Consular Affairs and Diplomacy

Edited by

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CHAPTER TWO

RISK, POPULISM, AND THE EVOLUTION OF CONSULAR RESPONSIBILITIES

WILLIAM MALEY

Millions of tourists are churning up the gravel
While they gaze at St Peter's Dome
But why oh why do the wrong people travel
When the right people stay at home?

Noël Coward, *Sail Away* (1961)

Introduction: Consular Warnings and Their Risks

On 26 November 2008, a determined group of terrorists from the Pakistan-based group *Lashkar-e Toiba* made their way onshore near the Indian city of Mumbai, and embarked on a brutal rampage that left a large number of people dead. The central railway station, a Jewish community centre in Nariman House, and two luxury hotels, the Taj Mahal Palace and the Oberoi Trident, were all targeted. This was by no means the only terrorist attack in Mumbai in recent times, but foreign visitors figured much more prominently among the victims than in any previous case. Consular services swung into action. Staff of the Australian Consulate contacted all 84 Australians who had registered their presence in Mumbai with Australian authorities, and also provided assistance to a number of wounded Australians and support for the families of two Australian visitors who were murdered by the attackers.

At the same time that these events were playing out—covered graphically and frighteningly by India's energetic news media—the Australian government also posted a 'travel warning'¹ on the website of the Australian Department of Foreign Affairs and Trade in Canberra.

¹ In this chapter, the expressions 'travel warning' and 'travel advisory' are used interchangeably to refer to regularly updated official pronouncements by foreign ministries, offering advice on the safety and advisability of travel to particular destinations, or on steps that travellers might take to minimize risk while they are abroad.

The Department had long maintained a section on its website entitled 'Smart Traveller', incorporating material on documents required for travel and health challenges for Australians voyaging or living abroad. However, the new warning about India was prominently displayed in a section in which the Department either warns Australians not to travel to particular states, or encourages them to exercise particular caution. This, which is simply one example among many from foreign ministry websites around the world, points to a new form of consular activity that was not specifically contemplated by the *Vienna Convention on Consular Relations* of 1963: appraisal of the political and security environments in foreign countries, not for the purpose of foreign policy-making, but for the protection of one's nationals abroad.

India had long been a victim of destructive terrorist attacks; indeed, more people had been killed by terrorist attacks in the previous decade in India than in any other country but Iraq.² This did not, however, mean that government-issued travel warnings would be seen as otiose or redundant. It was not long after the dust had settled in Mumbai that a storm, of sorts, broke out in Australia. The spokesperson on foreign affairs of the opposition Liberal Party, Senator Helen Coonan, asserted that reliable sources had informed the opposition 'that there were credible reports of an impending deadly attack on Mumbai landmarks favoured by foreigners', and that 'disturbingly, the travel warning issued by the Australian government was less informative, declaring only that there were unconfirmed reports of possible attacks'. Australia's Foreign Minister, Stephen Smith, responded by stating that it was 'regrettable' that Senator Coonan was 'seeking to exploit the deaths of Australian citizens for political purposes', and accused her of breaching the confidentiality of an official briefing.³ This exchange highlighted a further feature of the system of travel warnings: its strong potential to be drawn into rancorous domestic political debate.

This chapter aims to explore some of the implications, ramifications and complexities of this new form of consular activity. A key lesson of recent events is that foreign ministries are increasingly under pressure to anticipate specific risks that their nationals abroad might face, and

² See Kanti Bajpai, *Roots of Terrorism* (New Delhi: Penguin Books, 2002); and Sandy Gordon, 'Policing Terrorism in India', *Crime, Law and Social Change*, vol. 50, 2008, pp. 111–124.

³ Mark Davis, 'Minister Rejects Criticism of India Travel Advisory', *Sydney Morning Herald*, 24 December 2008.

to provide real-time warnings as potential threats materialize. This has created new challenges: a strong warning from a foreign ministry may offend a friendly government, while a warning that is insufficiently robust may expose the ministry (and minister) to populist domestic political attack. This chapter argues that the weight of domestic considerations is likely to carry the day, and that this has the potential to lead to routine exaggeration of threats, with a number of unintended but significant consequences. The chapter concludes by suggesting that in this sphere, it would be desirable for ministries to vacate the field of public threat assessment, and that consideration might be given to the establishment of an independent transnational agency that could offer specific warnings, or to the effective outsourcing of such an activity to an established agency such as Swisspeace or the International Crisis Group.

The chapter is divided into seven sections. The first offers a brief overview of what might be called 'classic' consular responsibilities. The second examines the phenomenon of travel warnings, and the context of popular expectations within which they are issued. The third outlines the types of political controversy that can surround travel warnings, and the fourth notes some of the complexities that surround the management of 'risk'. The fifth section explores some of the unintended consequences that can flow from travel warnings, and the sixth looks at alternatives. Finally, the seventh section offers some brief conclusions.

Classic Consular Protection

Consular assistance has a venerable history that long precedes the coming into effect of the *Vienna Convention on Consular Relations* of 1963,⁴ which is best seen as a codification of consular law as it had developed to that point. The need for consular protection arises when citizens are exposed to the political and legal systems of a foreign state; and it differs from diplomatic protection, in which states respond to violations of international law to which their nationals may have

⁴ For overviews, see John Dickie, *The British Consul: Heir to a Great Tradition* (London: Hurst & Co., 2007), pp. 5–32; and Luke T. Lee and John Quigley, *Consular Law and Practice* (Oxford: Oxford University Press, 2008).

fallen victim.⁵ In a very real sense, consular protection reflects a particular conception of relations between the state and its citizens, one based on a sense of reciprocity or mutual obligation. When a realm was comprised merely of rulers and *subjects*, the flow of responsibility was typically upwards, but the emergence of the modern notion of *citizenship*—profoundly intertwined with the ideas of the Enlightenment and with the development of civil society as a constraint on the state's claims—created expectations that state agencies would deliver services as a way of bolstering their legitimacy. However, while this was one necessary condition for the emergence of the consular function, there was another—namely, the disposition of citizens to travel, to place themselves beyond the direct protection of their own country of nationality, and to subject themselves instead to the legal regime of another state. This plurality of legal regimes was itself a reflection of the emergence of a Westphalian international order, and in that sense consular assistance is also a distinctive creature of the modern international system.

The earlier forms of consular assistance were largely commercial, for commerce rather than recreation was the principal motivation for individuals to travel abroad. The prevalence of colonial domination also limited to some degree the exposure of citizens to unfamiliar legal systems; raw power was often quite enough to ensure that foreigners exercised a position of dominance, something brilliantly captured in the writings of Joseph Conrad.⁶ However, the expansion of international society through the post-Second World War processes of decolonization⁷ saw a huge number of new states added to the 51 founder members of the United Nations in 1945, and this involved also a proliferation of jurisdictions in which consular assistance might be important. But another post-war development also proved important, namely the expansion of travel for the purposes of tourism and short-term labour migration. This was greatly facilitated by the invention of wide-bodied jet aircraft, which caused the price of international travel to fall in real terms, making it accessible to people for whom it might

⁵ See Chittharanjan F. Amerasinghe, *Diplomatic Protection* (Oxford: Oxford University Press, 2008), pp. 45–46.

⁶ See Joseph Conrad, *Heart of Darkness and Others Tales* (Oxford: Oxford University Press, 2002).

⁷ See Barry Hindess, 'Sovereignty as Indirect Rule', in Trudy Jacobsen, Charles Sampford and Ramesh Thakur (eds), *Re-Envisioning Sovereignty: The End of Westphalia?* (Aldershot: Ashgate, 2008), pp. 301–313.

earlier have been impossible. (The nineteenth century had witnessed significant freedom of movement, but far fewer people had had the wherewithal to travel.)⁸ This in turn led to an increased demand for consular assistance, as more travellers found themselves in need.

One specific feature of 'classic' consular protection is what might be called its 'human' dimension. The development of a state's foreign policy and the implementation of such a policy through diplomatic activities is often a dry and unexciting process, involving negotiations over extremely arcane issues in which ordinary citizens take very little interest. By contrast, consular protection often has vulnerable individuals at the centre of its focus, and the general public may readily empathize with such individuals. If such cases are then taken up by sensationalist media outlets, a consular issue may suddenly make the headlines. This can prove a nightmare for professional consular staff, for several reasons. First, the mass public may have little understanding of the limits of consular assistance, and expect agents of the state to be able to mount some kind of 'rescue mission' for citizens in trouble abroad. This may be possible where one is talking about victims of natural disaster or even political turbulence, but it is most unlikely when the case is one of a citizen charged with a criminal offence. Second, hostile media attention may limit the scope for discreet engagement to try to procure a positive outcome for citizens in difficulty, and while it is true that certain kinds of 'quiet diplomacy' can resemble two ostriches having an underground conversation, there are other circumstances in which it is by far the best way of dealing with a complex consular case. Third, uproar over consular cases can poison political relations between states, compromising efforts to achieve positive outcomes through diplomacy in a range of different spheres.

The cases that are most likely to create controversy relate to criminal prosecutions resulting in the application of capital punishment. Relations between Singapore and the Philippines went through a chill in the 1990s as a result of the execution in Singapore in March 1995 of a Filipina domestic servant, Flor Contemplacion, following her conviction for homicide. The issues in the specific case rapidly became entangled in the domestic politics of the Philippines, in a range of broader issues concerning mistreatment of Filipinos working in vulnerable situations

⁸ See John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge: Cambridge University Press, 2000), pp. 57–92.

abroad. While the Philippines' President Fidel Ramos sought to handle the issue with care, he was significantly constrained by the shape of domestic public opinion in the Philippines.

Sometimes, of course, normal diplomatic caution can be thrown to the winds, especially when public opinion and deeply held elite attitudes coincide. Thus, when Malaysia in July 1986 executed two convicted Australian drug traffickers, Kevin Barlow and Brian Chambers, Australian Prime Minister Bob Hawke bluntly referred to Malaysia's actions as 'barbaric', a remark that caused huge offence in Kuala Lumpur and contributed to a slump in relations that lasted into the twenty-first century and only ended when Dr Mahathir Mohammad was succeeded as Malaysian Prime Minister by Abdullah Badawi. That said, both media and publics can also be fickle. Thus, when Singapore in December 2005 executed another convicted drug trafficker, the Australian Van Tuong Nguyen, the Australian reaction was much more muted, in part because the Australian government was led by a conservative Prime Minister with an avowed policy of being 'tough on drugs', but perhaps also because Nguyen, an Australian of Vietnamese ancestry, won less general sympathy than had the Anglo-Saxons Barlow and Chambers.

Travel Warnings

Classical consular-protection needs arise as a consequence of challenges encountered by nationals abroad. It is only a small step from this to the issuing of travel warnings as a preventive measure. In situations of major disaster or serious civil strife, the consular capacities of resident embassies, high commissions and consulates may swiftly be overwhelmed. During the 2006 Israeli attacks on Lebanon, for example, a number of states were obliged to augment their resident consular staff with other personnel. This was partly a reflection of the urgency of the situation on the ground, but it also reflected the size of the Lebanese diaspora: many of those trapped in the war zone held Western passports even though they were of Lebanese descent. Such unsatisfactory scrambling, so the argument runs, might be avoided or at least reduced in scale if travel warnings could dissuade adventurous tourists from making their way to potentially explosive regions. While the issuing of travel warnings is thus not a 'classic' consular responsibility, it nonetheless sits comfortably with a range of activities that are widely accepted as consular in character.

It is not clear when the first 'modern' travel warnings were issued, but they are manifestly creatures of modern technologies of communication. They are not, of course, an entirely novel phenomenon. A number of countries, when issuing passports to their nationals, historically accompanied them with brochures outlining some of the general difficulties that travellers might encounter, and advising of the need for vaccinations against infectious diseases. More generally, from time to time foreign ministers or ministries have issued press statements warning of dangers in particular parts of the world, especially war zones. However, these tended to be rather general, or at best a snapshot of the situation in a country or region, rather than a regularly updated source of information about currently prevailing circumstances. It took the arrival of the Internet and more extensive access to personal computers to create a channel or avenue for modern travel warnings. The Internet allows real-time updating of information for travellers. That said, such travel warnings remain very much a feature of the consular activity of developed countries or countries with growing middle classes. It is hardly surprising that in Afghanistan, where only 5 per cent of households own a functioning computer, there is no system of travel warnings.⁹

It is very difficult to judge how effective travel warnings have been or might be in reducing the burden for consular officials in diverse parts of the world. The number of travellers who, in the absence of a travel warning, would head for countries such as Iraq or Somalia is probably not large. Indeed, the truly reckless are unlikely to pay much attention to such warnings in any case. But this is not to deny that at the margin, warnings may play a role in shaping travellers' plans, especially when one considers business people and professionals whose travel is not time-sensitive and who are contemplating a visit to places that are less dangerous than Iraq or Somalia, but still demand a degree of caution. This is doubtless one reason why many foreign ministries offer gradations of warning, ranging from 'avoid all travel' to lesser warnings such as 'reconsider the need to travel' or 'exercise caution'. On occasion, ministries will also offer varying assessments of different parts of a country. Security threats in remote and poorly policed rural areas may be much more severe than in capital cities, where the need to protect institutions of the state often leads to a high

⁹ See *Afghanistan in 2008: A Survey of the Afghan People* (Kabul: The Asia Foundation, 2008), p. 140.

level of attention to security—although in a revolutionary situation, the opposite may become the case, with capital cities (such as Tehran during the Iranian revolution) becoming key focal points for political protest.

Expectations that states can issue useful travel warnings are in part a product of the claims that have long been made for the benefit of having resident diplomatic missions in other countries. Reporting on the politics of such countries is a key diplomatic task that was recognized in the 1961 *Vienna Convention on Diplomatic Relations*, and when carried out by trained and accomplished professionals, such reporting can be very valuable indeed. It is an open question, however, whether the shift towards recruitment of 'generalists' that has occurred in many foreign ministries has left embassies sufficiently equipped to anticipate situations that are dramatically out of the ordinary, which are notoriously the situations in which a sudden surge in demand for consular assistance is most likely to occur. Even certain natural disasters, such as earthquakes and explosive volcanic eruptions, are very difficult to predict specifically, although high-risk areas where tectonic plates meet (subduction zones) are well known, permitting what F.A. Hayek has called 'pattern prediction'.¹⁰

Political crises are even more difficult to foresee in their specifics. Indeed, many aspects of human affairs are 'radically uncertain', in the sense that it may be impossible to predict not only what will happen, but what might happen. It has recently been revealed that Sir Anthony Parsons, British Ambassador in Tehran before the 1979 revolution, long held to the belief that the Shah of Iran would survive the challenge to his power.¹¹ But those with memories of the events of that time will likely recall that very few general commentators were prepared publicly to predict the Shah's ouster; it was only a small number of Iran specialists who had pointed to the difficulties that the regime was confronting. All of this suggests that the task of crafting travel warnings on the basis of diplomatic reporting is likely to be challenging, but also a task in which other kinds of calculation—some

¹⁰ F.A. Hayek, *Studies in Philosophy, Politics and Economics* (London: Routledge & Kegan Paul, 1967), pp. 22–42.

¹¹ Cahal Milmo, 'The Shah? He's as Safe as Houses...', *The Independent*, 30 December 2008.

methodological and some political—have the potential to intrude. Coping with such intrusions is one of the problems, in turn, for those seeking to make use of travel warnings.

Controversies Surrounding Travel Warnings: The Role of Politics

In the best of all worlds, the issuance of travel warnings would be a technical matter protected from the intrusion of politics. Early-warning systems would employ objective criteria that, on the basis of past experience, would point to a heightened risk of violence or turmoil, and these could then be fine-tuned by the addition of area expertise in embassies and the head offices of ministries. This, unfortunately, is rarely the case. Not surprisingly, a range of political matters have the potential to contaminate such a 'technocratic' approach.

First, the supply of 'accurate' travel warnings is increasingly becoming a matter of public concern. Populist politicians can easily score cheap points by slating their opponents for failing to foresee trouble. The terse exchanges over the adequacy of Australian travel warnings before the Mumbai attack are merely the tip of a larger iceberg. In Australia, a fierce debate erupted after the Bali bombings of October 2002 over the content of travel warnings with respect to Indonesia: the wording of warnings before the bombings led some readers to conclude that the island of Bali was exempt from the broader cautions that the government had offered. Yet many would have argued that the disposition to see Bali as a distinct and separate case did make some sense: its remarkably syncretic culture, marked by substantial Hindu influences, set it apart from other units of the Indonesian archipelago, and the Bali bombers were themselves not Balinese, but products of a radical *pesantran* (religious college) in Java, which in turn was inspired by a radical cleric of Yemeni descent. None of this, unfortunately, was likely to register strongly with readers of the tabloid press. The propensity of travel warnings to fuel political controversy means that ministers will almost inevitably keep them under scrutiny, increasing pressure on the officials who craft them.

This pressure is likely to affect the ways in which bureaucrats approach their tasks. Here, Weberian models of detached professional officials have been somewhat superseded by models of the state that emphasize bureaucratic interests—including both the personal interests of individual bureaucrats and the shared interests of bureaucrats in seeing

their particular agencies survive and flourish—as relevant sources of motivation.¹² Furthermore, as Charles Lindblom put it, the ‘conditions in which administrators are expected to implement policy’—including incomplete specification of ostensible policy, conflicting criteria for application, incentive failures, conflicting directives, limited competence and inadequate administrative resources—‘compel them to join in the policy-making process’.¹³ Where travel warnings are concerned, officials are more likely to suffer if they *fail* to anticipate a problem than if they point to potential dangers that do *not* ultimately materialize. This can inject a bias in favour of caution, and this can just as easily emerge subliminally as it can as a result of consciously self-interested calculations by bureaucrats. The disposition to cover one’s back in the face of a potential political attack is entirely understandable.

This problem is compounded by a problem of resource scarcity. As one senior Australian ambassador put it, the provision of detailed travel warnings that distinguish between situations in different parts of a country is a much more taxing task than the issue of a blanket warning, and imposes heavier demands on embassy staff.¹⁴ Yet in war-torn or severely disrupted states, embassies may be functioning with ‘skeleton staff’, fully occupied with standard diplomatic tasks of representation and reporting, and it is far easier to issue a single countrywide warning than to dig any more deeply. This comes, however, at the expense of precision and nuance. For example, while the United Kingdom offers a detailed and careful account of regional variations in Afghanistan,¹⁵ Australia’s travel warnings for Afghanistan do not distinguish between extremely dangerous areas such as Helmand and Uruzgan, and much safer places such as the cities of Kabul, Herat and Mazar-e-Sharif. Even more striking is Australia’s late-2009 warning for India, a country of over one billion people: ‘We advise you to exercise a high degree of caution in India at this time because of the high risk of terrorist activity by militant groups [...] *Terrorist attacks can occur anywhere at any*

¹² See William A. Niskanen, *Bureaucracy and Representative Government* (Chicago IL: Aldine Atherton, 1971), pp. 36–42.

¹³ Charles Lindblom, *The Policy-Making Process* (Englewood Cliffs NJ: Prentice-Hall, 1980), pp. 65–68.

¹⁴ Interview with the author, Abu Dhabi, 18 December 2008.

¹⁵ See, for example, online at www.fco.gov.uk/en/travelling-and-living-overseas/travel-advice-by-country/asia-oceania/afghanistan (advice current for 31 August 2009).

time in India'.¹⁶ (The United States, by contrast, had *no* travel warning in place in respect of India, despite the November 2008 Mumbai attack.) In the long run, lack of nuance may compromise the credibility of travel warnings in the eyes of some readers, and to a degree defeat their very purpose.

A third political factor at play may come from the senior political leadership. There may on occasion be a sense that broader foreign policy interests can be served by minimizing 'people-to-people' contacts, or by promoting the isolation of a country as a form of political signal. Some might see it as a perversion of travel-warning systems to use them in this way. After all, it may be open to a state to criminalize engagements between its citizens and a state that it regards as somehow beyond the pale—the United States has done this in a number of cases. However, there is no doubt that travel-warning systems are open to such exploitation. For example, it was long the belief of officials in the Australian Department of Foreign Affairs and Trade that discouraging travel to Syria was much more driven by political preferences than by any risks to travellers in Syria. In many cases, however, such political calculations may well travel hand in hand with an aversion to downgrading a warning prematurely, which can make it difficult to disentangle the exact motives that are at work.

There is, however, one significant source of countervailing pressure that can come into play in the shaping of travel warnings, and it takes the form of representations from the state about which the warning has been issued. Syrian representations to Australia would, of course, count for very little, but the same is not true when one considers countries such as India or Indonesia. Here, one is dealing with states where political relations are stable and cordial, and where significant harm could be done to the country's tourist industry through the issuance of a travel warning. If there is compelling evidence of an ongoing threat to life and limb, such representations are unlikely to lead on their own to a warning being downgraded, but they are likely at the least to be treated very seriously, and at the margin they may well tip the balance when reconsideration of a warning seems in any case to be justified.

¹⁶ See online at www.smarttraveller.gov.au/zw/cgi/view/Advice/India (advice current for 31 August 2009); emphasis added.

Travel Warnings and the Nature and Management of Risk

Beyond these political issues, however, there is a further realm of complication that impacts upon the issuance of travel warnings. This relates to the very ideas of 'risk' and 'threat', and to the ways in which perceptions of risk and threat take shape. This might seem to be an area where common sense is a sufficient guide, but on closer scrutiny, it proves to be one fraught with difficulty.

A first point to note is that 'threat' and 'risk' can be interpreted in a number of different ways. For example, a travel warning issued by the Australian government in respect of Afghanistan and in force in late 2009 opened with the words: 'We strongly advise you not to travel to Afghanistan because of the extremely dangerous security situation and the very high threat of terrorist attack'. It went on to state 'You should avoid non-essential road travel in Kabul City and avoid travelling on Jalalabad and Airport (Great Massoud) roads due to the very high threat of terrorist attack'.¹⁷ It is useful to pause here and reflect on the meaning of the expression 'very high threat'. On the one hand, there is a record of bomb blasts on the roads that the warning named, and on the Jalalabad Road, it is common to see extensive anti-blast protections in place around the offices used by foreign agencies. It is therefore reasonable to conclude that the likelihood is high that attacks might occur and would engage the attention of some consular staff in Kabul. On the other hand, the likelihood that a *given individual* might happen to be on the spot when a bomb went off remains extremely low. Kabul is a city with a population of between 3 and 4 million, and it is fair to say that from a purely statistical point of view, the risk of death in a traffic accident, itself very low, nonetheless significantly exceeds that of death from a terrorist attack. This is a point that has been made about the threat posed by terrorism more generally.¹⁸ And from the traveller's point of view (although not necessarily the consul's), it is this individualized threat that is the most important.¹⁹

¹⁷ See online at www.smarttraveller.gov.au/zw/cgi/view/Advice/Afghanistan (advice current for 31 August 2009).

¹⁸ Robert E. Goodin, *What's Wrong with Terrorism?* (Cambridge: Polity Press, 2006), p. 116.

¹⁹ In some respects there is an interesting parallel here with the well-known 'lottery paradox': in a lottery with a large number of tickets, it is *unlikely* that any given ticket will win; yet at the same time, the constitutive rules of the process mean that it is

A second point of significance is that in the absence of direct intelligence about specific risks, more general methodological postulations and street-level epistemologies can come into play. These have their own risks. One approach is to rely on the views of others, but the danger here is of an informational cascade, which occurs when 'people with little personal information about a particular matter base their own beliefs on the apparent beliefs of others'.²⁰ The cumulative result can be a social echo-chamber, in which views with weak foundations become received wisdom: the proposition that Saddam Hussein possessed weapons of mass destruction before the March 2003 US invasion is an obvious example. Where travel is concerned, one trigger worth watching is the proliferation of private security companies,²¹ which may have a vested interest in drawing attention to 'threats' for which they offer a solution. But more broadly, as Robert E. Goodin has noted, it is well-documented in psychological literatures that certain kinds of risk are routinely given more weight than others. Mass-casualty events (such as the 9/11 attacks) strike more fear than problems that cumulatively cost just as many lives, or more (road death tolls); unlikely dramatic events (such as attacks by bears) strike more fear than more probable but more mundane events (such as attacks by domestic dogs); situations that people feel they can control (such as driving a car) give rise to less fear than objectively safer situations where one's fate is in the hands of others (such as flying in an aircraft).²² There is potentially a complex but important interplay between publics thinking in this way, officials responding to such perceptions, and officials, as members of the public, themselves being disposed to see risk in somewhat similar ways.

certain that one will. See Henry E. Kyburg Jr, *Probability and the Logic of Rational Belief* (Middletown CT: Wesleyan University Press, 1961), p. 197.

²⁰ Cass R. Sunstein, *Risk and Reason: Safety, Law and the Environment* (Cambridge: Cambridge University Press, 2002), p. 86 (passage co-authored with Timur Kuran). See also Cass R. Sunstein, *Laws of Fear: Beyond the Precautionary Principle* (Cambridge: Cambridge University Press, 2005), pp. 94–106.

²¹ See P.W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca NY: Cornell University Press, 2003); Deborah D. Avant, *The Market for Force: The Consequences of Privatizing Security* (Cambridge: Cambridge University Press, 2005); and Simon Chesterman and Chia Lehnardt (eds), *From Mercenaries to Market: The Rise and Regulation of Private Military Companies* (New York: Oxford University Press, 2007).

²² Goodin, *What's Wrong with Terrorism?*, pp. 124–131.

Of course, terrorist attacks *do* occur, and they *do* claim casualties. In January 2008, the five-star Kabul Serena Hotel was attacked by armed gunmen who killed a number of staff and visitors and terrorized the other occupants. There were, however, two remarkable aspects of the choice of target. This was not the first time that terrorism had come to this hotel. In early 1979, the US Ambassador to Afghanistan, Adolph ('Spike') Dubs, had been killed in the very same building, in a botched operation directed against terrorist kidnappers of an uncertain background who had snatched him from a Kabul street. But perhaps more notably, the Kabul Serena Hotel *actually housed the Australian Embassy* at the time of the 2008 terrorist attack, and like all such missions the Australian Embassy in Kabul had a role to play in contributing to travel warnings. No Embassy staff were injured in the attack, but the Embassy was immediately relocated to a safer spot. If there is a lesson here, it is that no government can be expected to identify all of the risks. The Australian Embassy staff at the time of the attack were extremely competent; they simply happened to be in the wrong place at the wrong time, and this, unfortunately, can happen to almost anyone, almost anywhere.

Perverse Consequences

The risk in this sort of situation will be a default to 'worst-case scenario' thinking, and the implicit use of a crude 'maximin' decision rule to determine how to act. In worst-case scenario thinking, it is the possibility of an event rather than its probability that becomes the basis for action. The 'One Percent' doctrine advanced by former US Vice-President Dick Cheney—according to which one must spring into action to deal with threats of major harm even if their probability is extremely low—is a very obvious example.²³ A simple maximin decision rule ('maximizing the minimum') is that one should 'choose the policy with the best worst-case outcome'.²⁴ The immediate appeal of such approaches for consular officials is obvious: a rigorous application of such approaches should minimize the burdens that they might

²³ Ron Suskind, *The One Percent Doctrine: Deep Inside America's Pursuit of Its Enemies Since 9/11* (New York: Simon & Schuster, 2006).

²⁴ Cass R. Sunstein, *Worst-Case Scenarios* (Cambridge MA: Harvard University Press, 2007), p. 147.

be called upon to carry. But viewed more broadly, worst-case scenario thinking and maximin decision-making can have extremely perverse consequences. In a famous passage, the economist John Harsanyi set out what he saw as the likely result:

If you took the maximin principle seriously then you could not ever cross a street (after all, you might be hit by a car); you could never drive over a bridge (after all, it might collapse); you could never get married (after all, it might end in disaster), etc. If anybody really acted this way he would soon end up in a mental institution.²⁵

This is best seen as a *reductio ad absurdum*: one can doubt the actual force of Harsanyi's point both in the context in which it was used—a critique of the use of the maximin principle by the philosopher John Rawls²⁶—and as a depiction of how those who are crafting travel warnings actually think about the world. Nonetheless, it is worth keeping in mind, as the slope to maximin thinking is potentially quite slippery.

At a more concrete level, further perverse consequences can flow from travel-warning systems. Many governments (and many travel agents) encourage travellers to take out travel insurance before leaving their countries of nationality. This is extremely sensible advice; even citizens of developed countries, travelling to other developed countries, can face huge costs if they are struck with routine medical problems, such as renal colic, which are not life-threatening but require immediate attention simply in terms of pain management. Travel insurance does not provide a perfect safety net. If one is killed, it may be little comfort that one had a travel insurance policy, and such policies routinely contain clauses that exclude cover for harms resulting from war or civil strife. Insurance companies are no keener than consular staff to see people travelling into war zones. However, in recent times, new terms have begun to find their way into insurance contracts, *based on travel warnings issued by governments*. The milder version of these terms excludes cover when the country of which the insurance purchaser is a citizen, or the country in which the insurance company is domiciled, has issued a warning to defer all travel. A stronger version of these terms excludes cover if *any* country has issued such a warning.

²⁵ John C. Harsanyi, *Essays on Ethics, Social Behaviour and Scientific Explanation* (Dordrecht: D. Reidel, 1976), p. 40.

²⁶ See John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1973), pp. 152–153 and the following pages. For a critique of Harsanyi's views, see Sunstein, *Worst-Case Scenarios*, pp. 150–151.

Based on discussions with officials of a number of foreign ministries, it is my impression that those drafting travel warnings are only dimly aware of this possible consequence. The net effect, however, may be an increase in the number of uninsured travellers who encounter difficulties, and have no option but to seek consular assistance as a way of dealing with their problems. The area where the problem is likely to be most pressing is not in war zones (for which insurance under standard travel policies has long been excluded), but in marginal areas facing potential rather than immediate difficulties. Of course, it may be possible for 'adventure travellers' and others with special needs to visit war zones or other disrupted territories to negotiate special insurance cover through an insurance broker, but the policies on offer may well be prohibitively expensive.

In the long run, travel warnings pose an additional dangerous threat: that of the erosion and ultimately the loss of high-level expertise about different parts of the world. Universities are a crucible for the development of such expertise, and doctoral programmes in particular serve to create a cohort of specialists for the future. Some kinds of research can be desk-based—for example, the identification of theories that field analysis might be used to test—but the ability to do field work is likely to be a very important element of the development of expertise. It provides the embryonic specialist with the opportunity to gather research material, perfect his or her language skills, and more broadly to pick up the 'smell and feel' of a situation, to build up an understanding of local 'practical knowledge', and to do so almost without the need for conscious reasoning ('tacit knowing').²⁷ Yet university administrators will (understandably) be most reluctant to sanction research trips by young researchers if the government has warned against travel. Even if a travel warning does no more than advise that one should 'reconsider the need to travel', universities may fear that they could be exposed to liability for a damages claim if researchers suffer losses that a blanket insurance policy does not fully cover. This problem is already becoming apparent in universities in Australasia and North America. Over

²⁷ I owe the expression 'smell and feel' to an eminent Sovietologist, Professor T.H. Rigby. On practical knowledge, see James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven CT: Yale University Press, 1998), pp. 309–341. On tacit knowing, see Michael Polanyi, *The Tacit Dimension* (London: Routledge & Kegan Paul, 1967), pp. 3–25, and especially the famous observation on p. 4: 'we can know more than we can tell'.

time, therefore, travel warnings can contribute to the loss of expertise on the very questions on which it is important that the state and its diplomatic agents be well informed. Even more unfortunately, it is not just junior researchers who can be caught in this trap, and one of the ironies of the travel-warning system is that eminent specialists, to whom foreign ministries may have recourse for advice about a country's situation, can also be inconvenienced by the travel warnings that those ministries then produce, even though they are more than capable of looking after themselves.

Taking stock, we are confronted by a situation in which travel warnings run the risk of being contaminated at considerable cost—by political considerations (populist or bureaucratic), by psychological factors that militate against a probabilistic rather than emotional notion of risk, and by the intrusive effects of 'worst-case thinking' and risk-averse decision rules. Are there any ways in which these problems can be countered?

Alternatives

As noted earlier, it is possible to develop early-warning systems that can point to the potential for trouble in particular states or regions. A great deal of careful work has been done by scholars who are concerned to identify the independent variables (that is, relevant causal factors) that either individually or in conjunction with others shape particular outcomes. The result has been sophisticated models that can be put to use in the analysis of disruptive tendencies such as the repression of minorities or the outbreak of ethnic conflict.²⁸ While such models underpin no more than 'pattern prediction', they have good claims to be at least as robust as impressionistic diplomatic reporting. As Susanne Schmeidl has put it:

[...] the inability accurately to predict the exact occurrence of a violent event, or being honest about the impossibility of doing so, may in the past have led to early warning being perceived as 'soft' and 'weak' in comparison with intelligence analysis. However, the failure of intelligence

²⁸ See Ted Robert Gurr, *Minorities at Risk: A Global View of Ethnopolitical Conflicts* (Washington DC: United States Institute of Peace Press, 1993); and Barbara Harff and Ted Robert Gurr, *Ethnic Conflict in World Politics* (Boulder CO: Westview, 2004).

accurately to predict and prevent September 11 may have given early warning an added boost.²⁹

More use could be made of such approaches.

One approach to separating travel warnings from some of the influences that could contaminate them would be to fund early warning and travel advice from a new private agency. A model here could be the early-warning analyses produced between 1998 and 2008 by Swisspeace. This programme, known as FAST (*Früherkennung und Analyse von Spannungen und Tatsachenermittlung* [or Early Warning and Analysis of Tensions and Fact-Finding]), produced regular updates on situations in a large number of troubled states, based on the systematic compilation of data relating to security issues ('Quantitative Event Data Analysis'), and input from international country experts ('Qualitative Analysis'). The advantage of systematic data analysis of this sort is that it offers a better picture of trends in a country than anecdotal discussion of what may be statistical outliers—something that readily accommodates the promulgation of worst scenarios. The advantage of the use of country experts is that it allows data to be set in a richer historical, social and political context, guarding against simplistic linear extrapolations of trends that may be grounded in transitory idiosyncratic factors. Data do not interpret themselves, and carefully constructed analyses give them some meaning. The cessation of the FAST programme has led to something of a vacuum in the sphere of open-source formal early warning, and funding a new agency to take it up is one option, either within the UN system or as a separate initiative.

Where broader depiction of political situations is concerned, there is much to be said for simply drawing travellers' attention to the rich array of materials available from research institutes. A traveller who is inclined to consult a government travel website in the first place can easily be redirected in this way. There is increasing recognition of the roles that research institutes can play in diplomacy,³⁰ but perhaps

²⁹ Susanne Schmeidl, 'The Early Warning of Forced Migration: State or Human Security?', in Edward Newman and Joanne van Selms (eds), *Refugees and Forced Migration: International Security, Human Vulnerability and the State* (Tokyo: United Nations University Press, 2003), pp. 130–155, at p. 150.

³⁰ See Shankari Sundararaman, 'Research Institutes as Diplomatic Actors', in Andrew F. Cooper, Brian Hocking and William Maley (eds), *Global Governance and Diplomacy: Worlds Apart?* (New York: Palgrave Macmillan, 2008), pp. 118–132.

not enough recognition of the value of their intellectual product for even lay persons who are considering travel to different parts of the world. It takes no more than a hypertext link on a foreign ministry website to make this material available, and would be vastly cheaper than committing valuable staff time for the assembling of the kind of material that often now appears in travel warnings. Fortunately, there are a number of excellent organizations whose analyses would be very useful in this respect, including the Council on Foreign Relations, the Carnegie Endowment for International Peace, the International Institute for Strategic Studies and Chatham House (to mention anglophone organizations). But perhaps the most valuable of all is the International Crisis Group, based in Brussels. Established in 1995, the International Crisis Group has an annual budget of US\$ 16 million, with 130 full-time staff. It produces the monthly bulletin *CrisisWatch*, together with some 90 reports annually, uniformly of very high analytical quality. Its President and Chief Executive Officer is former UN High Commissioner for Human Rights Louise Arbour, and its work is overseen by a Board of Trustees that is co-chaired by Lord Patten, a former UK cabinet minister, and Ambassador Thomas Pickering, former US Under-Secretary of State. In its key personnel, the International Crisis Group therefore bridges the divide between private organizations and states, drawing on the skills of individuals who have been involved in government service at high levels. Early warning is explicitly one of its functions. It typically has staff working actively in most countries for which travel warnings are likely to be issued, and in significant respects, these staff can be found 'out and about' in the countries in which they work because they are less subject to stringent security constraints of the kind that often limit the capacity of diplomats posted in troubled states.

Conclusion

Exploiting the capacities of either a new agency or existing agencies would help to adulterate some of the perverse consequences of travel warnings, but in conclusion, it is worth noting that travel warnings can be subject to an even more radical critique, which applies to consular services more broadly: that of moral hazard. The concept of moral hazard is much discussed in the context of insurance, but has been applied to other spheres of activity as well, most recently

humanitarian intervention.³¹ The problem of moral hazard arises when the prospect of protection encourages risk-taking. Individuals who are warned of trouble in *some* cases may assume that all is well if they have not been explicitly warned about others, and calculate that they can expect to receive help from their own government should problems arise. Establishing that this is more than a theoretical risk is difficult, but it should not be discounted. One implication is that rather than expecting the state to be able to anticipate all of the problems abroad that its nationals may encounter, something that is highly unrealistic, a stronger sense of responsibility might be inculcated if—in respect of deciding where to travel and when—citizens were left entirely to their own devices. As we have seen, travel warnings have the potential to impact severely on people who are well placed to look after themselves, but may in many cases be of no more value than media reporting in shaping the attitudes of most of the public. As a result, it may indeed be the case that the wrong people travel while the right people stay at home.

³¹ See Alan J. Kuperman, 'Mitigating the Moral Hazard of Humanitarian Intervention: Lessons from Economics', *Global Governance*, vol. 14, no. 2, April–June 2008, pp. 219–240.