International Law and International Organizations: The Legacy of the Twentieth Century[1]

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Abstract

The growth in international law is not just a matter of an ever-increasing number of treaties. There has also been a considerable growth in what is known as "customary international law" being the writings of scholars, principles of international law that grow out of the jurisprudence of international courts and tribunals, and the writings of international organizations themselves. Like all forms of law, international law is susceptible to interminable growth. Unlike other branches of law, it is not subject to any democratic check. It is driven by academics, pressure groups, and international organizations, international political institutions who have every interest in there being ever more international law with which to sustain them. The lingering concern is that the growth of international law absorbs money and time, without being developed in the context of a proper policy debate. International law is far more than the signature of treaties between states that see mutual advantage in cooperation. It purports to be a global order of moral principles regulating the conduct of states. Yet states have far more economic and military power than the institutions that administer international law, which calls into question the notion that international law can ever change the balance of power. A curious confluence of interests between states and international organizations means that international law can grow ever more, but persists in having remarkably little effect upon the underlying dynamics of international relations.

Keywords

iInternational law, sovereignty, international organizations, Wilsonian institutions, international treaties, structure of international order

If we had to choose one person as the father of modern international law, it would be not Grotius but Woodrow Wilson. These two figures are worth briefly comparing. Their goals were similar. Both sought to develop sets of legal rules which dictate the behaviour of states in their mutual confrontations. The subject matter of these rules in both cases was the circumstances in which states were entitled to go to war with one another, and the way those wars should be fought when they occur. Both advanced their ideas in the context of wars that had exacted a brutal toil on human life. Grotius wrote in the midst of the bloody Thirty Years War, in which it is estimated that between three and twelve million people died. Wilson advanced his ideas in the aftermath of the First World War, in which between fifteen and thirty million people may have died. The purpose of the international law they developed was to prevent the future horrors of warfare and massive loss of life.

[1] This article is based in part on a chapter in the author's book *Mirages of International Justice: The Elusive Pursuit of a Transnational Legal Order* (London: Edward Elgar, 2011).

Yet there was a profound difference in the sorts of international legal regime each thinker advocated. Grotius's masterpiece *De Jure Belli ac Pacis* (1625) was the first attempt to set out detailed rules for the conduct of states in their hostile relations with one-another. The array of topics he addresses is exceptionally broad, including performance of treaty obligations, duties to respect foreign property, authority of agents to bind sovereigns, embassies and diplomatic immunity, prisoners of war, plunder of conquered territory, treatment of civilians, neutrality, the obligations of states in criminal justice, and a great deal more. For the most part his authorities are the ancient Roman and Greek writers; there is very little reference in his work to contemporary events, although the horrors of the Thirty Years' War, raging in the background as he wrote, no doubt motivated his appeal to moderation. However, he clearly perceived war as to a degree inevitable, and thus something to be regulated rather than eliminated altogether. Most revealingly, Grotius makes no attempt to explain how the principles of international law he sets out are to be enforced. Presumably he thought that states themselves would enforce his principles against other states; but that begs the question, how they would do so in circumstances of hostility between one-another that triggered the need for this area of law in the first place.

Although to the modern eye this may appear a surprising lacuna in Grotius's writings, it was perhaps less surprising to his readership. This was an era in which the study of law was not a practical matter, of how to administer impartially justice between individuals; rather it was an affair of scholarship, of study of Roman law. Certainly the notion of an independent judiciary, neutrally applying the law apart from the sovereign who propagated it, was only dimly understood in the era. It would not be until events preceding the English Civil War, in the period beginning ten years after Grotius published his work, that the tradition of judicial independence from the sovereign would find expression in a series of cases in which the English courts sided with Parliament, and against the Crown. The notion of an independent judicial authority existing to assess the sovereign's compliance with legal obligations would have appeared to Grotius, writing before these momentous events, as bizarre or even seditious.

International law would remain a set of lofty scholarly ideals that European sovereigns in their wisdom and unquestioned authority, often asserted as being derived from the divine, might be expected to observe. It would not be enforced *per se* against a recalcitrant sovereign; there would be no need. International law at the time was seen as a kind of "natural law",[2] an account of the way things really are, rather than a set of rules to be imposed under threats of sanction for noncompliance. This was, perhaps, a natural legal philosophy for those dependent upon the will of a near absolute sovereign for enforcement of the law. Inevitably, as soon as one relaxed the assumptions about the Monarch's beneficence and infallibility, the lack of an enforcement mechanism for Grotius's edicts would become of acute concern. But for Grotius himself, relaxing those assumptions was unthinkable. For lawyers to enter the political realm in such a way, in an era of absolute power held by sovereigns who could wield that power arbitrarily and at will, could be exceptionally dangerous. In 1618, Grotius had been arrested and sentenced to life imprisonment for authorship of an edict promoting religious tolerance. In the future his legal writings would remain of an entirely academic nature.

International law continued in this principally academic vein for the next two hundred and ninety years. The Thirty Years' War ended with the Peace of Westphalia, a series of treaties in 1648 which demarcated the internal boundaries of the states within the Holy Roman Empire and delineated the powers between the Emperor and the states in a decentralising direction. It is said that the treaties comprising the Peace of Westphalia established the principle of sovereignty within international law: that is to say, the notion that states are free to do whatever

[2] Samuel von Pufendorf, *De jure naturae et gentium* (1672), developed Grotius's thinking in a natural law direction.

they please within their own borders, so long as they respect the borders of others.[3] However, that inference is an academic abstraction; the principles of sovereignty are prescribed nowhere in the Westphalian treaties. Indeed those treaties say a fair amount about the internal operations of states, including a federal distribution of powers between Holy Roman Emperor and constituent states; and guarantees of freedom of worship to Christian minorities within the territories of the Empire.

The association of Westphalia with the notion of sovereignty may derive from the fact that international territorial boundaries were recognised by other states, which promised to honour them. The notion of mutual respect by republican governments for one-another's territory promised to be the foundation of what Immanuel Kant called a "Perpetual Peace" in 1795, in his influential essay of that name. Nonetheless, the principles of international relations Kant proposed — which included abolition of standing armies, the prohibition of secret treaties planning for future wars, prohibitions on national debts, and a ban on interference with the internal affairs of other states — remained aspirations only. Kant saw them as hortatory: principles which, if observed, would lead to the idealised state of peace to which he aspired. Kant's international law, like that of Grotius, was more akin to moral philosophy than law in the sense of judges, juries, police and prosecutors. Although the nineteenth century saw considerable growth in international law, in the form of a wealth of treaties between nations, again these treaties were modelled on Kant's conception of international law. Little thought was given to the question of whether the domestic authorities within a state might fail to comply with their international legal obligations, and the philosophical thinking necessary to develop international law beyond an abstract discipline did not take place.[4]

Wilsonian institutions

The sea change in international law occurred at the end of the First World War when one man, the US President Woodrow Wilson, forced upon the world a vision of international law as a tool to prevent future warfare. The last of Wilson's Fourteen Points, his plan to the US Congress for bringing the First World War to an end,[5] provided that "a general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike". Wilson insisted that this principle find expression in the Peace Treaty of Versailles over considerable scepticism by his European counterparts;[6] he had such leverage, perhaps, because the entry of the United States into the war had secured the defeat of Germany and the United States was perceived as the guarantor of the Versailles peace. The first thirty articles of the Versailles Treaty became the Covenant of the League of Nations, and Wilson himself presided over the committee at Versailles which drafted the League's Covenant. The League of Nations would pressage a new breed of international organizations, and would have an Assembly (in which all member states were represented), a Council (in which a limited set of members would make

[3] There is a debate amongst scholars as to whether the Peace of Westphalia genuinely represented such a dramatic development of political philosophy as is traditionally imagined. See e.g. Andreas Osiander, *Sovereignty, International Relations, and the Westphalian Myth,* International Organization 55: 251 (2001).

[4] See e.g. David Kennedy, *International Law and the Nineteenth Century: History of an Illusion,* QLR 17: 99 (1997).

[5] The "Fourteen Points" was a speech delivered by President Wilson to a joint session of Congress on 8 January 1918.

[6] See George Egerton, *The Lloyd George Government and the Creation of the League of Nations,* American Historical Review 79(2): 419 (1974).

urgent decisions), and a Secretariat. Disputes between states would be resolved peaceably, by reference to judicial settlement (through a Permanent Court of International Justice), arbitration, or resolution by the League's Council. Any act of war against one state would be deemed an act of war against all; all members would be obliged to implement sanctions against the transgressor, and the Council would recommend military action. By that notion, collective security was born, and the League was conceived as a forerunner to NATO.

The League of Nations Covenant said relatively little about the substance of international law; what it did instead was prescribe procedures by which disputes in the field of international law would be resolved, to foreclose war as the default method of dispute resolution. The radical innovation was to create an institutional structure within which questions of international law would be decided, in contrast to what had gone previously when international law had Grotian or Kantian content, but no procedures by which it would be implemented. Equally important was the broad scope of issues the League of Nations regime deemed to fall within the potential scope of international law. The Covenant contained a regime for oversight of League of Nations "mandates" (that is to say, former colonies of the defeated powers Germany and Turkey, administered after the First World War by the victorious nations),[7] and also provided that the League would subsequently expand its competences into the setting of international labour rights, treatment of native inhabitants, people trafficking and drug smuggling, arms control, control of disease, and free communications and fair treatment of commerce.[8] Another chapter with the Versailles Treaty created a second intergovernmental organization, the International Labour Office, with authority to promulgate draft conventions addressing the protection of workforces within member states and, like the League of Nations, with a permanent secretariat. Even by the standards of modern international institutions, the League of Nations was remarkably broad in scope.

Ironically given that the League of Nations structure was so much the work of the US President, the United States was blocked from joining the League by its own legislature. The Senate refused to ratify the League Covenant out of a concern that it might commit US armed forces to foreign military action without the authority of Congress, contrary to the US Constitution.[9] No such qualms inhibited the United States' later ratification of the UN Treaty and the North Atlantic Treaty, however. Today the League is widely perceived as a failure, through its inability to prevent Axis aggression in the 1930s, and in particular the stepwise territorial advances Hitler's Germany made during that decade that pushed the world towards the Second World War. This criticism of the League of Nations may be unfair, however, depending on what one compares it with.

The United Nations Organization was created by the UN Charter, signed in San Francisco in June 1945. This was intended to be a new international organization, also designed to keep the peace between nations, created in the aftermath of the Second World War. Its ostensible goals are very much the same as the League Covenant, and the UN Charter is structured in a

[7] Article 22 of the Covenant of the League of Nations created a Permanent Mandates Commission, ostensibly with responsibility for overseeing management of the former German and Ottoman colonies by the victorious powers. In theory there were three types of mandate, "A", "B" and "C" mandates, corresponding to decreasing levels of development and the corresponding necessity of increasingly intrusive administration by the mandatory power. In practice the mandatory powers administered the mandates as their own colonies, and the Permanent Mandates Commission was toothless.

[8] See Article 23 of the Covenant of the League of Nations.

[9] Article I.8.11 of the US Constitution provides for the right of Congress to declare war. The United States has often engaged in foreign military hostilities without Congress's authority. The US courts have refused to intervene in legal debates about the authority to declare war and the consequences of the lack of such a declaration: *Holmes v United States,* 391 US 936 (1968); *United States v O'Brien,* 391 US 367 (1968).

very similar way to its predecessor. Neither institution had a standing army to enforce the obligation not to go to war. As will be seen in Chapter Three, the jurisdiction of the two institutions' courts (the Permanent Court of International Justice for the League, the International Court of Justice for the UN) were not compulsory for any affected nation and there was no mechanism for enforcing their decisions. Decisions of the Council of the League required unanimity; this was undoubtedly too high a burden to make the Council an effective body in issues of contested and high profile international affairs. But decisions of the UN Security Council can be vetoed by any one of the Council's "permanent members". The five permanent members — the United States, France, Great Britain, Russia and China — have often diametrically opposing international agendas, and this seems unlikely to change soon. In the face of major international crises, therefore, the existence of the veto is barely more satisfactory than the League of Nations requirement of unanimity.

The Assembly in both the United Nations and the League, where resolutions can be passed by a simple majority, is denuded of power, having no authority to make decisions of substance. Even if the UN Security Council does pass a resolution against a recalcitrant and warlike state acting in violation of its international obligations, the Council is reliant, just like the Council of the League, upon individual members committing military forces to enforce its strictures. Both the United Nations and the League of Nations might be conceived as attempts at global government: efforts to set compulsory rules about what states may or may not do. But both lack a workable mechanism for independent adjudication or enforcement of those rules. For that reason, the League of Nations was powerless to resist Nazi Germany when it deliberately disregarded the international legal system. In describing the League of Nations as a failure however, we must be careful not to suggest that the United Nations would have done any better. There is no reason why it should have done. One might aver that the United States is a member of the UN but was not a member of the League. However, the United States did not see fit to act against Hitler on its own in the 1930s. It certainly had the means to do so. The reason it did not do so was because the country was undergoing one of its periodic episodes of international isolationism. If that militated against interfering in a dangerous European military escalation outside the auspices of the League of Nations, it is not clear why the United States would have intervened against Nazi Germany had it been within the League of Nations. Nothing about the League's structure compelled it to do so; and nothing in the UN's structure would have compelled it to do so either.

Both the League of Nations and the United Nations are most interesting for what they do not contain in their charters. While they establish elaborate international institutional mechanisms, and set out procedures for the Assembly and the Council to issue resolutions, neither calls upon national governments to commit troops to a unified international command, neither makes the jurisdiction of the international courts under their auspices compulsory, and neither permits small states to outvote powerful ones (or even for powerful states to outvote other powerful states) in any matters of significance. It is not hard to see why provisions of these kinds are absent from both charters. Powerful states have no incentive to agree to create a true world government. The United States, one of the most powerful nations in the world in both 1918 and 1945, would not want to give up real military or legal sovereignty over its affairs. The only possible incentive for any country to do so would be collective security; but the United States no doubt took the view that given the magnitude of its own power, it would be better at protecting its own security alone, than operating within a collective security apparatus.

This logic must have seemed particularly compelling in the aftermath of the Second World War, when there was a real ideological confrontation between liberal democratic capitalism and communism. Significant future threats would come not from rogue states against which allied nations could combine their forces, but from the Soviet Union, a rival empire with few

common political values with the United States. Why would the United States agree to an international institutional structure in which the Soviet Union — or any other country — had any say in the circumstances in which the US military could act? The idea was preposterous. It was out of the question — as, indeed, it would have been for the Soviet Union. The most powerful countries would embrace a system of international institutions only to the extent those institutions did not inhibit their sovereign prerogatives to declare war and conduct domestic and foreign policy as they wished. International institutions could not be permitted to take actions contrary to the interests of those nations, or to adjudicate and condemn their actions. The goal of any powerful state in agreeing to a system of international institutions could only be either to use those institutions as tools to control weaker states, or for internal political goals — for a state to associate itself with a set of values that the institution represents.

Imagine 192 families of varying sizes, wealth and strength cohabiting in a village, each of whom carry their own weapons and are used to defending themselves and the territory they claim for their own. For years they fight one-another incessantly. Then, one day, after a particularly bloody battle in which a great many people are killed, they sit down and agree to form an institution which will resolve all their differences in a peaceful manner, to prevent future wars. Someone suggests that all families agree to creation of an executive board, consisting of the heads of (say) five families, with their own Police force, and with all weapons turned over to that Police force. The Police and the executive board, it is said, will operate only within the confines of a series of pre-agreed rules. There will be a judicial authority to adjudicate disputes over these rules. This might in principle seem like a good idea to the weakest families in the village, tired of being preyed upon by their more powerful neighbours. But it is hardly attractive to the powerful families, who have far less to fear from the other members of the village. In theory, the powerful families might agree to give up their military autonomy in favour of the executive board to quell the ongoing disputes they have with one-another. But such an act of mutual foresight and wisdom would be less likely if each of the powerful families took the view that they had or were about to obtain some comparative advantage that would allow them to be the prevailing power in the future — or if they felt they had some overwhelming military capacity that would never allow them to be dominated, for example a nuclear weapon. The powerful families would be fearful of a truly independent and powerful executive board, that might be able to impose decisions upon them — even crush them with violence — and over which they would have only a limited say. Therefore, if the powerful families were prepared to buy into this proposal for collective security, they would insist upon denuding the executive board of real power, or at least ensuring it could act only with the consent of those powerful families. It certainly would not have its own capacity for force, sufficient to threaten them; at most it would have a police force whose members were seconded temporarily to it by the powerful, when those powerful families decided that the executive board's proposed actions were in their interests. In all circumstances, any structure to be created would not impinge upon the powerful families' own freedom of action when they decided that a certain course of conduct, inconsistent with the wishes of other families, was in their interests. Those with power do not, as a rule, freely give it up.

This pessimistic account of the course human beings would pursue in a state of nature diverges from the social contract Rousseau imagined free peoples would voluntarily adopt, because it departs from the implicit assumption in his model that all the parties to the social contract were of equal power and thus all feared the others. In those circumstances of primal equality, it is imaginable that every party would perceive a genuine collective security arrangement as preferable to the status quo. Alas, life is virtually never so. The incentives upon powerful and weak actors to agree collective security arrangements are quite different. The only collective security arrangement a powerful actor will countenance is one in which (s)he

provides collective security at his own discretion to weaker actors, with a view to advancing his own strategic interests. This was the model adopted by both NATO and the Warsaw Pact, as the United States and the Soviet Union respectively purchased varying degrees of political domination or loyalty from their allies in exchange for collective security guarantees. Of course every country with an effective functioning government operates some kind of internal collective security arrangement, in which a government, independent of the citizens, adjudicates and enforces rules of law relating to how the citizenry may treat one-another. But what is notable is that comparatively rarely in world history has any such arrangement been created by consent. The usual manner that governments acquire their monopoly upon the use of force is not by agreement of those over whom force may be exercised, but through domination of those people by one particularly powerful individual or group of individuals, who subsequently decide to call themselves the government. In time, the distribution of power between different institutions of the government may change, and democratic representation may emerge. But collective security arrangements are, as a rule, initially imposed, rather than agreed.

Is voluntary combination ever possible?

The two most prominent arguable counterexamples to this proposition, the United States and Switzerland, did indeed involve agreements to create genuine collective security arrangements. In the late eighteenth century, the United States of America voluntarily came together to form a federal government, by way of a set of Articles of Confederation, later to be rewritten in the US Constitution. Interestingly the Articles of Confederation, coming into force on a *de jure* basis in 1781,[10] were insufficiently robust, granting to federal government the power to make war but not to raise taxes nor armies. The federal government under the Articles of Confederation was therefore somewhat like the UN, having to go to its member states to ask them for money and troops to sustain its activities. Nor did the federal government have executive or judicial authorities; it was just a legislature, whose edicts the states may or may not have observed as they saw fit. However, by 1788 a revised Constitution had been adopted, granting the federal government these extended authorities and also establishing a federal court system and executive branch of government (the President) with the power to raise an army. By the end of the American Civil War in 1865, the US federal government had developed into the undisputed primary military, political and judicial force in the United States.

Switzerland was likewise formed in 1292, as a voluntary confederation of three cantons rebelling against the Habsburg monarchy and who pooled their resources to resist Austrian suppression of the rebellion. To this day the Swiss Confederation has never grown to embrace more than the most elementary federal institutions. There is no nationwide police force. There is only one federal court, being Switzerland's final court of appeal. The list of areas of federal authority is very short, and for most Swiss citizens the only way the federal government intrudes into their lives is in compulsory military service for adult males in the country's militia-based army. The purpose of the militia (which remains one of the largest standing armies in the world proportionate to population) is exclusively defensive, to resist external threats. Switzerland seldom deploys troops abroad, in accordance with its centuries-old policy of neutrality, and seldom in modern times has it deployed troops within its own borders.[11] Collective Swiss pooling

[10] Drafting of the Articles of Confederation was completed in November 1777. They thereafter served as the *de facto* system of government used by Congress until their formal ratification in March 1781.

[11] The only occasion in the twentieth century Switzerland deployed its troops internally was the « fusillade du 9 novembre 1932 », when Swiss soldiers were sent to disperse an anti-fascist demonstration in Geneva. The troops opened fire, killing 13 people and injuring 65. It is important for our purposes that the troops were sent

of military resources exists not as a tool for adjudication of disputes between the country's cantons but solely as a method for deterring foreign invasion. The decentralised and idiosyncratic features of Swiss government continue today to reflect the unusual circumstances in which the Confederation was formed some 700 years ago.

For both the United States and Switzerland, the dynamic for the agreement to create a central authority was not fear by the sub-federal units of one-another, although the inability of the federal government to resolve frequent disputes between the states was one of the motives for abandoning the Articles of Confederation. Instead it was fear of forces outside, and the sense that collective action was necessary to defeat a common enemy. For the United States that enemy was Britain; for Switzerland it was the Austrian Empire. Likewise German unification in 1871, which was for the most part a voluntary combination of individual states formerly within the Holy Roman Empire, was driven by a desire for collective security not between the states themselves but to secure their common borders against hostile enemies (principally France). Moreover, German unification was arguably closer to a larger power in the region (Prussia) absorbing a range of smaller states, as the Emperor of Prussia was proclaimed Emperor of the German Empire. It was less like a voluntary social contract described above, more akin to weaker families asking to join the stronger family and be placed under its protection. Also worth noting is that although the United States entered into a collective security union in 1781, it was a mere eighty years before eleven states sought to secede from the Union, and were restrained from doing so through violence. As of 1861, when an attempt at secession of the southern states sparked the beginning of the American Civil War, the United States of America could no longer be described as a voluntary relationship between consenting nations.

If voluntary combination to create genuine federal government in a domestic setting is likely only in response to an external threat, then it is little surprise that the League of Nations, and the UN after it, created something less. There is no external threat to the world, in the sense of an extraterrestrial military force. Although such an unworldly danger might be sufficient impetus to create a genuine world government with adjudication and enforcement powers, in its absence an arrangement in which mutually suspicious, even hostile, nations within the global village come together to form a genuinely impartial collective security pact seems quite unlikely. Powerful nations will not be able to trust one-another enough, and will not want to give up their comparative advantages. They will certainly not want to share power with less powerful nations. Those less powerful nations may have to content themselves with aligning themselves behind more powerful nations; that is arguably the common rationale behind NATO and German reunification. The structures created as a result, in any attempt to form Wilsonian global government, will look remarkably like the League of Nations, the United Nations or the Articles of Confederation. Powerful nations will be able to veto decisions; no court will have compulsory jurisdiction over disputes between nations; contribution of troops to common military causes will be voluntary; and the individual nations will retain their own military forces.

In the event of a real dispute between powerful nations (such as the Cuban Missile Crisis in 1962), the global governance structures created will be able only to sit impotently on the sidelines, making calculated guesses about which horse to back. Where a powerful nation practices aggression against a weaker nation, and no other powerful nation is prepared to stop it (as in the US-led invasion of Iraq in 2003), the international institution will again be silent, for fear of incurring the powerful aggressor's wrath. Alternatively the international institution may find legalistic or theoretical grounds to support what the powerful country is doing, to engender favour with its paymaster (as happened upon the NATO bombing of Serbia in 1999, and its sub-

at the request of the Geneva cantonal government. Therefore they were not used by the central government to enforce its writ over a province.

sequent occupation of the country's southern province of Kosovo). Only where a weak country breaks the international rules, and a powerful country is inclined to punish it for so doing (as in the first Gulf War in 1991), will the international institution be able to speak up in favour of respect for international law. These are the sorts of principles that will likely govern the role of an attenuated international organization, such as the United Nations, which is the product of an ostensible agreement for collective security that emerges from the agreement of competing nations with different levels of military and economic power.

If this account is accurate, then it strikes at the heart of the liberal thesis. Were liberalism correct about the motivations of states, then powerful states would be willing to give up sovereignty over their own military affairs in favour of robust collective security agreements, rather than the bastardised kinds of collective security exemplified in the League of Nations and the UN. Powerful but beneficent states would agree to create a genuine world government with impartial enforcement institutions, at least between themselves, realising that this is the best way to preserve their mutual internal peace and to cooperate to resist external threats. That they fail to do so in practice is because they are too short-sighted and selfish. However, realism does not perfectly describe the rise of these institutions either. Realism can explain the creation of impotent institutions by the powerful: they are tools for cloaking nakedly self-interested acts of powerful states against weaker ones in the mantle of legitimacy. But it cannot explain why weaker states would go along with the charade. Are they just foolish? That seems unlikely at least as a general theory of international relations, even if it might be true in individual cases. The probable reason weaker states participate in impotent international institutions is more likely that they calculate they have nothing to lose; powerful states that wish to dominate weaker states will in all likelihood do so irrespective of the existence or otherwise of an international legal and institutional framework within which to do it. There are domestic benefits of participation in international institutions: for example, where an international organization promotes human rights, a state's membership and a contribution of funds may become an effective substitute for failure to respective human rights in the domestic sphere.

Weaker states may also calculate that international institutions provide a policy space in which they can exercise a disproportionate influence relative to their size. International organizations may allow states equality of representation of their members irrespective of economic, political or military strength, a status unthinkable for a weak state in the ordinary course of its diplomacy. (Such egalitarianism will rapidly break down in areas of international concern in which powerful nations have strong interests: hence the existence of "permanent" members of the UN Security Council with vetoes.) In the absence of strong interests advanced by powerful states, international organizations find autonomy within weak competing interests of a multiplicity of ostensibly equal nations. The unholy compromise between powerful and weak states in the creation of dysfunctional international organizations is this: the powerful states can use those institutions as a shroud for legitimacy when they want to push an international policy; weaker states obtain disproportionate influence over issues where more powerful states do not really care. International organizations capture a broad policy space in between the gaps. This is a constructivist explanation of how we have come to create weak solutions to collective security problems.

There are plenty of circumstances in which an international institution will not be buffeted by the forces of its most powerful members in their pursuit of acts of war. The roles of the League of Nations and the United Nations are arguably irrelevant where strong interests of the world's most powerful states are at stake such that they are prepared to spill blood in pursuit of their goals. Nevertheless there are plenty of international episodes of lesser intensity where such an institution may find room for maneuver. The League of Nations was not entirely irrelevant; notwithstanding its unsurprising inability to resist German, Japanese and Italian aggres-

sion, it achieved some results. Its principal achievement was the resolution a range of territorial disputes arising out of the decolonisation of the Ottoman and German Empires following the First World War, including settlement of German-Polish disputes relating to upper Silesia, delimiting the borders between Greece and Albania, resolution of the status of Mosul, affirmation of the status of Vilnius within Poland, administration of the Saar territory until its 1935 return to Germany after a plebiscite, and determination of sovereignty over the Aland Islands.

What is interesting about these achievements, however, is that in so many cases the decision adopted by the League of Nations represented the military or political status quo. In the dispute over the Upper Silesia, a buffer zone between Germany and Poland was recommended by the Treaty of Versailles to be subject to a plebiscite. After a narrow electoral result in that plebiscite, a League Commission recommended partition of the territory in accordance with the linguistic and cultural preferences of its residents. In a dispute over the murder of an Italian General who was engaged by the League to demarcate the Greek-Albanian border, the League's Conference of Ambassadors held the Greek government responsible and ordered payment of compensation demanded by the Italian government; Italian troops had occupied Corfu to enforce their demand. The Aland Islands had a Swedish population but had been held by Finland since imperial Russian occupation of Finland; again the League resolution involved maintaining the status quo, leaving the territory as part of Finland. Mosul was *de facto* in the British-administered mandate of Iraq; Turkish historical claims to the territory were rejected, supporting the British position.[12] In each case the League's action adopted the course of least resistance, lending international legitimacy to the facts on the ground.

The growth of international institutions

If the League inevitably had limited room for manoeuvre on issues of international political moment between its member states, it nonetheless found itself busy in a range of collateral, advisory areas. As well as the Permanent Court of International Justice and International Labour Organization, envisaged by the Treaty of Versailles, a range of other institutions were created under the League's auspices. A Health Organization was created, an early precursor of the World Health Organization. There was a Committee on Intellectual Cooperation, to promote international scientific and cultural work; a Permanent Central Opium Board, to coordinate international policies on narcotics; a Slavery Commission, working to eradicate slavery; a Commission for Refugees (a forerunner of UNHCR); and a Committee for the Study of the Legal Status of Women. All in all, the League became involved in quite a wide range of activities. Its budget expanded from $3.3 million in 1920 to $5.2 million in 1929 (equivalent to about $56 million in 2010). Notwithstanding this growth, it remained a comparatively modest institution; the UN's general budget was in excess of $2 billion in 2007. Although the League of Nations never had more than 58 members (this zenith was reached at the end of 1934) compared to the UN's 192 current members, the difference remains marked. Moreover, whereas the foregoing figures for the League included all its associated agencies, the $2 billion figure representing the UN's current budget does not include the seventeen UN specialist agencies, which are financed through separate negotiated contributions from those agencies' members. Nor does it include the UN's peacekeeping budget, which was in the region of $5 billion for the financial year 2005-06.

At the end of the Second World War, the League of Nations was perceived as a failure for having been unable to prevent conflict, but the United Nations, devised along much the same

[12] For a history of the foregoing and other League of Nations engagements, see George Scott, *The Rise and Fall of the League of Nations* (London: Hutchinson 1973).

lines, was nonetheless conceived to replace it. The United Nations would play a far more profligate role in developing a network of international law and international institutions than did its predecessor. It would grow into a very large organization. The number of staff in the UN "common system" (a common regime of recruitment procedures, and salary and management grades across the UN and thirteen of its specialist agencies) was over 83,000 as of 2008. This did not include staff on short-term contracts, of which no public records are available, but they may add at least 100% to the total. In 1950, the UN had a mere 1,500 employees. The operations of the UN and its associated agencies would come to span a remarkable range of activities. The International Labour Office (2,500 employees as of 2009; budget of $600 million as of 1999), and INTERPOL (500 employees as of 2005; budget of €47 million in 2009), an international police cooperation organization, survived the League of Nations era. In addition, a new range of specialized agencies of the UN emerged in the years after the Second World War, including the Food and Agriculture Organization, the United Nations Population Fund, the International Atomic Energy Agency, the International Civilian Aviation Organization, the International Fund for Agricultural Development, the International Maritime Organization, the International Telecommunications Union, and countless others. Among the larger ones are the United Nations High Commissioner for Refugees (UNHCR), responsible for operations to care for refugees (6,500 employees; US$2.5 billion budget in 2010); the World Health Organization (2,400 employees; $420 million budget in 2003); the World Intellectual Property Organization (1,000 employees; 2010 budget of $310 million); and the International Organization for Migration (in 2008, over 7,000 employees and a budget of over $1 billion).

At the Bretton Woods Conference in 1944, another slew of international organizations was conceived. Principal among these were the International Bank for Reconstruction and Development (the World Bank) and the International Monetary Fund. The World Bank subsequently multiplied, and now comprises five international organizations employing 10,000 people under the World Bank umbrella; the IMF employs around 2,500. A range of regional development banks (at least eleven are in existence at the time of writing) have followed in the wake of the World Bank, and employ several thousand more people worldwide. Still more international organizations grew out of the UN system or in conjunction with it. OSCE, an election-monitoring organization, had 3,500 staff and a budget of over €200 million in 2000. International organizations need not just be the creation of agreements between states. More international organizations can be created by the agreement of international organizations themselves. The International Trade Centre (ITC) is an international organization created by an agreement between the UN and the World Trade Organization (WTO). The Global Environment Facility (GEF) is a creation of the World Bank, the UN Environment Program and the UN Development Program. Perhaps the GEF and the ITC can enter into an agreement to create a third-order international organization, although it has not happened yet.

Depending on how one counts, there are 1,859 ordinary international organizations as of 2001, or 7,080 if one adds conferences (such as UNCTAD, the UN Conference on Trade and Development, a sort of autonomous conference-entity which employs some 500 people) and multilateral agreements creating a secretariat (such as the Energy Charter Secretariat, created to oversee the Energy Charter Treaty, which employs some 50 people). [13] No global figures for the annual turnover of international organizations, or the number of people employed by them, exist. But it is clear that taken together, they are a significant industry, employing hundreds of thousands of people worldwide and with tens of billions of US Dollars in annual revenues. The institutions of global government have undertaken quite an expansion since Wilson's dream and the early years of the League of Nations.

[13] These figures are provided courtesy of the Union of International Associations.

Why did the United Nations and associated international organizations undergo this phenomenal growth? The liberal theorist might argue that in an increasingly interdependent world, there are ever more issues which can be best resolved through international cooperation. The expansion of international organizations represents a realisation of the benefits of international cooperation. Even if the ideals of a global government with impartial and compulsory adjudication and enforcement are too much to expect nations currently to agree to, there are all sorts of other benefits to international cooperation that the creation of international organizations can harness. The World Health Organization may serve to share medical knowledge and pharmacological innovation across the different countries of the world. The World Bank fosters expertise in development economics, and the skills needed to assist countries to be lifted out of poverty. UNHCR exists as a conduit of specialist expertise through which countries may contribute to refugee relief efforts in distant foreign countries. These are goals which all right-thinking nations would want to pursue; there are tangible benefits to their cooperating to achieve these goals; and international organizations serve as the mediums of that cooperation. Technology, faster and cheaper transport, ever easier communications, and the consequent increased ease for states to take actions having an effect beyond their boundaries, have all made the possibilities for international cooperation increase exponentially. The growth of international organizations, on the liberal thesis, simply represents the increased opportunities for international cooperation in a globalised world.

There is undoubtedly some truth in this account. One of the reasons ever more policy issues become internationalized is the ease of exchange of information that has become possible due to technological advances. It may now be possible to undertake detailed country comparisons of malaria prophylaxis, because the internet and air travel make such studies easier and the data more readily sharable than was once the case. There may be value in having an impartial organization monitor and certify elections as fair in emerging democracies; and an international committee of monitors may stake a better claim to be impartial than monitors all of whom hale from a single country. But the challenge for the liberal defense of international organizations is to show why international governmental institutions are better methods of achieving cooperation gains than the nongovernmental alternatives. Cooperation is possible without creating a quasi-governmental international structure. International NGOs can monitor elections, and their judgments may be just as credible. The Carter Center, an NGO in Washington, DC, has a formidable reputation in this area, and works with a fraction of the budget of OSCE. Medical professionals can work with pharmaceutical companies and national health authorities to share medical information. It is not clear what an international organization can add to the international cooperation that would take place anyway through private and public mechanisms.

If an international organization is a forum for officials from different governments to meet, they can meet anyway; and they always could. Most countries have embassies in most other countries. If international organizations are conceived as centres for expertise, it is not clear why that expertise could not prosper within international private companies and national governments, and without the extravagant expense of international public bureaucracy. If the distinguishing feature of international organizations is conceived as their neutrality, it is far from clear that they are as impartial as they like to present themselves. Many international organizations are perceived as having pronounced political agendas. In Kosovo, UNMIK (the UN territorial administration of the territory between NATO occupation in 1999 and independence in 2008) pushed an independence agenda and thus was perceived as pro-Albanian and anti-Serb.[14] In post-war Bosnia, almost all the international organizations were perceived as pro-Bosniac and hostile to Serb and Croat interests. UN peacekeeping forces in Rwanda prior to and dur-

[14] See Matthew Parish, *International Officials,* Aust. Rev. Int. Econ. L. 13 (2009).

ing the 1994 genocide were perceived as attempting to prop up the genocidal Hutu regime.[15] In Darfur, UNAMID (the UN peacekeeping mission in Darfur) is perceived as anti-government.[16] One may infer from this small sample that it may be extremely difficult for international organizations genuinely to be perceived as neutral. Governments (such as the Swiss) or NGOs (such as the Carter Center) may be able better to achieve perceptions of neutrality. In short, it is not clear just what we are paying for in international organizations that cannot be achieved using other, presumably cheaper, means. The only feature unique to international organizations in resolving cooperation problems would be were they to possess an impartial and binding adjudicatory power and an enforcement authority, to bind states to agreements to cooperate. As subsequent chapters will show, this is precisely what international organizations virtually never have, because states consciously agree not to bestow them with that depth of authority.

The danger for the liberal theorist, in promoting international organizations as effective media of international cooperation, is that there is no theoretical account of why they ought to be better at achieving cooperation than other forms of organization. After all, states cooperated extensively before the era of international organizations, to which the substantial levels of trade and international travel in the nineteenth century are testament. If the only account of international organizations' advantage is to attribute to them a capacity for impartial adjudication and enforcement which in practice states do not bestow them with, then the liberal theorist struggles to explain why these organizations have grown to meet the global expansion in international cooperation. Neither can the realist explain it. For the realist, international organizations are *ex hypothesi* causally irrelevant, being reflections of the international balance of power rather than causative of relations between nations. It is not therefore clear why they would grow at all; why would states pour money into institutions that make no difference? One answer might be false optimism: a misplaced belief on behalf of most of the world's governments that there is a pressing need to expand exponentially the size of international organizations to address all the pressing new problems in international cooperation that emerge year on year. But collective idiocy is barely attractive as a general theory of international relations, even if occasionally in history — as in the Thirty Years War or the First World War — it has appeared to approximate to the norm.

The expansion in ostensible levels of international cooperation may instead be considered a coalition of two sets of interests. One is the international organizations themselves, who have every interest in expanding their own spheres of activity, and with them their budgets and staffing levels. As a general rule, bureaucracies are able to expand their budgets beyond the level necessary to fulfil the services required by the citizens to whom they are accountable (in the case of international organizations, those citizens are their member states). This is due to the monopoly the bureaucrat has over assessment of his or her own effectiveness. Typically a bureaucracy's output is not a series of measurable units but a level of activity that is difficult to evaluate. This creates a monitoring problem for oversight agencies, which cannot accurately judge the efficiency of the output where there is no point of comparison and no easily measurable output. Only the bureaucracy knows the true costs of providing its services. Because funding comes from outside the bureau, the bureaucracy can overstate its costs to receive a larger budget, and can make "take it or leave it" budget proposals to the funding agency. In this way, bureaucrats can generate budgets that are perpetually in excess of what the funders'

[15] For controversy about Operation Turquoise (the French-led UN peacekeeping mission in Rwanda in 1994), see e.g. Liberation, *Validation des plaintes visitant l'armie fran^aise au Rwanda,* 29 May 2006; BBC News, *France accused on Rwanda killings,* 24 October 2006 (citing Rwandan diplomat Jacques Bihozagara as alleging France's partial responsibility for the genocide).

[16] See e.g. Sudan Tribune, *Sudan summons top UNAMID official to protest reports of non-cooperation,* 4 December 2009.

requirements warrant. This type of theory seeks to explain not just the growth in international organizations' budgets, but also the growth of government in western countries.[17] However, the theory is particularly apposite for international organizations, because the lines of accountability to those ultimately paying the bill for bureaucratic growth are so much more diffuse. An international organization is not directly accountable to a taxpayer; it is only indirectly so, through another bureaucracy (the foreign ministries or treasuries of the organizations' member states), who themselves have incentives to perpetrate their own bureaucratic growth.

The incentive for international organizations to enlarge themselves is reinforced by an interest individual states have in the expansion of international organizations' remits. Faced with a foreign policy issue which there exists domestic demand to address, referral of the issue to a specialist international organization is an attractive option. Delegation to a body one does not control alleviates electoral responsibility for failure. Association with an international organization may permit a state to assert that it upholds or supports a certain value, while committing nothing beyond a marginal sum of money. The international organization's mandate will be circumscribed in such a way that no real sovereignty (in terms of binding adjudicatory power or enforcement capacity) is attributed to it; and the costs of funding the organization's expansion will be so thinly distributed across the members as to be barely felt, particularly compared with the costs of any home grown initiative.

Malaria prophylaxis in the developing world became a hot political issue in the developed world in the 1990s; it was killing many people, particularly in Africa, and immigrants from those countries to the affluent west gave the issue political life. The World Health Organization (WHO) adopted it, and created a specialist unit to deal with it. Subsequently, staff within the WHO spotted this was not the only epidemic disease capable of creating political pressure in the wealthy west, where the political process might make budgets available for international cooperation. The fight against malaria was combined with battles against AIDS and tuberculosis, and before long a new international organization, the Global Fund, had spun off from the WHO, with a new staff, a new budget and a new mandate.[18] The Food and Agriculture Organization, which deals with a broad range of issues relating to feeding the hungry (including emergency relief, pest management and policy debates) in 1960 created a specialist arm, the World Food Programme (WFP), to coordinate emergency food distribution in famines. The WFP subsequently spun off and became an independent organization. The two institutions now have overlapping mandates. In 1974 a further related organization was created, the International Fund for Agricultural Development, with another mandate in the same area. It is hard to justify the existence of three international organizations all with such similar functions. Nonetheless, they persist. Domestic pressure groups support each individual institution, and this support is reinforced where international organizations make grants in favour of NGOs. Thus a high political price may be paid by any individual member who withdraws from the institution, once established, as it will be criticised for abandoning the poor or vulnerable. This price is seldom outweighed by the funds saved.

[17] See e.g. William Niskansen, *Bureaucracy and Representative Government* (Chicago: Aldine-Atherton, 1971); William Niskansen, *Bureaucracy,* in William Shughart and Laura Razzolini, eds., *The Elgar Companion to Public Choice* (Northampton: Edward Elgar, 2001); Thomas A. Garrett and Russell M. Rhine, *On the Size and Growth of Government,* Federal Reserve Bank of St Louis Review (January/February 2006).

[18] The Global Fund to Fight AIDS, Tuberculosis and Malaria, established in 2002, was a spin-off from the WHO but was established as a Swiss foundation in Geneva, albeit one with full diplomatic immunity by way of a Headquarters Agreement with Switzerland, and controlled by a board of trustees representing member states who contribute funds to the Fund. Until 2009 the Global Fund's administration was managed by the WHO; thereafter it managed to wrest itself entirely from the WHO, and for all practical purposes is now an independent international organization.

the growth of international law

At the same time as international organizations were expanding, international law was growing, at least in terms of the quantities of treaties. Even in 1967, it was commented that "[o]ne of the most significant developments in international law in the twentieth century is the tremendous growth in the number of treaties".[19] Under Article 102 of the UN Charter, all treaties are required to be registered with and published by the secretariat of the United Nations. As of the end of 2005, over 46,000 treaties have been registered, organized for publication into some 2,200 volumes. Of these, perhaps 50% have been registered since 1990. In 2009, a mean of around 100 treaties a month were being registered. The growth is explosive. Several reasons suggest themselves why there has been such a glut of treaty-making. With the expansion of economic relationships across the globe, there are ever more reasons for nations to cooperate. A great many international treaties are concerned with economic cooperation, such as removal of barriers to international trade or foreign investment.[20]

Cooperation has also become easier. There may be many reasons why nations want to cooperate, but in the past it was too logistically complex. States may want to agree that they will enforce and respect one another's court decisions. They may wish to agree that citizens of one country living in another will not be taxed twice on the same income or assets, and tax paid to one authority will be offset against taxes due to the other. The modern telecommunications and computer revolutions make complex and detailed agreements far easier to negotiate. Drafts can be exchanged and amendments proposed instantaneously, without the parties even needing to meet. This is also undoubtedly a reason why all modern legal documents have increased exponentially in length, including domestic statutes and commercial contracts. The virtues of brevity are apparently forgone amongst modern legal professionals. Treaties may thus be longer, more detailed, and more complex, than they were previously. There is a debate about whether this is a good thing, of course: whether the complexity reflects a level of detail desired by the parties to refine the precise scope of their obligations and eliminate ambiguities that frustrate faithful observance of treaties and necessitate recourse to dispute resolution mechanisms, or whether the extra complexity is a mere smokescreen of irrelevant detail designed to keep lawyers busy and well paid. A divergence between the interests of principals and their agents (i.e. lawyers) might explain a growth of length and complexity of legal documentation exogenous to the interests of those the documents will bind.

There is more to explain the exponential growth in international law than just the demands by its users for increased cooperation, or the incentives of lawyers to expand their own workloads. Beyond the interests of both states and lawyers, international organizations have been active campaigners for the creation of ever more international law. International organizations are themselves the creations of treaties; and they are parties to a great many international treaties. Every loan agreement signed by the international development banks and the IMF is a treaty. International organizations often play leading roles in the negotiation and conclusion of treaties. The International Labour Organization negotiates international conventions relating to workers' rights, of which at the time of writing there are at least 188. The UN High Commissioner for Human Rights negotiates, and gently pushes upon the UN member states, various treaties and conventions relating to human rights of which (depending on how one counts them) there are at least 80.[21] Since international organizations are intentionally created

[19] Vincent Jordan, *Creation of Customary International Law by way of Treaty,* 9 USAF JAG L Rev 38 (1967).

[20] Investment treaties and treaties regulating global trade will be considered in Chapters 5 and 6.

[21] See the UNHCHR website at www2.ohchr.org/english/law (accessed on 24 June 2010).

toothless by the states that parent them, one of the activities they can safely undertake even without teeth is the creation of further toothless treaties. They can then monitor and oversee those treaties' implementation, an activity with which international organizations are perennially preoccupied. A great many modern international treaties create international organizations or vest them with further responsibilities, for which they must be further budgeted, and further staffed. The 1997 Ottawa Convention banning landmines[22] is typical. It gives the UN a variety of roles, including administration of programmes for care and rehabilitation of victims; preparation of national de-mining programs; receipt of reports of de-mining progress; organization of "fact finding missions" by panels of experts where one state accuses another of non-compliance; arranging "Meetings of State Parties" that make reports and recommendations on compliance; arranging "review conferences"; and facilitating resolution of disputes. Nowhere in the text, however, does it suggest how to enforce the ban against states that flout it.

The 1980 Convention on the Elimination of All Forms of Discrimination Against Women creates a "Committee on the Elimination of Discrimination Between Women", an institution within the United Nations system, consisting of various experts elected by the signatories. The Committee receives reports and itself reports to the UN's Economic and Social Council. Other UN specialised agencies are also entitled to make representations in connection with those reports. Disputes between states over application of the treaty may be referred to the International Court of Justice, an international organization considered in the next chapter, although no state signatory to the convention is obliged to consent to the involvement of the Court (and no dispute has ever actually been referred to the Court, for reasons that will be explored in Chapter Three). These treaties are typical. Both were created by international organizations; UN officials managed the multilateral negotiation process. They also create multiple responsibilities for international organizations. Modern international law necessarily involves the creation of international institutions, because international law cannot survive without them. A contract between two parties is worth little without an impartial third party to adjudicate and enforce it. The same logic applies to treaties; yet because states have no interest in creating strong international institutions, the temptation is to lend an air of legal pretence by writing a weak formal institution into the treaty. Thus treaties are replete with monitoring mechanisms, reporting obligations, committees, consultations and representations. The organizations administering these roles are all too aware of their own weaknesses. Permanently under a sense of existential threat, they will be motivated by fear of strong state actors, a desire to appear relevant, and to appropriate to themselves further tasks, to give the appearance of industry.

The growth in international law is not just a matter of an ever-increasing number of treaties. There has also been a considerable growth in what is known as "customary international law", being the writings of scholars, principles of international law that grow out of the jurisprudence of international courts and tribunals, and the writings of international organizations themselves. Ever increasing quantities of academic material have been written about international law in the last twenty years. Well over 100,000 scholarly books have been written in the field, with hundreds of academic journals devoted to it. By a consensus adopted by scholars and jurists alike, this material can be drawn upon in deciding the content of international law. Naturally, scholars are supported by international organizations, some of which (including the United Nations and the World Bank) even have their own universities to promote scholarly research. The International Law Commission, a committee within and funded by the UN that exists to promote the development of international law, employs scholars from around the world to write reports. It has spent most of its existence, between its creation in 1948 and

[22] Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, opened for signature on 3 December 1997.

2001, negotiating and drafting its "draft Articles on the Responsibility of States for Internationally Wrongful Acts", an attempt to codify the principles governing the circumstances in which states may be liable for breaches of international law. The draft Articles do not explain how disputes may be resolved under the rules of any particular judicial forum; nor does it set out any specific rules for how much money a state may be obliged to pay, and to whom, for breaching its international obligations. Such issues would be too contentious. Instead, the draft Articles are confined to a wide ranging series of platitudes, such as prescriptions that "an internationally wrongful act" must be "attributable to the state" and "constitute a breach of an international obligation of the state". It was anticipated that the draft Articles would be adopted in a treaty.[23] They never were; but that did not stop international courts treating them as definitive statements of international law. Vacuities can be interminably debated; when one's aim is to paper over the cracks of impotence, abstractions of Aquinean dimensions may be of considerable value.

Like all forms of law, international law is susceptible to interminable growth. Unlike other branches of law, it is not subject to any democratic check. It is driven by academics, pressure groups, and international organizations, international political institutions who have every interest in there being ever more international law with which to sustain them. The lingering concern is that the growth of international law absorbs money and time, without being developed in the context of a proper policy debate. International law is far more than the signature of treaties between states that see mutual advantage in cooperation. It purports to be a global order of moral principles regulating the conduct of states. Yet states have far more economic and military power than the institutions that administer international law, which calls into question the notion that international law can ever change the balance of power. A curious confluence of interests between states and international organizations means that international law can grow ever more, but persists in having remarkably little effect upon the underlying dynamics of international relations.

References

Pufendorf S. von (1672) De jure naturae et gentium.

Osiander A. (2001) Sovereignty, International Relations, and the Westphalian Myth. International Organization, 55: 251.

Kennedy D. (1997) International Law and the Nineteenth Century: History of an Illusion. QLR 17: 99.

Egerton G. (1974) The Lloyd George Government and the Creation of the League of Nations. American Historical Review 79(2): 419.

Holmes v United States, 391 US 936 (1968); United States v O'Brien, 391 US 367 (1968).

Scott G. (1973) The Rise and Fall of the League of Nations. London: Hutchinson.

Parish M. (2009) International Officials. Aust. Rev. Int. Econ. L. 13.

(2006) Liberation, Validation des plaintes visitant l'armee fran^aise au Rwanda, 29 May 2006; BBC News, France accused on Rwanda killings, 24 October.

(2009) Sudan Tribune, Sudan summons top UNAMID official to protest reports of non-cooperation, 4 December.

Niskansen W. (1971) Bureaucracy and Representative Government. Chicago: Aldine-Atherton.

Niskansen W. (2001) Bureaucracy, in William Shughart and Laura Razzolini, eds., The Elgar Companion to Public Choice. Northampton: Edward Elgar.

[23] UN General Assembly Resolution 56/83 of 12 December 2001 "commends [the articles on responsibility of States for internationally wrongful acts] to the attention of Governments without prejudice to the question of their future adoption or appropriate action". In other words, the General Assembly thought they were a good draft; but they would not become binding until some action of member states to adopt them. This never happened, and hence the articles remain in "draft".

Garrett T. A. Russell M. R. (2001) On the Size and Growth of Government. Northampton: Edward Elgar.
Garrett T A. Russell M. R. (2006) On the Size and Growth of Government, Federal Reserve Bank of St Louis Review (January/February 2006).

Jordan V (1967) Creation of Customary International Law by way of Treaty, 9 USAF JAG L Rev 38.

(2006) Reserve Bank of St Louis Review (January/February 2006).

(2001) UN General Assembly Resolution 56/83 of 12 December 2001.