a guiding long-term objective for British policy.

1.1.7 This paper addresses some of the major issues that challenge the ability of nations acting alone to deliver security stability and prosperity. In particular it sets out in how international institutions and the international legal framework can be reformed in specific areas to better deal with those problems that do not respect national boundaries.

How does international law deliver international security?

2.0.1 This chapter addresses international law in relation to two security issues of critical importance: the use of force and the proliferation of nuclear weapons.

2.1 The use of force

2.1.1 Set against the controversial war against Iraq in 2003, the increasing tension between the United States and Iran, and the failure of the international community to halt catastrophe in Darfur, the international rules governing the use of force have assumed increasing salience. The relevant rules are set out in the United Nations Charter and are reflected in customary international law. Article 2(4) of the Charter outlaws the use of force, except in limited circumstances:

'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.'

2.1.2 The first exception is the use of force in self-defence. Article 51 preserves, *'the inherent right of individual or collective self-defence if an armed attack occurs'*, until the United Nations Security Council has taken *'the measures necessary to maintain international peace and security.'* The second exception is where the use of force is authorised by the UN Security Council under Chapter VII of the Charter, in response to *"any threat to the peace, breach of the peace, or act of aggression"*.

2.1.3 It is widely accepted that the right to self-defence in Article 51 may be exercised before an armed attack occurs. A state may take military action where a threatened attack is imminent, where there

are no alternative means of averting the attack, and the action is proportionate. However, there is no entitlement under international law for a state to take preventive military action, in cases where the threat is non-imminent.

2.2 The case of Iraq

2.2.1 The invasion of Iraq in 2003 by the US, UK and other allies was in breach of international law as confirmed by the United Nations Secretary General, Kofi Annan. The absence of legality has also undermined the legitimacy of the war.

2.2.2 The Iraq invasion could not be justified as pre-emptive self-defence as there was no imminent threat from Iraq. There was no evidence of either Iraqi intention or capability of launching an attack against the allied states. The timing of the war was driven not by any perceived threat but by policy considerations. Military action was not the last resort: UN inspectors said they needed more time. The UN Security Council did not authorise military force. Resolution 1441 declared Iraq in breach of its obligations and gave Iraq one further chance but did not use the accepted formula, *'all necessary means'* to allow the use of force.

2.2.3 The claim that the resolution revived a twelve year-old authorisation for military action (in resolution 678) has little support. The authorisation was granted in wholly different circumstances to deal with the Iraqi invasion of Kuwait in 1990. Moreover, resolution 1441 required the Council to reconvene to assess the situation, and the determination of a *'further material breach'* by Iraq of its obligations under 1441 was a matter for the Council, not individual members. Liberal Democrats believe it was wrong

for the Attorney General to express the view that the allies could unilaterally make such a determination.

2.2.4 The illegality of the military action has undermined the United Kingdom's international authority. It has undermined the international legal system and the authority of the United Nations. It has further generated widespread resentment and anger against the United States and Britain in particularly in Muslim and Arab states, but also among Britain's traditional allies. The war in Iraq has undoubtedly increased the terrorist threat and as the killing in Iraq continues the citizens face the continuing threat of civil war, sectarian violence and humanitarian disaster.

2.3 Authorising the use of force - international

2.3.1 The experience of Iraq provides a strong case for working within existing rules, as the UN World Summit agreed in September 2005. Although the Council is far from perfect, setting aside the rule which forms the bedrock of the international system, non-intervention except in self-defence or with UN authority, would generate further international instability.

2.3.2 If there are strong arguments in a specific circumstance for preventive military action, they should be brought to the UN Security Council, where full weight should be given to the full use of strategies of persuasion, negotiation, containment, or deterrence. Only as a last resort, where international peace and security is threatened, has the Council the authority take enforcement action.

2.4 Humanitarian intervention

2.4.1 The question of the use of force arises not only when threats are posed across borders, but also internally. The international community has long sought to reconcile the principles of sovereignty

and non-intervention, with a commitment to upholding universal human rights. On the one hand international law forbids intervention in '*matters which are essentially within the jurisdiction of any state*' (Article 2(7)). On the other hand, all members of the UN make a commitment to respect human rights, one of the founding purposes of the organisation, and the Charter specifically provides that the rule of non-intervention '*shall not prejudice the application of enforcement measures under Chapter VII*'.

2.4.2 Moreover, there is an emerging norm in international law concerning the responsibility to protect. This was endorsed at the World Summit in September 2005 where world leaders agreed that there was an individual and collective responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The on-going tragedy of Darfur, which has caused the deaths of over 200,000 people and the displacement of more than 2 million, illustrates the serious consequences of failing to take strong peace-enforcement action at an early stage.

2.4.3 If governments engage in large-scale violations of human rights, or are unable or unwilling to protect their populations from catastrophes, then this responsibility must be fulfilled by the international community. The measures which are used must draw on all peaceful means, from humanitarian assistance and diplomatic pressure to targeted sanctions, but where these are ineffective then force must be available as a last resort. The use of force in such circumstances should be authorised by the UN Security Council, which has primary responsibility in this area. But if it fails to act in exceptional cases, such as with Kosovo, where there is an overwhelming, widely supported and demonstrably legitimate case for

intervention, states may be entitled to take proportionate measures to protect fundamental human rights.

2.4.4 Liberal Democrats believe that strengthening the rules of international law governing the use of force is essential for enhancing international stability.

Currently, with respect to both humanitarian intervention and other instances of the use of force, there are no established rules on the factors which must be taken into account. Drawing on the proposals of the UN High Level Panel and the report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, the Security Council and General Assembly should, by declaratory resolutions, adopt criteria governing the use of force in these limited circumstances. The criteria could be based on the principles that the use of force is:

- Responding to a threat to international peace and security, or actual or imminent large scale violations of human rights;
- With proper purpose, such that the primary purpose must be to halt or avert the threat or crisis in question;
- As a last resort, such that all non-military means have been explored, and there are reasonable grounds believing other measures could not succeed;
- Proportionate in scale, intensity and duration; the minimum military force necessary; and in compliance with international humanitarian law;
- With reasonable prospects of success in averting or halting the threat or crisis in question;
- Undertaken with a commitment to achieving long-term peace and stability; and
- With the authority or support of the UN Security Council or General Assembly, except in extreme circumstances.

2.4.5 Liberal Democrat policy paper 35 *Global Responses to Global Problems*, sets out our approach to reforming the United Nations. Proposals include:

- Reform of the Security Council, to make its membership more representative of the world's peoples could strengthen its authority and legitimacy in addressing threats to international peace and security;
- A review of voting procedures in the Council, with consideration of decision-making by qualified majority voting in certain areas;
- Permanent Members should be required to set out a public justification of their use of the veto;
- There should also be regular and comprehensive audits of Security Council Resolutions to determine outstanding action and unfulfilled obligations.

2.4.6 We support proposals that will reform and enhance the powers of the General Assembly to enable it effectively to scrutinise and hold accountable the agencies and bodies within the UN system. The General Assembly should routinely debate the issues the Security Council addresses, as permitted by Chapter IV of the Charter.

2.4.7 The Secretary General should be provided with greater resources to investigate and report to the Security Council on emerging crises. He should have full executive powers within the UN Secretariat to enable him to ensure that any non-military preventative action required by the UN is carried out rapidly and effectively.

2.5 Authorising the use of force - UK

2.5.1 Liberal Democrats believe the United Kingdom Parliament should have the sole power to authorise military action, with provision for retrospective

authorisation in exceptional cases. Official advice on the legality of the use of force should be made public in order to inform the judgement of Parliament and the public. In making such a decision Parliament should consider domestic legislation, general and customary international law, including international humanitarian and human rights law, as well as emerging norms on the principles governing the use of force.

2.5.2 To enhance public confidence in decision-making and to restore the integrity of government in this area, the Liberal Democrats are committed to a wide-ranging inquiry to examine decision-making in the run up to and aftermath of the war in March 2003, to ensure that lessons are learned for the future.

2.6 The international approach to nuclear weapons

2.6.1 One of the major sources of current international concern is the proliferation of nuclear weapons. The cornerstone of the international legal regime on nuclear non-proliferation is the Nuclear Non-Proliferation Treaty (NPT) of 1970, which has near universal membership. It forbids non-nuclear weapons states from acquiring nuclear weapons and obliges nuclear weapon states (NWS) to work towards nuclear disarmament, and Liberal Democrats are strongly committed to keep issues of proliferation within a multinational, rules-based system. Specifically, Article VI provides: *'Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.'*

2.6.2 Progress on disarmament objectives was made at the NPT Review Conference in 2000 where NWS agreed that the 'principle of irreversibility' applied to nuclear disarmament and related arms control measures, and gave the *'unequivocal undertaking ... to accomplish the total elimination of their nuclear arsenals'*. A work plan was also agreed for unilateral and multilateral reductions in the size and operational status of strategic and tactical nuclear stockpiles. In 2002, under the Strategic Offensive Reductions Treaty between the US and Russia, substantial long-term nuclear arms reductions were agreed.

2.6.3 Recent developments, however, have brought into question the adequacy of the legal regime governing the proliferation of nuclear weapons. The 1996 Comprehensive Test Ban Treaty (CTBT) has still not entered into force; the US has withdrawn from the Anti-Ballistic Missile Treaty; negotiations on a Fissile Material Cut-off Treaty (FMCT), to end the production of highly enriched uranium, have stalled; and there was a failure at the NPT 2005 Review Conference to agree on measures to increase the effectiveness of the nuclear disarmament and non-proliferation regime.

2.6.4 In 2003 North Korea, which may now have a nuclear weapons capability, withdrew from the NPT. Iran's advanced nuclear programme continues to be a source of concern to the international community. Israel, Pakistan and India remain outside the NPT; and a US-India agreement on nuclear cooperation threatens to further undermine the NPT.

2.6.5 Liberal Democrats would pursue legal initiatives, in conjunction with a range of practical measures, to strengthen the international non-proliferation and disarmament regime. Two examples are as

follows:

- As proposed by the UN High Level Panel in 2005, a multinational agency managed by the IAEA could oversee the provision of nuclear fuels. This would pave the way for stricter controls on access to nuclear fuel cycle technology, which can relatively easily be diverted for weapons uses, and ultimately, a moratorium on new enrichment or reprocessing facilities;
- The Additional Protocol to the NPT, which allows greater IAEA verification access, is still not in force in close to two-thirds of all NPT state parties. As the Director General of the IAEA, Dr. ElBaradei, has argued, this should be made the universal standard for all states, to ensure rigorous standards of verification.

2.6.6 Liberal Democrats would also support further new steps to reinvigorate disarmament measures. There are still 27,000 nuclear warheads in existence, with a significant proportion on high states of readiness. If non-nuclear weapons states are to be expected to adhere to their non-proliferation commitments, renewed disarmament talks, including with India, Israel and Pakistan, to change strategic postures and reduce arsenals, are imperative. This would include steps to achieve universal ratification of the CTBT and a FMCT.

2.6.7 The conventional arms field offers prospects for tangible progress. Liberal Democrats would support an Arms Trade Treaty as a means of increasing controls on conventional weapons, preventing arms sales to countries where there is conflict or human rights issues. We would work for the development of legally binding standards in the Convention on Certain Conventional Weapons focussed on banning particularly inhuman conventional weapons and on mitigating the effects of

conflict on civilian populations. We support the Ottawa Convention banning the use of anti-personnel landmines.

2.7 Britain's nuclear obligations

2.7.1 The UK has so far taken steps to abide by its legal disarmament obligations. It has dismantled its maritime tactical nuclear capability, and removed all its air-delivered WE177 bombs. The UK is the only NWS to have a single nuclear weapons delivery system. There is only one Trident submarine on patrol at any one time with several days notice to fire and its missiles are de-targeted. Since 1990 the UK has reduced the total explosive power of its nuclear weapons by 70%; it has observed a moratorium on testing, ratified the CTBT and supported the FMCT. The Government has also made clear that the role for nuclear weapons is political, to deter aggression, and that it would only be used in '*extreme circumstances of self-defence in accordance with international law.*'

2.7.2 Given that the Trident nuclear weapons system has a limited lifespan, and there is a lengthy procurement process for any potential replacement, the UK government has claimed that a decision on replacement is required in the near future. The Liberal Democrats believe that the decision need not be taken for some time, and that any decision must be based on a full consideration of the international political and strategic context, threat assessment, cost implications and alternative options. It must also conform with the UK's international legal obligations.

2.7.3 International law does not deal specifically with the circumstances of replacement of a nuclear weapon system. It does not preclude such a replacement, but given the UK's express commitment to nuclear disarmament under Article VI of

the NPT, and the principle of irreversibility, if the system is replaced, any increase in the UK's nuclear weapons capability would be incompatible with our obligations. This would also be inconsistent with the UK's stated objective of maintaining only the minimum deterrent necessary for our security.

How can international law help tackle crime and improve security?

3.0.1 Improved transport and communications have made the world more accessible and promoted trade between countries. However, the globalisation of legitimate trade, communications and travel has been accompanied by the globalisation of crime and terror. Cross border crime has increased, and weak or failing structures of government and law enforcement provide criminals and terrorists with opportunities which could be minimised through better international coordination.

3.0.2 Liberal Democrats believe that the exercise of authority must be subject to national democratic accountability and that the rule of law is at the heart of achieving that balance. But the globalisation of crime, and the even more dramatic globalisation of terrorism, has made cooperation among law enforcement agencies in different countries essential. Cross-border co-operation requires effective international rules.

3.0.3 Liberal Democrats believe that reliance on state sovereignty is inadequate in responding to the challenges of international crime and international terrorism. We are faced with international crime and international terrorism operating beyond the reach of national agencies; just as multinational commerce is difficult to control by individual sovereign nation states, so multinational crime also escapes their control. Examples are manifold: young women are recruited by organised gangs in Eastern Europe to work in the brothels of Hamburg or London; young men from China are smuggled into Britain as illegal workers; Colombian or Afghan drug masters organise networks to distribute heroin into Canada or France; suicide bombers in

London are recruited by agents in the Near East and trained in Pakistan.

3.0.4 Consultative intergovernmental bodies such as Interpol, the long-established international police agency, are essential. International conventions negotiated by like-minded governments provide another means to approach the problem of crime fighting on a global scale. The UN Convention on Transnational Organised Crime is an example, as is the Council of Europe's Extradition Convention and Money Laundering Convention. The challenge is to build an effective framework to tackle multinational crime and terrorism which incorporates elements of accountability and legal redress.

3.1 Progress at the European Union level

3.1.1 The EU has gone some way over the past fifteen years towards developing an international legal framework within which law enforcement agencies, prosecuting authorities, and courts can work together across national boundaries. Europol and Eurojust, in The Hague, underpinned by mutual inspection of national border controls and court procedures, provide a framework for rule-based cooperation which is not so far available in any other context. Liaison officers have been posted to each other's capitals to work with national law enforcement agencies. Terrorist attacks have forced member states to co-operate quickly to improve the sharing of data and intelligence.

3.1.2 The EU's Schengen treaty gives the police of one member state the power to cross the frontier into another member

state in hot pursuit of a suspect, under agreed rules and subject to retrospective scrutiny. The Schengen Agreement also maintains EU-wide databases on suspected criminals and undesirable immigrants, with mechanisms to check that these databases are not misused. The UK government is not yet a formal member of the Schengen Agreement, though in practice it operates as a very close associate, including in accessing shared databases. Since the attacks on the US on 11th September 2001 and the subsequent attacks in Bali, Madrid and London, cooperation among EU member states has increased. Agreement on a common European Arrest Warrant, in 2002, made it possible for British authorities to obtain the extradition from Italy of a suspected participant in the London bombings of July 2005 in weeks, rather than the months or years that had been the previous international practice.

3.2 UK / US co-operation

3.2.1 In contrast, transatlantic cooperation in combating crime and terrorism is much less balanced, and far less subject to scrutiny. US immigration clearance staff and customs officers are now stationed in Rotterdam, Canada and elsewhere, though officials from friendly countries are allowed far less access to the US. The US Administration, Congress and the courts are acutely sensitive about domestic sovereignty as it relates to their own national territory, though insistent on others accepting limitations on sovereignty in the US national interest.

3.2.2 The bilateral US-UK Extradition Treaty, signed in 2003, has been ratified and implemented by the UK Government, but has not yet been ratified by the US Senate. Moreover, it is not reciprocal. For extradition requests made to the US, the treaty requires information that provides a reasonable basis to believe that the person sought committed the offence for which

extradition is requested. There is, however, no corresponding requirement for requests made by the US. American authorities have begun to exploit the agreement to extradite British citizens before UK courts can do likewise. For instance, British authorities remain unable to pursue suspected participants in Irish terrorism through the US courts. The Liberal Democrats would consider the reestablishment of a balance and mutually reciprocal treaty relationship.

3.3 Pressure on civil and human rights

3.3.1 While we must not underestimate the threat posed by terrorism, the current war on terror risks in some instances threatening the very values that terrorists target: human rights and the rule of law. Some of the approaches to terrorism adopted by the US and UK risk undermining efforts to promote good governance and human rights, and alienating people in many parts of the world.

3.3.2 Countries where terrorism originates need not only the capacity but also the will to fight terrorist organisations. To develop that will - both in government and in the people - requires a broad approach from international organisations. Liberal Democrats believe that any measures taken to combat terrorism comply with our obligations under international law, in particular human rights law, refugee law and international humanitarian law.

3.4 Further scope for co-operation in counter-terrorism

3.4.1 There are several United Nations anti-terrorist conventions that have laid important foundations for tackling terrorism, but far too many states remain outside the conventions and not all countries ratifying the conventions

actually adopt internal enforcement measures. Attempts to address the problem of terrorist financing have also been inadequate. Seized funds represent only a small fraction of the money available to terrorist organisations. Around the world, states have varying levels of money-laundering laws, many inadequate, but terrorists' techniques are highly sophisticated and hard to detect.

3.4.2 Liberal Democrats would encourage UN member states that have not yet done so to ratify all 12 international conventions against terrorism, and adopt the eight Special Recommendations on Terrorist Financing issued by the Organization for Economic Cooperation and Development (OECD)-supported Financial Action Task Force on Money - Laundering. The Special Recommendations are:

- Take immediate steps to ratify and implement the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism and Security Council Resolution 1373 dealing with the prevention and suppression of the financing of terrorist acts;
- Criminalize the financing of terrorism, terrorist acts and terrorist organizations;
- Freeze and confiscate funds or other assets of terrorists and adopt measures which allow authorities to seize and confiscate property;
- Report funds that are believed to be linked or related to, or are to be used for terrorism, terrorist acts, or by terrorist organizations;
- Provide the widest possible range of assistance to other countries' law enforcement and regulatory authorities in connection with criminal, civil enforcement, and administrative investigations;
- Impose anti-money laundering requirements on alternative remittance systems;

- Strengthen customer identification requirements on financial institutions for domestic and international wire transfer of funds;
- Ensure that entities such as non-profit organizations cannot be misused to finance terrorism.

3.5 A better definition of terrorism

3.5.1 There is a strong set of laws governing states' conduct during armed conflict including the UN Charter, the Geneva Conventions and their Protocols and the Rome Statute for the International Criminal Court. Violations should continue to be met with international condemnation and pressure to abide by these obligations and wherever possible prosecutions should be brought.

3.5.2 However, the norms governing the use of force by non-State actors have not kept pace. Virtually all forms of terrorism are prohibited by one of 12 international counter-terrorism conventions, international customary law, the Geneva Conventions or the Rome Statutes - but this scattered legal framework makes it difficult for the UN to send the unequivocal message that terrorism is never an acceptable tactic. Liberal Democrats would work within the UN to achieve the same degree of clarity concerning non-state use of force as there is concerning the use of force by states.

3.5.3 The search for an agreed definition of terrorism faces two specific problems. The first is the argument that any definition should include states' use of armed forces against civilians, and the second that people under foreign occupation have a right to resistance and a definition of terrorism should not override this right.

3.5.4 We share the UN position that the first argument is not compelling: there is

already a strong legal and normative framework against state violations. The question of the right to resistance is more complex: however, there is nothing in the fact of occupation that justifies the targeting and killing of civilians or other persons who are subject to international protection. Attacks that specifically target innocent civilians and non-combatants must be universally and unequivocally condemned.

3.5.5 We welcome the recent passage of Security Council resolution 1566 (2004), which includes several measures to strengthen the role of the UN in combating terrorism. Nevertheless, we believe there is particular value in achieving a consensus definition within the General Assembly, and that it should rapidly complete negotiations on a comprehensive convention on terrorism.

3.6 International drugs law

3.6.1 The laws governing the use and trafficking of narcotic drugs are governed by international treaties: the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (known as the Vienna Convention), and preceding UN agreements to which the UK is a signatory. The UN Conventions list all the substances covered, which include all the principal illegal drugs in the UK including cannabis.

3.6.2 Although the UN Conventions are sometimes subject to varying interpretations, they clearly require that supply or possession with intent to supply drugs must be a criminal offence. At the other end of the spectrum, the Conventions are usually interpreted to mean that simple use of a drug does not have to be criminalised, although it must be limited in a way short of criminalisation. The fact that use itself is not criminalised, and possession of a drug

is necessary before anyone can use it allows some countries to interpret the Conventions to allow use of noncriminal sanctions for possession of a drug for personal use alone. Other countries retain criminal sanctions for possession, but have alternative non criminal sanctions available and in practice always use the latter, so that there is effective if not technical decriminalisation. The general trend in most EU countries has been towards a more flexible and less punitive approach to dealing with certain drugs such as cannabis. More background on these issues can be found in policy paper 47 *Honesty, Realism, Responsibility* (2002).

3.6.3 The effectiveness of the UN conventions must be kept under constant review in order to keep up with the latest innovations at national level in drugs policy and to allow those innovations to progress. We believe that the UK should work with EU partners to lobby for reform of the UN Narcotics Treaties. In particular, individual countries should be free to place the supply of cannabis on a regulated legal basis as a way of breaking the link between cannabis use and organised crime.

3.7 Action on money laundering

3.7.1 Unlike terrorists, criminals are motivated by financial gain. One of the most effective strategies for weakening organised crime is to tackle money laundering. Transnational organised crime generates income of some \$500 billion a year, with some sources estimating triple that amount. In 2000, between \$500 billion and \$1.5 trillion were laundered. Despite the magnitude of these sums and their role in furthering organised crime, many states do not regulate money laundering. Indiscriminate enforcement of bank secrecy and the rapid development of financial havens remains a serious

obstacle to tackling this problem. The Liberal Democrats would work towards the negotiation of a comprehensive international convention on money laundering endorsed by the UN General Assembly.

3.8 Action on people trafficking

3.8.1 The most obscene form of organised crime is the traffic in human beings. There are important steps the UK should be taking both at a UN and EU

level. All states should take decisive action to halt people trafficking, first and foremost by signing and ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and taking all necessary steps to effectively implement it. The UK should ratify the Council of Europe convention on Action against Trafficking in Human Beings at the earliest opportunity, as a first step towards a much needed coherent European policy on trafficking.

How should international law better protect human rights?

4.0.1 One of the primary purposes of the United Nations itself is the promotion of respect for human rights and fundamental freedoms for all, reflected in the Universal Declaration on Human Rights 1948 (UDHR). As affirmed by the 1993 Vienna Declaration and Programme of Action, human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing.

4.0.2 Liberal Democrats believe that human rights represent fundamental standards of humanity and that all states have a duty to promote and protect human rights and fundamental freedoms, regardless of their political, economic or cultural systems, and without distinction of any kind as to race, colour, sex, language or religion, political opinion, origin, property, birth or other status. The achievement of respect for human rights is the responsibility of states, but requires cooperation and dialogue between states, international, regional and non-governmental organisations, religious bodies and the media. It also requires international efforts to enhance the capacity of states to promote human rights. We believe respect for human rights is intrinsically linked both to development, and individual and collective security, which are mutually reinforcing.

4.0.3 The scope of international human rights law, covering civil, political, economic, social, cultural and other spheres, necessitates selectivity for the purposes of this paper. It will therefore address three issues at the forefront of current concern: the operation of the new Human Rights Council, and the use of torture and indefinite detention.

4.1 Human Rights Council

4.1.1 Liberal Democrats welcome the establishment of the UN Human Rights Council, to replace the Commission on Human Rights, whose independence, credibility and professionalism had been undermined. Within the old Commission states appeared to be more concerned to protect their own reputations, than to expose and challenge human rights abuses. As agreed at the UN World Summit, and established by General Assembly resolution, the new Council has the responsibility of promoting universal respect for human rights and fundamental freedoms for all; addressing situations of violations of human rights, including systematic violations; and promoting the coordination and mainstreaming of human rights throughout the UN system.

4.1.2 Liberal Democrats believe that the following recommendations would help to ensure the success of the Council in fulfilling these responsibilities:

- Although membership of the Council is open to all states, and based on an equitable geographical distribution, the Council should agree standards for membership, to ensure that members maintain the highest standards of human rights. Any state that commits gross or systematic violations of human rights, according to an objective assessment conducted in conjunction with Office of the High Commissioner for Human Rights (OHCHR), should be prohibited, for the duration of the violation, from being a member of the Council.
- The results of the reviews of the situation on human rights in each state should be made public, and should include conclusions and recommendations. On an agreed

timescale, the rapporteur should be required to report on progress or otherwise in the implementation of these recommendations.

- The Council should maintain and develop the system of country resolutions. In accordance with principle of the responsibility to protect the UK should press for the Council to make use of its capability of holding special or emergency sessions. The Council should be willing to make recommendations for effective action by member states, OHCHR and other UN agencies and the UN Security Council, in order to tackle serious human rights abuses.
- The Council requires extensive support from the OHCHR to provide effective monitoring, advisory services, technical assistance and capacity building. We welcome the doubling of the budget of OHCHR, which should be sustained over the long-term, and believe all states should be required by the Council to cooperate in full with its activities.

4.2 Torture and inhumane treatment

4.2.1 Over the last century the prohibition against torture has assumed the highest legal and moral importance. Its significance is reflected in its status as a peremptory norm of international law, being applicable in all circumstances, ranking alongside the prohibitions of genocide, slavery and racial discrimination. It is prohibited by the Universal Declaration, and several powerful treaties, including the Convention against Torture (1984).

4.2.2 Despite international condemnation, however, torture continues to be practised by dozens of states around the world. It is used to create the conditions of fear which underpin oppressive regimes. Liberal Democrats

regard the torture prohibition as non-negotiable. It is a foundation stone of civilization, with fundamental constitutional significance in the UK, US and many other states. The Liberal Democrats welcomed the landmark ruling of the House of Lords in December 2005, which found that evidence obtained by torture is not admissible in British Courts. As Lord Hoffman said, the rejection of torture: has '*iconic importance as the touchstone of a humane and civilised legal system.*' It is deeply regrettable that the government fought against this.

4.2.3 To this end, Liberal Democrats would not allow persons to be returned to a country where it is likely that they will be tortured. Memoranda of Understanding protecting the rights of returnees against torture would need to provide cast iron guarantees against torture, ill treatment and execution, and will need to contain a mechanism for independent inspection, ideally through the UN.

4.2.4 Not only torture, but cruel, inhuman and degrading treatment is prohibited under international law. Article 5 of the Universal Declaration of Human Rights itself provides: '*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*' The same provision is included in Article 7 of the International Covenant on Civil and Political Rights 1966 (ICCPR); and it is also prohibited by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

4.2.5 International law on torture and other inhumane treatment is unequivocal. State practice, however, is undermining long-established rules. Liberal Democrats believe the following steps should be taken to secure adherence to international law:

- A concerted international campaign for universal ratification of the Optional Protocol to the Convention against Torture, which provides for

international oversight through a new Sub-Committee of the Committee against Torture, and requires effective national monitoring.

- Greater resourcing and support for the UN Special Rapporteur on Torture, with the view to the formation of a significant number of permanent professional staff to conduct monitoring of and investigation into countries of concern.
- The referral of cases of systematic abuse to the UN Security Council for consideration of punitive action, where recommendations of the Human Rights Council have not been implemented.
- Investment by the UK and other developed states in education and training programmes for overseas judges, prosecutors, lawyers, police, other law enforcement officials, and the military.
- Implementation of EU wide regulations prohibiting the production and export of equipment which has no other use than for torture or inhumane treatment.

4.3 Rendition

4.3.1 In recent years we have seen a growing trend for governments to respond to security threats with the torture or other mistreatment of terrorist suspects.

Terrorism undoubtedly poses new threats which require a wide range of means to tackle it, including security, intelligence related and financial measures. However, it has become increasingly clear that the response to the tragedy of 9/11, particular in respect of the treatment of terrorist suspects, has been disproportionate.

4.3.2 Using sweeping powers granted in the aftermath of 9/11, the US is known to have pursued a strategy of abducting suspected terrorists and rendering them to Middle Eastern or Asian states where they are held and tortured or otherwise ill-

treated for information. The US has consistently refused to deny allegations of an international network of secret CIA prisons, known as black sites.

4.3.3 The US has admitted the practice of rendition, but says that terrorists are never transferred where they will be subject to torture. However, suspects appear to have been transferred for the very purpose of ill treatment, and to states which the US itself condemns for torture. There is no question that the transfer to another country of an individual, for the purpose of torture or cruel, inhuman or degrading treatment, violates international law.

4.3.4 The practice of rendition, which has been endorsed by the British Prime Minister, amounts to abduction by the state. It is the covert transfer of individuals outside accepted legal processes such as deportation, extradition, removal or exclusion. Its purpose is to avoid the law and to procure information by ill treatment. The practice has undoubtedly undermined US efforts to defend and promote human rights worldwide.

4.3.5 US officials have now been prohibited from inflicting such treatment anywhere in the world by the Detainee Treatment Act 2005. Yet the policy of rendition remains in place and it is still far from clear whether enhanced interrogation techniques, such as water-boarding, which necessarily amount to either cruel, inhuman or degrading treatment, have been discontinued. Nor is it clear what definition of torture or inhuman treatment the US has adopted.

4.3.6 In February 2006 Council of Europe Secretary General, Terry Davis, produced a report on rendition in which he concludes that the rules governing activities of secret services are inadequate; that states are rarely aware of the purpose of foreign agency flights or the passengers

on board; that international air traffic regulations have inadequate safeguards against abuse; and that rules on state immunity impede accountability.

UK involvement

4.3.7 After pressure from the Liberal Democrats and human rights groups, the British Government has been forced to disclose that there have been at least two cases of rendition through the UK and hundreds of CIA flights the purposes of which are unknown. The Government has obfuscated, withheld information, sought to avoid getting drawn on detail. Many questions remain unanswered, such as how much British officials knew about the US rendition programme and what assistance they provided. Liberal Democrats believe the following measures are now required:

- A public inquiry with all necessary powers of investigation. As the House of Common Foreign Affairs Committee concluded recently, and Liberal Democrats have argued from the outset, the Government has a legal obligation, under the Convention against Torture, to inquire into the allegations of extraordinary rendition.
- Amendments to UK law to strengthen the powers of police and customs officials to search a plane if there is intelligence that it is being used for unlawful rendition, and to empower the Secretary of State to require any such plane using UK airspace to land for the purposes of investigation. Liberal Democrat sponsored amendments to the UK Civil Aviation Bill to this effect, which were defeated by the Government.
- A European wide review of European air traffic regulations to ensure that there are safeguards against the abuse of human rights. All cases of the forcible transfer of individuals through states should be subject to national judicial scrutiny.

- A European review of the application of the rule of state immunity, to ensure that this does not amount to impunity where serious human rights violations are concerned.

4.4 Indefinite detention

4.4.1 The Human Rights Committee, the body of independent experts that monitors for the UN the implementation of the International Covenant on Civil and Political Rights, has held that arbitrary deprivations of liberty in contravention of Article 9 of the ICCPR can never be justified, even during a state of emergency. Although certain elements of the right to liberty are derogable, the Committee is clear that a detainee must always have the right to challenge the lawfulness of detention. All detainees should have access to legal counsel and any restriction of the right to liberty, and connected rights, such as the right to be brought promptly before a judge and to trial within a reasonable time, can only be derogated from to the extent that this is strictly required by the exigencies of the situation.

4.4.2 Protections are also included in international humanitarian law. Under common Article 3 of the Geneva Conventions and Article 75 of Additional Protocol I, which are recognised as constituting international customary law, any prisoner no matter what his or her status is entitled to be treated humanely and may not be subject to legal sanction without fair trial. In a situation of armed conflict detention is permitted only for the duration of the conflict in question; after which incarceration is not permitted, unless criminal proceedings are in progress, or a sentence is being served.

4.4.3 Currently, thousands of prisoners worldwide are being indefinitely detained without fair trial in violation of international law. The worst cases are

countries where there is large scale repression of civil and political rights, such as China, as well as a number of African and Middle Eastern states. However, the US has also undertaken indefinite detention without trial on security grounds, at Guantanamo and other secret locations around the world.

4.4.4 Liberal Democrats condemn all cases of prolonged detention without charge or trial, which undermines the rule of law and gives scope for the abuse of other human rights. Liberal Democrats believe:

- The new UN Human Rights Council should establish all necessary mechanisms to investigate, research and monitor the incidence of indefinite detention without trial around the world.
- The Office of the High Commissioner for Human Rights should be granted

full access to prisons in all states of concern to attempt to establish the identities, circumstances and conditions of those detained.

- OHCHR should be charged with producing regular reports on states of concern, in consultation with state authorities and NGOs, indicating the conditions of incarceration and the number of prisoners detained without trial.
- All states should be encouraged to sign and ratify this treaty the recently drafted International Convention for the Protection of All Persons from Enforced Disappearance, and the Human Rights Council working group on enforced or involuntary disappearance should be given full resources to monitor its implementation.

How should international law regulate the international economy?

5.0.1 In the field of economic activity and trade, globalisation has meant the radically diminished importance of distance. Many traded goods have become higher value, lighter, and less commodity and energy-intensive. Consequently transport costs have fallen, and more goods can be traded as markets come closer together.

5.0.2 Services can also be traded more readily as air travel has expanded: architecture, civil engineering, education, medicine, entertainment and tourism are all now increasingly international businesses. The globalisation of communications has helped to drive the integration of financial markets. The Internet brings markets even closer together, opening up consumer choice and business opportunities.

5.0.3 The principal players in the economic field are not national governments, but global corporations and businesses, financial institutions and entrepreneurs. Increasingly individuals too look to migrate to foreign countries where economic opportunities are better for themselves and their families. These developments increase choice, opportunity and welfare for people across the globe, but in some circumstances can also pose significant policy challenges.

5.0.4 Multinational banks and companies play a vital role in contributing to other governmental objectives such as conflict prevention, development, human rights, a sustainable environment and energy security. Thus international law in the economic field has an important role to play both in delivering international objectives, and in helping to manage problems as they arise in the global economy, which benefits all countries.

5.0.5 Liberal Democrats believe that there remains a need for a body that brings together the key developed and developing countries to address the critical inter-dependency between trade, finance, the environment, the handling of pandemic diseases and economic and social development. One option may be to expand the role and remit of the G20 group of finance ministers, which currently brings together states collectively encompassing 80% of the world's population and 90% of its economic activity, with regular attendance by the IMF, World Bank, World Trade Organisation (WTO) and the EU.

5.1 International institutions

5.1.1 The world in which the international financial institutions were established in the 1940s is vastly different to the world of today. Liberal Democrats believe that these institutions, the World Bank and the International Monetary Fund (IMF), need to continue the process of reform so they are more able to assist in managing the global economy, and to address the imbalances of the contemporary global economy. A thorough re-evaluation of the governance of international finance is required. In policy papers 64 *A World Free from Poverty* and 65 *Wealth for the World* we examine this issue and make proposals for reforms, some of which we include here.

The IMF

5.1.2 At its recent summit the IMF was reformulated so that it will now devote more attention to multilateral surveillance, scrutinising how much each member's policies affect others. This differs from the IMF's customary approach, where it looks at individual economies in turn. Once it

has identified matters of collective concern the Fund will then seek to bring states together to agree collective solutions.

5.1.3 Liberal Democrats have long argued for reform of the IMF to render it more responsive, transparent and accountable. We welcome the recent reforms and argue that for the IMF to remain effective:

- It should be a global institution, with near universal membership;
- Members' representation should broadly reflect their economic weight: a reallocation of quotas, including existing quotas is necessary.

5.1.4 The Independent Evaluation Office (IEO) was set up by the IMF's Executive Board in 2001 to produce objective and independent evaluation on issues facing the IMF; enhance the learning culture of the Fund; and support the IMF's Executive Board in its governance and oversight. While recent IEO papers have often been critical of Fund policies, the IEO should be given the remit and resources to monitor a greater range of Fund activities, and undertake performance assessments.

World Bank

5.1.5 The Liberal Democrats believe that the World Bank's agreed mission to reduce poverty through equitable growth provides no real guidance on country-specific priorities. It is time to end the confusion between what is good for development in general and what the Bank should do in a particular setting. In today's complex donor system, the Bank focuses on partnership with developing governments and tailors policies according to circumstances.

5.1.6 World Bank leverage policies must be pro-poor and supportive in general of a more secure and sustainable global system. But such leverage cannot rely on

the detailed conditionality of a nanny Bank. It must rely on Bank staff being sensitive to a country's political constraints and to the opportunities of responsible leaders to push reforms. This implies a premium on systematic analysis of local politics and institutions, and on increasing Bank-wide research and analysis of country governance.

5.1.7 The Bank's future legitimacy and effectiveness depends upon its borrowers being better represented in its governance. It should undergo a transformation from a development agency to something closer in spirit to that of a global club in which today's developing-country beneficiaries, not only its rich-country benefactors, have a keen sense of ownership and financial responsibility. Liberal Democrats believe that the World Bank's priority tasks are to:

- Bring new discipline and greater differentiation to low income country operations;
- Take leadership on ensuring truly independent evaluation of the impact of Bank and other aid programmes;
- Obtain an explicit mandate, an adequate grant instrument, and a special governance arrangement for the Bank's work on global public goods, for example environmental protection and environmental health.
- Push the Bank's member governments to make the Bank's governance more representative and thus more legitimate.

International Financial Authority (IFA)

5.1.8 In policy paper 65, *Wealth for the World* (2004), Liberal Democrats called for the establishment of a new International Financial Authority (IFA) to coordinate aspects of the regulation of the international financial system. We reiterate this call here for the new IFA to deal with regulation of:

- Capital flows to and from developing countries;
- Capital flows from source countries;

- The after-effects of inappropriate capital flows.

The full details of each of these functions can be found in *Wealth for the World*.

World Trade Organisation

5.1.9 As previously discussed in *Wealth for the World* Liberal Democrats support an open, rules-based international trading system designed to achieve sustainable development at the country level and globally. WTO rules need reform to make the system fairer both to the least developed and to middle income countries. We will:

- Support moves towards free trade and the removal of barriers to trade including trade distorting subsidies, but such changes will need to be asymmetrical especially to provide LDCs with significantly longer timeframes to open their markets. ‘Aid for trade’ from the wealthy countries to LDCs has to accompany opening up of the trading system if reforms are to achieve development goals.
- Support a WTO review of TRIPS which is urgently necessary to make sure that the rules enhance rather than inhibit the ability of developing countries to tackle diseases like HIV/AIDS, TB and malaria.
- Support greater transparency and accountability in the WTO including an Advocate General to represent the public in trade disputes and mechanisms for Parliamentarians to scrutinise the work of the WTO.

We examine further policies to promote sustainable development in chapter 6.

5.2 Corporate responsibility and accountability

5.2.1 The Organisation for Economic Co-operation and Development (OECD)

Guidelines for Multinational Enterprises cover a wide range of areas, which, if based on a strong regulatory framework, could reduce the negative impacts of corporate behaviour, encourage innovation and establish a level playing field for all competitors. We argue for:

- Incorporating adherence to the guidelines as a requirement of companies benefiting from markets opened up through the General Agreement on Trade in Services or our proposed new international investment agreement (see 5.3 below);
- Linking export credit guarantees to compliance with the guidelines;
- Ensuring that government procurement contracts are limited to companies that are working within the guidelines; and
- Strengthening the contact between national bodies responsible for overseeing implementation of the guidelines.

5.2.2 We believe that the UK can play a vital role in corporate reporting standards for environmental, social and human rights impacts of their operations, both on staff and other stakeholders, such as local communities, just as they do their financial performance.

5.2.3 There is much that is already being done on a voluntary, non-legal basis that should be supported through national and international institutions. Many companies have recognised that their shareholders and consumers are increasingly expecting them to operate within an ethical, sustainable and socially responsible framework. Voluntary initiatives can encourage companies to improve upon what is already expected under national and international regulation, Liberal Democrats support:

- Initiatives such as the Ethical Trading Initiative and the Fair Trade Foundation;
- Voluntary labelling schemes which

- inform customers about the conditions in which end products are produced;
- International policy dialogues aimed at implementing the World Summit on Sustainable Development commitments on corporate responsibility; and
- The UN Global Compact, an initiative which seeks to advance good corporate citizenship by encouraging companies to work with UN agencies, governments, labour organisations and civil society to advance universal principles in the areas of human rights, labour and the environment.

Foreign direct liability

5.2.4 Corporations should be legally liable for violations of national law carried out by their subsidiaries abroad; this is especially important where justice is not easily accessible in the country where the violation took place. This is the concept of ‘foreign direct liability’ (the counterpart of foreign direct investment discussed below in 5.3); a number of cases have already been brought before courts in the US, under the Alien Torts Claims Act, and in the UK, US, Canada and Australia under general principles of civil liability (e.g. negligence) and the principle has now been established in the UN Convention Against Corruption. Nevertheless, the idea is controversial and its application still disputed. We will:

- Legislate to make it clear that parent companies can be sued in UK courts for the behaviour of their overseas subsidiaries (i.e. entities directly or indirectly controlled by or in common control with them);
- Institute preliminary hearings to exclude frivolous or malicious claims to ensure that these cases do not bring the new practice into disrepute;
- Extend the liability of company directors to make them responsible for the social and environmental impacts of both their companies and their

subsidiaries;

- Make it explicit in domestic regulation that corporations based or operating in the UK have a duty of care in their social and environmental impacts wherever they may fall.

Global competition policy

5.2.5 Many companies escape national regulation on competition by shifting their operations between national jurisdictions. Anti-trust agencies can improve their links with each other, sharing information and experience in the enforcement of existing law, leading in due course to the development of common global competition standards.

5.2.6 The EU can impose competition conditions on companies based and trading both into the Union and outside the Union. Liberal Democrats believe the UK should take a leading role in promoting better market competition and anti-monopoly policies and encouraging greater cooperation between competition authorities.

5.3 Using foreign direct investment to fuse sustainable development and economic growth

5.3.1 Foreign direct investment (FDI) flows are critical to achieving the goal of sustainable development, especially for poor countries aiming to develop new forms of economic activity. Considering the environmental dimension of sustainable development in particular, it is clear that the development and spread of new, less polluting and resource intensive technologies and processes, through FDI, is vital to the future of the planet.

5.3.2 Poorer developing countries enjoy least access to FDI primarily because of structural problems in their economies: a shortage of skills needed to convert the

capital, political risk, and restrictions on capital inflows. In addition they tend to find themselves at a disadvantage when negotiating with transnational corporations (TNCs) that are the major sources of FDI. There are examples, particularly in the extractive sector (mining, oil and gas) where investments which have caused environmental damage, as well as having failed to transfer skills and new technologies to the host country.

5.3.3 There is therefore a strong case for a multilateral regulatory framework that will establish principles on the protection of the environment, whilst ensuring transparent, stable and predictable conditions that will encourage FDI and protect investors' investments. The negotiations for such a framework should be held under the auspices of the UN Commission on Sustainable Development with other multilateral agencies, such as the World Bank, fully involved.

5.4 Tackling corruption

5.4.1 Corruption is a major obstacle to sustainable development. It erodes public trust in the state, stunts a country's economic and social development and undermines environmental standards. Corruption is also harmful to economic growth as it diverts resources into unproductive expenditure and deters investment. The UN Convention Against Corruption provides a comprehensive set of standards and measures to promote international cooperation and domestic efforts in the fight and prevention of

corruption. However, political will is essential to the Convention's success. The UK is in a strong position to play a significant role and lead the fight against corruption. Liberal Democrats will:

- Actively enforce the OECD Convention on Bribery and work to strengthen it to include the bribery of foreign political officials;
- Extend the application of domestic law to corrupt acts involving British nationals and companies operating abroad;
- Use the UK's Extractive Industries Transparency Initiative as a model for an EU initiative to require transparency of payments by EU-based multi-national companies.

5.4.2 Liberal Democrats believe that the UK should offer capacity-building support to assist developing countries in the implementation and enforcement of internationally agreed anti-corruption initiatives.

Money laundering

5.4.3 Liberal Democrats support the OECD Financial Action Taskforce's investigation into offshore financial centres and believe that Britain has particular responsibilities here, as many of the world's leading offshore centres are British territories. We also support a comprehensive international convention on money laundering that is internationally negotiated and endorsed through the UN.

How international law can strengthen protection of our environment

6.0.1 Humans are living beyond the ability of the planet to support life. The first report of the UN's Millennium Ecosystem Assessment, in 2003, showed that 60% of the basic ecosystems that support life on Earth are being degraded or used unsustainably. Of all the likely outcomes, the predicted impacts of catastrophic climate change are the most serious: rising sea levels and damage to coastal areas, higher variability in weather patterns, including a greater likelihood of droughts and storms, the spread of diseases such as malaria, the extinction of habitats and biodiversity, and the growing number of 'environmental refugees' from countries too poor and too vulnerable to adapt effectively.

6.0.2 Developing countries, lacking the capacity of adjust to these and other environmental challenges, are particularly at risk. The Report of the High-level Panel on Threats, Challenges and Change, established by the UN Secretary General highlights current trends towards persistent and possibly worsening food insecurity in many countries, especially in sub-Saharan Africa. The loss of arable land, water scarcity, overfishing, deforestation and the alteration of ecosystems pose daunting challenges for environmentally sustainable development. The world's population is expected to increase from 6.3 billion today to 8.9 billion in 2050, with nearly all of that growth occurring in the countries least equipped to accommodate it.

6.0.3 There is therefore an urgent need for international action to slow down climate change and protect the global environment. The impact on the environment of economic development and population growth is far too apparent to be ignored. Yet for many states the fear of losing economic power tomorrow

remains greater than the threat of environmental disaster in future decades. Liberal Democrats believe that multilateral action to negotiate more effective global rules is now essential. The world has already passed an irreversible threshold in terms of environmental damage.

6.1 An integrated, international approach

6.1.1 As argued in Liberal Democrat policy papers *Global Responses to Global Problems*, *A World Free from Poverty and Wealth for the World*, Liberal Democrats have long argued that sustainable development must be at the heart of domestic and international policy making.

6.1.2 The Chernobyl nuclear accident, 20 years ago, demonstrated the vulnerability of the British public to distant developments. The level of greenhouse gases emitted on the other side of the world will have an effect on communities in the UK. Such threats can only successfully be tackled by states acting together, and accepting constraints on their behaviour. In this way the EU has made more progress than some on the challenges of sustainable development. Liberal Democrats believe that the EU's experience of strong cooperation, the sharing of sovereignty where it is in the collective interest, yet maintaining diversity, is a useful model for achievement of sustainable development.

6.1.3 Over 500 international treaties and agreements have been negotiated to protect various aspects of the natural environment. Although there have been some clear successes, such as the treaties protecting the stratospheric ozone layer, in general these agreements lack strong enforcement mechanisms and financial

support. Some issues, such as deforestation, are not addressed adequately by existing agreements, while in other areas, such as climate change, action to date has been insufficient given the magnitude of the challenge.

6.1.4 Ensuring the proper implementation of environmental treaties and enhancing the effectiveness of international institutions, such as the WTO, in promoting environmental sustainability should be at the forefront of our environmental policies. The UK should also seek to ensure that institutions and states treat poverty, infectious disease and environmental degradation as interconnected and overlapping threats. Liberal Democrats believe environmental concerns should be factored into security, development and humanitarian strategies and that there is coherence in environmental protection efforts at the global level. Too often the fragmented sectoral approaches of international institutions mirror the fragmented sectoral approaches of governments. Liberal Democrats believe the development of integrated, cross-cutting and cross-portfolio solutions, at both national and international levels, are essential.

6.2 Multilateral Environmental Agreements

6.2.1 The main international mechanism for the protection of the natural environment is the framework of multilateral environmental agreements, or treaties, which provide a means of establishing and achieving measurable environmental standards. To be effective they must be better resourced and more effectively enforced.

6.2.2 There are some success stories. The Montreal Protocol on Substances that Deplete the Ozone Layer, for example, possesses an effective financial mechanism to ensure the rapid

development of substitute substances and technologies which will not damage the ozone layer, which has helped developing countries phase out CFCs and other ozone-depleting substances. The main route for delivering financial support to other environmental agreements, the Global Environment Facility, is significantly under-resourced; it should be an urgent priority for the UK and EU to argue for enhanced financing for the GEF.

6.2.3 Most environmental agreements also lack effective enforcement mechanisms, though some of them, including the Montreal Protocol, and the Convention on International Trade in Endangered Species, have used trade measures (bans on trade, in the products controlled by the treaty, with non-parties or non-complying parties) with success. There is some doubt about the WTO-compatibility of such trade measures, which should be resolved; see further below.

6.2.4 In the long term, the development of more effective enforcement mechanisms, using financial penalties, is desirable, possibly based on the model offered by the EU. Member States who fail to comply with EU environmental (or other) legislation are taken before the European Court of Justice; states found to be in breach of EC law must pay financial penalties. Consideration should be given to the possibility of developing the International Court of Justice, or a specialised international environmental court, to play a role equivalent to that of the ECJ.

6.3 Climate change

6.3.1 Of all the multilateral environmental agreements in existence, the UN Framework Convention on Climate Change, and its Kyoto Protocol, which sets targets for reductions in emissions of greenhouse gases, are clearly

the most important. The Protocol faces two main problems: the inadequate nature of its current set of targets, and the failure of the US and Australia to ratify it and join the international effort to limit climate change.

6.3.2 The first ‘commitment period’, which extends from 2008 to 2012, includes emissions targets only for the developed countries. It should be an urgent priority for the UK, operating through the EU, to reach agreement on a much more ambitious set of targets for the second commitment period and beyond. We believe that these should be calculated on the basis of the approach known as ‘contraction and convergence’, which reflects the extreme differences in emissions levels per head between nations. Under contraction and convergence all nations seek to reduce their levels of greenhouse gas emissions, and converge emissions levels towards a point where all citizens of the world are entitled to emit equal amounts.

6.3.3 The Kyoto Protocol recognises that developing countries will be unable to comply with emission reduction targets without considerable assistance with capacity-building and technological development. The innovative mechanisms built in to the Protocol - emissions trading, and the Clean Development Mechanism - offer ways in which emissions-reducing investment can be channelled towards developing countries, but in addition to this, developed states must also be prepared to increase the resources available through GEF (see para 6.2.2).

6.3.4 The UK and EU can also take action outside the Kyoto framework. In particular, every effort should be made to bring the major non-signatories (the US and Australia) into the Protocol, and to build links with appropriate organisations within those countries (several US states, for example, are taking action unilaterally

to reduce greenhouse gas emissions). In addition, there is scope for bilateral cooperation between the EU and major developing countries, particularly China, which relies heavily on coal for power generation, to develop cleaner energy systems.

6.3.5 The Kyoto Protocol’s enforcement mechanism also needs to be as effective as possible. Where a country exceeds its allowed emissions in the first commitment period, it will be required to make up the difference during the second commitment period, plus a penalty deduction of 30 per cent. In theory this is a good system, but it has not yet, of course, been tested, and the UK and EU must make sure that it is applied as rigorously as possible when it comes fully into force.

6.4 International environmental institutions

6.4.1 The main relevant international institution for the protection of the environment is the United Nations Environment Programme (UNEP), which has had some success in promoting environmental initiatives, encouraging the adoption of international agreements, encouraging the private sector to embrace corporate social responsibility and promoting national environmental policy and legislation. However, unlike many other important UN bodies it is largely dependent on voluntary support. Liberal Democrats believe that guaranteed international funding for UNEP would enable it to expand and improve the effectiveness of its activities.

6.4.2 Many other UN bodies are also relevant to the environmental agenda, including the UN Development Programme, UN Industrial Development Organisation, UN Forum on Forests, and the Commission on Sustainable Development, which was supposed to bring together ministers from relevant

departments, such as energy or transport, though its achievements to date have been disappointing. UNEP should be given a lead role in coordinating the environmental work of all relevant bodies within the UN system.

6.5 Integrating environmental objectives into international financial institutions

6.5.1 The international financial institutions - the WTO, World Bank and IMF - have between them a huge impact on environmentally sustainable development, overseeing and implementing trading rules and financial transfers that affect the degree to which national governments can implement environmental policy. Environmental priorities have not yet been integrated sufficiently into any of them.

6.5.2 The current trade rules administered by the WTO are often insensitive to environmental objectives and, more broadly, the drive to trade liberalisation, particularly in developing countries, has often impeded the development of effective domestic environmental policies, for example for the sustainable management of natural resources such as timber or fisheries. Yet there are also many instances of trade liberalisation supporting environmental objectives - for example in helping to remove protection from resource- and pollution-intensive activities - and there is no reason in principle why the two should not be compatible.

6.5.3 Liberal Democrats believe that a new 'sustainability clause' should be added to the General Agreement on Trade and Tariffs (GATT), the core agreement of the WTO system, setting out agreed

principles of environmental policy, such as the Polluter Pays Principle and the Precautionary Principle, against which trade measures can be judged. This would ensure that trade rules do not undermine environmental protection and that environmental regulation is not used as a disguise for covert protectionism.

6.5.4 In particular, the sustainability clause would permit modifications of WTO rules in four key areas:

- Ensuring that trade measures within multilateral environmental agreements (see 6.2.3) are explicitly recognised and permitted, removing the spectre of a WTO challenge to them.
- Allowing stricter environmental product standards to be applied (while at the same time making support available to developing country producers to help meet them).
- Making it clear that discrimination on the basis of production processes, which often involve much unsustainable behaviour, is permitted where the environmental damage caused is transboundary.
- Allowing subsidies designed to make environmentally friendly technologies more affordable and accessible.

6.5.5 The lending policies of the World Bank, and the other multilateral development banks, have a key role to play in supporting environmentally sustainable development. They should develop and apply safeguard policies more rigorously, to reduce or end support for environmentally damaging investments. Equally, they should devote much greater levels of support to key investments, including the development of renewable energy sources and sustainable agriculture, forestry and fisheries.

Conclusion

7.0.1 It is no easy task to build a global order resting on law, rather than on the exercise of power moderated by intermittent conflict. The world has benefited enormously from the framework of institutions and rules established, under American leadership, after World War Two, under which open markets and technological innovation have developed a global economy and some elements of a global society. The European region has benefited even more from the substitution of multilateral order, and supranational law, for power politics; for all its current difficulties and weaknesses, the European Union has provided a model for regional order which other regions struggle with limited success to emulate.

7.0.2 Economic development, and the population increase that prolonged peace and medical and administrative advances have permitted, have however thrown up new challenges to our stability, security and prosperity, which can only be met through common action among national governments, within an extending framework of enforceable rules - of international law. Globalisation - the cumulative impact of freer trade and greater prosperity, cheaper and faster travel, technological change and the transformation of both military and civil capabilities, the information revolution and the population explosion has brought

great benefits. But it has also undermined the principles of state sovereignty on which the modern international system was built, and reinforced the common interests of citizens within different states in shared rules for international order.

7.0.3 Liberal Democrats are committed to strengthening that framework of international law. We recognise the difficulties of building international consent, and the constant dangers of backsliding of commitments: sometimes by our closest allies and partners, as with the US Administration and its non-observance of the laws of war, and sometimes by the French Government in its resistance to the European Union's agenda for economic and financial reform, sometimes by British governments themselves. We recognise the strength of resistance to sharing sovereignty with others, from nationalists instinctively suspicious of foreign motives. Nevertheless, we insist that a stronger framework of international law, within global and regional institutions, is the only way to build a more peaceful, ordered and sustainable world. Britain's enlightened national interests require its political leaders to accept the logic of shared sovereignty, and to persuade other governments and publics to accept the same logic.

This paper has been approved for debate by the Federal Conference by the Federal Policy Committee under the terms of Article 5.4 of the Federal Constitution. Within the policy-making procedure of the Liberal Democrats, the Federal Party determines the policy of the Party in those areas which might reasonably be expected to fall within the remit of the federal institutions in the context of a federal United Kingdom. The Party in England, the Scottish Liberal Democrats, the Welsh Liberal Democrats and the Northern Ireland Local Party determine the policy of the Party on all other issues, except that any or all of them may confer this power upon the Federal Party in any specified area or areas. The Party in England has chosen to pass up policy-making to the Federal level. If approved by Conference, this paper will therefore form the policy of the Federal Party on federal issues and the Party in England on English issues. In appropriate policy areas, Scottish, Welsh and Northern Ireland party policy would take precedence.

Many of the policy papers published by the Liberal Democrats imply modifications to existing government public expenditure priorities. We recognise that it may not be possible to achieve all these proposals in the lifetime of one Parliament. We intend to publish a costings programme, setting out our priorities across all policy areas, closer to the next general election.

Working Group on International Law

Note: Membership of the Working Group should not be taken to indicate that every member necessarily agrees with every statement or every proposal in this Paper.

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