

WORLDMAKING AT THE END OF HISTORY: THE GULF CRISIS OF 1990–91 AND INTERNATIONAL LAW

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ABSTRACT

This Article argues that the Gulf Crisis of 1990–91, the first major international crisis of the post-Cold War era, was a constitutive moment for international law. The Article examines the contests in the United Nations over the meaning of the Crisis and shows that these contests were also over the meaning of cooperation under international law in the “new world order.” The Article casts the Gulf Crisis itself as a moment of “worldmaking,” in which the United States refashioned foundational concepts like interdependence, sovereignty, and humanity in warfare and deployed them to suit a state-centered vision of international cooperation under hierarchy.

I. INTRODUCTION

In 1993, W. Michael Reisman observed that the UN Security Council “might be evolving into something far more effective and powerful than anticipated.”¹ The fact that, the “rhetoric of state equality notwithstanding, the United Nations Charter confirms and endorses a highly differentiated international society” was returning to the foreground of international consciousness.² It appeared possible that the UN system would reemerge “as conceived in 1945, as essentially an oligarchy of the victors of the Second World War who, when they agree, can decide on and enforce their vision of world order.”³ It was clear, however, that there was inequality even among oligarchs. “Within the Council,” Reisman wrote, “the P-5 meet privately to coordinate policy and, within the P-5, the P-3 [of the United States, the United Kingdom, and France] meet privately to coordinate policy. There is no question about the identity of P-1.”⁴

The Gulf Crisis of 1990–91, precipitated by Saddam Hussein’s invasion of Kuwait, lay at the root of the renewed salience of the “highly differentiated” nature of international society,

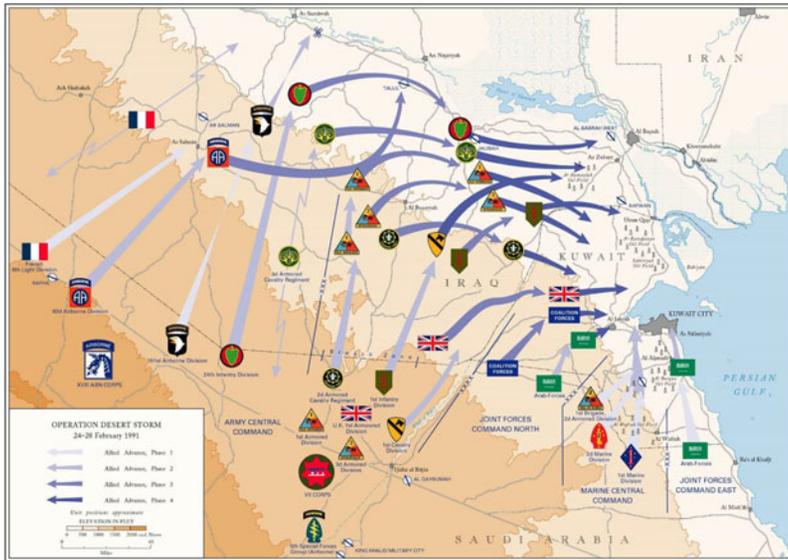
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¹ W. Michael Reisman, *The Constitutional Crisis in the United Nations*, 87 AJIL 83, 83 (1993).

² *Id.*

³ *Id.* at 95.

⁴ *Id.* at 97.



Source: <https://history.army.mil/reference/Commemoratives.htm>

as well as its institutional embodiment, the Security Council. This Article is a study of the Gulf Crisis as a critical juncture in the history of international law and in that of the modern international order. The significance of the Crisis derives, in large part, from the moment at which it arose. The year 1989 created the conditions for the international response to the invasion of Kuwait, but the end of the Cold War's meaning for international order did not begin to crystallize until the late summer, fall, and winter of 1990–91. Although not often remembered as such, the fall of 1990 was a moment of nearly universal exuberance about the possibilities for international cooperation in a dawning post-Cold War era. What U.S. President George H. W. Bush heralded as the advent of a “new world order” was welcomed enthusiastically in many unexpected quarters.

A broadly shared enthusiasm was possible because the character of that order was not yet settled. Instead, the new world order's meaning was debated, and eventually defined, through the contests over the response to the Gulf Crisis itself. This Article examines some aspects of those contests over the meaning of the Crisis and their implications for the nature of the emerging international order. It argues that, from the perspective of international law, the dominant positions that emerged from those debates—largely ones dictated by the United States—must be understood both with reference to alternatives voiced on the international stage during the Crisis, and with reference to alternative visions of order from the then-recent history of international law. This means, in particular, bringing in the history of decolonization, the Global South's “battle for international law” that reached its apex amid the crises of the 1970s, and Western governments' responses to these events.⁵ To foreground that context is to complicate—but not to reject—the usual tendency to frame the Gulf Crisis as a

⁵ THE BATTLE FOR INTERNATIONAL LAW: SOUTH-NORTH PERSPECTIVES ON THE DECOLONIZATION ERA (Jochen von Bernstorff & Philipp Dann eds., 2019). As a matter of convention, I generally use the term “Global South”

revitalization of the United Nations system as imagined in 1945. The Crisis was such a renewal, but it took place on a terrain that had been transformed by the international law reform projects of the preceding decades. It was, indeed, a renewal that had to answer questions similar to those posed in the 1960s and 1970s: about interdependence, oil, and security; about the meaning of sovereignty and territorial integrity; and about the relationship between hegemony and law.

To be sure, no formal statements of general international legal principle were issued in the Crisis. Such things are arguably more suited to expressing the points of agreement of large collective bodies than the determinations of one or a few powerful states, the latter being less likely to state the law and more likely to simply show what they already know it to be. But a vision of “world order”—and the place in it of certain fundamental international law ideas—nonetheless can be discerned.

What emerges from this study, which is structured around the changing uses of three concepts—interdependence, sovereignty, and humane warfare—is a partial picture of what Adom Getachew called the post-Cold War era’s “striking return to and defense of a hierarchical international order.”⁶ At least during the Gulf Crisis, the United States articulated a vision of international legal order that, not unlike the projects of anti-colonial “worldmaking,” recognized that an “interdependent” post-war world entailed that the global community of states had substantive common interests. In its way—and to borrow a phrase from Wolfgang Friedmann—this was a vision oriented to an international law of “cooperation” rather than mere “coexistence.”⁷ But it was a distinctively conservative vision of cooperation under hierarchy, one suited to a world whose horizons of political possibility had been shaped by the failures of the 1970s worldmaking projects and the ascent of a neoliberal economic order. This new world order spoke not in terms of common interests in justice or prosperity, nor in terms of liberalism and democracy. It spoke, instead, in the Hobbesian terms of shared vulnerability.

That story is told in five parts. Part II clarifies some of the Article’s methodological choices. Part III sets the stage by describing the terms of the early contests at the United Nations over the meaning of the Gulf Crisis and the “new world order,” as well as the alternative visions, some only briefly visible, against which the road actually taken must be seen. Part IV addresses the role of ideas of economic interdependence in the Crisis, particularly in relation to its oil politics. It shows how anti-colonial worldmaking projects like the New International Economic Order and “threats from the Third World” like the Organization of the Petroleum Exporting Countries (OPEC) embargo of 1973–74 shaped the sense of Western interests in the Gulf. It then argues that U.S. arguments about interdependence show how the concept had transformed from one that had implied an international obligation to cooperate “in a welfarist spirit,”⁸ to one that merely signified common vulnerability to global shocks.

throughout the Article rather than “Third World,” although it will in some cases be anachronistic and, like any such term, is necessarily imprecise.

⁶ ADOM GETACHEW, *WORLDMAKING AFTER EMPIRE: THE RISE AND FALL OF SELF-DETERMINATION* 179 (2019).

⁷ WOLFGANG FRIEDMANN, *THE CHANGING STRUCTURE OF INTERNATIONAL LAW*, at vi (1964).

⁸ Samuel Moyn & Umut Özsü, *The Historical Origins and Setting of the Friendly Relations Declaration*, in *THE UN FRIENDLY RELATIONS DECLARATION AT 50: AN ASSESSMENT OF THE FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW* (Jorge E. Viñuales ed., 2020).

Part V argues that the Gulf Crisis witnessed a shift toward a vision of sovereignty and territorial integrity, now framed by a U.S. foreign policy oriented to the dangers of “instability” or “uncertainty,” as principles entailing the maintenance of international hierarchy rather than its mitigation. Part VI addresses the conduct of the war itself. It argues that it was in the Gulf that the United States, reaping the benefits of an American military-technical “revolution,” first genuinely discovered humane war as a legitimating tool. In doing so, it began a process of reinstating an explicit “standard of civilization” into the language of international law that would persist into the later 1990s and, eventually, the War on Terror. Part VII concludes.

II. CONTEXT, SOURCES, AND METHODS

This Article seeks to explain the meaning of the Gulf Crisis in the history of recent projects of international order or “worldmaking.”⁹ The Article tries to understand the event “on its own terms”¹⁰ by examining the ongoing conversations, past and present, into which the uses of given concepts and rhetorical strategies represented implicit and explicit interventions.¹¹ I look for these conversations primarily in contemporaneous documents from the United Nations that show claims being made about the scope and meaning of the Crisis, the proper framework for response, and the justifications for the eventual war. I also look to U.S. government documents and records of diplomatic exchange (where available), some of the written recollections of U.S. officials, and contemporaneous political and legal commentary. Because I argue that the Gulf Crisis’s significance for international order should be understood against the backdrop of the crises of the 1970s and the project of “anti-colonial legalism,”¹² I also draw extensively from historical work on these topics.¹³ This choice is explained and defended at more length in Section III.D below.

Some other methodological choices or assumptions should be made explicit. First, the Article focuses above all on the meaning of U.S. policy in the Crisis. This is because the U.S. vision of order, and its approach to the Gulf Crisis, emerged triumphant. The aim is to understand what this vision meant and what it responded to, and, one hopes, to lay a groundwork for a better understanding of the Gulf Crisis’s significance for other developments in the subsequent years of the “unipolar moment” and the post-9/11 era.

Second, the Article’s selection of sources and the structure of its narrative betray a focus on the actions of states via their various representatives on the international scene. This focus is

⁹ See GETACHEW, *supra* note 6, at 2–9; see also Duncan Bell, *Making and Taking Worlds*, in *GLOBAL INTELLECTUAL HISTORY* 257–63 (Samuel Moyn & Andrew Sartori eds., 2013).

¹⁰ R.C.H. Lesaffer, *International Law and Its History: The Story of an Unrequited Love*, in *TIME, HISTORY AND INTERNATIONAL LAW* 27, 38 (Matthew Craven, Malgosia Fitzmaurice & Maria Vogiatzi eds., 2006).

¹¹ See Andrew Fitzmaurice, *Context in the History of International Law*, 20 *J. HIST. INT’L L.* 5, 7–8 (2018); see also LAUREN A. BENTON, *A SEARCH FOR SOVEREIGNTY: LAW AND GEOGRAPHY IN EUROPEAN EMPIRES, 1400–1900*, at 121 (2009).

¹² Samuel Moyn, *The High Tide of Anticolonial Legalism*, 23 *J. HIST. INT’L L.* 5 (2020).

¹³ For a valuable argument that the post-Cold War period should be understood not just in terms of “geopolitical rupture” but also “continuities” in North-South relations. See Julia Dehm, *Rupture and Continuity: North-South Struggles Over Debt and Economic Co-operation at the End of the Cold War*, in *INTERNATIONAL LAW AND THE COLD WAR* 289 (Matthew Craven, Sundhya Pahuja & Gerry Simpson eds., 1st ed. 2020). See also Madeline Chiam, *More Than a “Parlour Game”: International Law in Australian Public Debate, 1965–1966*, in *INTERNATIONAL LAW AND THE COLD WAR*, *supra* note 13.

not without its limits, and it does not remotely exhaust the important aspects of the events under study, whether for U.S. politics, international relations, or international law. The historical actors speaking in this Article are UN delegates, heads of state, high-level officials, and government and military lawyers, and they are mostly men. International law is made and contested in other quarters, and there can be no doubt that the places one goes looking for international law have implications for what one finds.¹⁴ This Article's state-centrism follows from the question it asks about the vision of order articulated by the United States in the Gulf Crisis. It also follows from the distinctive character of the Crisis itself, which was primarily conceived—unlike many of the other security issues taken up by the international community in the subsequent decade—as a matter of interstate violence.¹⁵

Third, where one looks for international law also reflects one's assumptions about what international law is and how it relates to other features of international activity.¹⁶ This Article takes a broad view of international law and the way its fundamental principles are made and remade. It does not approach international law in the mode of advancing arguments about what the law is or ought to be, or whether given actions complied with it.¹⁷ Instead, it is organized around the uses of some international law concepts in the Crisis—sovereignty, territorial integrity, self-determination, the laws of armed conflict—and some concepts, like “interdependence,” that have a central place in international law discourse but are not, strictly speaking, legal concepts.¹⁸

Such an approach is suited to the Gulf Crisis because, as I show in more detail below, many of its central actors were self-conscious about the “precedent” that they were setting, given the historical moment in which they found themselves. Most were non-lawyers, but law and politics—public justification and national interest—were inseparable throughout the Crisis, not least because of the worldmaking mood and the fact that the United Nations was so central to it.¹⁹ Margaret Thatcher could be heard arguing about the scope of the

¹⁴ See ANNE ORFORD, *INTERNATIONAL LAW AND THE POLITICS OF HISTORY* 256 (2021).

¹⁵ However, important challenges to this state-centric framing can be found in, e.g., Christine Chinkin, *A Gendered Perspective to the International Use of Force*, 12 *AUSTL. Y.B. INT'L L.* 279, 291 (1992) (arguing that “[t]he initial international response to the Iraqi invasion of the sovereign State of Kuwait has been to reinforce the statist orientation of international law,” but that this is a mistake); Anne Orford, *The Politics of Collective Security*, 17 *MICH. J. INT'L L.* 373, 376 (1996) (discussing the Gulf Crisis in the context of an argument that, among other things, “many women are in fact rendered less secure by actions authorized by the Security Council in the name of collective security”).

¹⁶ See ORFORD, *supra* note 14, at 257.

¹⁷ There is a large volume of interesting scholarship from the 1990s that approaches legal questions raised in the Gulf Crisis. For an arbitrary sampling see, for example, Chinkin, *supra* note 15; Judith Gardam, *A Feminist Analysis of Certain Aspects of International Humanitarian Law*, 12 *AUSTL. Y.B. INT'L L.* 265 (1992); Colin Warbrick, *The Invasion of Kuwait by Iraq*, 40 *INT'L COMP. L. Q.* 482 (1991); Colin Warbrick, *The Invasion of Kuwait by Iraq: Part II*, 40 *INT'L COMP. L. Q.* 965 (1991); Oscar Schachter, *United Nations Law in the Gulf Conflict*, 85 *AJIL* 452 (1991); Thomas M. Franck & Faiza Patel, *UN Police Action in Lieu of War: “The Old Order Changeth,”* 85 *AJIL* 63 (1991); Eugene V. Rostow, *Until What? Enforcement Action or Collective Self-Defence?*, 85 *AJIL* 506 (1991); LAW AND FORCE IN THE NEW WORLD ORDER (Lofi F. Damrosch & David J. Scheffer eds., 1991); Philip Alston, *The Security Council and Human Rights: Lessons to be Learned from the Iraq-Kuwait Crisis and Its Aftermath*, 13 *AUSTL. Y.B. INT'L L.* 107 (1992).

¹⁸ Cf. Lauren Benton, *Beyond Anachronism: Histories of International Law and Global Legal Politics*, 21 *J. HIST. INT'L L.* 7, 26 (2019) (describing varieties of international law history scholarship, including a strand attending “to ‘visions of global order’ emerging alongside shifting international structures”).

¹⁹ One firsthand account of law's place in the Gulf Crisis is Martti Koskenniemi, *The Place of Law in Collective Security*, 17 *MICH. J. INT'L L.* 455, 472–78 (1995).

right of collective self-defense under Article 51; non-lawyers debated the meaning of the Charter in the halls of the United Nations.²⁰ Even for a realist inclined to see pronouncements of principle as mere warnings to the world about the extent of American interests, it would be difficult to understand those warnings except by way of their place in the history of international law.

III. THE NEW WORLD ORDER AND THE OLD

A. *International Law and the New World Order*

Saddam Hussein's invasion of Kuwait on August 2, 1990, was the first major global crisis of what can properly be called the post-Cold War era. It occurred at a moment already witnessing a massive international reordering. In Eastern Europe, new states emerged as the Soviet Union began to disintegrate. The United States, the Soviets, and the Europeans negotiated the Maastricht Treaties that, in October, would finally reunify the German state. In Western Asia, the Iran-Iraq War had ended in 1988 after nearly a decade of brutal violence, and Mikhail Gorbachev had completed the Soviet withdrawal from Afghanistan in 1989. The Israel and Palestine questions were in a period of heightened urgency, in light of a rapidly increasing migration of Soviet Jews to Israel, the outbreak of the First Intifada, and the Likud government of Yitzhak Shamir. Meanwhile the neoliberal revolution in global economic governance was powering ahead at full steam. The Uruguay Round of negotiations under the General Agreement on Tariffs and Trade (GATT) was, for example, well on its way toward producing what would become the architecture of the World Trade Organization.

In this context, President George H. W. Bush and his cabinet approached the invasion of Kuwait with an acute sense of historical self-consciousness. It is a truism that, for the powerful, crises are not to be wasted. This one was no different. U.S. policymakers came to view it as an opportunity to launch in earnest a project of world order, one based on principle but backed by action and arms.²¹ Whatever the outcome in the Gulf, it would set a "precedent," as Richard Haass, the then deputy national security advisor, wrote in a memo to the president the day after invasion.²² President Bush told Congress that these were "troubled times," but they were equally a "unique and extraordinary moment" out of which a "new world order . . . can emerge."²³

On September 11, 1990, Bush had announced the establishment of this "new world order" as one of the U.S. objectives in the Gulf.²⁴ This "fifth objective" existed on a loftier plane than the other four previously identified by the administration, namely Iraq's complete and

²⁰ *Id.* at 474.

²¹ Cf. Edwin D. Williamson, *International Law and the Role of the Legal Adviser in the Persian Gulf Crisis*, 85 ASIL PROC. 377, 381 (1991); JEFFREY A. ENGEL, WHEN THE WORLD SEEMED NEW: GEORGE H. W. BUSH AND THE END OF THE COLD WAR 401 (2017).

²² RICHARD HAASS, WAR OF NECESSITY, WAR OF CHOICE: A MEMOIR OF TWO IRAQ WARS 62 (2009); see also ENGEL, *supra* note 21, at 395 ("More than merely oil or American national interests were at stake. What mattered most was precedent.")

²³ President Bush Address Before a Joint Session of the Congress on the Persian Gulf and the Federal Budget Deficit, Sept. 11, 1990, in 1 IRAQ, 1990–2006: A DIPLOMATIC HISTORY THROUGH DOCUMENTS (Philip E. Auerswald ed., 2009) [hereinafter AUERSWALD].

²⁴ See *id.*

unconditional withdrawal from Kuwait, the restoration of Kuwait's legitimate government, "a commitment to the security and stability of the Persian Gulf," and the protection of American citizens abroad.²⁵

In the years that followed the Crisis, the idea of the "new world order" took on a magic-eye quality. Depending on one's angle of observation, the phrase came to signify anything from the ascendance of a technocratic global neoliberalism, the advent of unrivaled U.S. hegemony, the dawn of a new era of world peace and international cooperation, or simply enough, a bit of presidential pablum.²⁶ But while Bush's meaning was vague, the idea of the new world order was not as contentless as it has since come to seem. It was, at the time, widely understood to announce a commitment to a certain kind of international law. The new world order would be, as Bush said, "a world where the rule of law supplants the rule of the jungle. A world in which nations recognize the shared responsibility for freedom and justice. A world where the strong respect the rights of the weak."²⁷ In a real sense, Bush made good on these claims, as he proceeded to make himself the first U.S. politician since Dean Rusk to accord the United Nations anything like a central role in important U.S. policy decisions.²⁸

Sophisticated contemporary observers also understood the new world order as first and foremost a legal order. Thus Ted Galen Carpenter, writing in *Foreign Policy* magazine: "[T]o protect 'the sovereignty of nations' and the rule of international law . . . is the essence of [Bush's] concept of a 'new world order.'"²⁹ And thus Georges Abi-Saab, looking back from 1998:

The Gulf War, authorized by the Security Council, in principle to make Iraq withdraw from Kuwait which it had invaded and annexed—an operation called "a war for international law"—gave former President Bush the opportunity to proclaim the advent of a "New World Order." This implied that from then on the system would function in a regular and non-selective manner each time that circumstances required it, thus providing an institutional guarantee to the hard core of constitutive principles.³⁰

The context of the September "new world order" speech justified this optimistic reading. August and September 1990 represented the highwater mark of international solidarity and cooperation in responding to the Crisis, and the "new world order" rhetoric was adopted

²⁵ See *id.* These four objectives were officially stated in NSD-45. THE WHITE HOUSE, NATIONAL SECURITY DIRECTIVE 45 (Aug. 20, 1990), at <https://bush41library.tamu.edu/files/nsd/nsd45.pdf>.

²⁶ On the phrase's conspiratorial reception, see Alasdair Spark, *Conjuring Order: The New World Order and Conspiracy Theories of Globalization*, 48 SOCIOLOGICAL REV. 46 (2000).

²⁷ President Bush Address, *supra* note 23, at 160.

²⁸ Cf. MARK M. MAZOWER, NO ENCHANTED PALACE: THE END OF EMPIRE AND THE IDEOLOGICAL ORIGINS OF THE UNITED NATIONS 197–98 (2009) [hereinafter MAZOWER, NO ENCHANTED PALACE].

²⁹ Ted Galen Carpenter, *The New World Disorder*, 84 FOR. POL'Y 24, 25 (1991); see also ROBERT W. TUCKER & DAVID C. HENDRICKSON, THE IMPERIAL TEMPTATION: THE NEW WORLD ORDER AND AMERICA'S PURPOSE 51–52 (1992) (criticizing the "legalism" of the Bush administration's embrace of "collective security"); Michael Sterner, *Navigating the Gulf*, 81 FOR. POL'Y 39, 44 (1990) ("What the United States is defending is the territorial integrity and political independence of [Gulf] states."); LAWRENCE FREEDMAN & EFRAIM KARSH, THE GULF CONFLICT 1990–1991: DIPLOMACY AND WAR IN THE NEW WORLD ORDER 413 (1994) ("Bush's new world order did not require the restructuring of the Iraqi political system . . . but was related to the international 'rules of the game.'").

³⁰ See Georges Abi-Saab, *Whither the International Community?*, 9 EUR. J. INT'L L. 248, 264 (1998).

widely within the United Nations and beyond it. The sense of renewal permeated the Security Council's activities. Martti Koskenniemi, who was then a member of the Finnish delegation to the Security Council, later reflected on the "brief moment in the autumn of 1990" when "the political context within the Security Council seemed open and institutional culture might have been revised."³¹ Certainly, a sense of post-Cold War openness in international affairs was already present before August 2. Debates in the May 1990 Special Session of the General Assembly, for example, had often taken place in terms of the possibilities created by détente.³² But what was said in May had a different meaning in August and September: something had happened that unavoidably brought what Abi-Saab called the "hard core of constitutive principles" into play. The question was what the world would make of them. Even Bush, generally not much for flights of fancy, told his National Security Council principals on August 3 that, in the Gulf, "at stake is the shape of the world to come."³³ His enthusiasm was more than momentary; by the time Desert Storm was underway, Bush could still say that "What we're doing is going to chart the future of the world for the next hundred years."³⁴

B. Defining the Crisis: Law and Linkage

This rather grandiose view of the Crisis—or at least the contemporaneous sense of its historical significance—was not limited to U.S. officials. An unusual meeting of the Security Council on September 25, attended not by UN country missions but by foreign ministers, attests to this fact in both its form and content.³⁵ Opening remarks by Secretary-General Javier Pérez de Cuéllar opened the meeting with a declaration that the decisions taken there would "have a momentous significance well beyond the crisis that has formed their context," particularly for Chapter VII of the UN Charter and the system of collective security.³⁶ The sentiment was *de rigueur*; every foreign minister's remarks contained some statement to similar effect.³⁷

But the Council's unity at this relatively early moment belied stark differences in opinion about the Crisis's underlying nature. How should it be framed—was it a matter of the "Middle East question," the "Kuwait question," the oil question, the "Saddam question"? The international community was apparently united, at least in September 1990. But what united them—what made this a global issue? Was it the abrogation of a fundamental international norm, that of non-aggression and the violation of the territorial integrity of a sovereign state? Was it an economic issue, namely the possibility of disruption to the global supply of oil from the Gulf? By what means should the international community be willing to

³¹ Koskenniemi, *supra* note 19, at 490.

³² See Dehm, *supra* note 13, at 288–89. Contemporary writings by international lawyers reflect this sense of coming change, with varying degrees of optimism. See, e.g., W. Michael Reisman, *International Law After the Cold War*, 84 AJIL 859 (1990).

³³ CHRISTOPHER MAYNARD, *OUT OF THE SHADOW: GEORGE H. W. BUSH AND THE END OF THE COLD WAR* 302 (2008).

³⁴ ENGEL, *supra* note 21, at 396.

³⁵ Foreign ministers represented every delegation except those of Cuba and Côte d'Ivoire.

³⁶ UNSC, Provisional Verbatim Record of the 2943rd Meeting, UN Doc. S/PV.2943, at 6–7 (Sept. 25, 1990).

³⁷ See generally *id.*

solve the Crisis—were sanctions and an embargo enough, or should war be on the table? What, if anything, did the invasion have to do with other regional issues?³⁸

The foreign ministers' remarks dramatized the international community's divergence on these questions. They show that the unity that so excited the secretary-general was more the product of what could be called an overlapping consensus—and a relatively limited one at that—than an identity of values or a common understanding of what was at stake. Representatives of China, Yemen, Colombia, and Malaysia all voiced their strong views that there could be no military solution to the Crisis and that they understood none of the theretofore passed resolutions to authorize any use of force.³⁹ Chinese Foreign Minister Qian Qichen called military intervention a potential “catastrophe” by which “the new world order, which is a source of hope in the future, would be wrecked at the very outset.”⁴⁰ Luis Fernando Jaramillo Correa of Colombia named oil as the crucial interest in the region and the fundamental source of the Crisis. In response, he reached for a proposal that had most recently been mooted in response to the oil crises of the 1970s, calling for a project of international cooperation to manage oil flows through “a world forum attended by consumers and producers [that] could establish the parameters for dealing with that commodity, which is so vital to international life, peace and security.”⁴¹ Abu Hassan of Malaysia, invoking the Non-Aligned Movement (NAM), warned against a war fought by outside “major Powers,” who would be sure to take the opportunity to establish a “long-term presence” in the region.⁴² He, like several others, also described the need to resolve other crises in the region—especially the Israeli-Palestinian issue—with the same urgency as was being brought to bear on Kuwait, a theme that would recur throughout the fall and winter.⁴³ U.S. Secretary of State James Baker spoke of Iraq's “blatant . . . act of aggression,” warning that “[w]e simply cannot allow our hopes and aspirations to be trampled by a dictator's ambitions or his threats.”⁴⁴ Baker did not specify the particular hopes and aspirations at issue; what mattered was that they were under threat.

“The declaration of a crisis,” as Timothy Mitchell has written, “often marks an attempt to introduce new forces or to identify threats against which decisive action must be taken. It also requires defining the object or assemblage under threat.”⁴⁵ The Gulf Crisis certainly fits this paradigm. Contests over the definition of the Crisis and those over the meaning of international order in a post-Cold War world were always closely linked. None doubted that Iraq had breached a fundamental international norm, and nearly every state adopted the view that the response was ushering in a new era of international cooperation. How the terms of that cooperation would be framed was, however, an open question.

³⁸ Compare Koskenniemi, *supra* note 19, at 479, on the constructive aspects of the debates at the UN, and for a parallel set of questions.

³⁹ UNSC, Provisional Verbatim Record of the 2943rd Meeting, *supra* note 36.

⁴⁰ *Id.* at 14.

⁴¹ *Id.* at 52–53.

⁴² *Id.* at 62.

⁴³ *Id.* at 63–65.

⁴⁴ *Id.* at 27.

⁴⁵ TIMOTHY MITCHELL, *CARBON DEMOCRACY: POLITICAL POWER IN THE AGE OF OIL* 176 (2011); *see also* Koskenniemi, *supra* note 19, at 479.

The conventional way of understanding this competition to define the Gulf Crisis is under the rubric of “linkage.”⁴⁶ In the language of international relations, “issue linkage” refers to “the simultaneous discussion of two or more issues for joint settlement.”⁴⁷ In accounts of the Gulf Crisis, the word usually refers to the effort to draw connections between the invasion of Kuwait and other regional issues, most frequently the questions of Palestine and the longer legacy of Arab-Israeli conflict. “Linkage” has an ambivalent role in the history of the Gulf Crisis, and by 1991, it had become almost a term of derision after months of U.S. militancy against it.⁴⁸

On the one hand, the U.S. task in arguing against a broader view of the Crisis’s stakes was substantially aided by the fact that one version of linkage was Saddam Hussein’s own. Hussein was quick to try to establish a connection between his invasion of Kuwait and the Palestinian question. He issued a statement on August 12 that claimed the two as part of a common struggle against Western imperialism.⁴⁹ Of course, in Hussein’s mouth, the connection was difficult to defend.⁵⁰ It made little sense for him to insist—as others would—that the Security Council punish all lawbreakers equally or enforce all resolutions with equal vigor, for Hussein insisted he had not broken any laws and that the applicable Security Council resolutions were illegitimate.⁵¹ When the United States and the United Kingdom argued that discussing Kuwait in the context of other regional issues amounted to rewarding Iraq’s aggression, their claims drew force from Saddam Hussein’s clear efforts to use linkage as a wedge against the international coalition.

On the other hand, forms of linkage nonetheless became a regular theme in the Crisis, one raised in nearly every Security Council meeting in one way or another—and not only by Iraq’s sympathizers, of whom there were few. In part, linkage recurred because connecting the Gulf conflict to other regional issues was one of the few visible threads on which the diplomacy-minded could pull if they hoped to unravel the Crisis without resorting to war.⁵² More broadly, something like “linkage” seemed an obvious thing to discuss amidst the omnipresent declarations of the moment’s historic importance. The Gulf Crisis clearly raised the question of how a newly functioning Security Council should direct its attention and whether it would enforce with equal vigor its various resolutions, which as was frequently pointed out, included Resolution 242.⁵³

French President François Mitterrand’s September 24 speech to the General Assembly offers an example of this sort of linkage.⁵⁴ Mitterrand’s address reflected a high-minded internationalism with a central place for the United Nations, which he said was “coming into its

⁴⁶ See, e.g., FREEDMAN & KARSH, *supra* note 29, at 166–80.

⁴⁷ Paul Poast, *Does Issue Linkage Work? Evidence from European Alliance Negotiations, 1860 to 1945*, 66 INT’L ORG. 277, 278 (2012).

⁴⁸ See Ibrahim Abu-Lughod, *The Politics of Linkage: The Arab-Israeli Conflict in the Gulf War*, in BEYOND THE STORM: A GULF CRISIS READER 183–90 (Phyllis Bennis & Michel Moushabeck eds., 1991).

⁴⁹ See FREEDMAN & KARSH, *supra* note 29, at 168. On the role of Arab-Israeli conflict in Hussein’s worldview, see Shibley Telhami, *The Arab Dimension of Saddam Hussein’s Calculations: What We Have Learned from Iraqi Records*, in INTO THE DESERT: REFLECTIONS ON THE GULF WAR (Jeffrey Engel ed., 2012).

⁵⁰ However, Hussein’s privately expressed worldview was not much different from his public positions. See Telhami, *supra* note 49, at 150–51.

⁵¹ This paradox is evident in, for example, Iraqi Foreign Minister Tariq Aziz’s remarks during and after his meeting with James Baker on January 9, 1991. FREEDMAN & KARSH, *supra* note 29, at 259.

⁵² *Cf. id.* at 263.

⁵³ SC Res. 242 (Nov. 22, 1967).

⁵⁴ UNGA, Provisional Verbatim Record of the Fourth Meeting, UN Doc. A/45/PV.4, at 31–51 (Sept. 24, 1990).

own as a genuine judge” at “the dawning of the rule of law.”⁵⁵ The remarks sketched the most defensible version of “linkage”: one that connected the international response to the Crisis in Kuwait with other regional conflicts not exactly as a matter of common substance, but rather as a matter of legal coherence.⁵⁶ Saddam Hussein would have it that his war against Kuwait and the legacy of the Arab-Israeli conflict were politically continuous. This position could not really be defended. But for Mitterrand, who was convinced “that [the Gulf Crisis] represented a test case in international law on which depended the entire future of any new world order,” another argument for linkage became possible.⁵⁷ It could not be disputed that the Security Council’s demand that Iraq withdraw from occupied Kuwait was at least formally parallel to the demand that Israel withdraw from its occupied territories pursuant to Resolution 242. As Koskenniemi put it, “Placing the argument in the context of law, there seemed to be no half-way house.”⁵⁸ There was a clear appetite for cooperation on Iraq and Kuwait; could other issues not be brought in, too? Must they be? After all, “[t]he Council could not just apply some law in the Kuwait crisis, leaving the rest unapplied.”⁵⁹

U.S. leaders criticized the French president’s speech as conciliatory, especially where Mitterrand promised that if “Iraq were to affirm its intention to withdraw its troops and free the hostages, everything might become possible.”⁶⁰ James Baker reportedly called it “an appeasement speech.”⁶¹ With hindsight this seems ungenerous. Mitterrand’s address combined an uncompromising concept of collective security under an ascendant international “rule of law” with economic themes that harkened back to the Brandt Commission and the late 1970s dialogues between the European Economic Community and the Global South.⁶² It also clearly reflected an interest in staking out a French, or perhaps European, position in world affairs independent of the United States.⁶³ It was perhaps more to this that the United States reacted than to the speech’s substance. For the substance was not all that appeasing; Mitterrand was quite clear that there could be “no compromise so long as Iraq does not comply with the views of the Security Council and withdraw from Kuwait. That country’s sovereignty is not negotiable, any more than any other’s.”⁶⁴ The resolution of the Kuwait problem still took lexical priority over the extension of UN concern

⁵⁵ *Id.* at 36. See Jolyon Howorth, *François Mitterrand and the “Domaine Réservé”: From Cohabitation to the Gulf War*, 10 *FRENCH POL. & SOC’Y* 43, 52 (1992).

⁵⁶ *Cf.* Poast, *supra* note 47, at 281 (distinguishing “tactical linkage,” which “occurs when the linked issues are in no intellectually coherent way related to one another,” and “substantive linkage,” which results “from the intellectual coherence of issues becoming evident”).

⁵⁷ See Howorth, *supra* note 55, at 52.

⁵⁸ Koskenniemi, *supra* note 19, at 477.

⁵⁹ *Id.*; *cf.* MAJID KHADDURI & EDMUND A. GHAREEB, *WAR IN THE GULF, 1990–91: THE IRAQ-KUWAIT CONFLICT AND ITS IMPLICATIONS* 247 (1997); Abu-Lughod, *supra* note 48, at 186–87.

⁶⁰ UNGA, Provisional Verbatim Record of the Fourth Meeting, *supra* note 54, at 41.

⁶¹ ÉRIC LAURENT & PIERRE SALINGER, *TEMPÊTE DU DÉSERT: LES SECRETS DE LA MAISON BLANCHE* 75 (1991).

⁶² On this European “Global Social Democracy,” see GIULIANO GARAVINI, *AFTER EMPIRES: EUROPEAN INTEGRATION, DECOLONIZATION, AND THE CHALLENGE FROM THE GLOBAL SOUTH 1957–1986*, at 230–40 (Richard R. Nybakken trans., 2012). For another account of Mitterrand’s speech and its reception, compare Howorth, *supra* note 55, at 53.

⁶³ *Cf.* David S. Yost, *Mitterrand and Defense and Security Policy*, 9 *FRENCH POL. & SOC’Y* 141, 150–51 (1991); Pia Christian Wood, *France and the Israeli-Palestinian Conflict: The Mitterrand Policies, 1981–1992*, 47 *MIDDLE EAST J.* 21, 34–35 (1993); Howorth, *supra* note 55, at 52.

⁶⁴ UNGA, Provisional Verbatim Record of the Fourth Meeting, *supra* note 54, at 41.

to an international conference on issues like the occupation of southern Lebanon, the statelessness of the Palestinians, or the security of Israel, although Mitterrand acknowledged that the failure to act on the latter issues “somewhat undercuts the real authority of our recent decisions.”⁶⁵ One of the implicit challenges to the American position was over how seriously to take the moment’s legalism.

Subsequent meetings of the Security Council featured arguments that resembled and extended Mitterrand’s. The world’s interest in the stability of the Middle East and in cooperative enforcement of the basic rules of international law was repeatedly declared. The same strident rhetoric of UN ascendancy in a new world order was deployed by those seeking action on Israel and Palestine in the months of Gulf Crisis. “We can divide the history of the United Nations into two parts—the pre-Gulf Crisis and the post-Gulf Crisis,” said the Yemeni representative on October 12, following a vote on Resolution 672. The resolution was the product of several October meetings of the Security Council that, drawing urgency from the October 8 violence at the Al-Aqsa Mosque, focused solely on Israeli-Palestinian issues.⁶⁶ The Gulf Crisis was, however, always present. “Even as it grapples with the Gulf crisis, however critical, [the Council] cannot ignore the Palestinian issue, which is recognized by all as the core issue in the Middle East,” said Malaysian representative Razali Ismail.⁶⁷ After quoting at length from Mitterrand’s General Assembly address, Libyan Representative Treiki put it most bluntly: “Occupation is occupation, invasion is invasion, aggression is aggression, whether in Panama, Afghanistan, Grenada, Palestine, Lebanon, Libya or Kuwait.”⁶⁸

U.S. officials were not insensitive to the force of legalistic arguments for broader international cooperation in the region. Bush gave his own address to the General Assembly on October 1 in which he intimated that if Iraq complied with UN resolutions, it would make it possible “for Iraq and Kuwait to settle their differences permanently; for the States of the Gulf themselves to build new arrangements for stability; and for all the States and peoples of the region to settle the conflict that divides the Arabs from Israel.”⁶⁹ Bush, too, emphasized the renewed function of the United Nations as a “centre for international collective security,” and compared the Security Council to a “jury of [Iraq’s] peers” by which it had been “fairly judged.”⁷⁰ On December 5, about a week after Resolution 678 authorized “all necessary means” to enforce the prior resolutions, Thomas Pickering suggested that the United States would back an international conference on the Middle East.⁷¹ In November 1991, indeed, the Madrid Conference was held under the joint sponsorship of the United States and the Soviet Union, initiating a process that would lead to the Oslo Accords.

The question for the Bush administration was, thus, not one of aversion to Israeli-Palestinian talks, but of sensitivity to how the boundaries of international cooperation were being drawn.⁷² The implicit view was that the Security Council ought to focus on

⁶⁵ *Id.* at 42–45.

⁶⁶ UNSC, Provisional Verbatim Record of the 2948th Meeting, UN Doc. S/PV.2948, at 32 (Oct. 12, 1990).

⁶⁷ UNSC, Provisional Verbatim Record of the 2946th Meeting, UN Doc. S/PV.2946, at 41 (Oct. 8, 1990).

⁶⁸ *Id.* at 26

⁶⁹ UNGA, Provisional Verbatim Record of the Fourteenth Meeting, UN Doc. A/45/PV.14, at 67 (Oct. 1, 1990).

⁷⁰ *Id.* at 62, 67.

⁷¹ See FREEDMAN & KARSH, *supra* note 29, at 238.

⁷² Cf. Abu-Lughod, *supra* note 48, at 190.

punishing aggression; it was not suitable that everything become a global issue, which entailed a loss of control over policy. But not everyone was so circumspect. Along with the French, it was the Soviets who most strongly pressed political solutions in bilateral discussions with the U.S. officials.⁷³ On October 17, for example, Gorbachev wrote to Secretary of Defense Richard Cheney to urge upon him the broader Soviet view of the assemblage at issue in the Gulf:

[E]verything in the Middle East is tied together in a single tight knot, and one has to see these ties. We discussed it with [President Bush] and we should try to deepen this analysis of interconnections of problems and opportunities, which exist. We are set on acting together with the United States. We are in favor of continuing a firm line, not allowing any cracks in the common position, and at the same time not missing a single opportunity for a political solution.⁷⁴

If, by mid-October, the Soviets had joined many of the former Non-Aligned states in viewing the invasion of Kuwait as bound with other regional crises “in a single tight knot,” the United States was deepening its commitment to a more Gordian solution. Different ideas about what it would mean to vindicate an international “rule of law” were in evidence. The U.S. approach to the Crisis hardened into one that avowed a stiff resistance to any efforts at “linkage,” even at the cost of war, avoiding which was for Gorbachev essential to “establish the role of international law.”⁷⁵ But the basic U.S.-U.S.S.R. dynamic, repeated over the following months, was on display when Bush, warned by Gorbachev that peace would not succeed if Saddam Hussein was “backed into a corner,” simply responded: “If we had offered Hitler some way out, would it have succeeded?”⁷⁶

C. *Old New World Orders*

Here, in 1990, was Adolf Hitler, discussed by a United States and a U.S.S.R. cooperating over what to do about him. (Bush’s *we* is best read literally.) The exchange speaks to the fact that, for a moment rich in “inaugural gestures,”⁷⁷ the Gulf Crisis was thoroughly Janus-faced. Part of the reason President Bush’s “new world order” was “new” was, paradoxically, because it would feature a “United Nations that performs as envisioned by its founders.”⁷⁸ 1990 was repeatedly linked with 1945, in a movement that has since been taken up into conventional wisdom, especially in the domain of international law. Matthew Craven, Sundhya Pahuja, and Gerry Simpson have persuasively challenged this “historiography of hiatus,” one

⁷³ See Bush-Gorbachev Memcon, Helsinki, Sept. 9, 1990, Nat’l Sec. Archive, at <https://nsarchive.gwu.edu/document/24317-bush-gorbachev-memcon-helsinki-september-9-1990>.

⁷⁴ Gorbachev Memcon with U.S. Secretary of Defense Dick Cheney, Moscow, Oct. 17, 1990, Nat’l Sec. Archive, at <https://nsarchive.gwu.edu/document/24321-gorbachev-memcon-u-s-secretary-defense-dick-cheney-moscow-october-17-1990>.

⁷⁵ See GEORGE H. W. BUSH & BRENT SCOWCROFT, *A WORLD TRANSFORMED* 362, 366 (1999); FREEDMAN & KARSH, *supra* note 29, at 166.

⁷⁶ BUSH & SCOWCROFT, *supra* note 75, at 366.

⁷⁷ Matthew Craven, Sundhya Pahuja & Gerry Simpson, *Reading and Unreading the Historiography of Hiatus*, in *INTERNATIONAL LAW AND THE COLD WAR*, *supra* note 13.

⁷⁸ President Bush Address Before a Joint Session of the Congress on the Persian Gulf and the Federal Budget Deficit, *supra* note 23.

which “retrospectively cast[] ‘the Cold War’ as a period of legal stasis . . . between two highpoints of legal utopianism.”⁷⁹

To be sure, a certain kind of stasis is undeniable. In the forty-five-year history of the Security Council, a period that had witnessed dozens of interstate wars (to say nothing of other forms of violence), the body had authorized military action under Chapter VII twice and binding non-military sanctions twice again.⁸⁰ Not really since the Council backed U.S. action in the Korean peninsula in 1950—enabled by the Soviet Union’s temporary withdrawal—had it been able to act with such decisiveness.⁸¹ Some form of renewal, following some form of hiatus, must be allowed for. Both were part of the historical imagination of the Crisis’s participants, and they were given voice not only by the Global North.⁸²

But, reading the records of the Gulf Crisis, one finds another history is necessary to grasping it, and it belies the caricature of a half-century without international law, even in the less exaggerated form that would limit the hiatus narrative to the security sphere. For the competing interpretations of the Crisis, and the competing ideas about how to respond, were rooted as much in the 1960s and 1970s and their post-colonial struggles as in 1945 and its post-war institution-building. The debates at the September 25 Security Council meeting, for example, demand this context: Colombia’s call for an international forum to manage oil markets; Malaysia’s invocation of the NAM; the links between Gulf politics, oil power, and Israel; Mitterrand’s gestures at the European internationalism of the Brandt Commission. All of these were bound up with decolonization, the crises of the 1970s, and the struggles of the Global South toward reform of international law and the post-war international order.

International society had undergone a profound structural transformation following decolonization. The absolute number of states in the world increased from fifty-one in 1945 to 144 in 1975, at which time more than two-thirds of the world’s population lived in these “newly independent states.”⁸³ A veto-bound Security Council enhanced the importance of the General Assembly, which took on what Georges Abi-Saab has called a “collective legitimation” function, that of the “oracle” of international society’s views.⁸⁴ Tectonic shifts in the global economy and concerted efforts to challenge the *idées reçues* of international law made a fighting matter out of the basic principles of the post-war order. For the political organs of the Global South like the Group of 77 (G77) and the NAM, these projects of what Adom Getachew has called “worldmaking” aimed at—to borrow from Resolution 1514—ending “colonialism in all its forms and manifestations.”⁸⁵ They continued much

⁷⁹ Craven, Pahuja & Simpson, *supra* note 77, at 2.

⁸⁰ See *Introduction*, in *THE UN SECURITY COUNCIL IN THE TWENTY-FIRST CENTURY* (Sebastian von Einsiedel, David M. Malone & Bruno Stagno Ugarte eds., 2016). The Chapter VII actions were in Korea and in the Congo, the sanctions against Southern Rhodesia and South Africa. There were sixteen military observer/peacekeeping missions in the same period. See *id.*

⁸¹ See MAZOWER, *NO ENCHANTED PALACE*, *supra* note 28, at 99–100. The text of Resolution 678 was based on Resolution 83 on Korea. See Williamson, *supra* note 21, at 380.

⁸² See Section III.B *supra*.

⁸³ Jochen von Bernstorff & Philipp Dann, *The Battle for International Law: An Introduction*, in *THE BATTLE FOR INTERNATIONAL LAW*, *supra* note 5.

⁸⁴ Abi-Saab, *supra* note 30, at 259–60.

⁸⁵ See generally GETACHEW, *supra* note 6. The “all its forms” language is from GA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples (Dec. 12, 1960). The literature on these movements is rich and growing. On anti-colonial internationalism and international law, see, for example, Cindy Ewing, “With a Minimum of Bitterness”: *Decolonization, the Right to Self-Determination, and the Arab-Asian Group*, 17

longer struggles for decolonization, albeit on a new terrain. If there was a felt openness in international affairs in 1990—a chance to set the terms of a new world order—its most recent predecessor had been the 1970s, another, albeit quite different, moment of superpower détente.

The world order sketched by U.S. policymakers in the Gulf Crisis was thoroughly shaped by that history, both directly and indirectly.⁸⁶ Under President Ronald Reagan, the 1980s had been what Thomas Hughes, then president of the Carnegie Endowment, called a “twilight of internationalism.”⁸⁷ Within the Reagan administration, a more hawkish, neo-conservative foreign policy elite had been in the ascendant, in part in a reaction against the Nixon-Kissinger years’ policy of détente. Historians have recently begun to argue that the rise of this Reaganite foreign policy was also driven by the domestic reception of the international anti-Americanism of the 1970s, and the perceived failings of Henry Kissinger’s North-South policies.⁸⁸ The Reagan years’ disengagement was most obvious in the United Nations and associated institutions, where the sense of a United States “in opposition” had been strongest.⁸⁹ During the 1980s the United States had, for example, denounced its commitment to general compulsory jurisdiction at the International Court of Justice, withdrawn from the UN Educational, Scientific and Cultural Organization, withdrawn funding from various UN institutions, and rejected the UN Convention on the Law of the Sea (UNCLOS) treaty; elsewhere it refused to sign the 1977 Geneva Convention Protocols and intervened

J. GLOB. HIST. 254 (2022); Cindy Ewing, *The “Fate of Minorities” in the Early Afro-Asian Struggle for Decolonization*, 41 COMP. STUDS. S. ASIA, AFRICA & MIDDLE EAST 340 (2021); CHRISTY THORNTON, *REVOLUTION IN DEVELOPMENT: MEXICO AND THE GOVERNANCE OF THE GLOBAL ECONOMY* (2021); GETACHEW, *supra* note 6; Moyn, *supra* note 12; THE UN FRIENDLY RELATIONS DECLARATION AT 50: AN ASSESSMENT OF THE FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW (Jorge E. Viñuales ed., 2020); THE BATTLE FOR INTERNATIONAL LAW, *supra* note 5; BANDUNG, GLOBAL HISTORY, AND INTERNATIONAL LAW: CRITICAL PASTS AND PENDING FUTURES (Luis Eslava, Michael Fakhri & Vasuki Nesiha eds., 2017); VIJAY PRASHAD, *THE POORER NATIONS: A POSSIBLE HISTORY OF THE GLOBAL SOUTH* (2013); GARAVINI, *supra* note 62; ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW* (2005). On the importance of attending to the anti-colonial internationalisms of the interwar period, see Manu Goswami, *Imaginary Futures and Colonial Internationalisms*, 117 AM. HIST. REV. 1461 (2012). There are also rich literatures in languages other than English. In Spanish see, for example, W. Fernández Luzuriaga & H. Olmedo González, *La conferencia de Bandung en 1966. Síntoma y respuesta al sistema internacional de la guerra fría*, 10 CRÍTICA CONTEMPORÁNEA: REVISTA DE TEORÍA POLÍTICA 7 (2021); N. Molina Medina, *Asia y la Conferencia de Bandung*, 10 HUMANIA DEL SUR: REVISTA DE ESTUDIOS LATINOAMERICANOS, AFRICANOS Y ASIÁTICOS 43 (2015); J. Delgado Caicedo & A. Sáenz Peñas, *Un recuerdo incierto: Bandung ante la nueva arquitectura de la Cooperación Sur-Sur en África*, 10 HUMANIA DEL SUR: REVISTA DE ESTUDIOS LATINOAMERICANOS, AFRICANOS Y ASIÁTICOS 69 (2015).

⁸⁶ Compare Christy Thornton, who argues that “U.S. hegemony—rather than being ‘built from the top down’—has in fact been shaped by iterative, repeated struggle from subordinate states, *themselves* shaped by internal social struggles over property, access and representation.” THORNTON, *supra* note 85, at 7. See also, vitally, the work of Amitav Acharya. *E.g.*, Amitav Acharya, *Who Are the Norm Makers? The Asian-African Conference in Bandung and the Evolution of Norms*, 20 GLOB. GOVERNANCE 405 (2014).

⁸⁷ See MARK MAZOWER, *GOVERNING THE WORLD: THE HISTORY OF AN IDEA, 1815 TO THE PRESENT* 331–32 (2012) [hereinafter MAZOWER, *GOVERNING THE WORLD*]; STEVEN C. NEFF, *JUSTICE AMONG NATIONS: A HISTORY OF INTERNATIONAL LAW* 409–10 (2014) (describing the “Reagan Doctrine” regarding foreign intervention).

⁸⁸ See SEAN T. BYRNES, *DISUNITED NATIONS: US FOREIGN POLICY, ANTI-AMERICANISM, AND THE RISE OF THE NEW RIGHT* (2021); Michael Franczak, *Losing the Battle, Winning the War: Neoconservatives Versus the New International Economic Order, 1974–82*, 43 DIPLOMATIC HIST. 867 (2019).

⁸⁹ See BYRNES, *supra* note 88, at 6–11; see also MAZOWER, *GOVERNING THE WORLD*, *supra* note 87, at 317. We owe the phrase to Daniel Patrick Moynihan, *The United States in Opposition*, COMMENTARY (Mar. 1975).

unilaterally in, for example, Grenada and Nicaragua.⁹⁰ Now, in 1989, Bush had brought in a foreign policy team whose intellectual lineage—located more in Kissinger’s realism than in neoconservatism—had last been in power in the 1970s.⁹¹ The change was striking. That Reagan’s former vice president was now speaking in high tones about world order under law, addressing the General Assembly, and putting the Security Council near the heart of his foreign policy was a serious departure. But it was, at the same time, a return to a discursive terrain of cooperation under international law, one whose terms had been transformed in the 1970s.⁹²

IV. CARBON SECURITY: INTERDEPENDENCE WITHOUT COOPERATION

The Gulf Crisis posed a question about oil and interdependence, and the new world order offered an answer. In this respect, it was continuous with a history in which threatened energy flows had demonstrated both the necessity of international action and the necessity of order—of world order—to make cooperation, or at least consent, out of common interest. In that history, oil politics and the idea of interdependence often went together. The latter did not require the former: the discourse of international law, at least since the nineteenth-century founders of the *Institut de droit international*, had pointed to an increasing “interdependence” of nations to explain what social facts made the “international” a useful level of analysis and site of organization.⁹³ But, particularly after decolonization, the world’s mutual dependence on oil became a powerful worldmaking device. Oil could both demonstrate concretely the interdependence of states and, at the same time, compel compliance with a particular vision of interdependence’s moral, legal, and institutional implications.

This would be so in the Gulf Crisis, from which emerged an American vision of interdependence’s implications. But that vision emerged against an earlier one. It did so, first, at the conceptual level, where it transformed the idea of an interdependent world from one that implied cooperation in the name of global welfare to one that implied only a common vulnerability to global shocks. Second, while that conceptual transformation was effected in the Gulf Crisis, the U.S. use of interdependence was plausible, and rhetorically successful, in large part because of the international economic order that had emerged from the failures of, and reaction against, the “oil weapon” and the New International Economic Order.

⁹⁰ See Burns H. Weston, *The Reagan Administration Versus International Law*, 19 CASE W. RES. J. INT’L L. 295, 296–97 (1987); NEFF, *supra* note 87, at 409–10.

⁹¹ See JAMES MANN, *RISE OF THE VULCANS: THE HISTORY OF BUSH’S WAR CABINET 168–72* (2004).

⁹² For historical accounts that touch on the effects of anti-colonial legal activism on U.S. foreign relations and its approach to international institutions, see, for example, BYRNES, *supra* note 88; THORNTON, *supra* note 85; SAMUEL MOYN, *NOT ENOUGH: HUMAN RIGHTS IN AN UNEQUAL WORLD* (2018) [hereinafter MOYN, *NOT ENOUGH*]; DANIEL J. SARGENT, *A SUPERPOWER TRANSFORMED: THE REMAKING OF AMERICAN FOREIGN RELATIONS IN THE 1970s* (2015); Debbie Sharnak, *Sovereignty and Human Rights: Re-examining Carter’s Foreign Policy Towards the Third World*, 25 DIPLOMACY & STATECRAFT 303 (2014); Bradley R. Simpson, *Self-Determination, Human Rights, and the End of Empire in the 1970s*, 4 HUMANITY 239 (2013) [hereinafter Simpson, *Human Rights*]; Bradley R. Simpson, *The United States and the Curious History of Self-Determination*, 36 DIPLOMATIC HIST. 675 (2012) [hereinafter Simpson, *United States*]; MAZOWER, *GOVERNING THE WORLD*, *supra* note 87.

⁹³ MARTTI KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870–1960*, at 96 (2001) [hereinafter KOSKENNIEMI, *GENTLE CIVILIZER*]. In fact the international lawyer Francis Lieber claimed to have coined the word. *Id.*

A. *The Old New World Order: Interdependence, the Oil Weapon, and the NIEO*

The mid-1970s witnessed what was, for then-Secretary of State Henry Kissinger, “a turning point in the history of the Western world.”⁹⁴ The occasion was the “first oil shock” of 1973–74, precipitated by the Organization of Petroleum Exporting Countries’ (OPEC) deployment of what was called the “oil weapon.” OPEC’s move came at a sensitive moment for U.S. policymakers in the 1970s, who over the preceding years had witnessed a wave of oil industry nationalizations by producer countries, as well as tightening markets that had brought the days of American oil surpluses to an end.⁹⁵ Kissinger called it the end of an “economy that treated cheap oil as natural and excess production capacity as the main economic problem.”⁹⁶

The first oil shock resulted from what were in fact two separate policies undertaken by the Arab-majority states in OPEC: a direct embargo imposed on oil sales to the United States and the Netherlands and a series of graduated production cuts that, it was announced, would continue until OPEC’s demands—namely, the implementation of Security Council Resolution 242—were met. Privately, OPEC hoped more generally to punish the United States for its decision to airlift supplies to Israel during the Yom Kippur War, an action which represented a new level of overt U.S. military support for Israel.⁹⁷ By the end of 1973, the price of Persian Gulf oil had quadrupled.⁹⁸

For the United States, the psychic effects of the “oil weapon” were just as profound as its economic effects. OPEC’s move came at what was perhaps the nadir of U.S. actual and symbolic power in the world in the early- to mid-1970s.⁹⁹ The most obvious and immediate message the price hikes sent was of the regional unity of the Arab world, where they fueled an ascendant secular Arab nationalism.¹⁰⁰ But the oil weapon also had global consequences. Despite the much more damaging effects of the high prices on the poorer economies of the Global South, Southern solidarity generally hung together.¹⁰¹ The portent of what Helmut Schmidt called an “unholy alliance” of OPEC and non-oil-producing states in the Global South vexed Western leaders.¹⁰²

Worse than this show of unity was that the “oil weapon” threatened to inspire like action among other groups of commodity-producing states.¹⁰³ “Traditionally considered a weapon

⁹⁴ BYRNES, *supra* note 88, at 93; cf. Daniel J. Sargent, *The United States and Globalization in the 1970s*, in *THE SHOCK OF THE GLOBAL: THE 1970S IN PERSPECTIVE* (Niall Ferguson, Charles S. Maier, Erez Manela & Daniel J. Sargent eds., 2010) (arguing that the oil shock was a turning point in the history of U.S. foreign policy).

⁹⁵ On structural changes in the international oil market that set the stage for OPEC’s actions, see David S. Painter, *International Oil and National Security*, 120 *DAEDALUS* 183, 189–91 (1991) [hereinafter Painter, *National Security*]; GARAVINI, *supra* note 62, at 167.

⁹⁶ BYRNES, *supra* note 88, at 87.

⁹⁷ Rüdiger Graf, *Making Use of the “Oil Weapon”: Western Industrialized Countries and Arab Petropolitics in 1973–1974*, 36 *DIPLOMATIC HIST.* 185, 208 (2012).

⁹⁸ CHRISTOPHER R. W. DIETRICH, *OIL REVOLUTION: ANTICOLONIAL ELITES, SOVEREIGN RIGHTS, AND THE ECONOMIC CULTURE OF DECOLONIZATION* 2 (2017).

⁹⁹ See BYRNES, *supra* note 88, at 87.

¹⁰⁰ See Graf, *supra* note 97, at 207. The unity was, however, not without exceptions. Within OPEC, Iraq had sought a more radical move against the United States; when its policy lost, it cheated on the agreed production cuts. See DANIEL YERGIN, *THE PRIZE: THE EPIC QUEST FOR OIL, MONEY & POWER* 614 (1991). Non-Arab OPEC states did not join the embargo or cut production. Painter, *National Security*, *supra* note 95, at 189–90.

¹⁰¹ See GARAVINI, *supra* note 62, at 181.

¹⁰² See BYRNES, *supra* note 88, at 78.

¹⁰³ See *id.* at 87; Christopher R. W. Dietrich, *Oil Power and Economic Theologies*, 40 *DIPLOMATIC HIST.* 500, 507 (2016).

of the strong,” as Rüdiger Graf writes, “the embargo challenged conventional notions about the global distribution of economic power at a time of worldwide economic upheavals.”¹⁰⁴ Kissinger had put the lesson in characteristic terms: “We are now living in a never-never land in which tiny, poor, and weak nations can hold up for ransom some of the industrialized world.”¹⁰⁵ “It is ridiculous,” he later added, “that the civilized world is held up by eight million savages.”¹⁰⁶ A sublimated version of this sentiment could be found in the pages of *Foreign Policy*, which ran an influential article by the economist C. Fred Bergsten entitled “The Threat from the Third World,” in which the author worried over the possibility of broader raw-material embargoes or coordinated price hikes among other commodity cartels.¹⁰⁷ The fear was not unreasonable, as many other commodity prices had exhibited a “spectacular rebound” in the early 1970s.¹⁰⁸ Bergsten’s article spawned sustained debate, including significant Congressional attention and a follow-up symposium in the same magazine entitled “One, Two, Many OPECs?”¹⁰⁹

Neither the oil shock nor even the broad threat of weaponized commodity flows, however, can by themselves explain the sense of arrival in “never-never land.” Instead, their significance depended on the normative challenges from the Global South to which they were linked. What was called an “oil shock” in the Global North was more often called an “oil revolution” by the producer states.¹¹⁰ At least since the delegates of twenty-nine African and Asian states had met at the Bandung Conference in 1955, coalitions of states in the Global South had been pressing projects of global reordering.¹¹¹ These projects arguably saw their culmination during the period of oil crisis, which momentarily shifted the international balance of power in their favor. The “oil weapon” was thus linked with the Global South’s demands for a “New International Economic Order” (NIEO) that would revise the rules of the global economy, redistribute resources to the “less-developed countries,” and concentrate more power over global economic governance in the United Nations. A 1973 Nixon administration memorandum made the connection clearly: “following the success of OPEC in utilizing oil as an economic and political weapon to promote their foreign policy interests the developing nations . . . initiated efforts to the employ the United Nations General Assembly and its subsidiary bodies . . . to press for redistribution of economic wealth and to seek special trade benefits and increased financial flows.”¹¹² The Global South’s efforts to reorder the world had grown teeth.¹¹³

¹⁰⁴ See Graf, *supra* note 97, at 208; see also MAZOWER, *GOVERNING THE WORLD*, *supra* note 87, at 303.

¹⁰⁵ Sargent, *supra* note 94, at 49.

¹⁰⁶ SARGENT, *supra* note 92, at 153.

¹⁰⁷ See C. Fred Bergsten, *The Threat from the Third World*, 11 FOR. POL’Y 102 (1973).

¹⁰⁸ GARAVINI, *supra* note 62, at 169.

¹⁰⁹ See, e.g., 119 Cong. Rec. 294 (May 14, 1973); 120 Cong. Rec. 17002–04 (May 30, 1974) (Senator Percy); 120 Cong. Rec. 527–28 (Jan. 23, 1974) (Senator Metcalf, article read into Senate record as part of debate over Deep Seabed Hard Minerals Act); *One, Two, Many OPECs?*, 14 FOR. POL’Y 56 (1974).

¹¹⁰ DIETRICH, *supra* note 98, at 3.

¹¹¹ For a reflection on Bandung and international law, see Luis Eslava, Michael Fakhri & Vasuki Nesiah, *The Spirit of Bandung*, in *BANDUNG, GLOBAL HISTORY, AND INTERNATIONAL LAW*, *supra* note 85, at 3. On Bandung’s immediate precursors, see the work of Cindy Ewing, *supra* note 85.

¹¹² Quoted in BYRNES, *supra* note 88, at 87.

¹¹³ See GARAVINI, *supra* note 62, at 162–200; BYRNES, *supra* note 88, at 87; Jennifer Bair, *Taking Aim at the New International Economic Order*, in *THE ROAD FROM MONT PÉLERIN: THE MAKING OF THE NEOLIBERAL THOUGHT*

The preamble to the Declaration on the Establishment of a New International Economic Order, issued by the Sixth Special Session of the UN General Assembly on May 1, 1974, enshrined the importance of “interdependence,” along with “equity, sovereign equality, . . . common interest and cooperation among all States” as the basic pillars of its new world order.¹¹⁴ So, too, did the subsequent Charter on the Economic Rights and Duties of States (CERD) (adopted at the regular session of the general assembly following the Sixth Special Session), a parallel document whose history is entwined with that of the NIEO.¹¹⁵ For the G77 and the NAM, “interdependence” necessarily implied a “common commitment to build the New International Economic Order.”¹¹⁶ There was a project of state-centric egalitarianism, based on global cooperation by equal sovereigns, structured by representative international institutions and a reformed international law.¹¹⁷ The NIEO’s world was one of interdependent states, but, drawing on the tradition of dependency theory, the NIEO program took this interdependence to be characterized by a structural inequality that persisted from the days of formal empire—a matter of “unequal integration” into the political economic order.¹¹⁸ In combination with a general commitment to state-led economic development, this worldview implied the need to complete decolonization not through withdrawal from, but equal integration into, the world’s political-economic architecture.¹¹⁹

Adom Getachew has, thus, interpreted the basic vision of the NIEO as an effort to achieve a “welfare world” that would implement, on the global scale, the political principle of nondomination.¹²⁰ The institutional proposals codified in its core documents, which included commodity price stabilization, a preferential tariff system, and technology transfer policies, aimed, on Getachew’s reading, to “finally overcome the economic dependencies that threatened to undermine postcolonial self-government.”¹²¹ These policies were, to be sure, largely continuous with those urged by the G77 for years.¹²² What was new was the global economic context and the room for political maneuver that this afforded the G77 and the NAM. It mattered, too, that the Global South’s general demands had their sympathizers in the West, from socialist parties in Europe to liberals in the United States.¹²³ In 1976, following the Seventh Special Session of the General Assembly, Branislav Gosovic and

COLLECTIVE 350–51 (Philip Mirowski & Dieter Plehwe eds., 2009) [hereinafter Bair, *Taking Aim*]; Peter Marshall, *Whatever Happened to the NIEO?*, 83 *THE ROUND TABLE* 331, 333 (1994).

¹¹⁴ GA Res. 3201, Declaration on the Establishment of a New International Economic Order (May 1, 1974).

¹¹⁵ GA Res. 3281, Charter on the Economic Rights and Duties of States (Dec. 12, 1974). On CERD, whose history lies more in Mexico than in the NAM, see THORNTON, *supra* note 85, at 166–89.

¹¹⁶ MOYN, NOT ENOUGH, *supra* note 92, at 156.

¹¹⁷ See Bair, *Taking Aim*, *supra* note 113, at 347–52; GETACHEW, *supra* note 6, at 142–75; THORNTON, *supra* note 85, at 166–89; BYRNES, *supra* note 88, at 8594. For a contemporaneous view on the entanglement with oil politics, see Branislav Gosovic & John Gerard Ruggie, *On the Creation of a New International Economic Order: Issue Linkage and the Seventh Special Session of the UN General Assembly*, 30 *INT’L ORG.* 309, 310 (1976).

¹¹⁸ GETACHEW, *supra* note 6, at 157; see Bair, *Taking Aim*, *supra* note 113, at 352; GARAVINI, *supra* note 62, at 26.

¹¹⁹ See GETACHEW, *supra* note 6, at 157–58.

¹²⁰ See *id.* at 142–75; see also Bair, *Taking Aim*, *supra* note 113, at 347–52.

¹²¹ GETACHEW, *supra* note 6, at 144. Sara Lorenzini describes the NIEO as a result of the failure of the existing modernization paradigm, which had failed to deliver the promised benefits to Southern states. See SARA LORENZINI, *GLOBAL DEVELOPMENT: A COLD WAR HISTORY* 6 (2019).

¹²² Bair, *Taking Aim*, *supra* note 113, at 351.

¹²³ See QUINN SLOBODIAN, *GLOBALISTS: THE END OF EMPIRE AND THE BIRTH OF NEOLIBERALISM* 221 (2018).

John Ruggie could write that “[c]ritical scrutiny of the structure of the international economy has been legitimized, and the issue now has become *how* not *whether* to deal with certain Third World demands.”¹²⁴

If tight commodity markets, OPEC activism, and solidarity among states in the Global South made the NIEO a political force, it was anti-colonial legalism that gave form to its claims.¹²⁵ The NIEO program drew from the principle of formal sovereign equality, paired with an expansive conception of the right of self-determination, a claim about the material basis for the substantive independence of states. The prior decade’s projects of anti-colonial international law—among others Resolution 1514, the canonization of the right of self-determination in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and the Declaration on Friendly Relations—were drawn from and extended.¹²⁶ So too was the emergent, if controversial, status of the General Assembly as a site of international lawmaking authority.¹²⁷ The NIEO Declaration described the Assembly as “a universal organization [that] should be capable of dealing with problems of international co-operation in a comprehensive manner and ensuring equally the interests of all countries.”¹²⁸ For these reasons, the Declaration stated that the Assembly “must have an even greater role in the establishment of a new international economic order.”¹²⁹ This institutional challenge alone was a radical one, directed as it was at something more like majoritarian international economic governance. What Christy Thornton identifies as the twin goals of representation and redistribution went hand in hand.¹³⁰

B. *The United States in Opposition*

Western intellectuals and policymakers learned to love the word “interdependence” at this moment, too.¹³¹ The oil shock was largely responsible for making its meaning concrete. For U.S. policymakers, as Daniel Sargent has shown, 1973–74 came to stand for a sea change in international affairs, after which the old logic of geopolitics would have to make room for the more complex logic of a world characterized by interdependence.¹³² The economic processes

¹²⁴ See Gosovic & Ruggie, *supra* note 117, at 342.

¹²⁵ See Moyn, *supra* note 12, at 125; THORNTON, *supra* note 85, at 178; Daniel J. Whelan, “*Under the Aegis of Man: The Right to Development and the Origins of the New International Economic Order*,” 6 HUMANITY 93 (2015).

¹²⁶ For a synthesis of the projects of anti-colonial legalism generally, see Moyn, *supra* note 12. For some specific documents, see GA Res. 1514, *supra* note 85; International Covenant for Civil and Political Rights, Art. 1, Dec. 16, 1966, 999 UNTS 171; International Covenant on Economic, Social, and Cultural Rights, Art. 1, Dec. 16, 1966, 993 UNTS 3; GA Res. 2625, Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (Oct. 24, 1970).

¹²⁷ On the contested lawmaking function of the United Nations’ “political organs,” see generally ROSALYN HIGGINS, THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS (1963); Michel Virally, *Droit international et décolonisation devant les Nations Unies*, 9 ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL 508, 533–37 (1963).

¹²⁸ GA Res. 3201, *supra* note 114; see also GA Res. 3202, Programme of Action on the Establishment of a New International Economic Order (May 1, 1974); see also BYRNES, *supra* note 88, at 89.

¹²⁹ *Id.*

¹³⁰ THORNTON, *supra* note 85, at 1. Thornton is describing the “Mexican vision of global economic governance,” but the characterization can fairly be applied more broadly.

¹³¹ See, e.g., KATRINA FORRESTER, IN THE SHADOW OF JUSTICE: POSTWAR LIBERALISM AND THE REMAKING OF POLITICAL PHILOSOPHY 145 (2019); MOYN, NOT ENOUGH, *supra* note 98, at 142.

¹³² See SARGENT, *supra* note 92, at 150, 157, 167–75.

that by the 1990s would more frequently be called “globalization” were well underway, with the transnational integration of markets through massive increases in the volume of world trade and foreign investment leading some to inaugurate the (still practiced) ritual of proclaiming the death of the nation-state.¹³³

European governments also learned the lesson of interdependence, although the social democratic parties largely in power had different ideas about how to respond to the Global South’s demands.¹³⁴ It was, in fact, a French initiative (however under a Gaullist government) for a UN conference on energy that Houari Boumédiène of Algeria, then chairman of the NAM and a member of OPEC, managed to parlay into the Sixth Special Session of the General Assembly on the much broader theme of “raw materials and development.”¹³⁵ The NIEO Declaration and its Program of Action emerged from this meeting. A split developed between the United States and a Europe more willing to entertain North-South dialogue and, indeed, the general need for a restructuring of the international economy.¹³⁶ The power implications of the unilateral U.S. move to upend the global monetary system in 1971 had not been lost on Europe. The European Economic Community held North-South talks on commodities throughout the decade, and initiatives like the Brandt Commission explored alternative arrangements for global economic governance under the sign of “global social democracy.”¹³⁷ Briefly there arose the specter of a social-democratic Europe with an independent foreign policy linked to a more conciliatory relationship with the South.¹³⁸

The United States approached the issue of interdependence, as raised in the energy crisis and by the NIEO, in its own way. Kissinger embraced the term, delivering an address on the subject to the General Assembly in September 1974, in which he sought to placate some of the simmering discontent with offers of aid. The strategy was intended, as Samuel Moyn writes, “to contain and divide the third world movement, pioneering the enduring American strategy of responding to a call for equality with a gesture toward subsistence.”¹³⁹ The move nevertheless acknowledged (albeit from a posture of *realpolitik*) that interdependence gave rise to some form of mutual responsibility—a validation of some of the basic ethical claims of the NIEO, if not of the policy implications the G77 drew from them. The acknowledgement derived in part from the sense, made vivid in the oil shock, that the perils of “dependency” could sometimes be made to run the other way.

But Kissinger’s strategy of dividing the Global South by selectively engaging with it was not without its critics. For some, like Daniel Patrick Moynihan—soon to undertake a brief stint as U.S. Ambassador to the United Nations under President Ford—it looked too much like an

¹³³ See *id.* at 5–7. On global financial integration following the disintegration of the Bretton Woods system, see RAWI ABDELAL, *CAPITAL RULES: THE CONSTRUCTION OF GLOBAL FINANCE* (2007).

¹³⁴ See GARAVINI, *supra* note 62, at 169, 219–22; MAZOWER, *GOVERNING THE WORLD*, *supra* note 87, at 312.

¹³⁵ See Gosovic & Ruggie, *supra* note 117, at 317; Giuliano Garavini, *Completing Decolonization: The 1973 “Oil Shock” and the Struggle for Economic Rights*, 33 *INT’L HIST. REV.* 473, 474 (2011).

¹³⁶ See GARAVINI, *supra* note 62, at 216.

¹³⁷ See *id.* at 220–22, 230–40; Umut Özsu, *Neoliberalism and Human Rights: The Brandt Commission and the Struggle for a New World*, 81 *L. & CONTEMP. PROBS.* 139, 147–56 (2018). See also the first report of the Brandt Commission, *THE INDEPENDENT COMMISSION ON INTERNATIONAL DEVELOPMENT ISSUES, NORTH–SOUTH: A PROGRAM FOR SURVIVAL* (1980).

¹³⁸ See *id.* at 216, 237–38.

¹³⁹ MOYN, *NOT ENOUGH*, *supra* note 92, at 142.

unprincipled appeasement.¹⁴⁰ Moynihan credited the basic factual premises of interdependence, but he called for opposition to the “tyranny of the UN’s ‘new majority’” on the grounds that interdependence gave rise to no redistributive obligations on the part of any other states.¹⁴¹ On the contrary, if there were obligations, they ran in the opposite direction, since it was the United States and Europe that had given the world the gift of interdependence. Unsatisfactory economic conditions in the Global South were “of their own making and no one else’s, and no claim on anyone else arises in consequence.”¹⁴² An emergent neo-conservative movement, reacting in significant part to the NIEO, began to advocate a more muscular posture of opposition.¹⁴³ The views of Jeane Kirkpatrick, a political scientist who would later become Reagan’s UN ambassador, were characteristic. It was time, she wrote, to recognize that “a posture of continuous self-abasement and apology *vis-à-vis* the Third World is neither morally necessary nor politically appropriate. . . . It is not even necessary or appropriate for our leaders to forswear unilaterally the use of military force to counter military force.”¹⁴⁴ Linked with a Manichaeic recommitment to Cold War confrontation, this logic would contribute to the U.S. turn to unilateralism in the 1980s.¹⁴⁵

In the end, a new international economic order was ushered in, but it was not the New International Economic Order.¹⁴⁶ In several ways the oil shock and the NIEO ultimately called forth the destruction of the dream of a “welfare world.” High oil prices contributed to a fourfold increase in debt borne by non-producer nations in the Global South between 1973 and 1976, a number that would quadruple again by the end of the decade.¹⁴⁷ The United States neutralized efforts to construct a UN Relief Fund and a special International Monetary Fund (IMF) lending facility to support oil-importing states with low-interest loans.¹⁴⁸ William Simon, secretary of the Treasury beginning in May 1974, argued that such efforts would legitimize OPEC’s price increases.¹⁴⁹ Instead, the remaining U.S. capital controls were lifted, with the result that private lenders in Wall Street and the City of London, flooded with petrodollars from the oil producers, picked up the slack by lending to the debtor states of the Global South.¹⁵⁰ The clear shape of the post-Bretton Woods international economy came into view in the wake of the Federal Reserve’s decision to raise interest rates to 20 percent in 1979, which triggered crises throughout the Global South. Here was the other side of interdependence.

In the ensuing years the General Assembly and UN Conference on Trade and Development weakened, and the solidarity that had characterized the NIEO moment was

¹⁴⁰ A separate line of critique came from neoliberals in the Ford administration who decried Kissinger’s refusal to stand up for the virtues of the market. See Dietrich, *supra* note 103, at 512–21.

¹⁴¹ See Moynihan, *supra* note 89.

¹⁴² *Id.*; see also GETACHEW, *supra* note 6, at 177; MAZOWER, *GOVERNING THE WORLD*, *supra* note 87, at 309–10.

¹⁴³ See Franczak, *supra* note 88; ODD ARNE WESTAD, *THE GLOBAL COLD WAR: THIRD WORLD INTERVENTIONS AND THE MAKING OF OUR TIMES* 357–58 (2007).

¹⁴⁴ Jeane J. Kirkpatrick, *Dictatorships & Double Standards*, COMMENTARY (Nov. 1979).

¹⁴⁵ See GARAVINI, *supra* note 62, at 202.

¹⁴⁶ See Bair, *Taking Aim*, *supra* note 113; MAZOWER, *GOVERNING THE WORLD*, *supra* note 87, at 343–77.

¹⁴⁷ GARAVINI, *supra* note 62, at 222.

¹⁴⁸ See Dietrich, *supra* note 103, at 516–17.

¹⁴⁹ See *id.*

¹⁵⁰ GARAVINI, *supra* note 62, at 222; MAZOWER, *GOVERNING THE WORLD*, *supra* note 87, at 317.

shown to be fragile.¹⁵¹ Even before the Volcker shock, divisions began to surface between the oil-producing and non-oil-producing states, between radical and moderate states in the Global South, and within OPEC itself.¹⁵² There was no longer much question of welfarist international politics; liberal and left-wing internationalisms, such as they were, shifted from an emphasis on equality to one on sufficiency, generally under the rubric of economic and social rights.¹⁵³ Much scholarly work has explored the central place of the 1970s worldmaking projects to the neoliberal revolution in global economic governance, whose ideas, political organization, and institutional forms emerged, in part, as alternative responses to the crises of the 1970s and the challenge from the Global South.¹⁵⁴

International initiatives with roots in the NIEO did persist beyond this moment, however, and the memory of the NIEO certainly retained a place in the world's political imagination, if often a fraught one. Julia Dehm notes that, in discussions at the General Assembly's 1990 Eighteenth Special Session on economic cooperation, while "some Southern states referred . . . to the [NIEO] and the Declaration carried many of its echoes, it was also 'carefully worded' to avoid any explicit reference to the NIEO's agenda."¹⁵⁵ As late as 2004, Kirkpatrick, testifying against U.S. ratification of the UN Convention on the Law of Sea, tarred it as "the cornerstone of the New International Economic Order and of the associated efforts to use U.N. regulatory power as an instrument for restructuring international economic relations and redistributing wealth and power."¹⁵⁶ The question of interdependence certainly had not disappeared, but it had been given answers altogether different than those expressed in the NIEO proposal.

C. Interdependence as Vulnerability: Making the Crisis Global

Some of these contests over the meaning of interdependence would reappear in the Gulf Crisis, albeit on the very different political and economic terrain that had taken shape in the aftermath of the oil shock and the NIEO. The Bush administration's approach to the Gulf Crisis drew centrally on the idea of interdependence and the lessons learned during the oil shock. But it rejected the welfarist implications that the G77 and the NAM had drawn from the concept. It showed, instead, that "interdependence" could now be put to work for the United States and its version of collective security by refashioning the concept for a world not of mutual obligations, but mutual vulnerabilities. In this new guise, interdependence could be used to break linkages rather than forge them, undercut solidarity among commodity-producing states, and justify U.S. military power as the antidote to "uncertainty"—a new bit of international affairs argot for the era of high neoliberalism. Oil, and the world's mutual dependence on it, was again at the center of this story.

¹⁵¹ MAZOWER, *GOVERNING THE WORLD*, *supra* note 87, at 317.

¹⁵² See Garavini, *supra* note 135, at 484; Simpson, *Human Rights*, *supra* note 92.

¹⁵³ See generally MOYN, *NOT ENOUGH*, *supra* note 92.

¹⁵⁴ See SLOBODIAN, *supra* note 123, at 218–62; Bair, *Taking Aim*, *supra* note 113; MAZOWER, *GOVERNING THE WORLD*, *supra* note 87, at 342–63; GARAVINI, *supra* note 62, at 241–61.

¹⁵⁵ Dehm, *supra* note 13, at 295–96; see also Jennifer Bair, *Corporations at the United Nations: Echoes of the New International Economic Order?*, 6 *HUMANITY* 159 (2015); Henry J. Richardson, *The Gulf Crisis and African-American Interests Under International Law*, 87 *AJIL* 42, 78–81 (1993) (observing that although the NIEO's "original doctrines are bruised and deflected, "NIEO principles" were "live tools to be deployed").

¹⁵⁶ Bair, *Taking Aim*, *supra* note 113, at 378.

1979's "second oil shock," precipitated by the Iranian revolution and ensuing market turmoil, forced the United States to rethink its strategy of relying on regional surrogates to protect access to the region.¹⁵⁷ Following the Soviet invasion of Afghanistan, President Jimmy Carter articulated what came to be called "the Carter doctrine" in his 1980 State of the Union Address. He declared "the Persian Gulf region," to be "of vital interest to the United States," in view of the fact that it "contains more than two-thirds of the world's exportable oil."¹⁵⁸ Carter created the military infrastructure that would become U.S. Central Command, which would eventually be used to execute Operation Desert Shield (the initial defensive buildup of troops in Saudi Arabia) and Operation Desert Storm. This basic view of U.S. interests in the Persian Gulf was reaffirmed by the Bush White House in National Security Directive 26, issued in 1989.¹⁵⁹ Shortly after the Iranian Revolution, the Islamic Republic would be engaged in a long and dreadfully violent war with Saddam Hussein's Iraq. The "tanker wars" of that conflict, in which the belligerents targeted shipping of the others' oil exports, provided the occasion for a substantial U.S. (and Soviet) naval presence to be established in the Gulf.¹⁶⁰

Despite these threats to the shipping lanes, the price of oil had fallen precipitously in the later 1980s.¹⁶¹ This caused Saddam Hussein considerable anxiety. Ninety-five percent of his country's national income came from the commodity.¹⁶² He faced the difficult prospect of governing a society that had been fighting a war for nearly a decade, the costs of which had led the country to take on a massive amount of foreign debt—some \$80 billion—and left his country's infrastructure in need of more than \$200 billion in repairs.¹⁶³ The demobilization of his large army would have almost certainly led to an economic crisis, given that the Iraqi labor market could not absorb the massive influx of young men who had spent the better part of their adult lives at war. It certainly could not do so if the dollar price of a barrel of Brent crude remained in the low- to mid-teens.¹⁶⁴

OPEC had moved to address the low prices in 1986, agreeing in principle to a production quota system intended to get the price back up to \$18 per barrel.¹⁶⁵ Further meetings in 1989 affirmed the quota system, although in both cases OPEC aimed at lower prices than Iraq sought.¹⁶⁶ But the cartel was no longer inclined to act with the same unity that it had in the mid-1970s, nor had it been since the second oil shock and the Soviet invasion of Afghanistan.¹⁶⁷ Ideological and economic differences within OPEC divided states like

¹⁵⁷ David S. Painter, *Oil and Geopolitics: The Oil Crises of the 1970s and the Cold War*, 39 HIST. SOC. RES. 186, 198–99 (2014) [hereinafter Painter, *Geopolitics*].

¹⁵⁸ See Michael T. Klare, *Oil, Iraq, and American Foreign Policy: The Continuing Salience of the Carter Doctrine*, 62 INT'L J. 31, 34 (2006).

¹⁵⁹ THE WHITE HOUSE, NATIONAL SECURITY DIRECTIVE 26 (Oct. 2, 1989), at <https://irp.fas.org/offdocs/nsd/nsd26.pdf>.

¹⁶⁰ See LALEH KHALILI, SINEWS OF WAR AND TRADE: SHIPPING AND CAPITALISM IN THE ARABIAN PENINSULA 251–52 (2020).

¹⁶¹ On the drop in prices, see Painter, *Geopolitics*, *supra* note 157, at 202–03.

¹⁶² See FREEDMAN & KARSH, *supra* note 29, at 39.

¹⁶³ See *id.* at 37–40; KHADDURI & GHAREEB, *supra* note 59, at 87 (gives a figure of \$70 billion in debt).

¹⁶⁴ See FREEDMAN & KARSH, *supra* note 29, at 41.

¹⁶⁵ See *id.* at 40.

¹⁶⁶ KHADDURI & GHAREEB, *supra* note 59, at 86–87.

¹⁶⁷ See Garavini, *supra* note 135, at 484.

Kuwait and the United Arab Emirates from cash-strapped Iraq. The former states openly flouted the quota system and prevented the price from settling.¹⁶⁸ These differences in orientation toward the OPEC action reflected structural economic differences between “high absorbing” states like Iran and Iraq, which had large populations and therefore a greater need for cash to conduct social spending on an ongoing basis, and those like Kuwait, the UAE, and Saudi Arabia, which are “low absorbers” in that they have less immediate need for revenues and can look to their longer-term interest in maintaining market share. Such states can better tolerate lower prices and even benefit from them.¹⁶⁹ The legitimacy of Hussein’s authoritarian regime also depended in large part on development and rising living standards.¹⁷⁰

Kuwait’s refusal to cooperate with Iraq’s interest in higher oil prices was at the heart of the dispute brewing between the two states in the first half of 1990, though it was grounded in longstanding Iraqi claims to Kuwaiti territory, rooted at least in part on the status of the two territories under Ottoman rule and the process of their division by the English.¹⁷¹ A more proximate cause of the conflict involved Kuwait’s refusal to forgive war loans it had issued to Iraq during the Iran-Iraq War. Iraq believed the loans ought to be treated as grants, given its self-described (though not altogether fanciful) role as the defender of the weaker Gulf states against revolutionary Iran.¹⁷²

The brewing conflict with Kuwait, along with the easing of superpower tensions and a sense that the West was growing hostile toward him, had driven Hussein to begin publicly conjuring the old days of OPEC solidarity in the early months of 1990. In a speech before the Arab Cooperation Council in late February, he laid out a basically realist analysis of the emerging unipolar order and the threats it posed to the independence of the Arab world.¹⁷³ In response to anticipated overreaching by the United States, he called on OPEC to be prepared to use the oil weapon, fondly recalling its power in 1973.¹⁷⁴ He struck a similar note at the Arab Summit in late May.¹⁷⁵ In his meeting with U.S. ambassador April Glaspie a week before the invasion, Hussein repeatedly complained of Kuwait’s intentional sabotage of prices and noted that he considered it to be conducting an “economic war” amounting to a military threat to Iraq.¹⁷⁶

¹⁶⁸ See *id.* at 40–41.

¹⁶⁹ See STEPHEN C. PELLETIERE, *IRAQ AND THE INTERNATIONAL OIL SYSTEM: WHY AMERICA WENT TO WAR IN THE GULF* 154–55 (2001).

¹⁷⁰ See *id.* at 161.

¹⁷¹ See KHADDURI & GHAREEB, *supra* note 59, at 6–19; Joseph Sassoon & Alissa Walter, *The Iraqi Occupation of Kuwait: New Historical Perspectives*, 71 *MIDDLE EAST J.* 607, 610 (2017); Telhami, *supra* note 49, at 150. A more general account of the historical roots of Iraq’s dispute with Kuwait can be found in KHADDURI & GHAREEB, *supra* note 59, at 6–75.

¹⁷² See FREEDMAN & KARSH, *supra* note 29, at 47–48; KHADDURI & GHAREEB, *supra* note 59, at 107; Sassoon & Walter, *supra* note 171, at 610.

¹⁷³ See Telhami, *supra* note 49, at 154–55.

¹⁷⁴ See Speech by Iraqi President Saddam Hussein at the Opening of the Fourth Summit of the Arab Cooperation Council (ACC) at the Royal Cultural Center in Amman, Jordan, Feb. 24, 1990, in AUERSWALD, *supra* note 23, at 24–25.

¹⁷⁵ See Speech by Iraqi President Saddam Hussein at the Opening of an Arab Summit in Baghdad, Iraq, May 28, 1990, in AUERSWALD, *supra* note 23, at 51.

¹⁷⁶ Excerpts from Iraqi Document on Meeting with U.S. Envoy, July 25, 1990, in AUERSWALD, *supra* note 23, at 64.

After diplomatic efforts among Arab states failed to stop his invasion of Kuwait—still unexpected when it occurred on August 2—the oil issue was the core topic of the first meeting of the U.S. National Security Council (NSC) after the event.¹⁷⁷ The meeting did not give any indication of the hardline stance against concessions to Hussein that would eventually become the hallmark of the U.S. position. Instead, the conversation—a somewhat unfocused one—drew a basic distinction between “defending Saudi Arabia and liberating Kuwait,” and it touched mostly on the threat to Saudi Arabia and the invasion’s implications for global oil markets. John Sununu, Bush’s chief of staff, wondered whether “the scenario of Iraq staying and annexing Kuwait” was “an option.”¹⁷⁸ National Security Adviser Brent Scowcroft left the meeting troubled by the fact that most of the National Security Council’s principals seemed prepared to accept the occupation of Kuwait as a *fait accompli*. He complained that the meeting was dominated by a blinkered “petroleum-based perspective.”¹⁷⁹ Jeffrey Engel notes that the Council “openly discussed whether it really mattered, from a purely strategic standpoint, if an Iraqi or a Kuwaiti flag was printed on the side of an exported barrel.”¹⁸⁰ Colin Powell had earlier wondered to Richard Cheney whether “anybody really care[s] about Kuwait[.]”¹⁸¹

Scowcroft was not naïve about the oil issue. He likely understood the stakes as well as anyone in the room, having been a deputy to Kissinger during the first oil shock and, later, his successor as Gerald Ford’s national security advisor beginning in 1975. But Scowcroft was intent on seeing the bigger picture, and he instructed his deputy Richard Haass to produce a memorandum that took up the larger implications of the invasion for both oil and “precedent” in the post-Cold War era. It was out of this memo (delivered on August 3) and Scowcroft’s subsequent thinking on the issue that the basic administration position on the U.S. interests and objectives in the Crisis seems to have crystallized.¹⁸²

Scowcroft laid out his considered views to Bush and Margaret Thatcher at a meeting in Aspen later on August 3. If it kept Kuwait, Iraq “would dominate OPEC policies, Palestinian politics and the PLO, and lead the Arab world to the detriment of the United States, and the great stakes we have in the Middle East and Israel.”¹⁸³ Scowcroft knew that it surely did matter, from a strategic standpoint, what flag was printed on the side of the barrels of oil coming out of the Gulf. It was oil *power*, not merely prices, that concerned him—a consideration that makes the most sense in light of the experience of the “oil weapon.” Soon this view was adopted by the president, who worried about “the economic impact of Saddam’s control of so much of the world’s oil supply.”¹⁸⁴ The OPEC embargo’s linkage between U.S. policy toward Israel and the flow of oil from the Gulf was a point clearly not lost on at least some members of the administration. In fact the administration’s analysis depended on

¹⁷⁷ On these efforts by Saudi Arabia, Egypt, and the Arab Cooperation Council to head off the brewing conflict, see KHADDURI & GHAREEB, *supra* note 59, at 82–88.

¹⁷⁸ Meeting of the NSC/Deputy Committee Meeting, at 10, Aug. 2, 1990, 8:05–9:30 AM, Nat’l Sec. Archive, at <https://nsarchive.gwu.edu/document/24306-national-security-council-meeting-august-2-1990>.

¹⁷⁹ See BARTHOLOMEW H. SPARROW, *THE STRATEGIST: BRENT SCOWCROFT AND THE CALL OF NATIONAL SECURITY* 387 (2015).

¹⁸⁰ ENGEL, *supra* note 21, at 385.

¹⁸¹ *Id.* at 386.

¹⁸² See Bartholomew H. Sparrow, *Realism’s Practitioner: Brent Scowcroft and the Making of the New World Order, 1989–1993*, 34 *DIPLOMATIC HIST.* 141, 155 (2010).

¹⁸³ See SPARROW, *supra* note 179, at 388.

¹⁸⁴ *Id.*

linkages of its own. Bush recalled Cheney's firm belief that, with Saudi Arabia as Hussein's probable next objective, "he would control OPEC and oil prices. If he succeeds, then he will target Israel."¹⁸⁵

What bears discussion here is the way these internal discussions, carried out in frank terms of perceived U.S. interests, were subsequently universalized into a language of world order.¹⁸⁶ It is not always the case that such a translation can be convincingly made; the right conditions are required. During the first oil shock, a frustrated Kissinger had observed that the old powers would not have thought too hard about their response: Western militaries "would have landed, they would have divided up the oil fields, and they would have solved the problem."¹⁸⁷ Unfortunately, in the post-colonial world of 1973, this was not possible.

In the new world order of 1990, it would not be necessary. For the world's mutual dependence on oil could be used to globalize what would otherwise appear as a merely regional crisis, and thus to secure global support for a U.S.-led use of force intended to resolve it in accord with American interests. The basic claim was that, as James Baker put it to NATO, "given the central importance of Gulf oil to the global economy, all of us share an interest in thwarting this dictator's ambitions."¹⁸⁸ The idea that the interest in stable access to Gulf oil was what united the world's interest against Saddam Hussein, and that the United States was chief protector of that access, came to be a central theme of U.S. policy statements on the issue. Bush's first major statement on the Crisis on August 8 noted that "[o]ur country now imports nearly half the oil it consumes and could face a major threat to its economic independence. Much of the world is even more dependent upon imported oil and is even more vulnerable to Iraqi threats."¹⁸⁹ The same point recurred in the "new world order" speech and many times thereafter, including warnings that strains from higher prices were falling primarily on poorer nations and thereby threatening democratization in places like Eastern Europe.¹⁹⁰

In the later months of the Crisis, the same rhetoric of economic vulnerability helped drive the global community toward war. Making the case for fighting to the Senate Foreign Relations Committee on December 5, James Baker argued that "Economically, [Hussein's] aggression imperils the world's oil lifelines, threatening recession and depression, here and abroad, hitting hardest those fledgling democracies [that are] least able to cope with it. His aggression is an attempt to mortgage the economic promise of the post-Cold War world."¹⁹¹ Any efforts to stay the hand of the U.S. military neglected the urgency of this

¹⁸⁵ BUSH & SCOWCROFT, *supra* note 75, at 323.

¹⁸⁶ Compare Koskenniemi: "It is an uninteresting truism that delegations couch decisions in legal garb to make them look more respectable. That is the point of law. . . . Law's contribution to security is not in the substantive responses it gives, but in the process of justification that it imports into institutional policy and in its assumption of responsibility for the policies chosen." Koskenniemi, *supra* note 19, at 477–78.

¹⁸⁷ Quoted in SARGENT, *supra* note 92, at 154.

¹⁸⁸ Intervention by Secretary Baker at Special Session of the North Atlantic Council, Brussels, Aug. 10, 1990, in AUERSWALD, *supra* note 23, at 102.

¹⁸⁹ President Bush's Address to the Nation Announcing the Deployment of United States Armed Forces to Saudi Arabia, Aug. 8, 1990, in AUERSWALD, *supra* note 23, at 92–93.

¹⁹⁰ President Bush Address Before a Joint Session of the Congress on the Persian Gulf and the Federal Budget Deficit, *supra* note 23; President Bush's News Conference on the Persian Gulf Crisis, Nov. 8, 1990, in AUERSWALD, *supra* note 23, at 239.

¹⁹¹ Statement by Secretary Baker Before the Senate Foreign Relations Committee, Washington, D.C., "America's Strategy in the Persian Gulf Crisis," Dec. 5, 1990, in AUERSWALD, *supra* note 23, at 283.

situation. Bush argued on January 16—the day before the beginning of the air campaign—that each passing day meant that Iraq had more time to develop chemical weapons, “more damage was being done to the fragile economies of the Third World, emerging democracies of Eastern Europe, to the entire world,” and more atrocities were being committed in Kuwait.¹⁹² Abstracted into the language of the new world order strategy, the lesson was that the maintenance of global stability was in the interest of all states, including and especially the weakest ones. It was a rhetoric of what one might call common but differentiated vulnerability.

The basic function of this view of interdependence in the immediate context of the Gulf Crisis was to resist Saddam Hussein’s efforts to break up the international coalition arrayed against him. Among other tactics, Hussein attempted to do so by adopting the (not necessarily consistent) languages of Nasser-esque third-world solidarity, political Islam, and pan-Arabism.¹⁹³ This was a vital piece of Hussein’s wartime strategy, for, as Shibley Telhami has argued, “much of his calculus pertained to Arab public opinion and its impact on the behavior of Arab and foreign rulers.”¹⁹⁴ On September 10, Hussein issued a statement “to third world nations” calling for solidarity, warning against placing too much trust in the great powers, and recalling the Global South’s common struggle against “the colonialist system.”¹⁹⁵ Here he looked back to a (by then much dissipated) sense of unity against the industrialized world—which was itself now unified against him as it had rarely, if ever, been unified before. In speeches directed at his own region, Hussein sought to exploit what Telhami has described as a sense of “regional despair” among Arab elites regarding the end of the Cold War and the promise of a freer hand for the United States and Israel in the region.¹⁹⁶ The invasion of Kuwait alienated most of these elites—with the important exceptions of Yasser Arafat and King Hussein of Jordan—but the same was not necessarily true of Saddam Hussein’s image among the masses in the Gulf and the broader Arab world.¹⁹⁷ The Gulf was a region of profound economic disparities, so Hussein’s call for the mobilization of Arab oil resources on behalf of all Arabs, “however self-serving it might have been[,] struck a responsive chord among oil-poor populations from Jordan and Yemen to the Sudan to North Africa.”¹⁹⁸

The Bush administration recognized that there was some force to these arguments emanating from Baghdad. A White House report observed that “The U.S. is now locked in a psychological battle with Saddam Hussein in which we hope to keep Arab focus on the perfidy of his aggression, while he seeks to define the conflict as poor versus rich, Arab

¹⁹² President Bush’s Address to the Nation Announcing Allied Military Action in the Persian Gulf, Jan. 16, 1991, in AUERSWALD, *supra* note 23, at 362–63.

¹⁹³ See generally JERRY M. LONG, SADDAM’S WAR OF WORDS: POLITICS, RELIGION, AND THE IRAQI INVASION OF KUWAIT (2004); see also Fouad Ajami, *The Summer of Arab Discontent*, 69 FOR. AFF. 1, 2 (1990) (Hussein mobilized “the material that Gamal Abdul al-Nasser of Egypt had worked with three decades ago”).

¹⁹⁴ Telhami, *supra* note 49, at 148.

¹⁹⁵ See Statement by Iraqi President Hussein Issued to Third World Nations, Sept. 10, 1990, in AUERSWALD, *supra* note 23, at 156–57.

¹⁹⁶ Telhami, *supra* note 49, at 158, 161.

¹⁹⁷ See Ajami, *supra* note 193.

¹⁹⁸ Rex Brynen & Paul Noble, *The Gulf Conflict and the Arab State System: A New Regional Order?*, 13 ARAB STUDS. Q. 117, 126 (1991); see also Telhami, *supra* note 49, at 168–70.

versus foreign, Muslim versus non-Muslim.”¹⁹⁹ But the U.S. mobilization of the claims of mutual vulnerability, as against Hussein’s piecemeal efforts to invoke various forms of solidarity, would ultimately demonstrate that the days of “unholy alliance” against the United States were long past.

Washington’s interdependence discourse succeeded in large part because the failure of the reform efforts of the 1970s, and the neoliberal alternative that ascended in their place, had in fact created the conditions for a universal, but differentiated, vulnerability to oil price shocks. As noted above, in the wake of the first oil shock, the United States had worked to scuttle even efforts to establish a robust UN Emergency Fund or a substantial IMF facility to cushion poorer states against high oil prices. This is to say nothing of the more radical economic reform proposals of the NIEO. And in 1990, the dangers of another sustained shock were not abstract. There were already signs of economic weakness around the world in 1990, and the oil price shock generated by the invasion of Kuwait helped to bring about the recessions of the early 1990s.²⁰⁰ The invasion of Kuwait certainly did not cause these crises on its own, but it contributed. Unequal integration had been affirmed, and now it was a premise of calls to take swift action in the Gulf.

The failure of Baghdad’s attempts to break up the coalition had their own reasons for weakness. Regional elites distrusted Saddam Hussein’s intentions and, to the extent that they could, prevented his message from reaching the masses who might have been most sympathetic to it.²⁰¹ In the wider world, Hussein simply lacked the credibility of a Nasser or a Boumédiène; Deng Xiaoping’s reported description of Desert Storm as a case of “big hegemonists beating up small hegemonists” no doubt had resonance elsewhere.²⁰² Most importantly, whereas the “oil weapon” had been linked with other Global South political projects, in 1990 little of the sort remained as a going concern on the international stage. Even under much more auspicious political circumstances, high crude prices in the 1970s and early 1980s had driven disastrous debt crises in the Global South, plus the structural adjustment policies that followed. After these experiences, what interdependence aside from an interdependence of vulnerability could be a plausible basis for cooperation or consent?

Thus, in a way suited to its own realism, which mingled a cautious internationalism and a less cautious American exceptionalism, the Bush administration put economic interdependence at the core of its argument for a new world order. The shape of this vision of interdependence is best seen against the radically different implications that the NIEO had drawn from it. Oil flows whose control had once seemed to portend new political strength in the Global South now explained why it was in the South’s interest—indeed the interest of the whole world—to unite under U.S. leadership. The ploughshare of interdependence,

¹⁹⁹ MAYNARD, *supra* note 33, at 86.

²⁰⁰ See John B. Taylor, *Discretion Versus Policy Rules in Practice*, 39 CARNEGIE-ROCHESTER CONF. SERIES ON PUB. POL’Y 195, 210–11 (1993); Carl Walsh, *What Caused the 1990-91 Recession?*, 1993 F.R.B.S.F. ECON. REV. 33, 33, 43 n. 20; Lars Jonung & Thomas Hagberg, *How Costly Was the Crisis of the 1990s? A Comparative Analysis of the Deepest Crises in Finland and Sweden Over the Last 130 Years* 16 (European Commission, Directorate-General for Economic and Financial Affairs, Economic Papers No. 224, Mar. 2005).

²⁰¹ Telhami, *supra* note 49, at 172–74.

²⁰² Nicholas D. Kristof, *War in the Gulf: China; Beijing Skeptical of U.S. Gulf Role*, N.Y. TIMES (Feb. 20, 1991), at <https://www.nytimes.com/1991/02/20/world/war-in-the-gulf-china-beijing-skeptical-of-us-gulf-role.html>.

once the basis of a rhetoric of global welfarist cooperation, had been beaten into a sword to be wielded by the United Nations' "P-1" under the sign of collective security.

V. ORDER UNDER HIERARCHY: SOVEREIGNTY WITHOUT SELF-DETERMINATION

A. *Sovereignty as Non-domination*

The interdependent world was also a world of states, which, as Rosalyn Higgins observed in 1982, were "still the most important of the actors in the international legal system."²⁰³ The world of sovereign states, long at the theoretical core of international law, had been genuinely realized through a process of decolonization that cemented the universality of the state form.²⁰⁴ But while the post-1945 international order was built for a world of states, formally equal and possessing things called sovereignty, territorial integrity, and political independence,²⁰⁵ it was also built for a world of great powers, Reisman's "oligarchy of the victors."²⁰⁶ This ambivalence had a long pedigree in international law, which has since at least the nineteenth century been characterized by what Gerry Simpson calls the interplay between "sovereignty as equality" and "sovereignty as inequality."²⁰⁷

There was no question that the most basic aspects of sovereignty were at issue in the Gulf Crisis. Iraq had attacked and purported to annex an independent state, and it undertook efforts to alter the demographic composition of what it called its new "Nineteenth Province."²⁰⁸ The international response reaffirmed that sovereignty had a sacrosanct place at the heart of the international order. But it also refashioned the concept for an avowedly hierarchical world, and in doing so, marginalized alternative ideas about sovereignty's ordering role that had been the subject of intense international legal activity by post-colonial states in the preceding decades.

In the wake of decolonization, the prerogatives of sovereignty were seized by post-colonial states, who pressed the international order's commitments to "sovereignty as equality" as far as they were able.²⁰⁹ The NIEO had been a project of interstate cooperation, of "worldmaking," but it was one in service of the sovereign state: one that aimed to increase the autonomy of states in the Global South who felt themselves sovereign in name but still, in fact, subject to extensive informal domination.²¹⁰ The international legal order provided language and fora in which to contest this state of affairs.²¹¹ The state and its sovereign prerogatives were,

²⁰³ Rosalyn Higgins, *International Law and the Reasonable Need of Governments to Govern*, in THEMES AND THEORIES: SELECTED ESSAYS, SPEECHES, AND WRITINGS IN INTERNATIONAL LAW 785 (2009).

²⁰⁴ Luis Eslava & Sundhya Pahuja, *The State and International Law: A Reading from the Global South*, 11 HUMANITY 118, 122 (2020); KOSKENNIEMI, GENTLE CIVILIZER, *supra* note 93, at 174–75.

²⁰⁵ UN Charter, Art. 2.

²⁰⁶ Reisman, *supra* note 1, at 95.

²⁰⁷ See GERRY SIMPSON, GREAT POWERS AND OUTLAW STATES: UNEQUAL SOVEREIGNS IN THE INTERNATIONAL LEGAL ORDER 227, 233–35 (2004).

²⁰⁸ See Sassoon & Walter, *supra* note 171, at 613–22.

²⁰⁹ On the pre-Bandung history of such efforts in the United Nations, see Cindy Ewing, "With a Minimum of Bitterness": Decolonization, the Right to Self-Determination, and the Arab-Asian group, 17 J. GLOB. HIST. 254 (2022).

²¹⁰ GETACHEW, *supra* note 6, at 154; a seminal statement of the view is KWAME NKRUMAH, NEO-COLONIALISM: THE LAST STAGE OF IMPERIALISM (1966).

²¹¹ See Moyn, *supra* note 12; Bernstorff & Dann, *supra* note 83.

indeed, at the heart of the very meaning of anti-colonial legalism. Resolution 1514, as it resoundingly declared that “[a]ll peoples have the right to self-determination,” made clear that this right’s most basic expression would be in the possession of a sovereign state, whose “internal affairs” would not be interfered with and whose “territorial integrity” would not be violated.²¹²

Anti-colonial international law thus “focused especially on the principle of sovereign state equality and the related rule of non-intervention and the prohibition of the use of force.”²¹³ It was basic that sovereign equality and territorial sovereignty should serve as a bulwark against the continuation of the long history of metropolitan military intervention in the South. But these same principles also served the “linkage between state and [economic] development,” one emphasized at Bandung and shared by leaders across the ideological spectrum of the post-colonial world.²¹⁴ The goal was the maximum amount of national autonomy compatible with the facts of world order—something that Adom Getachew identifies with political theories of non-domination.²¹⁵ This meant absolute sovereignty over the territorial state which would be, in the words of Priyasha Saksena, a “unified national space for development” in which “exclusive and absolute control” over political and economic decisions could be made.²¹⁶

Realizing this version of territorial sovereignty and non-intervention meant interpreting the principles alongside a thicker conception of sovereign equality and, especially, in light of the right to self-determination—specifically the economic aspects of self-determination as envisioned by the G77.²¹⁷ Consider, in this connection, the role of sovereignty as expressed in the Declaration on Friendly Relations.²¹⁸ The Declaration, it has been argued, must be understood as growing out of the “pressure to reinvent ‘co-operation’ from an anodyne concept not far from co-existence to one that entailed the renovation and socialisation of international law in a welfarist spirit.”²¹⁹ The Declaration is thus something of a transitional document—a rearticulation of the fundamental principles of the UN Charter in light of a changing conception of what precisely international law could do and what a more egalitarian world order might look like. As Samuel Moyn and Umut Özsü argue, the document thus embodies two basic types of principles.²²⁰ On the one hand are those that reinforce sovereignty: non-intervention, sovereign equality, and the prohibition against force. On the other hand are those that contribute to the development of a more collaborative international order: the principles of inter-state co-operation, peaceful dispute settlement, and good faith satisfaction of obligations under the Charter. The document thus embodies the “dynamic tension between sovereignty and solidarity that underwrote so much of the international

²¹² GA Res. 1514, *supra* note 85; cf. Simpson, *Human Rights*, *supra* note 92, at 241.

²¹³ Bernstorff & Dann, *supra* note 83, at 15–16; see also Antony Anghie, *Bandung and the Origins of Third World Sovereignty*, in BANDUNG, GLOBAL HISTORY, AND INTERNATIONAL LAW, *supra* note 83, at 535.

²¹⁴ Eslava & Pahuja, *supra* note 204, at 123–24; see also LORENZINI, *supra* note 121, at 6; Whelan, *supra* note 125, at 104.

²¹⁵ GETACHEW, *supra* note 6, at 79.

²¹⁶ Priyasha Saksena, *Building the Nation: Sovereignty and International Law in the Decolonisation of South Asia*, 23 J. HIST. INT’L L. 52, 54, 62 (2020).

²¹⁷ See GETACHEW, *supra* note 6, at 74–75.

²¹⁸ GA Res. 2625, *supra* note 126.

²¹⁹ Moyn & Özsü, *supra* note 8, at 31.

²²⁰ See *id.* at 25.

law of post-1945 decolonisation.”²²¹ In some endeavors—the NIEO, UNCLOS, the push for “permanent sovereignty over natural resources”—this was a politically productive tension, one that could be used to argue for international law reform in the service of the self-determination of the majority of peoples, and the sovereignty of their states.

In other spheres, sovereignty and self-determination could be deeply at odds, and international attention appeared as essentially an intrusion on sovereignty. The right of self-determination had the clearest meaning in the context of peoples under the domination of the old imperial powers or other forms of “alien rule,” like that of occupation following a war or white minority rule in a state like Rhodesia.²²² But applying self-determination to minorities within the post-colonial state posed difficult and often violent questions, which not infrequently divided the Global South against itself.²²³ And sovereignty in the “developmental state” could be a shield for authoritarianism as much as a guardian of autonomy.²²⁴

But in the context of the relationship between the post-colonial states and the old imperial powers—where the anti-colonial legalists’ voices were most unified—sovereignty and self-determination worked together. Self-determination, pushed further than mere formal independence, required a turn “to the international sphere to secure the conditions of post-colonial statehood,” especially to protect the legal rights of weaker states against “the exercise of power in the international sphere.”²²⁵ Sovereignty, in a “decolonizing international law[,] imposed responsibility on former masters to cease and desist from empire in all its modes.”²²⁶ This entailed an order emphasizing “sovereignty as equality,” one that pushed the ideas of non-intervention and equal participation farther than they had gone before.

B. Sovereignty Without Self-Determination

In 1990, the Bush administration deployed a rhetoric of world order that depended largely on the concepts of territorial sovereignty, formal sovereign equality, and the *jus ad bellum* norms against the threat or use of force expressed in Article 2(4) of the UN Charter. But the decision to emphasize these ideas as legal norms represented something of a departure from recent U.S. practice.

The 1980s had witnessed the articulation of the “Reagan Doctrine,” which authorized intervention in aid of anti-socialist or anti-communist insurgencies around the globe.²²⁷ Its exponents described it as a response to the “Brezhnev doctrine,” which sought to justify Soviet intervention in support of embattled socialist governments

²²¹ *Id.*

²²² See Rosalyn Higgins, *Self-Determination and Secession*, in THEMES AND THEORIES, *supra* note 203, at 961–66.

²²³ See Simpson, *Human Rights*, *supra* note 92, at 249–50; GETACHEW, *supra* note 6, at 100–06; MAZOWER, NO ENCHANTED PALACE, *supra* note 28, at 146; MAZOWER, GOVERNING THE WORLD, *supra* note 87, at 262. For some key international disputes that bring this question to the fore, see: Western Sahara, 1975 ICJ Rep. 3 (Oct. 16); Case Concerning East Timor (Port. v. Austl.), 1995 ICJ Rep. 90; Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Request for Advisory Opinion, 2010 ICJ Rep. (July 22).

²²⁴ See Eslava & Pahuja, *supra* note 204, at 124.

²²⁵ GETACHEW, *supra* note 6, at 100.

²²⁶ Moyn, *supra* note 12, at 18.

²²⁷ See NEFF, *supra* note 87, at 409

elsewhere.²²⁸ However, in key respects the Reagan doctrine was, as Steven Neff observes, “more radical . . . from the standpoint of international law,” since it frankly advocated regime change rather than merely regime stabilization.²²⁹ At any rate, its advocates forthrightly admitted that the Reagan Doctrine “rejects the notion that any government must be respected; that is, it rejects the inviolability of sovereignty.”²³⁰

In its deployments of this doctrine, the Reagan administration had generally defended its interventions in the Global South by denying that legal violations had occurred, or else by denying the legitimacy of international claims against the United States. A paradigm case—a nadir of U.S. engagement with international law—was the Reagan administration’s decision during the *Nicaragua*²³¹ dispute to reject the legitimacy of the International Court of Justice and to denounce the Optional Protocol, which had, at least in principle, committed the United States to the compulsory jurisdiction of the Court for most international disputes.²³² In brief, the International Court of Justice (ICJ) rejected the U.S. claim that its support for counterrevolutionary “Contra” paramilitaries and CIA actions against the Nicaraguan government could be justified under the collective self-defense provisions of Article 51 of the UN Charter. The Court held that there could be no Article 51 right in response to acts not amounting to an “armed attack” under Article 2(4), which the asserted factual bases of the U.S. claim did not meet.²³³ It thus held some actions of the U.S. to be illegal violations of the customary law principle prohibiting threat or use of force, as restated in Article 2(4) of the UN Charter.²³⁴ Perhaps even more threatening was the Court’s suggestion that mere U.S. aid to the paramilitaries might, under some circumstances, also have amounted to “a threat or use of force.”²³⁵ The decision was anathema to the Reagan administration, and to some remains so today.²³⁶

When Reagan and his UN Ambassador Jeane Kirkpatrick announced the U.S. denunciation of Article 36(2) compulsory jurisdiction at the ICJ, the move was criticized by liberals who had taken an alternative view of the proper response to “anti-Americanism” in the international sphere.²³⁷ Kirkpatrick had belittled the Court as a “semi-legal, semi-judicial, semi-political body which nations sometimes accept and sometimes don’t,” and called it “as nonpolitical as the [General] Assembly itself,” thus linking it with the den of global anti-Americanism.²³⁸ For more hawkish internationalists like

²²⁸ See *id.* at 407–09.

²²⁹ *Id.* at 409.

²³⁰ Jeane J. Kirkpatrick & Allan Gerson, *The Reagan Doctrine, Human Rights, and International Law*, in RIGHT V. MIGHT: INTERNATIONAL LAW AND THE USE OF FORCE 21 (Louis Henkin et al. eds., 1991).

²³¹ Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Jurisdiction and Admissibility, 1984 ICJ Rep. 392 (June 27) [hereinafter *Nicaragua*].

²³² The United States had, however, signed the protocol with a broad reservation that excluded from the Court’s jurisdiction “[d]isputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America.” 61 Stat. 1218, 1 UNTS 9.

²³³ See *Nicaragua*, *supra* note 231, para. 211.

²³⁴ See *id.*, para. 238.

²³⁵ See *id.*

²³⁶ See BYRNES, *supra* note 88, at 185. For a relatively recent criticism of the case from the point of view of the U.S. government, see John Norton Moore, *Jus ad Bellum Before the International Court of Justice*, 52 VA. J. INT’L L. 903 (2012).

²³⁷ See BYRNES, *supra* note 88, at 185–86.

²³⁸ See *id.*

Daniel Patrick Moynihan (to say nothing of other defenders of international law) this was a disastrous mistake. It broke with the United States' past advocacy of a liberal world order characterized by a "belief that international relations. . . can and should be governed by a regime of public international law."²³⁹ Rather than molding that regime to American needs, Reagan and Kirkpatrick had disengaged.

Now the Bush administration was reengaging, and it could use the opportunity to show what a regime of public international law serving U.S. interests might look like. A core aspect of the regime that emerged from the Crisis was an idea of territorial sovereignty that implied its own project of worldmaking—implied, in other words, that sovereignty must be one fundamental principle in a broader scheme of rights, obligations, and institutions. But it was a sovereignty for a security order of formal hierarchy, one that assumed and justified the role of the United States as the world's "P-1." The U.S. use of sovereignty in service of hierarchy was, to be sure, anything but novel. Hierarchy is embedded in the structure of the UN system. And, as Gerry Simpson has shown, "legalized hegemony" has at other times been justified in terms of defending the "'substantial' sovereign equality" of states, on the argument that only such arrangements can ensure that organized responses to aggression take place.²⁴⁰ So was legalized hegemony defended at the founding of the United Nations, and so it was, both implicitly and explicitly, during the Gulf Crisis.²⁴¹

But, as President Bush had suggested in his address on September 11, 1990, the new world order would recover certain aspects of the original UN system, but it would also be something new. For the United States articulated the meaning of sovereignty along with a vision of the threats against which legalized hegemony should defend. This involved interpolating sovereignty into prevailing ideas about U.S. interests abroad. In doing so, the United States marginalized the alternative vision of equal sovereignty linked to self-determination. The stage was laid for the more radical challenges to a strong non-intervention principle that would emerge in the coming years.

Legal ideas about sovereignty and territoriality—coupled closely with strategic ideas about the dangers of "uncertainty" and "instability" in the new world order—were integral to the administration's private thinking and public diplomatic strategy in the Gulf Crisis. Contemporary observers were keenly attuned to the fact that this interpretation of international law was central to the Bush administration's strategy and to its vision of world order.²⁴² The legal principle of territorial integrity was a core theme even of National Security Directive 54, issued on the eve of Operation Desert Storm, which noted that the United States "recognizes the territorial integrity of Iraq and will not support efforts to change current boundaries."²⁴³ Post-crisis stability in the Middle East, James Baker told the Senate Foreign Relations Committee on February 6, depended on "principles" such as "deterrence

²³⁹ See *id.* at 186.

²⁴⁰ SIMPSON, *supra* note 207, at 29.

²⁴¹ See *id.* at 29, 197.

²⁴² See, e.g., Michael Sterner, *Navigating the Gulf*, 81 FOR. POL'Y 39, 44 (1990) ("What the United States is defending is the territorial integrity and political independence of [Gulf] states."); Carpenter, *supra* note 29, at 24–25 ("[T]o protect 'the sovereignty of nations' and the rule of international law . . . is the essence of [Bush's] concept of a 'new world order.'"); TUCKER & HENDRICKSON, *supra* note 29, at 51–52 (criticizing the "legalism" of the Bush administration's embrace of "collective security").

²⁴³ THE WHITE HOUSE, NATIONAL SECURITY DIRECTIVE 54 (Jan. 15, 1991), at <https://irp.fas.org/offdocs/nsd/nsd54.pdf>.

of aggression from any quarter,” “territorial integrity,” “respect for the existing sovereignty of all states and for the inviolability of borders.”²⁴⁴ The Security Council resolutions issued throughout the Crisis, as well as American and European statements, invoked the “sovereignty, independence, and territorial integrity” of Kuwait with talismanic regularity.²⁴⁵ The central place of these principles was underscored by the administration’s choice not to press forward to Baghdad after liberating Kuwait.

The administration’s defense of territorial sovereignty and non-aggression as the core principles at stake in the Crisis was, however, not obvious at its outset. Some members of Bush’s National Security Council evinced an initial readiness to accept some level of Iraqi territorial gains in Kuwait. Robert Gates, then the deputy national security adviser, later said that the administration may have been prepared to accept a more limited move by Iraqi forces, such as the occupation of the Rumailia oilfields, or the seizure of “a couple of islands off of the [Kuwaiti] coast,” presumably the long-disputed Warba and Bubiyan islands.²⁴⁶ “Sovereignty,” “territorial integrity,” and “non-aggression”—later the bywords of the administration’s rhetoric of world order—were thus not current concepts at the highest levels of government at the beginning of the Crisis. Iraq might have taken a little territory and gotten away with it.²⁴⁷

This view quickly lost favor, however. President Bush’s own sense of history and the proper objects of U.S. foreign policy ambitions—views on which he shared much with Scowcroft, probably his closest advisor at this time—dictated this.²⁴⁸ Bush had been schooled in a grand tradition of American exceptionalism and held a confident belief in the inevitable triumph of liberal values and U.S. institutions over the long term. The lessons of the Cold War were self-evident to Bush; they counseled not radical reinvention but a recommitment to the universal American principles that had so recently triumphed over Soviet communism.²⁴⁹ The task in 1990 was thus not to remake the world, but to establish an order that would contain any forces that could disrupt or divert the inevitable spread of U.S. institutions. As Jeffrey Engel writes: “If one requires a mantra for understanding Bush, it is this unquestioned faith in that system in which he was raised—and from which he had greatly benefited—to succeed over time so long as stability reigned, chaos was avoided, and strategies were freely debated.”²⁵⁰ The Bush administration’s first National Security Strategy document, published in March 1990, gave a central role to these ideas. It called for a continuation of

²⁴⁴ Secretary Baker’s Statement as Delivered to the House Foreign Affairs Committee, Feb. 6, 1991, in AUERSWALD, *supra* note 23, at 403.

²⁴⁵ See, e.g., SC Res. 665 (Aug. 25, 1990); Declaration on Iraq’s Invasion of Kuwait Issued on 10 August 1990 by the Twelve States Members of the European Community at the Extraordinary Ministerial Meeting Held at Brussels, UN Docs. A/45/409, S/21502 (Aug. 10, 1990); SC Res. 674 (Oct. 29, 1990); SC Res. 687 (Apr. 3, 1991). See also, e.g., Letter Dated 11 August 1990 from the Permanent Representative of Qatar to the United Nations Addressed to the Secretary-General, UN Doc. S/21500 (Aug. 13, 1990) (resolution of the August 10 Arab Summit conference invoking “sovereignty, independence, and territorial integrity” as at stake in the Crisis).

²⁴⁶ George H. W. Bush Oral History Project, Robert M. Gates Interview, at 45, July 23–24, 2000, Miller Center, University of Virginia.

²⁴⁷ See *id.* at 51 (“[I]f [Saddam Hussein] had been a real strategist, he would simply have taken the Rumailia oil field. . . . We would not have gone to war for the Rumailia oil field. We damn near didn’t go to war for Kuwait.”).

²⁴⁸ Sparrow, *supra* note 182, at 148.

²⁴⁹ See Jeffrey A. Engel, *A Better World . . . but Don’t Get Carried Away: The Foreign Policy of George H. W. Bush Twenty Years On*, 34 *DIPLOMATIC HIST.* 25, 30 (2010).

²⁵⁰ *Id.* at 42–43; see also Sparrow, *supra* note 182, at 148.

U.S. global power in a security environment it called “more uncertain than at any time in the recent past,” and it described the issues it sought to solve as the maintenance of “continued international stability” amidst “great uncertainty,” “contingencies elsewhere in the world,” and so forth.²⁵¹

The trouble with “stability” as a foreign policy goal and “chaos” or “uncertainty” as enemies were their vagueness. It was one thing to hold that the next generation of security threats would come from conflicts in far-flung regions, but it was another to wield this rather abstract fear against those who used the end of the Cold War to press for a rethinking of the nature of U.S. foreign policy, or indeed of the defense budget.²⁵² Bush worried about how to make the case for the continued global hegemony he nevertheless thought was necessary. But in the end, as Engel writes, “Saddam made it for him.”²⁵³ The invasion of Kuwait painted a concrete picture of the dangers of “uncertainty” or “instability” that might flourish in the case of U.S. retrenchment.

In this framework, the task of defending “the territorial integrity of all countries, great and small” could become “the basis for enduring world peace”—even if this also implied a new set of reasons for the United States to make war. The paradox of this policy is well captured by Paul Rogers, who describes the U.S. foreign policy ethos of the era in terms of “keeping the violent peace.”²⁵⁴ Its terms recast the Global South from its Cold War position as a literal and ideological battleground between great powers—a view that led to immense violence²⁵⁵ but also, at least in the immediate post-war decades, created room for small-state political action and justified foreign aid—to a view of the Global South as simply a source of “uncertainty” and a virulent breeding ground for conflict.²⁵⁶ Bush’s remarks to the General Assembly in October had invoked the specter of a “dangerous world” filled with distant threats.²⁵⁷ The speech displays some realist doctrine—Bush’s world was dangerous more by axiom than by history—but also an effort to link those dangers to a set of principles drawn from international law: sovereignty, territorial integrity, aggression. In a similar vein, Baker, speaking to the Senate Foreign Relations Committee in the midst of the war, would emphasize that the post-crisis condition for stability was the respect for “principles” such as “deterrence of aggression from any quarter,” “territorial integrity,” “respect for existing sovereignty of all states and for the inviolability of borders.”²⁵⁸ It is important, too, that respecting the “inviolability of borders” meant the narrow proposition that borders should not be changed. Territorial sovereignty might be attenuated in other ways if the P-5 saw fit, and if the

²⁵¹ THE WHITE HOUSE, NATIONAL SECURITY STRATEGY OF THE UNITED STATES 7–8 (Mar. 1990), at <https://history.defense.gov/Portals/70/Documents/nss/nss1990.pdf?ver=x5cwOOez0oak2BjhXekM-Q%3d%3d>.

²⁵² See Charles William Maynes, *America Without the Cold War*, FOR. POL’Y. 3 (1990) (calling for a “peace dividend” and a “grand debate” on new directions for U.S. foreign policy); TUCKER & HENDRICKSON, *supra* note 29, at 27. For a synthesis of these post-Cold War foreign policy debates, see Barry R. Posen & Andrew L. Ross, *Competing Visions for U.S. Grand Strategy*, 21 INT’L SEC. 5 (1997).

²⁵³ ENGEL, *supra* note 21, at 401.

²⁵⁴ PAUL ROGERS: LOSING CONTROL: GLOBAL SECURITY IN THE 21ST CENTURY 6 (4th ed. 2021).

²⁵⁵ See generally PAUL THOMAS CHAMBERLIN, *THE COLD WAR’S KILLING FIELDS: RETHINKING THE LONG PEACE* (2018).

²⁵⁶ See ROGERS, *supra* note 254, at 112; see also MAZOWER, *GOVERNING THE WORLD*, *supra* note 87, at 382.

²⁵⁷ UNGA, Provisional Verbatim Record of the 14th Meeting, *supra* note 69, at 72.

²⁵⁸ Secretary Baker’s Statement as Delivered to the House Foreign Affairs Committee, *supra* note 244, at 403.

sovereign deserved it—for example in the various conditions imposed on Iraq by Resolution 687 after the war.²⁵⁹

Self-determination, a concept since the 1970s not much favored by the United States, fit poorly in this scheme.²⁶⁰ The term never appeared in any of the Security Council resolutions addressing the Gulf Crisis. Outside the context of decolonization, it had an obvious destabilizing potential, given that it might under some circumstances require borders to be changed or imply a right of secession.²⁶¹ It was easy to see that this was a potential source of instability, as when the administration did not act to support the post-Desert Storm uprisings of Shia Muslims and Kurds in Iraq's south and north, respectively—rebellions the U.S. had encouraged and which were brutally repressed.²⁶² The view in the administration was that “the United States could not be drawn into an Iraqi internal conflict” and that toppling Saddam Hussein would be too risky.²⁶³

But it was possible—if rarely done by Western officials—to characterize the stakes of Iraq's invasion of Kuwait as a matter of self-determination, a use of the phrase that more clearly recalled its decolonial form as a right against external domination. In the first Security Council meeting on the Crisis, for example, a member of the Colombian delegation, referring to its “support of the principle of non-interference in the affairs of other states” for “more than a century,” linked the Iraqi action to the December 1989 U.S. invasion of Panama.²⁶⁴ It condemned the Iraqi invasion on the basis that actions of both sorts needed to be avoided in any new world order: “We are convinced that, particularly in the near future, the sovereignty and self-determination of small States, which make up the majority of Members of the United Nations, will be jeopardized if in one fashion or another we were to condone the use of force to intervene in the internal affairs of other States.”²⁶⁵ Invoking self-determination in this context implied the view that sovereignty required restraints on hegemony rather than its authorization.

But that view had little place in the Gulf Crisis. Instead, sovereignty, like interdependence, would become a fundamental principle of the “new world order” to the extent that it could be used to invoke the interests of a world community of states—none of whom surely wanted to be invaded—while justifying the hierarchal world order that the United States was consolidating. A shared vulnerability to “instability” characterized the common interest of states in sovereignty. Like interdependence, which now implied a global form of economic vulnerability demanding U.S. protection, sovereignty and non-intervention signified not protection

²⁵⁹ See SIMPSON, *supra* note 207, at 293.

²⁶⁰ See Simpson, *United States*, *supra* note 92.

²⁶¹ Regarding self-determination's different meanings in the context of decolonization and outside of it, see, for example, Higgins, *supra* note 222, at 961–66. To my understanding, the ICJ has recognized this distinction as a feature of the customary international law of self-determination. See *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 2019 ICJ Rep. 95, para. 144 (Feb. 25) (limiting its analysis of the right of self-determination to “the right to self-determination in the context of decolonization”).

²⁶² See KHADDURI & GHAREEB, *supra* note 59, at 189–211.

²⁶³ Sparrow, *supra* note 182, at 168; see BUSH & SCOWCROFT, *supra* note 75, at 488 (“However admirable self-determination for the Kurds or Shi'ites might have been in principle, the practical aspects of this particular situation dictated the policy. For these reasons alone, the uprisings distressed us, but they also offered Saddam an opportunity to reassert himself and rally his army.”).

²⁶⁴ UNSC, Provisional Verbatim Record of the 2932nd Meeting, UN Doc. S/PV.2932, at 16 (Aug. 2, 1990).

²⁶⁵ *Id.*

against inequalities in global power, but the boundaries of the status quo that, if breached, would justify the collective action of the international community via the application of U.S. military force. A rebalancing occurred between “sovereignty as equality” and “sovereignty as inequality,” as the vestiges of a struggle for more of the former appeared only on the margins of international debate. In their place appeared a version of sovereignty that was less a source of authority for the states who possessed it and more a source of authority for the United States—and to an extent the rest of the P-5—who regained the clear prerogative to act in its defense.

C. “All Necessary Means”

In the Gulf Crisis, the line from sovereignty and territorial integrity to U.S. primacy ran through the Security Council. For the Bush administration, the “precedent” to be set was not just that aggression would not be tolerated, but that the United States would lead the charge against aggressors. This followed from Bush and Scowcroft’s shared worldview that, in Bartholomew Sparrow’s words, “‘civilized nations’ and especially the United States had the responsibility to lead other nations.”²⁶⁶ In other words, it mattered that the global defense of territorial sovereignty would ultimately fall to the United States, and thus be a source of power for it. Senator Richard Lugar was toeing the administration line when, in the same breath, he proclaimed the importance of the United Nations and “right, not might,” and then immediately issued a call to “stand for American leadership, not because we seek it but simply because no one else can do the job.”²⁶⁷ When the United States won the war, as President Bush said in a speech at Fort Stewart, Georgia, it would have “taught a dangerous dictator and any tyrant tempted to follow in his footsteps that the U.S. has a new credibility, and that what we say goes, and that there is no place for lawless aggression in the Persian Gulf and in this new world order that we seek to create.”²⁶⁸ In that new world order, the principles of sovereignty, territorial integrity, and non-intervention were less apt to restrain the actions of great powers. They would, instead, represent the boundaries whose breach would signal the irruption of instability and the need for an application of American power.

The revitalization of the Security Council enabled the United States to realize the exercise of its power as a project of international law. U.S. engagement with the Council was, of course, calibrated to its own needs. On the one hand, U.S. officials celebrated the Council’s new effectiveness, often in explicit contrast to the bygone days of anti-Americanism in the General Assembly. John Bolton, the then assistant secretary of state for international organization affairs, offered a certain kind of praise of the United Nations in these terms. “August 1990 is the most significant and eventful month in the forty-five-year history of the United Nations,” he said. This was so, on his account, both because the Security

²⁶⁶ Sparrow, *supra* note 182, at 148.

²⁶⁷ Remarks by Senator Richard J. Lugar Following Secretary Baker’s Senate Foreign Relations Committee Statement, Dec. 5, 1990, in AUERSWALD, *supra* note 23, at 284. See also James Baker’s remarks to the House Foreign Affairs Committee: “We remain the one nation that has the necessary political, military, and economic instruments at our disposal to catalyze a successful collective response.” Quoted in Norman Kempster, *Baker Says Iraqi Threat Calls for Defense Alliance*, L.A. TIMES (Sept. 5, 1990), at <https://www.latimes.com/archives/la-xpm-1990-09-05-mn-509-story.html>.

²⁶⁸ DAVID F. SCHMITZ, BRENT SCOWCROFT: INTERNATIONALISM AND POST-VIETNAM WAR ERA AMERICAN FOREIGN POLICY 158 (2011).

Council was finally functioning and because, this being the case, the days of posturing in the General Assembly—of states “attacking the very values upon which the Charter is based”—were now over.²⁶⁹ On the other hand, U.S. officials were careful to reserve their right to act independently of the Council, and they resisted efforts to engage provisions of the UN Charter that might have compromised that ability. The option of conducting the war under UN auspices via Article 43 was not seriously on the table, and Soviet proposals to activate the Military Staff Committee under Article 47 were rebuffed.²⁷⁰ Edwin D. Williamson, the State Department legal advisor during the Crisis, underscored in April 1991 that the administration had regarded itself as having a free hand: Resolution 678 was meaningful for its demonstration of political will and the unity of international support, but the U.S. position was that it could have acted under Article 51 without further Council action.²⁷¹

Of course, the Security Council did act. Like its September 25 meeting, its November 29 meeting was held at the ministerial level, this time with James Baker as chair. The ministers had assembled to authorize a war. The time was right, from the Bush administration’s perspective. Sanctions seemed not to be working; the weather would soon worsen and Ramadan was approaching; soon the Yemenis would take over the Council presidency from the Americans; Hussein was steadily working to “Iraqize” the population of Kuwait; and the longer one waited, the harder it would be to hold a coalition together and to undo the damage Saddam Hussein had wrought.²⁷²

James Baker opened the November 29 meeting with a lengthy quotation from Haile Selassie.²⁷³ Invoking Selassie, a remarkable gesture, served not just to affirm the need to stand up to aggression—Hitler was usually preferred for that purpose. It served also, by raising the specter of the League of Nations, to affirm that fighting aggression required an ordered world.

In November, as at the first meeting of ministers two months before, there was general agreement on what to do—Resolution 678 passed with only two no votes and China’s abstention—but also evident disputes over the meaning of the resolution and its political context. The by-then familiar dynamic of negotiation was that the United States set the agenda; the other members of the P-5 could tweak at the margins, as with Gorbachev’s success at getting language about a “period of goodwill” inserted into the resolution and keeping the words “military force” out; and the other members of

²⁶⁹ See Statement Delivered by Assistant Secretary of State for International Organizations, John R. Bolton, to the Subcommittee on Human Rights and International Organizations and the Subcommittee on International Operations of the House Foreign Affairs Committee, September 19, 1990, in AUERSWALD, *supra* note 23, at 195–97. In April 1992, Bolton would describe what he said had been the “the four goals that the Administration has been pursuing in the UN system.” The second of these was “to make UN bodies function more pragmatically, to eliminate the ideological confrontation that characterized much of the 1960s and 1970s and to get the specialized agencies to avoid dealing with political issues and return to the specialized questions they were created to address.” *The 1992 Presidential Campaign and International Law and Institutions*, 86 ASIL PROC. 88, 90–91 (1992) (remarks by John Bolton); see also *id.* at 93–94 (stating, in response to a question about the role of the General Assembly in international security, that “We are looking to the General Assembly for resolutions that have a practical effect in the real world. We want to get away from the 1960s, 1970s and early 1980s, when the General Assembly was essentially a political forum for anti-Western polemics, exploited for political purposes”).

²⁷⁰ See FREEDMAN & KARSH, *supra* note 29, at 146.

²⁷¹ Williamson, *supra* note 21, at 379–80.

²⁷² See FREEDMAN & KARSH, *supra* note 29, at 230, 275.

²⁷³ UNSC, Provisional Verbatim Record of the 2963rd Meeting, UN Doc. S/PV.2963, at 2–5 (Nov. 29, 1990).

the Council could come along if they wished, but also might face consequences if not, for example in the cancellation of aid programs.²⁷⁴

Those states that did not vote in favor of the resolution argued that sanctions should be given more time and that the possible destabilizing consequences of a war outweighed its benefits.²⁷⁵ Others took the chance to reiterate their critique of the Security Council's singular focus on Iraq and Kuwait even as they voted in favor. Zaire condemned Iraq for betraying the principles of Bandung and acting in an "obscurantist" fashion by trying to claim the Non-Aligned mantle for its actions.²⁷⁶ "It is absurd to talk of linkages," said the Malaysian foreign minister, "but every action of the Council stands evaluated one against the other."²⁷⁷ The Soviet Union, which still entertained hopes that it might broker a diplomatic solution, emphasized its continuing view that solving the Gulf Crisis meant "seeking a path towards a comprehensive settlement of the whole complex of Middle East problems that existed prior to 2 August."²⁷⁸ "That," said Eduard Shevardnadze, "is not rewarding anyone; it is just sound policy and common sense."²⁷⁹

The closer the onset of the war came, the less real use the United States had for its coalition partners and the more irritating the administration found efforts to find a political off-ramp. By the winter, the sense of international openness had disappeared.²⁸⁰ After the air war was underway, Gorbachev—by this point a weakened figure domestically and, internationally, little more than a junior associate in what had been trumpeted as a historical partnership—argued for a "two-phase" theory. There would first be "a pause in hostilities under the condition that Hussein declares that he will withdraw from Kuwait," and then "[a] promise to negotiate on all issues after the withdrawal."²⁸¹ Another recorded version of the plan involved six steps and a choreographed de-escalation.²⁸² The Soviet argument

²⁷⁴ FREEDMAN & KARSH, *supra* note 29, at 233–34; Record of the Main Content of Conversation Between Gorbachev and Bush, at 5–7, Paris, Nov. 19, 1990, Nat'l Sec. Archive (Sept. 9, 2020), at <https://nsarchive.gwu.edu/document/24326-bush-gorbachev-memcon-paris-november-19-1990>.

²⁷⁵ See the remarks of China, Yemen, and Cuba. UNSC, Provisional Verbatim Record of the 2963rd Meeting, *supra* note 273, at 32–38, 56, 61–83.

²⁷⁶ *Id.* at 46.

²⁷⁷ *Id.* at 77.

²⁷⁸ *Id.* at 93; see FREEDMAN & KARSH, *supra* note 29, at 233.

²⁷⁹ *Id.* The Soviets were, however, not going to challenge the U.S. line when push came to shove. For example, Anatoly Chernyaev recorded a November 24 meeting between Bush and Gorbachev in part as follows: "M.S. [Gorbachev] was in his style (regarding a 'political solution') but with a clear, thought-out tendency to stay close to Bush in any turn of events." Excerpts from Anatoly S. Chernyaev Diary, at 6, 1990, Nat'l Sec. Archive, at <https://nsarchive.gwu.edu/document/24305-anatoly-s-chernyaev-diary-1990-excerpts>.

²⁸⁰ See Koskenniemi, *supra* note 19, at 490.

²⁸¹ Excerpts from Anatoly S. Chernyaev Diary, at 2, Jan. 17, 18, 29, Nat'l Sec. Archive (Feb. 26, 2021), at <https://nsarchive.gwu.edu/document/21059-1991-01-17-chernyaev-diary-january>; see also Memorandum of Telephone Conversation Between Mikhail Gorbachev and Francois Mitterrand, at 1–2, Jan. 18, 1991, Nat'l Sec. Archive (Feb. 26, 2021), at <https://nsarchive.gwu.edu/document/21060-1991-01-18-gorbachev-mitterrand-memcon-mb>; Excerpts from Anatoly S. Chernyaev Diary, at 3–4, Feb. 7, 9, 15, 18, 22, Nat'l Sec. Archive (Feb. 26, 2021), at <https://nsarchive.gwu.edu/document/21062-1991-02-07-chernyaev-diary-feb-1991>; White House Memorandum of Telephone Conversation, Subject: Telcon with President Mikhail Gorbachev of the USSR of the Feb. 21, 1991, Nat'l Sec. Archive (Feb. 26, 1991), at <https://nsarchive.gwu.edu/document/21066-1991-02-21-gorbachev-bush>.

²⁸² See Excerpts from Anatoly S. Chernyaev Diary, at 3–4, Feb. 7, 9, 15, 18, 22, Nat'l Sec. Archive (Feb. 26, 2021), at <https://nsarchive.gwu.edu/document/21062-1991-02-07-chernyaev-diary-feb-1991> ("1. Hussein immediately declares full and unconditional withdrawal of troops from Kuwait. 2. The withdrawal starts the next day after a cease-fire. 3. The withdrawal takes place strictly within a fixed timeframe. 4. After 2/3 of the troops

against the war was that, as long as the regime survived, war would give Hussein the best that he could hope for—a chance to emerge as a courageous David who took on the American Goliath and lived to tell the tale.²⁸³

Baker's remarks on November 29 reiterated that the United States was committed to seeking a peaceful solution if one was there to be found, subject to strict terms. The U.S. position remained that the preconditions for any de-escalation or discussion of the broader "Middle East question" was Iraq's compliance with all relevant UN resolutions. The bind, from the point of view of a negotiated pullout, was that this meant that Hussein had to surrender under punitive conditions for negotiating to begin.²⁸⁴ Still, a flurry of diplomatic efforts followed in the month and a half between the passage of Resolution 678 and the January 15 deadline it set for an Iraqi withdrawal. None was successful. A long and awkward summit in Geneva on January 9 between Baker and Iraqi Foreign Minister Tariq Aziz was the fruitless culmination of these diplomatic efforts, which Hussein mostly played for time. It would be a war.

VI. BOMBING, THE "REVOLUTION IN MILITARY AFFAIRS," AND THE LAWS OF WAR: HUMANITY AND CIVILIZATION

A. *The Council Tables of Civilized Men*

Iraq's invasion of Kuwait was met with repeated declarations of outlawry. The United States was adamant that Saddam Hussein was not only an aggressor, but a barbarian—an enemy of order itself. This was a kind of enemy different from the Cold War's "evil empire." Hussein stood not for an alternative, hostile order, but for the antithesis of all order: he represented "the rule of the jungle" and perpetrated "a ruthless assault on the very essence of international order and civilized ideals."²⁸⁵

The idea of Saddam Hussein's outlawry had important strategic and diplomatic ramifications. It justified the commitment to nothing short of an unconditional Iraqi withdrawal; anything else would have permitted Hussein to "profit from his aggression," as Richard Haass wrote, and would have represented a failure to heed the lesson that "appeasement does not work."²⁸⁶ It justified the exercise of American power as the guarantor of global

are withdrawn, the economic sanctions against Iraq are lifted. 5. After the full withdrawal of troops, the causes of the UN Security Council's resolutions in effect disappear, and the resolutions are annulled. 6. The withdrawal is monitored by observers appointed by the UN Security Council.".)

²⁸³ Excerpts from Anatoly S. Chernyaev Diary, at 1, Feb. 7, 9, 15, 18, 22, Nat'l Sec. Archive (Feb. 26, 2021), at <https://nsarchive.gwu.edu/document/21062-1991-02-07-chernyaev-diary-feb-1991>.

²⁸⁴ If the resolutions were followed to the letter, for example, he would have been bound by Resolution 674's extremely broad determination that "the Iraqis were 'liable for any loss, damage or injury arising in regard to Kuwait or third states.'" SC Res. 674, *supra* note 245. The Council's tendency to allocate legal rights and responsibilities perplexed some commentators. As Rosalyn Higgins wrote: "that is an assertion that an international tribunal might want to make in more qualified terms." ROSALYN HIGGINS, PROBLEMS AND PROCESS 183 (1995); *see also* SIMPSON, *supra* note 207, at 289; Martti Koskenniemi, *The Police in the Temple Order, Justice and the UN: A Dialectical View*, 6 EUR. J. INT'L L. 325 (1995).

²⁸⁵ President Bush Address Before a Joint Session of the Congress on the Persian Gulf Crisis and the Federal Budget Deficit, *supra* note 23, at 159; Remarks by President Bush at the Annual Conference of the Veterans of Foreign Wars in Baltimore, Maryland, Aug. 20, 1990, in AUERSWALD, *supra* note 23, at 115.

²⁸⁶ HAASS, *supra* note 22, at 62; President Bush's Address to the Nation Announcing the Deployment of United States Armed Forces to Saudi Arabia, *supra* note 189, at 92.

stability, drawing as it did on the memory of fascist aggression and, incidentally, reminding the world who had helped defeat it. This was a view endemic to the concept of collective security, one that entailed an understanding of war not as a Clausewitzian extension of politics, and therefore a possible subject of negotiation or compromise, but rather as Franklin Roosevelt had understood the fight against fascism—as a “police operation, albeit a massive one, against gangsterism.”²⁸⁷

This image of Iraqi barbarism was continually generated and reinforced as the Crisis, and then the war, went on. A good tool for doing so turned out to be the form of U.S. warfare itself. As the fighting began, the U.S. came increasingly to underscore the care and restraint with which it carried out its own violence. The outlawry of the Iraqis would not be met with brutality, as when, in the past, the fight against an “uncivilized” outlaw exempted the Westerner from his own legal and moral obligations to moderate his violence.²⁸⁸ Rather, it would be countered with a form of warfare characterized by careful legalism and a publicized “humanity,” both of which served to underscore Saddam Hussein’s own outlawry. It was as if the truly barbaric thing to do would be to give in to the temptations of appeasement. By contrast, high-tech, “humane” warfare was not a recourse of last resort, but the essence of “civilization.” The link was an old one; a Japanese diplomat at the end of the nineteenth century had observed that, with the Europeans, “We show ourselves at least your equals in scientific butchery, and at once we are admitted to your council tables as civilized men.”²⁸⁹

It may be true, as some have written, that the careful legalism of the Gulf War belied a new form of brutality. The consequences of the war for the Iraqi people were devastating.²⁹⁰ And it is certainly true that this legalism served more generally to legitimate a military solution in the eyes of the international community.²⁹¹ But this legitimation function was nothing particularly new for international law in general or for the laws of armed conflict in particular. And critiques of efforts to humanize warfare as effectively perpetuating it have a long intellectual pedigree, as Samuel Moyn has shown.²⁹²

²⁸⁷ See Anders Stephanson, *The Cold War Considered as a US Project, in* REINTERPRETING THE END OF THE COLD WAR: ISSUES, INTERPRETATIONS, PERIODIZATIONS (Silvio Pons & Federico Romero eds., 2005).

²⁸⁸ Such was, for example, the argument of the Italian fascists at the League of Nations in defense of their intensely brutal aggression against Ethiopia. See League of Nations, Memorandum by the Italian Government on the Situation in Ethiopia, Sept. 11, 1935, C.340.M.171.1935.VII, in League of Nations, Official Journal, 88th and 89th Council Sessions, 66; GETACHEW, *supra* note 6, at 65; see also Alberto Sbacchi, *Poison Gas and Atrocities in the Italo-Ethiopian War, in* ITALIAN COLONIALISM (Ruth Ben-Ghiat & Mia Fuller eds., 2005). The contrast is not an idle one: the failure of the League to deter or reverse the invasion of Ethiopia was more than once raised in the Security Council, as mentioned above. See also KOSKENNIEMI, GENTLE CIVILIZER, *supra* note 93, at 86.

²⁸⁹ GEOFFREY BEST, HUMANITY IN WARFARE 141 (1980); see also KOSKENNIEMI, GENTLE CIVILIZER, *supra* note 93, at 84 (quoting same).

²⁹⁰ See, e.g., UNSC, Report to the Secretary-General on Humanitarian Needs in Kuwait and Iraq in the Immediate Post-Crisis Environment by a Mission to the Area led by Mr. Martti Ahtisaari, Under-Secretary-General for Administration and Management, UN Doc. S/22366 (Mar. 20, 1991); Human Rights Watch, *Needless Deaths in the Gulf War* (1991), at <https://www.hrw.org/reports/1991/gulfwar>.

²⁹¹ See, e.g., Chris af Jochnick & Roger Normand, *The Legitimation of Violence: A Critical History of the Laws of War*, 35 HARV. J. INT’L L. 49 (1994); Chris af Jochnick & Roger Normand, *The Legitimation of Violence: A Critical Analysis of the Gulf War*, 35 HARV. J. INT’L L. 387 (1994).

²⁹² See generally SAMUEL MOYN, HUMAN: HOW THE UNITED STATES ABANDONED PEACE AND REINVENTED WAR (2021) [hereinafter MOYN, HUMAN].

What was novel in the Gulf, and what links the laws of war to the larger significance of the Crisis, was the way in which the United States used the *jus in bello* as a means of transmuting its own military-technical superiority into a source of authority in the world order it sought to create. The rise of humane warfare helped renew the distinction between “civilized” and “uncivilized” nations in international relations. The resurgence of this civilizational criteria in the 1990s has been observed before, but the contribution of humane warfare has not been emphasized.²⁹³ The genius of this rhetoric—more discovered than designed by the Americans—was that it made inequalities of wealth and power self-justifying. Only the United States and its close allies could wage war this way. When they did, their resort to war demonstrated their civilizational capacities and their rightful place atop the global hierarchy. The tactics of their enemy could only demonstrate his barbarism and deepen his isolation.

B. A New Kind of War? Law and the Revolution in Military Affairs

The rise of humane warfare in the Gulf was the product not so much of legal, but of technological developments. Military historians and defense intellectuals write of the Gulf War as a watershed in military history, one that marked the consolidation of several technological and operational developments often called the “Revolution in Military Affairs” (RMA). There is a voluminous literature on the RMA that reflects some controversy over whether it was truly “revolutionary,” how to date it historically, and what precisely it consisted in.²⁹⁴ The conventional account describes the RMA as involving a combination of operational, strategic, and tactical developments enabled by the maturation of certain key military technologies around this time. The description of a Department of Defense memorandum written in the aftermath of Desert Storm is representative. It breaks the RMA (which it calls by its other name, the “military-technical revolution”) into three core technological elements: first, technologies enabling superior forms of information gathering, processing, and dissemination regarding the enemy’s vulnerabilities as well as one’s own; second, dramatic improvements in the “range, accuracy, and lethality of conventional munitions”; and third, the advent of simulations that improved the efficacy of training.²⁹⁵ Andrew Latham, taking a longer view, has argued that the RMA reflected a shift away from mass industrial warfare, based on the ability to produce huge quantities of arms and withstand various forms of civilian and military attrition under conditions of “total war,” to a more capital-intensive, less manpower-intensive, more professionalized form of “precision warfare.”²⁹⁶

²⁹³ See, e.g., SIMPSON, *supra* note 207, at 280 n. 9.

²⁹⁴ See, e.g., Warren Chin, *Technology, Industry, and War, 1945–1991*, in *WAR IN THE AGE OF TECHNOLOGY: MYRIAD FACES OF MODERN ARMED CONFLICT* (Robert Jensen & Andrew Wiest eds., 2001); FREDERICK W. KAGAN, *FINDING THE TARGET: THE TRANSFORMATION OF AMERICAN MILITARY POLICY* (2006); Andrew Latham, *Warfare Transformed: A Braudelien Perspective on the “Revolution in Military Affairs,”* 8 *EUR. J. INT’L RELATIONS* 231 (2002); Brian McAllister Linn, *The U.S. Armed Forces’ View of War*, 140 *DAEDALUS* 33 (2011); Thomas G. Mahnken, *The Growth & Spread of the Precision-Strike Regime*, 140 *DAEDALUS* 45 (2011); KEITH L. SHIMKO, *THE IRAQ WARS AND AMERICA’S MILITARY REVOLUTION* (2010).

²⁹⁵ See LTC Andrew F. Krepinevich, Memorandum for the Secretary of Defense: Assessment of the Military Technical Revolution, July 15, 1992, Nat’l Sec. Archive, at <https://nsarchive.gwu.edu/document/19398-national-security-archive-office>.

²⁹⁶ See Latham, *supra* note 294, at 242–44.

These technological advances were coupled with developments in operational theory that sought to take advantage of them. Broadly speaking, the leading theoretical components of the RMA emphasized the use of airpower to strike at an enemy's "centers of gravity" or "central nervous system" rather than its forces, and to do so in a manner that took advantage of informational asymmetries so as to overwhelm the enemy and outpace his ability to respond.²⁹⁷ In many ways, little was really new about these ideas, which, depending on their flavor, harkened back either to the ideas of early- and mid-twentieth century "strategic airpower" enthusiasts like the American Billy Mitchell and the Italian Giulio Douhet, or else to the tactical innovations of Hitler's Wehrmacht.²⁹⁸ What was different, though, was that the technological capabilities of the U.S. armed forces—thanks to the information and "precision strike" revolutions²⁹⁹—might now allow the armed forces to achieve in practice what was previously possible only in theory.

In Iraq it was the air offensive, which "differed in kind rather than degree from all previous air campaigns," that demonstrated these capabilities and came to stand for a "new American way of war."³⁰⁰ The Desert Storm air campaign demonstrated three key components of the RMA: the United States' total dominance of the air; its successful reliance on precision targeting in the first phase of the air campaign; and the dramatic improvements in surveillance technology and thus the army's "situational awareness" in Iraq.³⁰¹

These technical capabilities enabled a particular kind of war with a closer relationship to law. They were a necessary condition for the Gulf War's becoming, in the words of one military lawyer, "the most legalistic war we've ever fought," or, in Samuel Moyn's words, "America's first genuine attempt at humane war."³⁰² Consider the roughly contemporary argument that, in the past, "force has been a blunt instrument because military resources have made it so. To compensate for difficulty in finding and hitting targets, military forces have often resorted to saturating the target area or using large explosions."³⁰³ This mode of pre-RMA twentieth-century warfare was "difficult to encompass within systems of law or morality."³⁰⁴ The superior RMA-enabled information-gathering and processing capabilities, combined with the extensive deployment of precision-guided munitions (PGMs) in the air war, changed this. They did not themselves drive the U.S. military's embrace of humane

²⁹⁷ See *id.*; see also SHIMKO, *supra* note 294; Mahnken, *supra* note 294.

²⁹⁸ See Mahnken, *supra* note 294, at 53; Linn, *supra* note 294, at 35–36; SHIMKO, *supra* note 294, at 47. How one identifies the primary historical antecedents depends on which of two dueling tactical approaches (one from the Army, one from the Air Force) one takes as representative of the RMA. The answer does not matter here. For an account of the contemporaneous debate over military tactics, see FREEDMAN & KARSH, *supra* note 29, at 312–29.

²⁹⁹ See Mahnken, *supra* note 294, at 48.

³⁰⁰ Edward Luttwak, *The Air War*, in INTERNATIONAL PERSPECTIVES ON THE GULF CONFLICT, 1990–91, at 227 (Alex Danchev & Dan Keohane eds., 1994).

³⁰¹ See SHIMKO, *supra* note 294, at 79.

³⁰² Steven Keava, *Lawyers in the War Room*, A.B.A. J. 52, 77 (1991); MOYN, HUMANE, *supra* note 292, at 225.

³⁰³ Patrick M. Morgan, *The Impact of the Revolution in Military Affairs*, 23 J. STRATEGIC STUDS. 132, 141 (2000).

³⁰⁴ *Id.*; see also FREEDMAN & KARSH, *supra* note 29, at 314 ("The new technologies of precision guidance created options for a modern air force previously unavailable. This further encouraged the shift away from 'mass destruction.'").

warfare, which had deeper roots. But they made its realization possible in a novel—and thanks to an enthusiastic media, very visible—way.³⁰⁵

“Humanity” was understood to be an explicit benefit of the new PGMs, one to be enjoyed both by those on the receiving end of the bombing and, in a different way, by coalition soldiers, who could be more thoroughly kept out of harm’s way. A new generation of strategic airpower advocates in the Air Force, led by Col. John A. Warden III, sold their theories to the military brass and political leadership on the grounds that the sort of bombing they envisioned—specifically, the use of PGMs—could win the war with fewer civilian casualties and less overall destruction.³⁰⁶

The role of military lawyers in the planning and execution of Operation Desert Storm took advantage of these capabilities. Judge advocate general (JAG) lawyers participated in both the targeting planning and in the actual conduct of strikes. Major Harry Heintzelman headed a group of JAGs detached with the brass, and he “personally ‘scrubbed’ all of the targets for the air campaign.”³⁰⁷ Meanwhile, “wing-level” lawyers were deployed to advise the lower-level units as they received real-time targeting information and intelligence about the target and prepared to conduct the strikes.³⁰⁸ In all, “every target was reviewed by Heintzelman, . . . every aircrew had been extensively briefed on the laws of war and the rules of engagement, and . . . every aircrew had access to a JAG around briefing time for each mission[.]”³⁰⁹ A key factor in the JAGs’ proportionality calculus was the accuracy of the weapons at issue, which suggests that the RMA capabilities factored directly into the lawyers’ work.³¹⁰

To be very sure, the “precision” of precision warfare is easily overstated. Even more significantly, the distinction between civilian and military targets that is foundational to the modern laws of armed conflict rarely maps cleanly onto the actual infrastructure of modern society, meaning that even perfect information and perfect accuracy could never eliminate the barbarity of war in any absolute sense.³¹¹ (And this is assuming the proposition that killing military targets can never be barbarous, a law of armed conflict axiom put to the test in the “turkey shoot” of retreating Iraqi forces that concluded Desert Storm.)

The limits of precision were laid bare in the most controversial breaches of the rules of humane warfare on the part of U.S. forces, including the strike on the Al Firdos bunker that killed several hundred civilians, and the extensive and long-term health effects of the destruction of Iraqi infrastructure, particularly the Baghdad electrical grid. It is significant, though, that the defense of these actions has come down to arguments that mistakes were made because the knowledge possessed by the U.S. military was incomplete or flawed—the U.S. military has, for example, said that it would not have destroyed Baghdad’s electrical

³⁰⁵ Much of the air campaign was broadcast live on CNN, showcasing the firepower and precision of U.S. bombing. See generally SEEING THROUGH THE MEDIA: THE PERSIAN GULF WAR (Susan Jeffords & Lauren Rabinovitz eds., 1994); THE MEDIA AND THE PERSIAN GULF WAR (Robert E. Denton ed., 1993).

³⁰⁶ See Michael W. Lewis, *The Law of Aerial Bombardment in the 1991 Gulf War*, 97 AJIL 481, 486 (2003).

³⁰⁷ *Id.* at 487.

³⁰⁸ *See id.* at 499–500.

³⁰⁹ *Id.* at 502.

³¹⁰ *See id.* at 500–501.

³¹¹ See Oscar Schacter, *United Nations Law in the Gulf Conflict*, 85 AJIL 452, 466 (1991); Adam Roberts, *The Laws of War*, in INTERNATIONAL PERSPECTIVES ON THE GULF CONFLICT, 1990–91, at 272–73 (Alex Danchev & Dan Keohane eds., 1994). This “principle of distinction” is most clearly stated in the “Basic Rule” of Article 48, Additional Protocol I, of the Geneva Conventions.

grid as thoroughly as it did if it had a better understanding of the likely consequences.³¹² Once the problem is accepted as a technical one, better techniques can always be proposed as the solution. It is, in any event, difficult to deny that the level of carefulness demonstrated by the U.S. military in its bombing was unprecedented.³¹³ The point here is not at all to deny the severe human toll of the war, especially in its aftermath. But during the conflict, the spectacle of the war and the rhetoric of the coalition members was not one of absolute but relative humanity. What it meant to be civilized was, as has often been the case, defined by its opposite.³¹⁴

C. *The Laws of War in the New World Order: Civilization and Barbarism*

A formal “standard of civilization” has a long history in international law.³¹⁵ With the retreat of natural law thinking in the nineteenth century, “civilization” moved to the center of liberal international lawyers’ sense of their discipline, the concept formed in part by what appeared as the uniqueness of European progress in contrast with the wider world, and fed by current assumptions about the evolutionary development of peoples.³¹⁶ As Ntina Tzouvala has shown, the concept of civilization has always been ambivalent: on the one hand, it has promised integration to those peoples willing to adopt the institutional forms of capitalist modernity; on the other hand, it has regarded non-Western or non-European peoples as indelibly subordinate.³¹⁷ It thus functioned as a discursive engine of what Tzouvala calls a simultaneous “homogenisation and unevenness on a global scale,” and of what Getachew calls “unequal integration.”³¹⁸ The laws and practice of war reflected the civilizational distinction.³¹⁹

It was significant, then, that the United Nations Charter welcomed all “peace-loving nations” as members (though retaining a trusteeship system that mirrored the League of Nations’ Mandate system), while the League of Nations Covenant drew explicit distinctions between “civilization” and those non-European peoples that were relegated to its “sacred trust.”³²⁰ The post-war order “aspired to universality” in a more genuinely pluralist way.³²¹ Even if, to those newly admitted, membership in that order might merely imply a new form of unequal integration in which domination continued by other means, the

³¹² See Lewis, *supra* note 306, at 503–07, 509.

³¹³ One revealing example is the carefully choreographed destruction of the Iraqi biological weapons laboratories described in *id.* at 489–90.

³¹⁴ See ANGHIE, *supra* note 85, at 3; KOSKENNIEMI, GENTLE CIVILIZER, *supra* note 93, at 103.

³¹⁵ See generally NTINA TZOUVALA, CAPITALISM AS CIVILIZATION: A HISTORY OF INTERNATIONAL LAW (2020); GERRIT W. GONG, THE STANDARD OF “CIVILIZATION” IN INTERNATIONAL SOCIETY (1984).

³¹⁶ See Jennifer Pitts, *Empire and Legal Universalisms in the Nineteenth Century*, 117 AM. HIST. REV. 92, 92–93 (2012); TZOUVALA, *supra* note 315, at 44–87; KOSKENNIEMI, GENTLE CIVILIZER, *supra* note 93, at 102–03.

³¹⁷ TZOUVALA, *supra* note 315, at 45.

³¹⁸ *Id.*; GETACHEW, *supra* note 6, at 157.

³¹⁹ See MOYN, HUMANE, *supra* note 292, at 93–97.

³²⁰ Covenant of the League of Nations, Art. 22. On the history of the Mandate System, see SUSAN PEDERSEN, THE GUARDIANS: THE LEAGUE OF NATIONS AND THE CRISIS OF EMPIRE (2015). And of course European empire lived on well through the creation of the United Nations, and not necessarily in spite of it. Hundreds of millions lived in European colonies after the UN’s creation, compared with only 20 million in formal UN trusteeships. See MAZOWER, NO ENCHANTED PALACE, *supra* note 28, at 150.

³²¹ SIMPSON, *supra* note 207, at 272.

abolition of the standard of civilization was a victory, and membership was a starting point for contestation from within.

In the Gulf Crisis, as noted above, the standard of civilization returned, and it did so in connection with the methods and rules of warfare. It was, in the first instance, Iraq's aggression that marked it as an outlaw. But the fact of aggression alone was a tenuous basis to make the case for war and to head off a diplomatic compromise that would have, in the U.S. view, amounted to appeasement. So, too, was Iraq's aggressor status a thin basis to hold together a broad international coalition, as the outbreak of war made international consensus—particularly in majority-Arab countries—much more brittle. At one point, Bush personally called Hafiz Asad of Syria to reassure him that U.S. forces were doing everything they could to avoid civilian casualties.³²²

Such assurances were a general feature of the conflict's portrayal by the administration. When the war began, officials repeatedly underscored the extraordinary carefulness of U.S. conduct, often explicitly invoking the terminology of international humanitarian law. "When a war must be fought for the greater good, it is our gravest obligation to conduct a war in proportion to the threat. And that is why we must act reasonably, humanely, and make every effort to keep casualties to a minimum," President Bush told a convention of religious broadcasters on January 28.³²³ Later, commenting on the air war, Bush noted that coalition forces were "going to extraordinary and, I would venture to say, unprecedented lengths to avoid damage to civilians and holy places."³²⁴ On January 30, Thomas Pickering informed the world that "the allied aircraft . . . are taking every precaution to avoid civilian casualties. These pilots are in fact placing themselves in greater danger in order to minimize collateral damage and civilian casualties."³²⁵ The United Kingdom also picked up on the theme.³²⁶

The coalition efforts were explicitly contrasted with the Iraqi military's conduct. Bush and Baker accurately noted that Iraq—particularly in its indiscriminate SCUD launches against Israel and Saudi Arabia—was attacking "indiscriminately," perpetrating the "wanton, barbaric bombing of civilian areas," and using SCUD missiles as "nothing more than weapons of terror," which offer no "military advantage."³²⁷ In doing so, Saddam Hussein was carrying out "a relentless assault on the values of civilization."³²⁸ In a series of letters to the UN Security Council, the United States repeatedly warned Hussein of his obligations under the Geneva Conventions, while it underscored American compliance with the Conventions as well as its commitment to reducing civilian casualties in the air

³²² FREEDMAN & KARSH, *supra* note 29, at 326.

³²³ Excerpts from Address by President Bush to the National Religious Broadcasters Convention, Jan. 28, 1991, in AUERSWALD, *supra* note 23, at 381.

³²⁴ Excerpts from Remarks by President Bush at a Washington, D.C. News Conference, Feb. 5, 1991, in AUERSWALD, *supra* note 23, at 387.

³²⁵ Letter Dated 30 January 1991 from the Permanent Representative of the United States of America to the United Nations Addressed to the President of the Security Council, UN Doc. S/22173.

³²⁶ Letter Dated 13 February 1991 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations Addressed to the President of the Security Council, UN Doc. S/22218.

³²⁷ Excerpts from Address by President Bush to the National Religious Broadcasters Convention, *supra* note 323, at 382.

³²⁸ Secretary Baker's Statement as Delivered to the House Foreign Affairs Committee, *supra* note 244, at 401–02.

war.³²⁹ The specter of the use of chemical or biological weapons was also a subject of much discussion, as was the “environmental terrorism” of Iraqi attacks on oil installations.³³⁰ The U.S. deterrent against the use of chemical or biological weapons was, notably, not a threatened escalation in the *means* of warfare like, as some had speculated, the use of nuclear weapons. Rather, the deterrent was an escalation in ends—an extension of American objectives to the destruction of Saddam Hussein’s regime.³³¹ Brutality would not meet with brutality, but with an upwardly recalibrated exercise of humane force.

Critical accounts of the rise of war lawyering, both of 1990s and more recent vintage, stress its legitimation function, either with respect to the legality of wars themselves or with respect to the underlying violence, which, for all its legality, may not be any less brutal. Samuel Moyn argues, for example, that a focus on the laws of war has had the effect of perpetuating worldwide armed conflicts; if a war is humane and obeys the rules of the *jus in bello*, it must be “legal”—or else the legality of conflicts themselves is a secondary consideration.³³² Chris af Jochnick and Roger Normand, writing in direct response to the legalized war in the Gulf, questioned the extent to which the laws of war actually served to humanize the warfare there.³³³

My own claim, while not incompatible with these arguments, is different. In the Gulf Crisis, the rise of legally and technologically humane warfare needs to be understood as part of the larger picture of hierarchical international law that emerged from the Gulf. As against past efforts to realize the formal abolition of the “standard of civilization,” the practice of humane warfare in the Gulf helped to reinstate it. This was not a return to 1945, a renewal of the UN “as its founders intended,” but the resurfacing of a civilizational rhetoric that had not been so openly embraced for some time.³³⁴ But, significantly, its resurfacing depended on something new: the technological developments associated with the “Revolution in Military Affairs” that enabled the humane warfare in the Gulf. Here, the enormous wealth and power that made the United States the “last superpower” and the *primum inter pares* in the Security Council could, through the theory and practice of humane warfare, be transmuted from brute facts into justifications for a hierarchical world order. Authority sprang from power, immaculately conceived.

The revitalization of the rhetoric of civilization foreshadowed what later critics of humanitarian intervention saw in it—a resurrection of different rules for the civilized and the uncivilized, or a form of avowed “anti-pluralism” in international law.³³⁵ This tendency,

³²⁹ Letter Dated 21 January 1991 from the Permanent Representative of the United States of America to the United Nations Addressed to President of the Security Council, UN Doc. S/22122; Letter Dated 22 January 1991 from the Permanent Representative of the United States of America to the United Nations Addressed to the President of the Security Council, UN Doc. S/22130; Letter Dated 30 January 1991, *supra* note 325.

³³⁰ Letter Dated 14 February 1991 from the Permanent Representative of the United States of America to the United Nations Addressed to President of the Security Council, UN Doc. S/22227.

³³¹ FREEDMAN & KARSH, *supra* note 29, at 257, 289; *see also* Yost, *supra* note 63, at 149 (noting that Mitterrand opposed retaliatory use of WMDs as a “retreat toward barbarism”).

³³² *See* MOYN, HUMANE, *supra* note 292.

³³³ *See* Jochnick & Normand, *supra* note 291.

³³⁴ This is not at all to say that civilizational logic had ever disappeared from international law. *See generally* TZOUVALA, *supra* note 315.

³³⁵ For a discussion of the lingering standard of civilization in the twenty-first century, *see id.* at 168, n. 4. On “anti-pluralism,” *see* SIMPSON, *supra* note 207, at 232. Simpson uses the term as a merely descriptive one, one that

visible in the language of outlawry and barbarism before and during Desert Storm, was ratified with Resolution 687, issued following the Iraqi defeat.³³⁶ Bush's State Department legal advisor observed that it was "essentially without precedent" among Security Council actions.³³⁷ The resolution was the longest ever adopted by the Council.³³⁸ Among other things, it inaugurated a regime of punitive sanctions intended to enforce compliance with prior UN resolutions, including making reparations to Kuwait; imposed a settlement on the dispute over the Kuwaiti border; and ordered the deployment into Iraq of international teams to oversee the destruction of its weapons facilities and observe its nuclear facilities.³³⁹ Here, in a document that looks more like a piece of legislation than a Security Council resolution, Iraq's outlaw status was formalized, and the terms of its future place in the new world order were settled.³⁴⁰

VII. CONCLUSION

In the historical scholarship on international law and international institutions, the Gulf Crisis tends to be glossed over. In some respects this is justifiable. The nature and direction of the international response were largely dictated by the undisputed illegality of Saddam Hussein's actions, his brutality, and his tendency to isolate himself from almost all potential sympathizers. It might therefore be argued that there was nothing "new" about the world order that emerged from the Gulf, nor anything unusual about the character of the international response or its implications for international law. This was, after all, a paradigm case for a United Nations enforcement action.³⁴¹ This view of the conflict has led to a tendency among some to regard it with a certain nostalgia, particularly when it is set against the more radical unilateralism that characterized the second Bush administration and its war against Iraq, or indeed with the messier politics of the "war on terror." It was in this spirit that Richard Haass, twenty-five years later, would describe Desert Storm as a war that now "has a classic feel to it."³⁴²

But the fact that the invasion of Kuwait presented an easy case for UN action is the beginning, not the end, of what makes the Gulf Crisis an essential and neglected moment in the history of modern international order. It was precisely because there was agreement that action should be taken, and that this action should be taken cooperatively and under the sign of law, that fundamental questions about the character of the international order were put in issue and, for a time, opened for debate. Making sense of the terms of that debate, and of its meaning in the history of international order, requires seeing it in the context of the challenges and transformations that had attended the preceding decades of the history of

"denies certain states the right to participate fully in international legal life because of some moral or political incapacity such as lack of civilisation, absence of democracy or aggressive tendencies." *Id.*

³³⁶ SC Res. 687, *supra* note 245.

³³⁷ Williamson, *supra* note 21, at 380.

³³⁸ *See id.*

³³⁹ *See* SIMPSON, *supra* note 207, at 290–93; Oscar Schacter, *United Nations Law*, 88 AJIL 1, 12 n. 32, 18 n. 60 (1994).

³⁴⁰ *See* Usha Natarajan, *Creating and Recreating Iraq: Legacies of the Mandate System in Contemporary Understandings of Third World Sovereignty*, 24 LEIDEN J. INT'L L. 799, 818–19 (2011).

³⁴¹ *See* SIMPSON, *supra* note 207, at 197.

³⁴² Richard N. Haass, *Desert Storm, the Last Classic War*, WALL ST. J. (July 31, 2015).

international law. Most saliently, on my account, these challenges included the fight for an anti-colonial international law, an international law characterized by something more than formally equal sovereignty and enabled by the abolition of older modes of formal exclusion. Also vital are the responses to those challenges, including the rise of a global economic order with a very different conception of the role of the state and international institutions, and a Reagan-era period of frank unilateralism.

Against this backdrop, the shape of the hierarchical international law that emerged from the Gulf becomes clearer. The legal visions of the G77 and the NAM did not disappear after the 1970s but exerted ongoing effects on international law, the U.S. orientation to it, and the possible U.S. uses of international law and its institutions. Indeed, most striking about the fall of 1990 is how much possibility for interstate cooperation there appeared to be in the new tenor of international relations, despite the simultaneous recognition of a dawning era of U.S. primacy. Other alternatives with roots in the same tumultuous moment in international affairs—Mitterrand's rhetoric of global social democracy under international law; Colombian discussion of the creation of a multilateral institution to manage oil flows; calls among the Non-Aligned for the vigorous and even-handed enforcement of the "hard core of constitutive principles"; even the possibility of genuine great power cooperation among all members of the P-5—were, momentarily, given voice in the halls of the United Nations and the channels of diplomatic interchange. Most states agreed that the invasion of Kuwait had to be reversed, but many wanted this to be merely a small piece of a more cooperative and lawful international order. These are real paths not taken, even if—owing in part to Bush administration policy, in part to the nature of the Gulf War, and in part to the tectonic shifts in global politics between the 1970s and the 1990s—they retrospectively had little chance of success.

What emerged against these alternatives and against the legacies of the contests and crises of the 1970s were the rudiments of a hierarchical world order. The fact of an interdependent world, once the premise of an argument for an egalitarian international law of economic cooperation, now implied the need for a global hegemon to protect a vulnerable world from economic shocks. Sovereignty was now less the ally of equal standing in the international community and more the guarantor of international stability, a source of authority for the world's P-1, who would police its boundaries via the Security Council. And the humane warfare in the Gulf, enabled by the technological superiority of the United States and its allies, facilitated the revitalization of an explicit "standard of civilization" long discredited on the international stage. These conceptual redeployments and reassociations were their own form of worldmaking. In the following years, the terms and possibilities of international cooperation in this new world would evolve in different directions—some of them more genuinely "new"—but those developments have their roots in the Gulf Crisis, the terms laid down in it, and, in a different way, in the older worldmaking visions it laid aside.