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TOWARD HUMANE GLOBAL GOVERNANCE

Rhetoric, desire and imaginaries

Toward a global governance imaginary for the twenty-first century¹

Since the dawning of the nuclear age, there has been a growing anxiety about whether human civilization is sustainable within a state-centric framework of world order, with or without hegemonic geopolitics. Such a restrictive outlook embodies biopolitics on a global scale, and human anxieties as a species living under the threat of bare survival. My preoccupation has been to explore and depict a survival-plus imaginary of the human quest, supplementing this survivalist orientation by coequal concerns coupling the attainment of human dignity for all persons with a spiritual grounding for the meaning of life.² For the sake of focus, I label this imaginary as ‘humane global governance’, choosing words that call our attention to both normative (law, morality, justice, spirituality) and practical (administration, implementation of norms, institutionalized collaboration) dimensions of desirable types of world order.

The conception of what is desirable is historicized in relation to the circumstances of the early twenty-first century. A distinction is also drawn between the normative and practical deficiencies of world order as an operative framing for global activities and of world order *as a system*. This latter category of deficiency casts the darkest shadow across the human future as it presupposes that unless the *structure* of the world is rapidly transformed, the biopolitical future of the human species is severely at risk. These systemic threats include nuclear weaponry, climate change, and economic collapse.

This chapter examines some aspects of this overall effort to diagnose the character of world order challenges, as well as to assess the various responses that seem likely and promising. It includes some reflections on the trajectory of my research and writing over the course of more than five decades.

Establishing global governance: getting beyond illusion

There is little doubt that as the twenty-first century begins to unfold there is a widespread sense that human wellbeing is multiply jeopardized, and that a positive human future will depend upon unprecedented political coordination and cooperation on behalf of global common interests. What follows from this consensus with respect to the institutional arrangements of world politics remains uncertain and highly contested. At one extreme is the historical insistence that the emergence of a world state or government has become the indispensable foundation to achieve the necessary level of coordination, in effect, a sequel to the long experience with various stages of state-centric Westphalian political order. Further along this line of reasoning is the claim that trends toward global governance over the course of the last several decades make the emergence of a world state, or at least a world government, all but inevitable within a relatively short period, say 20 years or less.

Even if it is conceded that such an emergence is likely at some future time, there is a wide disparity of views as to the time frame, and actuating conditions. There are some advocates of world government who think it will come into being as a result of education and the impact of public reason, an overall rational adjustment to impinging realities without any accompanying trauma, and in view of trends toward institutionalizing the integrative pressures of globalization. Many informed observers are skeptical of such a soft landing, and believe that such a world polity will only become a reality, if ever, in a post-catastrophe setting where the old order has been reduced to shambles.³

Beyond speculation about emergence, a further issue raised concerns whether this prospect of a world state should be greeted with enthusiasm or not. Some advocates believe that only some form of world government could overcome the most serious biopolitical challenges confronting humanity, mobilizing resources and energies for a coordinated, compassionate, and equitable response to global warming, and reducing dramatically the likelihood of apocalyptic warfare. Others believe that any foreseeable transition to world government would almost certainly freeze or deepen the inequities of present world order, and would necessarily rely on repressive means of governance to sustain stability and maintain control. Such a world government would be widely regarded as a form of global empire of unprecedented scope, and undoubtedly administered by the leadership of a currently hegemonic state actor. Arguably, the American response to the 9/11 attacks during the early years of the Bush presidency was implicitly seeking a world order solution along such lines.⁴

Not everyone believes that the only meaningful focus for systemic global reform entails centralization of political authority in constitutional arrangements that are capable of effective regulation on a global scale. There are also supporters of various models of radical decentralization of power and authority. Such viewpoints emphasize beneficial effects of the anarchic energy that is being currently released by way of the fragmentation of existing states, that is, carrying the logic of self-determination

to levels of social order present *within* states, thereby giving approval to forms of order that are reflective of the existence of a historically conditioned sense of community, however it is spatially specified. This anti-centralization bias also expresses itself by effective localized and populist resistance to the geopolitics of empire as the defining structural force of this contemporary period. This vision of an increasingly anarchic future also generates debate about the benefits and drawbacks of political decentralization at this stage of history, including fragmentation of large states.⁵

An intermediate posture between a unified world polity and accelerating political fragmentation involves the rise of regional forms of order as a partial and ambiguous sequel to both the Westphalian framework of sovereign states and the various efforts to achieve empire and hegemony.⁶ This kind of political regionalism should be distinguished from renewed interest in a multipolar world order in which China, India, Russia, and Brazil join with the United States and the European Union in reinventing the balance of power for the twenty-first century.⁷ Amid such contradictory images of the future of world order, it is more difficult than at earlier stages of the modern period to set policy priorities or even to debate alternative approaches to world order.⁸

Against such a background it seems useful to offer some interpretation of the global setting as a dynamic, evolving reality that is generating challenges not easily met within a still predominantly politically fragmented world of sovereign territorial states. To impart some clarity to the political imagination I have differentiated horizons of feasibility, horizons of necessity, and horizons of desire or aspiration.⁹ The realist sensibility arising from a Westphalian world of sovereign states emphasizes the feasible, giving its main attention to the management of hard power as the foundation of security, conceiving of force as a still viable policy option that remains available to militarily strong states for the pursuit of their vital national interests, and treating normative concerns associated with constructing a more just and sustainable world order as falling outside the realm of politics conceived as the art of the possible. In my view, ever since the advent of nuclear weaponry 'realism' as a practical ideology guiding diplomacy has been an anachronistic ideology that imposes intolerable risks on the peoples of the world, exaggerates the contributions of military capabilities to security, and deflects attention from grasping the newer agendas of challenge, opportunity, and limits.¹⁰

Realism, while being anachronistic, is nevertheless robust and resilient with respect to governmental discourse and outlook, easily absorbing critiques without changing its views as to the structure of world order, or modifying its reliance on military approaches to problem-solving. To some extent, Europe since 1945 has moved impressively, if inconsistently, toward a somewhat demilitarized conception of its security, successfully establishing a culture of peace to govern *internal* European relations. The ambiguity arises because Europe's response to *external* security threats has been based on a close and comprehensive alliance with the United States, which has pursued a militarized, neo-imperial, and interventionary approach to global security. In my judgment, what is 'feasible' is insufficient to meet the world

order challenges of the present period, even if realism takes some account of the new and changing global setting. Arguably, also, if feasibility was to be fully realistic in a fragile and complex world setting, it would be more disposed to advocate as generally beneficial an acceptance of the constraints of international law in the context of foreign policy, even by a hegemon, and to acknowledge the limits on military power as demonstrated by the collapse of colonialism and the repeated failure of military intervention in the post-colonial world.

At present, even the least militarist of realists are unwilling to recommend adherence to the norms of international law in relation to war/peace issues.¹¹ When even the most liberal statespersons discuss foreign policy options, international law is rarely mentioned unless it can be invoked in a partisan spirit as supportive of a controversial geopolitical undertaking or to castigate an adversary. President Barack Obama's appraisal of the wars in Iraq and Afghanistan rested on the distinction between 'wars of choice' and 'wars of necessity' without ever bothering to justify the controversial engagement in Afghanistan by reference to international law or the United Nations.

What reformist pressure exists at intergovernmental levels is largely of a populist character that tends to surface in the aftermath of catastrophic breakdowns of global stability.¹² It exerts only temporary pressure and is inconsequential or trivial so far as overcoming the main anachronistic features of the Westphalian structure and operational behavior.¹³ The litmus test of failure is associated with absence of a relevant political will to implement the prohibition of aggressive use of force that has been decreed by international law for the past 80 years.¹⁴ Without the pressure of a catastrophic breakdown that is harmful to dominant political actors, the ideology of realism is likely to continue to shape prevailing ideas and policies about what it is feasible to do. Given the risks associated with war, climate change, and an impending energy/water/food squeeze, such a horizon of feasibility has become dangerously dysfunctional from the perspective of intermediate-term human wellbeing and even species survival.¹⁵

This conditioning circumstance invites pessimism, or a widespread conspiracy of psychological denial, the stubborn refusal of realism to see reality in relation to problems and a changing historical context, that is, according to the necessities posed, rather than through the familiar and reassuring optic of feasibility.¹⁶ Since the problematic character of the contemporary global circumstance cannot be completely ignored, especially by the liberal wing of the realist consensus, secondary concerns emphasize the goal of stabilizing an increasingly anachronistic world order. These would include enhanced cooperation among states via the disaggregation of the territorial state,¹⁷ the containment of the proliferation of nuclear weaponry, the promotion of human rights, and attention to the curtailment of greenhouse gas emissions by relying on such market correctives as carbon trading. These are plausible initiatives, compatible with horizons of feasibility, and do not demand structural modifications in world order.

A critique of this enclosure of the political imagination can be offered from the perspective of horizons of necessity, which is conceiving of global policy from the

perspective of what must be done at the earliest possible time to increase the prospects of human and humane survival and civilizational sustainability. It is from this standpoint that some argue that the political fragmentation of authority embedded in Westphalian, or even neo-Westphalian, systems needs to be overcome by establishing a form of world government with the capacity to regulate effectively the war system, and to impose a global rule of law that constrains and sanctions the strong as well as the weak. Such a world government also presupposes the establishment of a global democracy with a mandate and capacity to lengthen cycles of political accountability now operative at the level of the sovereign state.

As matters now stand, political leaders in the dominant countries depend for their legitimacy and support upon fulfilling short-term expectations that are not compatible with responding to the longer periods of adjustment required to address the twenty-first-century agenda of global challenges. In essence, the horizon of necessity calls for a shift in the balance of influence between the *parts* and the *whole*, as well as between *short-term* political accountability and *intermediate-term* (10–50 years) timelines. A defining feature of Westphalian world order is the sub-systemic dominance of the parts and of the present, complemented by the weakness of the whole or center and the failure to plan for the future. The lengthening of the time dimension for policymaking is less familiar but beginning to be understood within governmental and NGO circles, as suggested by the growing recognition of the needs and even the rights of future generations and by proposals for diminishing the likelihood of harmful climate change. But the prospects of this recent rhetoric of concern being translated into effective government or corporate planning remains highly unlikely.

Additional to feasibility and necessity, there exist various horizons of desire, which incorporate concerns about sustainability and survival, but also add a crucial emphasis on *justice, human dignity, compassion*, and even *individual and collective happiness*. A concern with justice is a matter of fairness that is particularly sensitive to severe deprivation of rights: poverty, oppression, gross inequalities. It also offers a means of liberating the political and moral imagination to envisage a future for humanity that is dedicated to the fulfillment of the potentials of all persons for a life of dignity.¹⁸ Positing happiness as a collective goal of humanity is an acknowledgement that there is more to a good life than being treated fairly; conditions of beauty and cultural vitality are also public goods that seem eminently worthy of safeguarding and ensuring widespread availability in affordable forms. There is no doubt that many persons who are responsive to horizons of desire favor the establishment as quickly as possible of world government, usually in a federal or confederal form that relies on strict constitutionalism (checks and balances; subsidiarity; separation of powers; substantive constraints) to limit the power of the leaders, and hopefully to contain risks of tyrannical abuses.

My own approach to the horizon of desire is much more conditioned by a bottom-up approach that stresses building normative democracy *within* states and other political communities on a municipal scale, while seeking to find nonviolent pathways to global democracy and global security.¹⁹ In essence, the advocacy of

world government is almost certain to produce negative results unless these preconditions of democratization and nonviolence are satisfied. The European Union, to the extent that it has established a culture of peace within Europe, built a rights-based social contract for welfare and participation, and created a popularly elected European Parliament that may be regarded to have partially satisfied the preconditions for the establishment of regional government. Such a development in Europe remains a project in the domain of desire, because popular support for such a dramatic centralization of authority within Europe does not exist at either grassroots or elite levels at this time, and has actually relapsed as the European recession has lingered and imperiled the solvency of several of the weaker national economies among EU members.

It may be helpful to understand activities associated with the horizon of desire as thought experiments that reject the understanding of politics as the art of the possible, that is, as conditioned by horizons of feasibility. Given the way international relations is mainly understood by government officials and academic establishments, this deference to feasibility is expressed by an unconditional reliance on the realist paradigm of understanding and policymaking. This means that if guided by a practical *problem-solving* perspective, only a politics of *impossibility* has any hope at all of meeting the challenges embedded in the current global setting. As such, what is posited is a glaring disconnect between the domain of feasibility, realism, possibility and the domain of actual global problems, humane values, and the quest for global justice. Of course, the idea of 'impossibility' is to some extent polemical, confined to what it is possible to expect from governments and the existing political structures. What makes the impossible possible under certain conditions is the agency of civil society and populist politics, which is unacknowledged or ignored by governmental establishments and their more trusted academic interpreters.

It should be pointed out that the impossible happens rather frequently. Recent instances include decolonization, the American Civil Rights Movement, the liberation of Eastern Europe, the collapse of apartheid in South Africa, the election of an African-American as president of the United States, and the Arab Spring. All of these outcomes were impossible in the sense that few, if any, 'responsible' persons envisioned such unfolding narratives as feasible, and scoffed at their proponents. Of course, after the fact, this same corps of responsible observers offered many explanations to account for the outcomes previously neglected or dismissed as impossible.

The long normative march

My own intellectual/political journey was originally nurtured by an Enlightenment confidence that material and moral progress would inevitably follow from the modernist reliance on science, technology, and the guiding role of instrumental reason. To a degree this confidence was shattered by the cumulative impact of the destructiveness of World War II, and particularly the ominous implications for the future of warfare associated with reliance on indiscriminate bombing of cities, long-range missiles, and, above all, by the development of the atomic bomb. This

concern was heightened by the growing awareness that the possessors of this technology were more committed to ensuring their geopolitical primacy than in making the world safer by renouncing this weaponry and working to achieve reliably verified disarmament.

The Cold War atmosphere made it appear almost self-evident that the then-current world order was based on the sanity of those competing sovereign states that possessed nuclear weaponry, and as such, was not likely to prove durable. This seemed especially true given the intense ideological rivalries and antagonistic nationalist perceptions of security which emerged after World War II. Such a perspective was admittedly apocalyptic in tone, exhibiting anxieties about survival, both in the elemental physical sense pertaining to the species but also with respect to the civilizational sense of modern urban life styles. So far, despite several close calls, these fears have not been realized, although the underlying set of dangerous circumstances persists even in the absence of serious strategic conflict among states, and has been magnified by the emergence of extremist political non-state actors that embrace tactics of mass destruction.

Coupled with this earlier mood of anxiety was the conviction that even if the worst catastrophes were averted, the continuous preparation for a war fought with weapons of mass destruction would have a negative effect on the quality of collective life, would burden the efforts of poorer countries to develop, and would short-circuit any fundamental effort to live well together on the planet.²⁰ In essence, so long as the wellbeing, and even the survival of the part, that is, *the state*, continue to be put ahead of the wellbeing of the whole, *the world* or *life on the planet*, it seems obvious that what global bonds of solidarity do exist are far too weak and fragile to cope with the challenges. Not surprisingly these bonds have already demonstrated their inability to overcome world poverty or gross disparities of wealth and resources. We continue to live in a world of statist, classist and individual narcissism, where in the extreme case, leaders of the nuclear-weapon states retain the capabilities and have declared their willingness to use the massive destructive power at their disposal for the sake of national security.²¹

It is against this background that my own journey has led from a stress on intellectual advocacy to a greater reliance on activist engagement, although these two kinds of nonviolent persuasive effort are not mutually exclusive. The advocacy was directed at persuading those who would pay attention that a transformative approach to global politics was needed to achieve safety, security, development, and justice for political actors and the peoples of the world in the nuclear and post-colonial age, and to make that approach compatible with a minimum set of widely shared values held in common by representatives of different civilizations and ideologies.²² The intention is to foster global-scale collaboration where necessary, while encouraging regional, national, and local diversities and autonomous self-administration to the extent possible. These explorations in thought, premised on transnational interaction with likeminded scholars joined by their opposition to imperial, exploitative, and violent features of existing world order, had no impact on general public opinion and only a marginal influence on the outlook of

academic specialists working within the domains of international relations and international law. In these fundamental respects, such scholarly efforts, while making a certain contribution to visionary thinking, lacked any *agency* with respect to promoting the desired transformations of world politics.

On this basis, the engagement as a citizen was more satisfying and seemed more productive of results. For at least a decade I was involved in the anti-war movement formed in reaction to the American intervention in Vietnam. Not only did this involvement have a nurturing effect by establishing communities of dedicated activists spread around the United States, and in Western Europe, but it also provided me with the occasion to experience first-handed injustice and one-sided violence from the perspective of the victim, which was especially a result of two visits to North Vietnam during the Vietnam War.²³ The issue of one-sided violence remains largely unexamined in the literature on either contemporary warfare or even international law, yet should be treated as a crucial component of any effort to (re)frame international *humanitarian* law. American and Israeli operational tactics are illustrative of such one-sided warfare, in which the technologically dominant side chooses the degree and type of destruction to be inflicted with only scant concern about provoking retaliation. For this reason, such military violence resembles torture more than it does warfare between sovereign states of equivalent or near equivalent technological capacity.

Of course, the colonial conquests in Asia, Africa, and Americas were antecedents to modern forms of one-sided warfare, climaxing to date with the atomic attacks on the undefended cities of Hiroshima and Nagasaki. Aside from these learning aspects of activism, the outcome of the Vietnam peace movement seemed to be a vindication of the popular struggle against the American war machine, suggesting at the time that popular democracy was not futile in a modern state. Of course, subsequent militarizing developments, especially in the aftermath of 9/11, cancelled many of these hopeful understandings of the prospect for a more peaceful and just world order that followed from the Vietnam experience.

What did remain, however, was the sense that only a movement of peoples, informed by an anti-realist intellectual analysis, could have any prospect at all of challenging the established structures of statist and market power. As the Cold War came to an end, the realities of these structural impediments to global reform became more evident as the dynamics of neoliberal globalization captured the public imagination in the 1990s. It was only the anti-globalization movement that seemed to grasp the true magnitude of the ethical and ecological challenges being posed by the championship of global economic growth based on making capital as efficient and profitable as possible.²⁴ In many ways the formation of global policy was shaped increasingly by a dialectical connection between the globalization-from-above operatives who gathered each year at Davos under the auspices of the World Economic Forum, and their populist counterparts who came together annually at the World Social Forum in a South country venue, most often in Porto Alegre, Brazil. It would be naive to suggest that the populist and NGO 'spirit of Seattle' is now or in the foreseeable future in a position to challenge the agenda

priorities and policy responses of geopolitical, statist, and corporate/financial forces.²⁵ Their current role is to provide an awakening presence in crucial global policy-forming venues, such as climate change and world trade meetings, which alerts an apathetic media and global public to the growing dangers and widespread injustices being perpetrated by statist/market collaboration.

In view of this analysis, it is difficult to suppose that the Westphalian approaches to global problem-solving can rectify the existing deficiencies associated with the operations of the world economy or in relation to the menace of nuclear weaponry and climate change. This skepticism is reinforced by the ideological hegemony of neoliberal perspectives, which insist on relying on market solutions to difficulties generated by an insufficiently regulated market. Furthermore, it would be premature to base our hopes on civil society activism given its lack of strength and questionable resolve. Against this background it seems sensible to rethink the role of citizenship in the context of participatory democracy under these twenty-first-century circumstances. An obvious temptation is to recommend the adoption of the outlook of 'a world citizen', thereby acknowledging the global scope of the policy problematique.

It is, of course, beneficial to weaken the nationalist bonds that view political reality through such a self-serving optic, but unless the affirmation of world citizenship is organically linked to a transformative political project it falls into the apolitical Enlightenment trap of disembodied instrumental reason. For this reason I have favored an orientation toward citizenship that is animated by time as well as space, regarding the primary role of citizen to be working toward and embodying a sustainable and just future, a work in progress specified as 'humane global governance'. I call this kind of citizen 'a citizen pilgrim', conceiving of pilgrimage as a journey to a desired re-creation of global governance that may or may not be attainable within the course of a lifetime. Of course, there is no defining *telos* for the citizen pilgrim, as each horizon of aspiration reached will generate a new horizon and start from a different point of departure. This commitment to re-creation of governance implies an understanding of 'the political' in the sense deployed by Sheldon Wolin as 'the commitment to finding the common good'.²⁶ As with the citizen pilgrim, this conception of citizenship is normative and future-oriented.

To give a sense of direction, it is appropriate to identify tangible steps that could be taken by a citizen pilgrim living in the West to ensure that the recommended identity does not become a new-age refuge for apolitical striving. Among the steps that seem valuable symbolically and substantively, the following can be mentioned for purposes of illustration: (1) the enactment of 'a Tobin tax' to fund at least partially the UN system and a global environmental fund to help economically disadvantaged and vulnerable countries meet the threats posed by global warming;²⁷ (2) the establishment of a global parliament that is either attached to the UN or operates as an independent institution in the manner of the World Trade Organization;²⁸ and (3) the conversion of 'advisory opinions' of the International Court of Justice into binding decisions that impose legal obligations on all sovereign states.²⁹

A concluding observation

The argument of this chapter has been that an appropriate horizon for global governance cannot be achieved by relying on Westphalian strategies of adaptation, whether horizontally agreed upon by sovereign states or vertically conceived and imposed by hegemonic actors, possibly a new geopolitical co-dominion administered by the United States and China. Such means are beholden to nationalist and market priorities that seem incompatible with eliminating world poverty and nuclear weaponry, as well as adapting sufficiently rapidly to climate change and other environmental threats to avoid severe and possibly irreversible harm of massive proportions. Even if the rhetoric of *necessary* reform were to be invoked, the likely *constraints* on behavior will be insufficient, and even these will probably not be followed in practice or enforced. In effect, relying on the intergovernmental framework to fashion a global governance imaginary responsive to the needs of the twenty-first century is a dead-end invitation to cynicism and nihilism.

The activities and demands of transnational civil society networks are diverse and sometimes contradictory, and variously contextualized, but many share a sense of the political as preoccupied with achieving the common good or promoting *human* interests. It is this normative orientation that is an essential component of a global governance imaginary that deserves the support of the peoples of the world. Such activist striving at present is not formidable enough to claim agency except to the extent of pushing the Westphalian actors to move slightly less slowly down self-destructive paths, but still not nearly slow enough, or attuned sufficiently to the normative demands of global justice. This understanding leads to the encouragement of a more engaged citizenry in democratic societies that has historical confidence built on the record of past achievements of social change in struggles against slavery, racism, gender discrimination, and colonialisms. These transformative developments in each instance involved challenges from below that combined moral passion and a willingness to make personal sacrifices by entering actively into different struggles against the established order. This orientation toward feelings, thought, and action can be given political shape by positing the ideal and encouraging the practices of ‘citizen pilgrims’.

We cannot know whether this visionary perspective will ever achieve the status of a viable political project. What we do know with reasonable assurance is that without such a political upheaval from below there will be insufficient movement in the direction of either planetary sustainability or global justice. We also know that what seems implausible from the outlook of now often happens in history, for better and worse. Anticipating the fall of the Berlin Wall, the rise of China, the transformation of apartheid South Africa, and the 9/11 attacks attained plausibility only *in retrospect*. We also know that the unanticipated favorable outcomes did take place because of sacrifice and struggle, making it worthwhile to invest hopes and energies in a desired future, even if we cannot be assured in advance that goals being pursued will ever be achieved. What can be affirmed, without equivocation, is the importance of a humane global imaginary responsive to ethical and ecological imperatives as understood in the year 2013.

Notes

- 1 The importance of conceiving of political horizons as an imaginary is based on C. Taylor, *Modern Social Imaginaries*, Durham, NC: Duke University Press, 2004.
- 2 See R. A. Falk, *A Study of Future Worlds*, New York: Free Press, 1975; R. A. Falk, *On Humane Governance: Toward A New Global Politics*. Cambridge: Polity, 1995; R. A. Falk, *The Declining World Order: America's Imperial Geopolitics*, New York: Routledge, 2004, esp. chs 1–7.
- 3 See D. Deudney, *Bounding Power: Republican Security Theory from the Polis to the Global Village*, Princeton, NJ: Princeton University Press, 2007, 264.
- 4 Best depicted in the canonical 'National Security Strategy of the United States of America', The White House, 'The National Security Strategy of the United States of America', Washington, DC: 2002.
- 5 L. Kohr, *The Breakdown of Nations*, New York: E. P. Dutton, 1978.
- 6 T. E. Paupp, *The Future of Global Relations: Crumbling Walls, Rising Regions*, New York: Palgrave Macmillan, 2009; see also: R. A. Falk, *Declining World Order: America's Imperial Geopolitics*, New York: Routledge, 2004, 45–65.
- 7 R. Kagan, *The Return of History and the End of Dreams*, New York: Knopf, 2008.
- 8 H. Bull (*The Anarchical Society: A Study of Order in World Politics*, New York: Columbia University Press, 2nd edn, 1995), co-founder (along with Martin Wight) of the English School of International Relations, is clearest in his view that world order is benefited by a pluralist view of order, and harmed by applications of a more solidarist conception, which he attributes to Grotius and his latter-day heirs (see also: H. Bull, 'The Grotian Conception of International Society', in *Diplomatic Investigations*, ed. H. Butterfield and M. Wight, Cambridge, MA: Harvard University Press, 1968; N. J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, Oxford: Oxford University Press, 2000, 21–52; R. Aron, *Peace and War: A Theory of International Relations*, London: Wiedenfeld and Nicolson, 1966).
- 9 R. A. Falk, *Achieving Human Rights*, New York: Routledge, 2009, 14–18.
- 10 For an excellent theoretical approach to security in its contemporary global setting, see K. Booth, *Theory of World Security*, Cambridge: Cambridge University Press, 2007. For realist stress on the relevance of insecurity as foundational for security and instability, see J. J. Mearsheimer, *The Tragedy of Great Power Politics*, New York: Norton, 2001; see also: J. J. Mearsheimer, 'Conversations in International Relations: Interview with J. J. Mearsheimer', *International Relations* 20, 2006: 105–23, 231–43; R. Jervis, *Perception and Misperception in International Politics*, Princeton, NJ: Princeton University Press, 1976. On realist attempts to constrain the militarist sides of American foreign policy, see S. M. Walt, *Taming American Power: The Global Response to U.S. Primacy*, New York: Norton, 2005; L. H. Gelb, *Power Rules: How Common Sense Can Rescue American Foreign Policy*, New York: Harper, 2009.
- 11 Walt, *Taming American Power: The Global Response to U.S. Primacy*; Gelb, *Power Rules: How Common Sense Can Rescue American Foreign Policy*.
- 12 J. G. Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars*, Princeton, NJ: Princeton University Press, 2001.
- 13 The most dramatic power-war challenges to a pure Westphalian structure were undoubtedly the two experiments with global political institutions: the League of Nations and the United Nations. Careful examination shows the degree of deference to both sovereign prerogatives and geopolitical status evident in the practice of these organizations, but even in their constitutional arrangements (voting rules; veto power, backroom influence).
- 14 The 'Pact of Paris' (General Treaty Providing for the Renunciation of War as an Instrument of National Policy) in 1928 made it unlawful to initiate any non-defensive war. This legal commitment was embodied in the UN Charter, Article 2(4), allowing for self-defense as narrowly defined in Article 51 to be the only exception. The prohibition of aggressive war was criminalized by the Nuremberg and Tokyo War Crimes Trials against surviving German and Japanese political and military leaders, but has been

- effectively constrained by geopolitical canons of impunity ever since by limits set by geopolitics, despite the surprising establishment of the International Criminal Court in 2002. Yet the non-discriminatory application of international criminal law to the leaders of dominant states seems as unlikely as ever by intergovernmental action. Only elements in global civil society seek to override geopolitics in relation to this norm prohibiting recourse to aggressive war. For serious illustration of a global civil society initiative to implement this prohibition at best symbolically, see M. G. Sökman, ed., *World Tribunal on Iraq: Making the Case Against War*, Northampton, MA: Olive Branch Press, 2008.
- 15 I have tried to argue this case from a world order perspective in R. A. Falk, 'A Radical World Order Challenge: Climate Change and the Threat of Nuclear Weapons', *Globalizations* 7, nos. 1–2, 2010, 137–55.
 - 16 The 'responsible' domain of political discourse in liberal democracies is so delineated; elected leaders are expected to refrain from acknowledging imperial structures or considerations. Their mere mention is likely to brand the messenger as a radical voice to be excluded from policymaking venues. Elite gatekeeping ensures silence about structural impediments within governmental circles. There is a need not to know, and if known, certainly for government officials to refrain from expressing structural criticisms in public space.
 - 17 A notable attempt along these lines is that of A-M. Slaughter, *The New World Order*, Princeton, NJ: Princeton University Press, 2004.
 - 18 See A. Sen, *The Idea of Justice*, Cambridge, MA: Harvard University Press, 2009; see also: J. Rawls, *The Law of Peoples and the Idea of Public Reason Revisited*, Cambridge, MA: Harvard University Press, 1999; T. Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, 2nd edn, Cambridge: Polity, 2008); M. J. Sandel, *Justice: What's the Right Thing To Do*, New York: Farrar, Straus and Giroux, 2009.
 - 19 I have stressed the importance of substantive democracy, and a bottom-up approach to globalization animated by the wellbeing of peoples rather than the prevailing top-down approach shaped by the efficiency of capital and the interests of governmental elites (see R. A. Falk, *Predatory Globalization: A Critique*, Cambridge: Polity, 1999; see also: D. Archibugi, *The Global Commonwealth of Citizens: Toward Cosmopolitan Democracy*, Princeton, NJ: Princeton University Press, 2008.
 - 20 Trenchantly described by E. P. Thompson in his essay on the detrimental effects on any society that rests its security on preparing to exterminate another society. See Thompson, 'Notes on Exterminism, the Last Stage of Civilisation', *Beyond the Cold War: A New Approach to the Arms Race and Nuclear Annihilation*, New York: Pantheon, 1982, 41–79. On living well together, a phrase explored in illuminating ways by Jacques Derrida, see the collection of essays edited by E. Weber, *Living Together: Jacques Derrida's Communities of Violence and Peace*, New York: Fordham University Press, 2013.
 - 21 For a somewhat feeble attempt to make the role of nuclear weaponry less omnicidal, see K. Lieber and D. Press, 'The Nukes We Need: Preserving the American Deterrent', *Foreign Affairs* 88, no. 6, 2009, 39–51.
 - 22 The World Order Models Project, with which I was associated for many years, worked collaboratively within an agreed framework of five values: peace, economic wellbeing, social justice, ecological stability, and positive identity. No effort was made to establish measurable guidelines for these values, as their vagueness was a further deliberate attempt to safeguard space for civilizational and ideological diversity. For the range of views reflected in the WOMP literature, see S. H. Mendlovitz, ed., *On the Creation of a Just World Order: Preferred Worlds for the 1990s*, New York: Free Press, 1975. For other attempts at depicting a minimum universalism as the basis for a just world order, see J. Rawls, *The Law of Peoples and the Idea of Public Reason Revisited*, and A. Sen, *The Idea of Justice*, as well as the writings associated with the World Parliament of Religions, especially of H. Küng, *A Global Ethic for Global Politics and Economics*, New York: Oxford University Press, 1998.
 - 23 Neither visit was authorized or approved by the US government. They took place in 1968 and 1972, the first at the invitation of the Hanoi government to view the damage

being done by the American air campaign, and the second to assist in escorting three American pilots who had been captured in North Vietnam back to the United States. Revealingly, I was invited prior to the 1968 visit to meet with two then-prominent Department of Defense officials, Leslie Gelb and Morton Halperin, to discuss the trip, and my willingness to deliver a letter sent jointly by the secretaries of defense and state at the time. I would have been entrusted with this mission on one condition, that I pledged not to engage in any further public criticism of the American war effort in Vietnam. Naturally, without hesitation, I refused, and still remain in the dark as to the contents of such a letter, but not as to the unacknowledged sensitivity of government officials to public criticism of war policies.

- 24 See R. Broad, ed., *Global Backlash: Citizen Initiatives for a Just World Economy*, Lanham, MD: Rowman and Littlefield, 2002; M. Hardt and A. Negri, *Multitude: War and Democracy in the Age of Empire*, New York: Penguin, 2005.
- 25 This skepticism does not even attempt to take account of the unconscious drivers of state policy or of the often sinister effects of what Peter Dale Scott (P. D. Scott, *The Road to 9/11: Wealth, Empire, and the Future of America*, Berkeley: University of California Press, 2007) has usefully depicted as 'deep politics'. I leave aside, despite their undoubted yet complex relevance, also the special problematics associated with the American global domination project that has ebbed and flowed ever since the end of World War II, followed by the collapse of the European overseas empires.
- 26 Wolin's book is relevant also because of its powerful argument that even citizenship in its traditional sense has been emptied of influence *within* supposedly democratic states. In other words, there is a crisis of democracy as assessed from the perspective of an engaged citizen, whose efforts are nullified by the way money and private sector influence controls the formation of public policy. See S. Wolin, *Democracy Inc.: Managed Democracy and the Specter of Inverted Totalitarianism*, Princeton, NJ: Princeton University Press, 2008, 66.
- 27 For the original proposal, see J. Tobin, 'A proposal for international monetary reform', *Eastern Economic Journal* 4, nos 3–4, 1978, 153–59; see sophisticated support for proposal throughout the volume of essays edited by Deepak Nayyar, especially, Amit Bhaduri's chapter, 'Nationalism and Economic Policy in an Era of Globalization', 19–48 (in particular 45–46) in: D. Nayyar, ed., *Governing Globalization: Issues and Institutions*, Oxford: Oxford University Press, 2002.
- 28 See R. A. Falk, *Achieving Human Rights*, New York: Routledge, 2009, 22–25; for more detailed depiction, see R. A. Falk and A. Strauss, 'Toward Global Parliament', *Foreign Affairs* 80, no. 1, 2001, 212–20; R. A. Falk and A. Strauss, 'On the Creation of a Global People's Assembly: Legitimacy and the Power of Popular Sovereignty', *Stanford Journal of International Law* 36, 2000, 191–220.
- 29 For instance, it would enhance the status of the rule of law applicable to states. As matters now stand, states regard themselves as free to disregard authoritative views as to legal duties. In one recent case, Israel felt no pressure to comply with a 14–1 advisory opinion of the World Court (2004) with respect to the unlawfulness of its construction of a separation wall on occupied Palestinian territory. Similar remarks apply to the World Court decision on the legality of nuclear weapons (1996).

4

APPROPRIATING NORMATIVE GEOPOLITICS

The theme of this chapter is the extent to which international law and the United Nations serve as both obstacle and instrument in the pursuit of a vision of a just world order that is sensitive to the realization of human rights comprehensively conceived to include economic, social, and cultural rights as well as civil and political rights.¹ It may seem obvious to the more ethically minded commentators on world politics that the most worthwhile undertaking of international law and the UN is to restrain the wrongful exercise of power by states, and that this task is deserving of the utmost and invariable respect of governments and citizens. But the realities of international life and experience are sufficiently complicated, contradictory, and confusing as to resist such formulaic clarity.² Both international law and the UN, besides being intertwined, can be twisted by powerful political actors so as to advance regressive, as well as progressive, policy agenda items.

The rules and frameworks that constitute international law, as conventionally understood, continue to owe their authority largely to the consent of the elites that control the governments of the most powerful sovereign states.³ Such an acknowledgement of legal positivism, as description and prescription, needs to come to terms with the extent to which states, especially dominant or hegemonic states, tend to subordinate or manipulate legal obligations whenever these impinge upon their geopolitical priorities. So conceived, international law from above is less useful as a source of behavioral restraint, especially in relation to the use of force, and more significant as either an instrument of mutually beneficial cooperation (as in relation to trade, investment, maritime safety, and a host of practical transnational concerns) or as a universal language for the communication of claims and grievances.⁴ There has, in addition, emerged over the course of the last century a counter-tradition that might be characterized as 'international from below', in which weaker states have effectively used international law as a protective shield to resist various forms of exploitative interference with sovereign rights.⁵

Martti Koskenniemi has provocatively argued that international law has habitually functioned either as a source of apology for the depredations of power (Kant in a similar spirit dismissed the celebrated international jurists of his time as ‘miserable consolers’) or as a utopian bromide for sentimental dreamers.⁶ In essence, such a doubting posture contends that international law either rationalizes the machinations of power and confuses the public or steadfastly ignores the shaping role of power and also confuses the public. Either way the preeminent role of the international lawyer from such a skeptical perspective is one of deliberate or innocent obfuscation, that is, serving the state out of ambition and deference or being too naive to understand the extent to which geopolitics trumps law whenever the grand strategies of major states become engaged. In this respect it is always important to be enough of a realist to see through this apologetic role that international law unquestionably and frequently plays in great power diplomacy, while also having an understanding that is simultaneously wary and even dismissive of fuzzy thinking legalists who believe that merely by positing legal rules it becomes possible to formulate a new behavioral hierarchy of self-actualizing norms that are by their very existence assured of restraining oppressive or exploitative exercises of state-centric violence. The Kelsenite tradition, with its formal rigor and deliberate detachment of law from an interplay with religious and political authority, represented the most influential expression of this depoliticized legalism, especially in Europe between the two world wars.⁷ Totalitarian forms of legalism, both Nazi and Soviet, discredited legal positivism nationally, but not internationally.

Nevertheless, the apology/utopia dualism is too simplistic in a number of respects, including overlooking the significance of law as relevant for gaining control over the often crucial high moral ground in a conflict situation, in all manner of ‘new wars’, especially in those conflicts highlighting the role of social movements and non-state actors.⁸ It is notable that ever since the end of World War II that the militarily dominant side in conflicts addressing self-determination concerns have rarely been able to control the political outcome. This was true throughout the period of anti-colonial struggles where the weaker side, as measured by hard power disparities, invariably prevailed, although sometimes after a long interval and at great human cost. Historically this had not always been the case. In the modern era, prior to 1945, the militarily stronger side almost always achieved its goals without great difficulty or sacrifice, with hard power consistently providing efficient and effective historical agency. The establishment of the globe-girdling colonial empires gave territorial and economic expression to this generalization about the geopolitical potency of hard power, especially as deployed by the major states in Western Europe, up through World War II.

No single factor reversed this pattern, but an essential feature of the reshaping of conflict and dominion, especially in the countries of the South, was that the militarily weaker side increasingly understood and took advantage of achieving the normative backing of law and morality (instruments of soft power) in carrying on its struggle. Other factors that contributed to this trend were the greater availability

of small arms throughout the world after World War I and the weakening of political will in the colonial North due to the debilitating effects of a costly war that was increasingly experienced in metropole society as being on the wrong side of history, and thereby producing a meaningless loss of life and resources. This new sense of normative advantage was especially relevant to creating a potential mass willingness by a people in bondage to endure heavy burdens over long periods of time due to this new belief in the entitlement and capacity of oppressed or colonized peoples to win their freedom and independence.⁹ The United Nations played an important role in creating and reinforcing this anti-colonial consciousness through its endorsement of norms of self-determination and of non-intervention in internal affairs, as well as through its repudiation of colonialism and condemnation of apartheid as an international crime.

The UN, at its start, was conceived and established as a purely Westphalian framework of world order, with governments constituted as the political actors representing sovereign states, alone entitled to membership. States retained full authority in relation to overseas territories subject to their sovereign authority. Yet from its inception the UN was also an arena where issues of normative aspiration were also considered to be matters of law and morality. That is, the shaping of the norms of international law within the UN was an expression of its soft power importance in a global setting that failed to possess supranational governmental authority to settle international disputes. Thus, despite the statist background and the hegemonic *modus operandi* of the UN, it came gradually to encourage the decolonization process, thereby reflecting a changing global climate of ideas and assessment of contending social forces, including the approval of norms that both empowered struggles against established colonial and racist political arrangements, and disempowered and demoralized entrenched elites seeking to perpetuate existing forms of political order.¹⁰ Of course, this dynamic of constructing such a people-friendly and emancipatory orientation for international law was itself the outcome of an ongoing political process complemented by the activism of non-governmental organizations, particularly those concerned about human rights.¹¹ It is here that the politics of civil society are shaped and tested through a variety of efforts to construct, validate, and then actualize a normative architecture embodying fundamental ideas of morality, fairness, and justice.¹² Although the historical trend validates the significance of gaining the high moral ground and reliance on soft power instruments, especially during the decades of anti-colonial struggle and during the last stages of the Cold War, there is no assurance about the outcome of any particular conflict. Where the historical trend seems strongest is in relation to the failures of foreign military intervention since 1945, despite hard power dominance, a pattern exemplified by the American defeat in Vietnam. The trend is less pronounced in state-society struggles in which the hard power state may prevail – as in relation to Tibet, Chechnya, or with regard to Sri Lanka – or fail, as in the Shah's Iran or apartheid South Africa. Further, the outcome of these struggles may produce a victory for a supposed liberation movement that itself turns oppressive almost as soon as it gains power, as in Iran after the victory of the Khomeini-led

revolution of 1978–79, or of the Taliban in the aftermath of the Afghanistan resistance to Soviet intervention.

But while this portrayal of the continuity between the worldview of progressive activists, the United Nations, and the international legal process contains important insights, it is far from the whole truth about the role and character of the United Nations, international law, and civil society. It is crucial to grasp the significance of the constitutional provision that allows the five permanent members of the Security Council to veto decisions of the Organization in the area of peace and security. This reflects a deliberate and fundamental intention in theory and practice to acknowledge the geopolitical dimension of world order by conferring on the then most powerful states permanent membership in the Security Council and an extraordinary exemption from any obligation or expectation that these five countries, considered the victors in World War II, would be bound by the norms or procedures of the UN Charter. The exemption in the form of the veto is unrestricted in its use for all important decisions of the Security Council, and can be extended to protect friends of the permanent five as well. What may be more troublesome in some respects is the other part of the bargain underlying the formation of the United Nations to the effect that every other member state is legally obligated to act within the bounds set by the UN Charter as interpreted by the Security Council, including being subject to UN-sponsored enforcement actions and punitive measures.

There are at least two ways to view this dualistic legal structure built into the constitutional foundations of the United Nations. It can be seen as a sort of Faustian bargain that was needed to bring the Organization into existence in the first place and to help ensure that it would not fall apart under the strain of political crises as did its predecessor, the League of Nations.¹³ This UN deference to the distribution and role of hard power capabilities is at the heart of the realist worldview, and the fact that the UN has achieved and sustained universality of membership would tend to vindicate this approach in many circles; but it also has had several negative consequences. Most obviously, throughout the Cold War it meant gridlock in the Security Council, which translated into a discrediting ineffectuality whenever the superpower antagonists were in disagreement, which was virtually always. The veto also explains a UN legitimacy deficit, embedding double standards in the constitutional sinews of the Organization. This has constrained UN effectiveness, as well as sending the disheartening message that considerations of law and justice must generally give way to the vagaries of hard power. Double standards, so contaminating to the rule of law, can also be observed in other domains of world politics. Most notably is the treaty regime established by the Nonproliferation Treaty in 1968 to manage the control of nuclear weapons and in relation to humanitarian intervention, both in cases where action is taken on behalf of a vulnerable or abused people and where such action is blocked despite being desperately needed.

Why should this kind of veto have been conferred on those states whose adherence to international law is most important if the UN system was ever to

become effective and legitimate? The same diplomats who were scorned as idealists for their dedication to the overall UN framework and vision were also attacked for giving large countries a realist reassurance of the veto as an enticement to become members without jeopardizing their geopolitical freedom of maneuver. After the Cold War, the assault on UN legitimacy was less because of the veto than due to the newly claimed hegemonic authority of the United States as the sole surviving superpower. When George W. Bush in the lead-up to the Iraq War in 2003 told the Security Council that the UN risked becoming irrelevant if it did not support the American-led attack on Iraq he was articulating this hegemonic understanding, insisting that the UN would lose credibility if it did not endorse an aggressive war that contravened the core norm of the Charter prohibiting recourse to force in an international conflict unless it could be justified as self-defense against a prior armed attack. Fortunately, despite bullying tactics by Washington, the Security Council withheld its endorsement of aggressive force in this instance, but from an international law point of view this was not a sufficient response with respect to a state wrongly threatened with an attack on its political independence and territorial integrity. The UN Security Council failed to condemn the invasion of Iraq and carry out its supposedly pivotal mission of protecting countries subject to unlawful threats or uses of force. Further, after the American-led attack toppled the Iraq government, the UN established a presence that seemed supportive of the outcome of the aggression. Nowhere in the Charter or in international law is there a rule that states lose their sovereign rights if governing abusively, although in UN practice it is true that if the level of abuse reaches the level of imminent or ongoing genocide, systematic ethnic cleansing and massive crimes against humanity, moral, legal, and political challenges to sovereignty have been made on behalf of the victimized population.¹⁴

After World War II, surviving Nazi and Japanese leaders were prosecuted for their abusive *international* behavior, and the Nuremberg promise was made at the original legal proceedings in 1945 that the victorious powers sitting in judgment of the defeated Germany would in the future subject their own conduct to a similar constraining discipline of accountability, a gesture intended to overcome delegitimizing double standards. Not surprisingly, this Nuremberg promise was almost immediately broken, inviting a new phase of the sort of cynicism associated with the apology/utopia dualism so strongly emphasized by Koskenniemi. It should be noted that 12 years before the Iraq War of 2003, the UN Security Council had endorsed an extremely punitive peace imposed on Iraq after the Gulf War of 1991, resulting in extreme harm to the civilian population of the country.¹⁵ There is every reason to view the United Nations as both an instrument of geopolitics and as a site of struggle for the establishment of norms and normative architecture that offer soft power encouragement to an array of struggles against oppression, abuse, and exploitation throughout the world. It would thus be wrong to regard the UN as either only a geopolitical instrument or as exclusively a bastion of law, justice, and peace. For better and worse, it is both. Sometimes, as during the anti-colonial period when the General Assembly was more assertive, the UN seemed more

aligned with a politics of liberation and justified resistance, and even global reform. And sometimes, as in recent decades, the UN became more overtly associated and identified with a power-driven geopolitics and a unipolar world order that tended to reflect the priorities of American foreign policy, which included consolidating the centrality of the Security Council in matters of peace and security, and marginalizing the General Assembly. This was true whether the issue was regime change in Iraq or subsequently imposing sanctions and threats of a military attack against Iran. In both of these recent instances, the UN seems to have abandoned the foundational mandate of the Charter to save succeeding generations from the scourge of war.

The relationship of the UN to international law in the context of the Israel–Palestine conflict is also emblematic of a split organizational personality. With normative zeal, the idea of a ‘responsibility to protect’ (R2P) was endorsed as a world community responsibility in the face of severe abuses by a state of human rights, ethnic cleansing, or genocide. The R2P ethos was a diplomatic effort to give ‘humanitarian intervention’ a post-colonial orientation, but so far this linguistic trope has not overcome the well-founded suspicions that accompany such selective and geopolitically driven uses of force.¹⁶ In mid-2007, Israel responded to the Hamas takeover of the governing process in Gaza by imposing a comprehensive blockade, denying food, medicine, and fuel to the 1.5 million inhabitants, more than half of whom are classified as children. This blockade has been widely condemned as a form of collective punishment in flagrant violation of Article 33 of the Fourth Geneva Convention governing belligerent occupation. This prolonged deprivation in Gaza certainly appears to pose a dramatic challenge to the supposed R2P norm, but the geopolitical circumstances of Israel’s posture of non-cooperation, and America’s willingness to support whatever Israel does, makes any kind of meaningful UN response not even seriously discussable, much less form the basis for action needed to provide protection to an acutely vulnerable and long suffering people who have endured continuing crimes against humanity for several decades.

But this UN failure is not the whole story. If the conflict is looked at differently, it can be seen that the UN lends significant support to the Palestinian struggle for self-determination, especially in light of the more recent shift in emphasis within the Palestinian resistance movement to a soft power, non-territorial strategy that seeks to do two things: exert coercive nonviolent pressure upon the Israeli government by recourse to such measures as boycott, divestment, and sanctions (the BDS Campaign) and through civil society militancy designed to break the Gaza blockade.¹⁷ The BDS Campaign definitely was strengthened by UN initiatives of the last several years, especially the Goldstone Report on alleged war crimes associated with Israeli attacks on Gaza in the period between December 27, 2008 and January 18, 2009, and in the Human Rights Council’s formal inquiry into the lawfulness of the Israeli attack of May 31, 2010 on the Mavi Mamara Freedom Flotilla carrying humanitarian assistance to Gaza.¹⁸ Ideally, these condemnations of Israel’s behavior as being in violation of international criminal law would induce intergovernmental and UN sanctions, censure, and mechanisms to impose accountability on those

responsible for shaping and implementing the policies, but a geopolitics of impunity continues to shield Israel and its leaders from any kind of negative effects despite these clear and authoritative UN findings.¹⁹ It is misleading to view this result as a reflection of something deeper and more general than geopolitical priorities (even if distorted from a realist perspective by the strength of the Israeli lobby) as is implied by the phrase often used of ‘a culture of impunity’. When geopolitical priorities fall on the accountability side of the balance sheet of interests, then vigorous efforts will be made to impose responsibility as in a reverse setting, where evasion of accountability is mandated.²⁰ The criminal prosecutions of Slobodan Milosevic and Saddam Hussein illustrated this pro-active, selective approach to criminal accountability of heads of state.

The conclusion in relation to Israel is that there is no requisite political will on the intergovernmental level of state-centric diplomacy to hold the Israeli officialdom accountable under international law, but at the same time there does exist sufficient political will within UN circles to determine *whether* Israel should be held accountable. In other words, try as it might, the United States cannot completely insulate Israel from the adverse normative consequences of its policies that affront the conscience of the world, but it can limit these consequences by blocking efforts to implement normative expectations at the UN or in most intergovernmental circles, although far less so with respect to global civil society.

A mid-way, relatively underutilized and controversial, option to implement international criminal law is afforded by some national courts, especially in Western Europe, which allow complaints about violations of international criminal law to be made under the rubric of ‘universal jurisdiction’.²¹ There have been, as yet, no dramatic results with respect to Israeli accountability achieved by way of universal jurisdiction, although on several occasions Israeli political leaders and military commanders have canceled travel plans to countries where courts possess this potential authority on their law books, for fear of being detained to face criminal charges. Even this low level of informal accountability, a mildly intimidating concern about the possibility of prosecution, undoubtedly adversely affects the comfort level of those Israeli leaders closely associated with policies widely viewed as involving serious violations of international criminal law. Israel has responded to these kinds of tactics, whether involving international criticism or the use of national courts to assess accountability, by relying on a politics of deflection, complaining about the bias of the messenger or the auspices being used to pass judgment rather than addressing the substance of the charges, as well as by mounting a major public relations campaign to present Israel in favorable terms.

Looking at this experience in the ever unfolding Israel–Palestine conflict through the Kaldor lens of ‘new wars’ accords a much more important political role for these delegitimizing and legitimizing narratives and related undertakings that have proceeded under UN auspices than would be the case if a mainstream state-centric or geopolitical lens was the main optic. Their high profile character gives societal plausibility to the main accusations of criminality associated especially with the expansion of settlements in the West Bank and East Jerusalem and the

blockade of Gaza, and this in turn invigorates efforts to organize various civic forms of boycott and divestment activities, as well as to develop a variety of civil disobedience initiatives with the purpose of breaking and discrediting the blockade of Gaza. In other words, the Goldstone Report and the UN Human Rights Council's report of the fact-finding mission on the Gaza Flotilla are important for mobilizing purposes, but the non-implementation of their recommendation gives the contention that international law matters a rather hollow sound. Israel defies international law, enjoys impunity, and can only be stopped by concerted action by the peoples of the world taking and sustaining action on a global scale. There is significant evidence that Israeli leaders view what they call 'the delegitimation project' as now a more serious threat to Israeli security than hard power Palestinian armed resistance. The Israeli ordeal of enduring a wave of 'suicide bombings' during the 1990s helped maintain the Holocaust imagery of Jewish victimization, and denied the Palestinians, despite enduring a systematic abuse of their fundamental rights associated with the post-1967 occupation of Palestinian territory, access to the high moral ground.

The shift in the normative equilibrium of the conflict has taken place since 2006, starting with the Israeli tactics of bombarding civilian centers of population in the Lebanon War, accentuated by the brutality of the 2008–9 Gaza War involving the same tactics on a more intense scale directed at the entrapped civilian population of Gaza, and culminating in the attacks of May 31, 2010 on the civilian flotilla carrying humanitarian goods to Gaza and challenging the blockade.²² These developments have allowed the Palestinians to take, for the time being at least, control over the moral heights in relation to the conflict, putting Israel on the defensive with respect to the crucial struggle for symbolic soft power ascendancy. I have labeled this new approach to the struggle for Palestinian self-determination as the non-violent reliance on a 'legitimacy war' strategy. The Palestinians are currently winning most battles on this global symbolic battlefield. Whether this use of coercion without reliance on violence, taking full advantage of the high moral ground, will be sustained, and if so, will be enough to alter the balance of political forces in the conflict to achieve a just and sustainable peace for the two peoples, remains highly uncertain. Whatever the outcome, the legitimacy war track offers the Palestinians and other embattled peoples far more promise under most circumstances than either armed resistance or reliance on traditional state-centric diplomacy. However, it is important to draw distinctions among various Palestinian elements in waging legitimacy wars. It is also far from certain that reliance on soft power will continue if there are no signs of substantive progress toward attaining the overriding goal of Palestinian self-determination.

The world of organized diplomacy, in contrast, has been offering the Palestinian people less than zero through its periodic convening of a 'peace process' involving negotiations between governmental representatives of the two embattled parties as mediated by the highly partisan United States. These negotiations are the most cynical imaginable inversion of justice, erecting a facade of pseudo-accommodation that forthrightly excludes any reference to the rights of the Palestinians under

international law, while seeking validation of the main unlawful and deliberate features of Israel's encroachment on Palestinian territories during more than 45 years of occupation, that is, legalization of the unlawful Israeli settlement blocs, separation wall, and a total rejection of Palestinian refugee rights. As many observers have commented, there can be no just and sustainable peace, as distinct from a ceasefire disguised as 'peace', until fundamental Palestinian rights and Palestinian security are accorded respect.²³ The current framework of official negotiations has no hope of achieving, or even pretending to proceed in a manner respectful of Palestinian rights, a process that alone would offer some prospect of justice. At present, negotiations are undertaken and promoted without the long abused people of Gaza even being represented in any formal or appropriate manner.²⁴ What has been argued in relation to Israel/Palestine applies with equivalent force to the differing situations in Kashmir, in the Kurdish struggle for fundamental rights in Turkey, and in many other conflicts around the world, although in each setting the originality of context is crucial. No one template fits all of these situations.

Generalizing these comments makes it evident that transnational civil society initiatives, whether the BDS Campaign or the Free Gaza Movement, are focused on two principal goals: peace and reconciliation based on justice and rights for both peoples under international law; and urgent action to alleviate the daily suffering of the Palestinian people and avert this further unfolding of a humanitarian catastrophe.²⁵ In this respect, the United Nations can be viewed as a necessary component in the prosecution of a legitimacy war, although not directly through its decisions or behavioral impacts, but indirectly as the world's most influential source of moral and legal authority, a legitimizing and delegitimizing arena that provides guidelines and sets limits on and gives visibility to permissible civil society approaches to conflict resolution. Prospects for a just world order depend on this reliance on peace and justice from below, a kind of nonviolent and populist form of geopolitics that seeks to neutralize the violent and governmental forms of traditional statecraft that continues to rely mainly on hard power calculations in shaping its approach to conflict resolution, which often entails downplaying the rights at stake of the weaker side and disregarding the limits set by international law on territorial gains achieved by force. The experience of the Palestinians since 1948 is extreme in these respects, but the pattern of marginalizing the relevance of international law is paradigmatic in any conflict situation in which the imperatives of geopolitics are allowed to guide diplomatic initiatives.

And this disappointing assessment is not confined to the peace and security agenda of world politics, but applies whenever international law and the authority of the UN are at odds with geopolitical pressures. The same sort of disillusionment with both state-centric diplomacy and the UN as problem-solver has resulted from the failures of the 2009 Copenhagen Conference on Climate Change to achieve the kind of obligatory agreement urgently needed to keep global warming from reaching even more dangerous and irreversible levels than at present. In this policy context the explanation of failure is similar in its generality and different in its particularities. On the latter, there are several distinctive structural flaws in the

operation and organization of world order in relation to the sort of globally constituted challenge posed by global warming, and its harmful effects, that call attention to the distinctiveness of the climate change problematic.

Three of these flaws are particularly relevant: short-term cycles of accountability governing the behavior of political leaders of national governments that work strongly against responding to longer-term challenges that require expensive economic adjustments; a spatial disconnect between those most responsible for the buildup of greenhouse gases and the generally distant locus of harm being produced, illustrated by the unevenly high temperature rise and associated droughts in sub-Saharan Africa, a region whose countries are trivial emitters of CO₂ and other greenhouse gases; and the well orchestrated and financed campaign of climate skepticism aimed at discrediting the *scientific* consensus established by the overwhelming majority of climate scientists as most authoritatively expressed by the periodic reports of the UN's Intergovernmental Panel on Climate Change. A heavily funded skeptics' campaign organized by the oil and coal industries has been very effective in discouraging the formation of a *political* consensus needed to shape a viable policy that is just and sensitive to the claims of future generations.²⁶

As was vividly dramatized at Copenhagen, the governments could not achieve any appropriate agreement, and used police and naked force to keep the representatives of civil society confined to the outer margins of the negotiations. It seems difficult to envision a solution to these challenges without the emergence of a transformative political consciousness, giving weight to patterns of thinking and acting on behalf of humanity and of future generations as opposed to thinking on behalf of states and corporations, and the present, with most citizens remaining captive of a consumerist mentality that demands maximum short-term satisfaction and is easily confused as to the gravity of ecological dangers. A similar confusion was generated by the tobacco industry with respect to the harmful effects of smoking, delaying restrictions on the sale and use of cigarettes by decades, but here in relation to climate change delay imperils the whole future of humanity.²⁷ It should be understood that global warming and its effects are currently already inflicting collective harm in various natural settings. The disastrous effects of climate change have not yet been fully experienced and perceived globally, especially, with irony, by those societies where industrialism has given rise to the problem in the first instance by emitting more carbon than the oceans and forests of the world can absorb.

A jurisprudential point is being made to the effect that state-centric international law is incapable of generating systemic norms when the perceptions of responsibility and the experience of harm are geographically so unevenly distributed. Climate change appears at its early stages to have the perverse characteristics of being most dangerous for those low-carbon producing parts of the planet with the least capability to adapt to or mitigate the harm, such as sub-Saharan Africa and Asian coastal and island communities. As a result the more wealthy and technologically capable countries have little current incentive to agree to a necessary *global* approach, since for the near future the worst national effects can be often avoided or mitigated by self-reliance, and any enactment of global norms would seem to

involve the acceptance by the richest countries of disproportionate burdens of adjustment. The overall perceptions of how much common interest in reducing the emission of greenhouse gases exists is itself very uneven, with Europe far more willing to accept significant burdens than the United States, and China far readier to invest in alternative energy sources than the rest of the world. Unfortunately, the climate change clock continues to move toward a kind of midnight climax, and the longer appropriate responses are deferred the more dangerous and expensive it will be to respond constructively. Not only are governments being tested, but also civil society, as to whether societal forces can become strong enough to overcome corporate resistance, by creating a political climate that exerts timely pressures on major states, especially the United States, to ensure that the existing robust scientific consensus is converted into a policy consensus that establishes a needed global framework of sufficiently rigorous regulation at the earliest possible time.

International law supplies the markers of the impermissible at a time when the formal annals of state-centric politics are being simultaneously (mis)shaped by the hubris of hegemonic geopolitics and ambiguously resisted by people-centered politics from below. In the varied enactments of this bearing of witness, international law helps parties to put contested behavior within a historical and ethical context, but leaves responsibility for action mostly in the hands of the mobilized peoples of the world and their governmental representatives. In this respect, international law contributes to an ongoing vital discourse, and should whenever possible be invoked and relied upon by those struggling to promote global justice, while at the same time remaining opposed to demystifying claims that international law vindicates this or that use of interventionary violence. This world order bromide of a necessary hegemon is likely to persist unless there is a global justice movement that safeguards and envisions the future from a people-centric viewpoint.²⁸

What emerges from this analysis of a changing global setting, underscoring the illuminating and prophetic importance of engaged scholarship that creatively conceptualizes the state/society/planet interaction, are two momentous, not generally appreciated, conclusions: first, violent resistance for an embattled people is being displaced, although not everywhere or consistently, by reliance on soft power instruments of resistance and coercion, including the force of law, morality, and nonviolent militancy; second, the traditional conflict resolving modalities associated either with hard power domination or state-centric diplomacy, whether under UN auspices or independently, are proving increasingly incapable of fashioning humane and effective problem-solving solutions.²⁹ As a result, there exist expanding opportunities for civil society initiatives, especially as the symbolic battlefields in legitimacy wars are non-territorial and often borderless in scope. If these dynamics are activated, as occurred during the anti-apartheid campaign of the late 1980s and early 1990s, then the UN and states can play a crucial role in encouraging just and sustainable outcomes to conflict. In effect, the war system has become increasingly dysfunctional for both strong and weak potential actors, with a few exceptions, and the future of world order now heavily depends on the extent to which political elites around the world, especially the leaders of major states, absorb and adjust

to this indispensable understanding of altered geopolitical realities in the early twenty-first century.

Notes

- 1 This enumeration of human rights accepts the categorizations and boundaries set forth in the two covenants of human rights, binding international treaties, that were negotiated in 1966 as a sequel to the Universal Declaration of Human Rights. It is important to appreciate that some leading democracies, most notably the United States, while ratifying the Covenant on Civil and Political Rights have failed even seriously to consider the Covenant on Economic, Social, and Cultural Rights. To a degree the two covenants split the unity of human rights as a reflection of the Cold War encounter between the liberal West as advocate of individual rights and the socialist East as champion of collective rights. It should be recognized that such an approach to global justice sets up a clash between the juridical idea of territorial supremacy of a sovereign state that is the foundation of the prevailing Westphalian conception of world order and the protection of human rights, which to the extent that it is externally implemented, is subversive of a statist structure of world order.
- 2 In fact, moral imperatives and political opportunities may point in one direction, while law points in the opposite direction. For instance, when a government abuses its citizenry to the extent of committing crimes against humanity, an external attempt to protect such vulnerable people may run up against the legal prohibition on recourse to the threat or use of force by states except in circumstances of self-defense rather narrowly defined or under the authority of the UN Security Council. If the Security Council refuses to mandate the use of force, then the tension between respect for law and the humanitarian urge to protect an endangered civilian population is made manifest. This tension was at the root of the debate about whether humanitarian intervention in Kosovo under NATO auspices was appropriate in 1999 without Security Council authorization. The Independent International Commission on Kosovo attempted to resolve this tension by suggesting that in this specific case considerations of legitimacy (moral imperative plus political feasibility) took precedence over legality. See Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned*, Oxford: Oxford University Press, 2000; for more theoretical exploration of these issues see R. A. Falk, M. Juergensmeyer, and V. Popovski, eds, *Legality and Legitimacy in Global Affairs*, New York: Oxford University Press, 2012.
- 3 Perhaps the clearest expression of this perspective is still associated with the work of L. Henkin, notably: L. Henkin, *How Nations Behave: Law and Foreign Policy*, New York: Columbia University Press, 2nd edn, 1979; for a view along the same lines although contextualized as a diatribe against the lawlessness of the Bush presidency, see P. Sands, *Lawless World: America and the Making and Breaking of Global Rules from FDR's Atlantic Charter to George W. Bush's Illegal War*, New York: Viking, 2005.
- 4 This role of international law communicative interaction was memorably articulated by C. A. W. Manning, *The Nature of International Society*, New York: Wiley, 1975; for a somewhat similar contemporary emphasis see D. Kennedy, *Of War and Law*, Princeton, NJ: Princeton University Press, 2006.
- 5 Latin American jurists took the lead in trying to use international law in such a defensive posture, successfully placing legal constraints on the use of force to collect economic debts or protect the rights of foreign investors in the Western Hemisphere. Such a perspective is well formulated in relation to the development discourse by B. Rajagopal, *International Law from Below: Development, Social Contemporary Movements, and Third World Resistance*, Cambridge: Cambridge University Press, 2003.
- 6 See M. Koskeniemi, *From Apology to Utopia: The Structure of International Legal Argument*, Helsinki, Finland: Finnish Lawyers' Publishing Co., 1989; also see sympathetic, yet

- critical outlook in M. Koskeniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*, Cambridge: Cambridge University Press, 2001.
- 7 See Hans Kelsen, *Principles of International Law*, 2nd revised edn (R. W. Tucker, ed.), New York: Holt, Rinehart, and Winston, 1966; also H. Kelsen, *The Law of the United Nations*, New York: Praeger, 1951.
 - 8 My views here are heavily influenced by M. Kaldor, *New and Old Wars: Organized Violence in a Global Era*, Cambridge: Polity, 1999.
 - 9 This distribution worldwide of small arms in the period following World War I and continuing throughout the century was an important source of empowerment for colonized peoples. Such a dispersion of weaponry did not nullify hard power disparities, especially as technologically advanced states continued to improve the lethality of their weaponry, but it did provide some means to carry on armed struggle, especially if accompanied by appropriate tactics. The Vietnamese opposition to American intervention was an exemplary instance of waging successful hard power resistance from a position of military inferiority.
 - 10 I have elaborated on this appraisal in R. A. Falk, *The Declining World Order: America's Imperial Geopolitics*, New York: Routledge, 2004, esp. 3–44, 67–103.
 - 11 See R. A. Falk, *Human Rights Horizons*, New York: Routledge, 2009, for an assessment along these lines.
 - 12 M. Kaldor, *Human Security*, Cambridge: Polity, 2007; also détente from below; what was empowering and disempowering in the decolonizing struggles was reproduced in relation to the demand for human rights in the Cold War settings of Eastern Europe. See also: M. E. Keck and K. Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics*, Ithaca, NY: Cornell University Press, 1999.
 - 13 It should be recalled that the League could neither induce some important states to join in the first place, most notably the United States, nor retain the membership of several important states. In contrast, the UN has retained the membership of all major states despite severe strains at times, and entry into the Organization is seen as a vital sign of legitimate sovereign status for governments and states seeking diplomatic acceptance at a global level.
 - 14 With respect to Iraq, these conditions were not present, despite past abuses that might at the time have justified intervention from a legal and moral perspective. In 2003 the reasons for intervention seemed overwhelmingly strategic, and moral arguments about liberating the Iraqi people from tyranny, while plausible, have little legal weight, and would constitute a dangerous UN precedent. It needs to be remembered that the UN was formed with war prevention as its primary mission, conditioned by assurances of non-intervention in domestic life (Article 2(7)). Human rights emerged during the operation of the Organization, and did erode the UN commitment to unconditional respect for territorial sovereignty, but always problematically.
 - 15 On the general issues of a punitive peace, see R. A. Falk, *The Costs of War: International Law, the UN, and World Order after Iraq*, New York: Routledge, 2008, esp. 37–51; and on the civilian impact of sanctions, see J. Gordon, *Invisible War: the United States and the Iraq Sanctions*, Cambridge, MA: Harvard University Press, 2010.
 - 16 See important critique of these humanitarian pretensions, and the interweaving of neo-liberal and imperial priorities, in: A. Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law*, Cambridge: Cambridge University Press, 2003.
 - 17 This shift can be questioned as to its depth and breadth. There is no way to be sure that various Palestinian factions will not in the future revert to their former reliance on hard power tactics, and it is evident that not the whole of the Palestinian opposition is persuaded to pursue a soft power approach. Hamas is still labeled as ‘a terrorist organization’ by many governments, although its diplomacy since its 2006 electoral victory has emphasized peaceful coexistence and its willingness to find a political solution to the conflict with Israel.

- 18 For some assessment of these developments see R. Falk, 'The Goldstone Report: Ordinary Text, Extraordinary Event', *Global Governance* 16, 2010, 173–90; M. Bayoumi, ed., *Midnight on the Mavi Mamara: The Attack on the Freedom Flotilla and How It Changed the Course of the Israel/Palestine Conflict*, New York: OR Books, 2010.
- 19 The unconditional support given to Israel by the United States has been sharply and persuasively criticized from a realist perspective, suggesting that it distorts the fulfillment of American strategic priorities in the region, most prominently by J. Mearsheimer and S. Walt, *The Israeli Lobby and U.S. Foreign Policy*, New York: Farrar, Straus, and Giroux, 2002. Two qualifications need to be added: even if foolish from a realistic perspective, the use of American leverage in the UN is an instance of geopolitics; after the Israeli victory in the 1967 Six Day War the Pentagon and Washington think tanks increasingly treated Israel as an important strategic asset in the region, a position further strengthened by the Iranian Revolution in 1979, which deprived the United States of its strongest and most dependable regional ally.
- 20 As Mary Kaldor has so significantly argued over the years, a statist focus provides an inadequate understanding of contemporary conflict situations, as the roles of civil society actors need to be increasingly taken into account. The Israel–Palestine conflict also illustrates the political importance of controlling the narrative about how to describe the conflict and attribute blame for its origins and persistence, which influences attitudes towards what would be a reasonable and acceptable outcome, and under what conditions resolution and reconciliation would be possible. For a recent example of the Kaldor approach, see S. D. Beebe and M. Kaldor, *The Ultimate Weapon Is No Weapon: Human Security and the New Rules of War and Peace*, New York: Public Affairs, 2010; see also: Kaldor, *New and Old Wars*, op. cit., and Kaldor, *Human Security*, op. cit.
- 21 See S. Macedo, ed., *Universal Jurisdiction*, Philadelphia, PA: University of Pennsylvania Press, 2004.
- 22 On the Lebanon War of 2006 see N. Hovsepian, ed., *The War of Lebanon: A Reader*, Northampton, MA: Olive Branch Press, 2008.
- 23 See V. Kattan, *From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict, 1891–1949*, London: Pluto, 2009, esp. xv–xx, 248–61.
- 24 See the still relevant prophetic critique of the peace process by E. W. Said, *The End of the Peace Process: Oslo and After*, New York: Pantheon, 2000.
- 25 The BDS Campaign was initiated by a coalition of Palestinian NGOs in 2005, but has recently strengthened dramatically, especially in response to the Gaza War and the flotilla incident. BDS tactics are modeled on the anti-apartheid campaign that contributed to the downfall of the racist regime in South Africa in the early 1990s. The Free Gaza Movement was organized initially by Israeli peace activists to deliver symbolically needed medical and other humanitarian supplies to the unlawfully blockaded population of Gaza, relying on civil society donated funds and using unarmed small boats to defy the Israeli blockade. The rationale relied upon was that the failure of the UN or governments to lift the blockade meant that it was appropriate for civil society to expose both the futility of traditional statecraft and the relative vitality of global civil society in its role of responsiveness to a humanitarian catastrophe.
- 26 See N. Oreskes and E. M. Conway, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming*, New York: Bloomsbury, 2010; H. Friel, *The Lomborg Deception: Setting the Record Straight About Global Warming*, New Haven, CT: Yale University Press, 2010.
- 27 For representative warnings from highly respected commentators, see G. Dyer, *Climate Wars: The Fight for Survival as the World Overheats*, Oxford: One World, 2010; C. Hamilton, *Requiem for a Species: Why We Resist the Truth About Climate Change*, London: Earthscan, 2010; J. Lovelock, *Revenge of Gaia: Earth's Climate in Crisis and the Fate of Humanity*, New York: Basic Books, 2006.
- 28 For a still relevant assessment of hegemonic stability, see R. Gilpin, *War and Change in World Politics*, Cambridge: Cambridge University Press, 1981.

- 29 More than any other single person, through her writings and citizen engagement, Mary Kaldor has given tangible expression to these assessments of fundamental historical changes: see the references in Note 20 above. For an attempt to assess these same tendencies from the perspective of international law, see R. A. Falk, *Law in an Emerging Global Village: A Post-Westphalian Perspective*, Ardsley, NY: Transnational, 1998.