CHAPTER 42

Wherefore Grand Strategy and International Law?

Nicholas Rostow*

I. Introduction

During the third Presidential debate of 2012, moderator Bob Schieffer asked President Barack Obama and former Governor Mitt Romney, “What is America’s role in the world?”1 The candidates declined to answer.

This question has provided a consistent challenge since the Vietnam War broke the bipartisan national consensus about containment of the Soviet Union and the spread of Communist influence and control. Debate about the U.S. international role acquired new vigor with the collapse of the Berlin Wall in 1989 and the disappearance of the Soviet Union in 1991. A momentous change in world affairs had taken place. President George H.W. Bush recognized this fact and operated from a deeply informed perspective that needed little articulation while trying to establish rules and processes that would prove acceptable and durable for the post Cold War world.2

* The views expressed are my own and do not necessarily represent the views of the U.S. government or any entity thereof. I am grateful for the able assistance of Emily Rotella, Ohio State University Moritz College of Law Class of 2015, and Brian Tenenbaum, University of Chicago Law School Class of 2014, in preparing this essay for publication.


2 See generally GEORGE BUSH & BRENT SCOWCROFT, A WORLD TRANSFORMED (Alfred A. Knopf 1998), at 566 (Bush concluded the book as follows: “Yet our leadership does not rest solely on the economic strength and military muscle of a superpower: much of the world trusts and asks for our involvement. The United States is mostly perceived as benign, without territorial ambitions, uncomfortable with exercising our considerable power. . . . The present international scene, turbulent though it is, is about as much of a blank slate as history ever provides, and the importance of American engagement [on behalf of predictability and stability and against isolationism] has never been higher. If the United States does not lead, there will be no leadership. It is our great challenge to
The U.S. political-military response to recent international crises has not generated a strategic view that provides a consistent answer to the Schieffer question. The 1991 Gulf War, the subsequent Kosovo War, humanitarian crises in Somalia, Haiti, and Rwanda, and, most significantly, the American response to the attacks of September 11, 2001, were ad hoc actions. While they may have contained elements of a strategic view, one is forced to discern them through a process of policy and political excavation. Some elements are deeply rooted in the American experience of international relations, self-government, and the

learn from this bloodiest century in history. If we fail to live up to our responsibilities, if we shirk the role which only we can assume, if we treat from our obligation to the world into indifference, we will, one day, pay the highest price once again for our neglect and shortsightedness.\footnote{Id.} Cf. Epigraph to volume VI of WINSTON S. CHURCHILL, THE SECOND WORLD WAR, TRIUMPH AND TRAGEDY (Houghton Mifflin 1953) (“How the great democracies triumphed, and so were able to resume the follies which had so nearly cost them their life.”)

A substantial number of commentators, including former government officials, separately have offered answers to Schieffer’s question. See e.g., Tod Lindberg, The Depressed Hyperpower, COMMENTARY, July/August 2013, at 15 (explaining that the United States and the American people are torn by the commitments that accompany the U.S. role as a hyperpower and tired of the inability of strategic European and Asian allies to help shoulder the burden against the increasingly aggressive interests of Russia and China as well as the cost of counteracting violent acts of terrorism by non-state actors); ROBERT KAGAN, THE WORLD AMERICA MADE (Alfred A. Knopf 2013) (the American people will decide if the United States remains a hyperpower because neither the BRIC [Brazil, Russia, India, China] countries nor the European Union represent a true counterweight to U.S. hegemony); ZBIGNIEW BRZEZINSKI , STRATEGIC VISION: AMERICA AND THE CRISIS OF GLOBAL POWER (Basic Books 2012); Dr. Eric S. Edelman, Understanding America’s Contested Primacy, Center for Strategic and Budgetary Assessments 2010 (declinists may overestimate the ability of the BRIC nations and close U.S. allies to contest U.S. national power, but U.S. primacy could give way to multipolarity); JOSEPH S. NYE, JR., THE FUTURE OF POWER, (Public Affairs 2011) (the United States is not in decline, but should employ a multipranged smart power strategy in order to maintain its hegemony in an increasingly multipolar environment); RICHARD HAASS, FOREIGN POLICY BEGINS AT HOME: THE CASE FOR PUTTING AMERICA’S HOUSE IN ORDER (Basic Books 2013); MICHAEL J. MAZARR, The Risks of Ignoring Strategic Insolvency, THE WASHINGTON QUARTERLY, Fall 2012, at 7 (the United States is on an irreversible power decline as Great Britain was before it due to diminished financial capacity; without fundamental shifts in policy and force structure U.S. primacy will only decline faster and may even result in conflict); Josef Joffe, The Default Power: The False Prophecy of America’s Decline, FOREIGN AFFAIRS, September/October 2009, available at http://www.foreignaffairs.com/articles/65225/josef-joffe/the-default-power (rebutting declinists on the basis of fundamental U.S. economic, military, and diplomatic strengths that demonstrate the United States plays a role now that can neither be supplanted or surpassed by others in world affairs).
rule and role of law in society. Others reflect anxiety about consequences of inaction. Lurking in the interstices is the principal theme of U.S. grand strategy since 1945: that the United States, because of its power and character as a democracy, and perhaps because of the moral burden of being the only state to have used atomic weapons against another state, bears special responsibility to avoid general war.

The premise for this chapter is that such a strategy was pursued in an international system and that the system has not changed with the end of the Cold War and the transition to new preoccupations, threats, and challenges. The system consists of independent states that have embraced, at least on paper, fundamental norms of behavior and delegated authorities to international organizations such as the United Nations. It is framed by international law, which defines permissible state activities and goals.

The United States, of course, played a central role in creating and maintaining this world. U.S. power was crucially important to the West’s triumph in the Cold War, which made the international regime truly global. U.S. goals at various times since 1945 have included the promotion of the rule of law as an integral part of U.S. grand strategy to prevent nuclear war and maintain an open, international economic system. This chapter therefore examines the relationship between power and law in U.S. foreign relations. Following a summary of U.S. grand strategy since World War II, the chapter considers: (1) the impact of nuclear weapons on world public order; (2) the requirements of minimum world public order in a community of diffuse power and increasing quantities of law; and (3) options for U.S. diplomacy and military and economic policy. Each of these topics has been a concern of Professor Don Wallace Jr., in whose honor I offer this chapter.

II. Power and Law

*Grand strategy* is a state’s “calculated relationship of means to large ends.” It involves the considered application of those instruments

---

4 John Lewis Gaddis, *What is Grand Strategy?*, Address at the Karl Von Der Heyden Distinguished Lecture, Duke University, (Feb. 26, 2009) (available at www.duke.edu./web/agsp/grandstrategypaper.pdf). See also COLIN S. GRAY, *MAKING STRATEGIC SENSE OF CYBER POWER: WHY THE SKY IS NOT FALLING* 1-2 (U.S. Army War College Press 2013) (“Because strategy is all about the consequences of the threat or use of military [(and other, for grand strategy),] means for political ends, the strategist must
available to the government for the preservation, protection, and defense of its most important values and interests. The tools to achieve these ends include diplomacy, information, military power, economics and finance, influence, prestige, myth, symbols, and law. Contemporary technological revolutions have expanded the list of instruments, leveled the strategic and tactical playing fields, and empowered smaller states and non-state actors with means to participate in and disrupt international politics. The proliferation of these increasingly available and low-cost technologies poses national and individual security challenges.

Each state’s perception of its interests and assessment of available policy instruments shape other states’ relative perceptions of the international context. Other features of the international landscape, including international law, affect a state’s calculation of what tools are available to preserve its interests and pursue new actions. International law is an omnipresent part of diplomacy at the United Nations and the numerous other multi-lateral, inter-governmental institutions. These fora exemplify the close connection between strategy and law.

The connection persists outside those halls because grand strategists and international lawyers operate in a non-hierarchical world where always ask what difference would possible ways and available means make to the course of events”.

5 Cf. U.S. CONST. art. II, presidential oath.

6 Even if all governments were to profess their commitment to similar values, they would not all agree on the meaning of the words. E.g., some paragraphs of the 2005 World Summit Outcome, adopted by consensus among the then-192 Member States of the United Nations, U.N. Doc. A/RES/60/1 ¶¶ 4-13 (Oct. 24, 2005), give every government something to endorse in order to tolerate language that is more controversial for them. The result is that the contextual significance of any particular phrase may be difficult or impossible to discern:

11. We acknowledge that good governance and the rule of law at the national and international levels are essential for sustained economic growth, sustainable development and the eradication of poverty and hunger.

12. We reaffirm that gender equality and the promotion and protection of the full enjoyment of all human rights and fundamental freedoms for all are essential to advance development and peace and security. We are committed to creating a world fit for future generations, which takes into account the best interests of the child.

13. We reaffirm the universality, indivisibility, interdependence and interrelatedness of all human rights.

Id. at ¶¶ 11-13.
WHEREFORE GRAND STRATEGY AND INTERNATIONAL LAW?

international law defines the content and limit of sovereignty.\(^7\) Just as a painter’s canvas and its frame are bonded, grand strategy and international law are inextricably linked: international law determines the permissible goals and instruments of a grand strategy.

Since the U.S. entry into World War I, successive American administrations have endeavored to use international law as a tool for achieving international peace. Although U.S. policymakers often break, bend, or forget international agreements and norms when they do not conveniently fit immediate policy goals or needs, the fact remains that the U.S. Government generally takes international law seriously. This truism, not only is consistent with the importance of law in American national life, but also reflects recognition that the United States has contributed substantially to the development of international law as a buttress of minimum world order, that is, the order minimally necessary to shore up obstacles to general conflict, which has the highest likelihood of becoming global and nuclear. U.S. foreign policy continues to look to the law to provide a guiding set of principles for strategic planning and action. When it fails to do so, it drifts.\(^8\)

Grand strategy and international law operate in the realm of decision-making.\(^9\) In democracies, the grand-strategist acts on the premise that the values of human dignity and democracy should form the governing framework for decision, whereas in non-democracies, grand strategists’ concerns seem focused on protecting territorially-defined security interests and the survival of the ruler.

\(^7\) The non-hierarchical system is theoretical only. It is infinitely more complex than a simple statement can encompass. As Raymond Aron wrote some 50 years ago, “The status of a political unit within an international system is fixed by the size of material or human resources that it can devote to diplomatic-strategic action. The great powers, in each period, are reputed capable of devoting considerable resources to external action and, in particular, of mobilizing numerous cohorts. International society involves a hierarchy of prestige which approximately reflects the hierarchy established by preceding combats.” RAYMOND ARON, PEACE AND WAR: A THEORY OF INTERNATIONAL RELATIONS 69 (Richard Howard & Annette Baker Fox trans., 1967).

\(^8\) E.g., Anne Applebaum, What to Stand for in Egypt, WASH. POST, Aug. 25, 12013, at A23 (arguing that the United States should stand for the rule of law in Egypt).

At the same time, whatever the governmental form, grand strategy and international law are based on power. International law molds global politics into a system; power prevents the system from collapsing. Power, while crucially important to the maintenance of the system, is not unrestrained.\textsuperscript{10} Despite Dean Acheson’s allegation that “law simply does not deal with such questions of ultimate power—power that comes close to the sources of sovereignty,” power, in order to have legitimacy, must be sanctioned by the law.\textsuperscript{11} For democracies, international law informs the conditioned reflexes of grand strategists and thus defines a lawful grand strategy.

International law has three core principles to be applied with reasonableness given the totality of the circumstances:\textsuperscript{12} (1) necessity, (2) proportionality, and (3) distinction. Each is centrally important to achieving a minimum order of peace and stability in international affairs.

\textbf{A. Necessity}

In international law, the principle of necessity is one of exception, such as in the use of force in self-defense. The use of force involves a normative understanding that a state shall not use the military instrument except in self-defense when no reasonable alternative exists.\textsuperscript{13} Secretary of State Daniel Webster articulated the doctrinal component of necessity— that is, of exceptions to norms—in 1841, in the \textit{Caroline} case.\textsuperscript{14} The

\begin{quote}
Webster to Fox, Apr. 24, 1841, \textit{reprinted at} www.avalon.law.yale.edu:

It will be for that [Her Britannic Majesty’s] Government to show a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment of deliberation. It will be for it to show, also, that the local authorities of Canada,—even supposing the necessity of the moment authorized them to enter the territories of the United States at all,—did nothing unreasonable or excessive; since the act justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it. It must be shown that admonition or remonstrance to the persons on board the “Caroline” was impracticable, or would have been unavailing; it must be shewn that daylight
\end{quote}


\textsuperscript{11} Dean Acheson (Secretary of State in the Truman Administration), \textit{57 Proc. Am. Soc’y Int’l L.} 14 (1963).

\textsuperscript{12} See generally \textit{Myres S. McDougal & Florentino P. Feliciano, Law and Minimum World Order: The Legal Regulation of International Coercion} (Yale University Press 1961).

\textsuperscript{13} The norm cannot be, and is not, that the mere existence of capability constitutes “use”. Most commentators view that observation as so obvious as needing no attention. See generally \textit{id.}

\textsuperscript{14} Webster to Fox, Apr. 24, 1841, \textit{reprinted at} www.avalon.law.yale.edu:
WHEREFORE GRAND STRATEGY AND INTERNATIONAL LAW?

*Caroline* language is still relevant because it expresses community policy. It restricts the use of force in self-defense to situations in which no reasonable alternative exists and provides for the use of force in anticipation of an actual attack. In effect, it takes into account that threat may constitute attack. The doctrine resonates both with those who advocate a limited right of self-defense in situations of armed attack\(^{15}\) and those who advocate a right to anticipatory self-defense. The standard generally accepted by the British and Americans is that the use of force must be reasonable under the totality of the circumstances.\(^{16}\)

**B. Proportionality**

The second principle of international law and grand strategy is proportionality.\(^{17}\) Proportionality concerns action. It requires that it be reasonable and limited to what is necessary to achieve lawful objectives.\(^{18}\) The increasing lethality of war energized efforts to limit the

---

\(^{15}\) “Armed attack” is the language of the English version of Art. 51 of the U.N. Charter: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence in the event an armed attack occurs . . . .”


\(^{18}\) McDougal & Feliciano, *supra* note 12, at 243. Barak elaborates the same point: proportionality requires a proper purpose defined as involving legitimacy, not just law (Barak, *supra* note 17, at 245); actions rationally connected to that purpose; the measures are necessary to the same purpose with a lesser degree of action or limitation on the right; balance between the achievement of the purpose and “social importance of preventing the limitation on the constitutional right.” *Id.* at 3. Barak is discussing proportionality in terms of limiting constitutionally sanctioned rights or power. The same idea is applicable in the field of international law and grand strategy.
use of disproportionate force. Proportionality requires the use of force to be measured, not in terms of quantum of violence, but against a standard of reasonableness. Roman grand strategy toward Carthage became one of total destruction. In contrast, allied grand strategy after the French Revolution and Napoleon centered on the containment of France in a European order rather than its destruction as a great power. Allied grand strategy toward Germany, Italy, and Japan in World War II involved the annihilation of regimes, not of states, and thereafter, the integration of Germany, Italy, and Japan into a democratic, stable, international order in whose survival those countries had the most vital of interests. After World War II, the avoidance of another world war, believed to be inevitably nuclear in nature, became the essence of allied grand strategy summed up in “containment” of the Soviet Union. That grand strategy seemed reasonable and proportional to the threat. It was not the only possible strategy, but it seemed to involve the least risk of general war.

C. Distinction

The third and final principle of grand strategy and international law is premised on the distinction between military and civilian targets during an armed conflict. The underlying rationale behind the concept of distinction is an attempt to confine warfare to military forces and specifically military objectives in the hopes of protecting civilian persons and property. Facilities and weapons that have civilian and military functions—dual uses—make the distinction easier to draw in theory than in practice. Because nuclear weapons per se are indiscriminate (even so-called tactical nuclear weapons could so blind the defending power as to require a strategic response out of fear that it was the victim of a strategic attack), the use of nuclear weapons would render the distinction meaningless. The possibility that nuclear weapons might be used, as chemical weapons have been, lends urgency to the law. The threat of nuclear conflict underpins all efforts to keep conflicts within tolerable limits of violence. Such distinctions between military and civilian

---

20 See, e.g., Raymond Aron, Penser la Guerre, Clausewitz, volume II: L’Âge Planétaire 139-83 (Gallimard NRF 1976); Aron, supra note 7.
WHEREFORE GRAND STRATEGY AND INTERNATIONAL LAW?

targets, or rather the lack thereof, add strength to the proposition that nuclear weapons, if they cannot be “uninvented,” must not be used.

Together, the principles of necessity, proportionality, and distinction limit and import reasonableness into judgment and decision-making. At the same time, the law does not preclude uses of power: the United States and other countries have not hesitated to use their power—diplomatic, informational, military, and economic—for grand strategic purposes.

III. The International Context since World War II: Peace Redefined

Grand strategy and international law take shape within the context of international politics. The present international order is the product of centuries of uneven development, emanating outward across the world from Europe. It is a state-centric system, and the state remains the most effective war-making political apparatus ever seen. The capacities of states to act as economic engines and war-machines made each succeeding general war more destructive and horrifying than its predecessor. As a result, governments came to see a need to organize international relations to minimize the risk of general war. Minimizing the risk of general war became the highest priority on the international agenda of states after the wars of the French Revolution and Napoleon, an agenda item reaffirmed after each breakdown of peace among the great European powers.

The experience of World War II and total war, especially the use of atomic bombs, led to a redefinition of peace as the absence of nuclear

---

22 “The relation of strategy and policy is expressed in a double formula: ‘War is to harmonize entirely with the political views and policy, to accommodate itself to the means available for War.’” ARON, supra note 7, at 25 (quoting CARL VON CLAUSEWITZ, ON WAR, Book I, Ch. I, 2 (J. J. Graham, trans., Barnes and Noble 1956); See also MORTON A. KAPLAN & NICHOLAS DEB. KATZENBACH, THE POLITICAL FOUNDATIONS OF INTERNATIONAL LAW 3 (John Wiley & Sons, Inc. 1961) (“Law exists, and legal institutions operate, only in particular political contexts”).


war and an emphasis on minimum order as meeting the requirement of preventing nuclear war: reduced to its most important single theme, U.S. grand strategy during the Cold War was to avoid nuclear war. To achieve this end, the United States employed a grand strategy of deterrence: a stated willingness to use nuclear weapons against even a non-nuclear or conventional attack in Europe and perhaps elsewhere and arms control negotiations with the Soviet Union. French President Charles de Gaulle articulated the meaning of nuclear deterrence during the 1958 Berlin crisis, urging his allies not to give in to Soviet demands. There was no point in giving in if the Soviet Union was bluffing and no reason at all if the Soviet leadership was looking to have a war with the West.

The Soviet Union came to share the goal of avoiding nuclear war and, with the United States, learned to manage crises notwithstanding that “peace” meant different things to the two states because of their different perspectives, interests, and values. The United States fought limited wars against Soviet (and Chinese) proxies out of fear that failing to do so would lead to general war in worse circumstances. American leaders were trying to apply the conventional wisdom, which

---

26 See e.g., Francis J. Gavin, Nuclear Statecraft: History and Strategy in America’s Atomic Age (Cornell University Press 2012); Francis J. Gavin, Blasts from the Past: Proliferation Lessons from the 1960s, 29:3 INT’L SEC. 100-135 (Winter 2004-05); Richard K. Betts, Nuclear blackmail and Nuclear Balance (Brookings 1987); McGeorge Bundy, Danger and Survival: Choices About the Bomb in the First Fifty Years (Random House 1988); McGeorge Bundy, Early Thoughts on Controlling the Nuclear Arms Race: A Report to the Secretary of State, January 1953, 7:2 INT’L SEC. 3-27 (Fall 1982).
27 See generally M. Elaine Bunn, Can Deterrence Be Tailored?, No. 225 STRATEGIC FORUM 1-8 (Jan. 2007) (arguing that “the goal of deterrence is to prevent aggressive action or WMD use by ensuring that, in the mind of a potential adversary, the risks of the action outweigh the benefits, while taking into account the consequences of inaction”).
30 See, e.g., Coral Bell, Conventions of Crisis: A Study in Diplomatic Management (Oxford University Press 1971).
WHEREFORE GRAND STRATEGY AND INTERNATIONAL LAW?

turned out to be correct as an historical matter,\textsuperscript{32} that the Western powers would have been better off resisting Adolf Hitler earlier than 1939.\textsuperscript{33}

During the Cold War, minimum order did not mean the absence of conflict. It meant limiting violence even if that entailed standing by for fear that taking military action would lead to another general, global conflict when, for example, the Soviet Union crushed reform movements in Eastern and Central Europe and China adopted policies that killed perhaps millions of people. Today, minimum order has the same goal: limits on tolerable violence within the boundaries of “reasonableness,” rather than some quantifiable or otherwise articulated rule or blanket prohibition against armed conflict. Because such minimum order is not achieved by itself, states need to manage it.

Each effort at such management, whether through the Concert of Europe, the League of Nations, or the United Nations, differentiated among states with the greatest power both to protect international peace and to threaten it. Differentiation recognized that power brings with it responsibility for the general welfare of the international system even if a state refuses to recognize or exercise such responsibility. At the same time, every attempt to organize international politics has rested on the assumption that each state has a stake in an international system of minimum order and the goal of preventing or avoiding general war. Existence of a system implies existence of norms of behavior—law. The efforts to organize international politics in the nineteenth and twentieth centuries justified themselves with this rationale, efforts and justification that continue to shape our world. International law is part of that justification. Grand strategy is devised and implemented in this context.

At the same time that the international context is turbulent and unpredictable, its contours reflect the triumph of American and Western goals in the Cold War: the avoidance of nuclear war, the demise of Communism as an armed, expansionist, and anti-democratic doctrine and threat, the spread of democracy as the desired form of governance, the expansion of the Western economy to be truly global and ever more open, and the invocation of law and the United Nations to resolve


\textsuperscript{33} See e.g., ERNEST R. MAY, "LESSONS" OF THE PAST: THE USE AND MISUSE OF HISTORY IN AMERICAN FOREIGN POLICY (Oxford University Press 1973) (discussing learning from history in contemporary situations).
ESSAYS IN HONOR OF DON WALLACE, JR.

international conflicts. China, for example, would not now be the increasingly prosperous and powerful country it is without a U.S. Cold War strategy aimed at making the Western economy the global economy and deterring aggression by the Soviet Union, including by protecting China against Soviet nuclear threats, real or potential. Having successfully conducted the Cold War, it remains to be seen if the United States can help manage post Cold War affairs with at least equal success.

IV. The Post Cold War Structure: The Role of the United Nations

The collapse of the Soviet Union ended a historical era; it did not change all fundamentals of the international context in which the United States and other states found themselves. Certain Cold War realities have persisted because they were born of the technological revolutions symbolized by the atomic bombs dropped on Hiroshima and Nagasaki. Other realities, far older than the Cold War and embedded in and reflecting the nature of the international system, have reasserted themselves more clearly than they did during the Cold War, including perhaps above all the tendency of states to coalesce against the strongest of their number. Our world therefore is still organized along the same lines that it has been since World War II.

34 Presidents have argued that the United Nations was an important institution that strengthened the peace. See generally, e.g., Presidential Remarks to the United Nations General Assembly, U.S. Dep’t of State, http://www.state.gov/p/io/potusunga/index.htm (last visited June 10, 2013). In his 1960 address, President Eisenhower said that “the United States stands squarely and unequivocally in support of the United Nations and those acting under its mandate in the interest of peace.” See id. at Sept. 22, 1960. President Nixon praised the United Nations in his 1970 address saying, “The U.N. has achieved many successes in promoting economic development and in fostering other areas of international cooperation.” See id. at Oct. 23, 1970.

35 See generally HENRY KISSINGER, WHITE HOUSE YEARS 1076 (Little, Brown & Co. 1979) (“We and [China] had a common interest in preventing the Soviet Union from upsetting the global balance of power by any means, including an attack on China”).


37 Colin S. Gray and C. Dale Walton call attention to tectonic shifts in The Geopolitics of Strategic Stability: Looing Beyond Cold Warriors and Nuclear Weapons,
WHEREFORE GRAND STRATEGY AND INTERNATIONAL LAW?

After nearly 70 years, the United Nations has become a sprawling organization with global reach and impact. At its essence, the United Nations has the same mission as the League of Nations: to prevent a recurrence of general war among the great powers by creating fora in which they can work and act together to maintain peace and address the transnational economic and social issues that provide a backdrop to “threats to, or breaches of, the peace.”

Reflection on the international history of the last 250 years suggests that Thucydides’ “honor, fear, and interest” play a greater role in causing armed conflict than the authors of either the League of Nations Covenant or the U.N. Charter could agree to put into words. The U.N. system nevertheless is a principal structural feature of international relations today. Its international bureaucracy actively works, at least in theory, to maintain international peace and stability; therefore, grand strategists and international lawyers must take the United Nations seriously, whatever its flaws.

The U.N. Security Council is the principal U.N. vehicle for addressing issues of war and peace. Its members determine its power and agenda and define its responsibilities. So far, while it has supported the

---


38 U.N. Charter art. 39. International community goals articulated in the Covenant of the League of Nations included: fulfillment of treaty obligations, reduction in armaments and the private manufacture of weapons, and improvement of the social and economic well-being of all peoples to reduce the risk of war. Cf. Covenant of the League of Nations arts. 8, 22; preamble.


40 In the 45 years between the founding of the United Nations in August 1945 and August 1, 1990, the U.N. Security Council adopted 659 resolutions. Between August 1, 1990 and May 29, 2013, a span of fewer than 23 years, it adopted 1, 445 resolutions. For commentary on perceived U.N. flaws, see generally John R. Bolton, Surrender is Not an Option: Defending America at the United Nations and Abroad (Threshold Editions 2007). Cf. Daniel Patrick Moynihan with Suzanne Weaver, A Dangerous Place (Little, Brown, & Co. 1978).

41 See Certain Expenses of the United Nations, Advisory Opinion, 1962 I.C.J. 151, 168 (July 20) (no judicial review). At the same time, this power to determine its own jurisdiction is not unlimited; for example, the U.N. Charter makes clear that the Security Council is a political, not a judicial body. Therefore, when the Security Council has decided on the placement of a boundary, a decision that is essentially judicial in that it delimits legal rights, it has done so with camouflaged language. The Security Council guaranteed a demarcated international border, thus implicitly determining the border even though such an action involved allocating legal rights, normally a judicial function. S.C.Res 773, U.N. Doc. S/RES/773 (Aug. 26, 1992).
taboo against the proliferation and use of nuclear weapons, it has focused on issues that do not touch the vital national interests of the five Permanent Members. The U.N. Charter specifies that the Security Council “shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations . . . to maintain or restore international peace and security.” The U.N. Charter conferred legally binding status on Security Council decisions, whereby Members of the United Nations “agree to accept and carry out the decisions of the Security Council in accordance with [the Charter].” Members give the Security Council “primary responsibility for the maintenance of international peace and security.”

Since the end of the Cold War, the Security Council— that is to say, the states sitting on the Security Council— has exercised the broad array of powers at its disposal in ways never before seen. It has determined the inter-state boundary between Kuwait and Iraq, established international criminal tribunals for the former Yugoslavia and Rwanda, and conducted increasingly sophisticated peace-keeping operations, often resembling exercises in multilateral governance. Among the most significant of Security Council innovations has been the blessing of multinational forces formed by volunteer states. Once so blessed, those forces acquire international political legitimacy they may have appeared to lack in the eyes of non-participating states. Similarly, the Security Council has authorized committees of the whole Council to act on its behalf, notably in the area of sanctions and terrorism, and has found new, subtle ways to exercise power.

42 Britain, China, France, Russia, and the United States, all nuclear weapons states.
43 U.N. CHARTER art. 39.
44 U.N. CHARTER art. 25.
45 U.N. CHARTER art. 24(1) (emphasis added). The italicized language provided a basis for the General Assembly’s actions with respect to Korea under the Uniting for Peace Resolution in 1950 as well as with respect to the U.N. Emergency Force in the Middle East (UNEF) in 1957, action with respect to the Congo in 1960, and actions with respect to the Arab-Israeli conflict since 1967 whenever a Permanent Member exercises its veto. See DOMINIK ZAUM, THE SECURITY COUNCIL, THE GENERAL ASSEMBLY, AND WAR: THE UNITING FOR PEACE RESOLUTION IN THE UNITED NATIONS SECURITY COUNCIL AND WAR 154-74 (Vaughan Lowe et al. eds., 2008).
47 Among the examples are operations in Cote d’Ivoire and Congo, Haiti, Kosovo, and, most controversially, of course, Iraq.
48 For example, the reports by the ad hoc international criminal tribunals for the Former Yugoslavia and Rwanda to the Security Council proved important means of
WHEREFORE GRAND STRATEGY AND INTERNATIONAL LAW?

At the same time, the Security Council remains a forum where representatives of governments meet, discuss, and negotiate. Chapter VII of the U.N. Charter obligates the Council to determine what action to take “with respect to threats to the peace, breaches of the peace, and acts of aggression.” This language represents the U.N. Charter’s strongest incursion into traditional concepts of sovereignty. It also has informed the structure of most Security Council resolutions adopted under Chapter VII since 1989.

Yet neither the United Nations nor the Security Council is a world government. While the Charter looks to the Security Council as the crucially important instrument creating and defending collective security, states have never renounced all responsibility for their own security to a group of states, however strong and apparently benevolent. The U.N. Charter recognizes this fact by reaffirming the “inherent” right of self-defense. The balance of power therefore remains a useful analytic concept, policy precept, and desirable goal if peace is to be maintained and independent states permitted to exist. Because the balance of power is both “the guarantee of the independence of nations” and “the occasion of war,” for more than 200 years states have worked to minimize the need for individual action in security matters by building multilateral institutions with capacity to police the international system.

V. Conclusion: Managing the Post Cold War Peace

The twenty years of turbulence since the Cold War has made international management complex. For the United States, the period has highlighted the inability of successive administrations to understand the

---

49 U.N. CHARTER art. 39.
50 U.N. CHARTER art. 2(7).
51 U.N. CHARTER art. 51.
52 MARTIN WIGHT, SYSTEMS OF STATES 174 (Hedley Bull ed., 1977). See also Martin Wight, supra note 35.
distinction between vital and other kinds of national interests. The following list offers one way to view the question posed in the presidential debate, what is America’s role in the world today, and the question how to distinguish between vital and other national interests?

1. Because of nuclear weapons, peace is the absence of nuclear war.

2. Because of nuclear weapons, the United States may not relapse into isolationism, leaving to unspecified others responsibility for peace.

3. Because of nuclear weapons and because of the kind of people Americans are, or like to think of themselves as, people of the law, international law is important to U.S. security and policy because it can strengthen the barriers to international conflict and provide boundaries on those that occur.

4. Because the United States is a democracy, its natural allies are democracies.

5. Because the United States is an island off the Eurasian landmass, it is the natural enemy of would-be hegemonic powers in Europe or Asia.

6. Because, for the moment at least, the United States is the single most important international actor, it is “‘the critical margin’ required to make any international collaborative effort succeed.”

The foregoing presentation represents a way of analyzing U.S. national interests today and for a future with nuclear weapons where preventing their use remains a primordial concern. Not everyone would agree that the concern is warranted or that proliferation could lead to increased risk of nuclear war. Yet, it is unlikely that nuclear weapons are going to disappear. Therefore, it would seem prudent to achieve an understanding among nuclear weapons states that they are not to be used.

---


WHEREFORE GRAND STRATEGY AND INTERNATIONAL LAW?

That is a diplomatic tack that follows from the grand strategic posture adopted by the United States right after it used atomic bombs against Japan.55

What about other threats, terrorism, cyber, and weapons of mass destruction? If one’s premise for analysis is the need to preserve the independence of states and to prevent and avoid general war, then it becomes possible, if not simple, to craft approaches to these transnational problems that other states can accept. This multilateral approach results in spreading risk and cost of international crisis management while establishing bases for common understanding and approaches. In no sense is it a recipe for world government or abdication of responsibility for national security in an ultimate sense. It is an approach to achieving national goals in a world of at least 193 states.

America’s role includes the management of a minimum world order, which involves relevant goals, means, and values. The managerial canvas is global, and the means used are wide-ranging; therefore, grand strategy is required. International law also is required in this effort because it provides a framework for activities and language for expressing aspirations. It also reflects political context. Just as grand strategists must think about large ends, the relevant international law affecting grand strategy concerns war and peace.

55 See Nicholas Rostow, The World Health Organization, the International Court of Justice, and Nuclear Weapons, 20 YALE J. INT’L L. 151, 178 (1995) (quoting President Truman, Radio Report to the Nation on the Potsdam Conference (August 9, 1945), HARRY S. TRUMAN 203, 212-213 (1961)) (“...The atomic bomb is too dangerous to be loose in a lawless world .... We must constitute ourselves trustees of this force – to prevent its misuse, and turn it into the channels of service to mankind...”).

593