

## Introduction

Created from the ashes of the Second World War with the Allies determined to prevent a repeat of Adolf Hitler's horrors, the United Nations for most of its existence has focused more on external aggression than internal mass killings. Yet Nazi Germany was guilty of both. Unlike aggression against other countries, the systematic and large-scale extermination of Jews was a new horror. With a UN Security Council (UNSC) resolution in 1999 calling for the protection of civilians, and the adoption of the Responsibility to Protect (R2P) promulgated in 2001 by the International Commission on Intervention and State Sovereignty (ICISS) as UN policy in 2005, the organisation elevated the doctrine of ending mass atrocities against people into a collective global responsibility alongside preventing and repelling armed aggression against states. In the sixty-year period from the UN's creation in 1945 to the adoption of R2P in 2005, the peace and security agenda of the world body was significantly recalibrated as the norm of non-intervention steadily softened and the cluster of human rights and humanitarian norms progressively hardened, as manifested across a wide range of agenda items culminating in R2P. That journey is the theme of this book.

Both sets of responsibility require judgements on when, how and how much force to use. This provides the leitmotif of my narrative: the procedural norm that emphasises multilateral forums and approaches for making the decision to use force, the substantive reasons justifying the recourse to force and the manner in which both these embedded norms have come under pressure in recent times. The second strand in my narrative is the distinction between legality and legitimacy. According to the UN Secretary-General's High-Level Panel on Threats, Challenges and Change, 'The maintenance of world peace and security depends importantly on there being a common global understanding, and acceptance, of when the application of force is both legal and legitimate.'<sup>1</sup> An international

<sup>1</sup> High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility* (New York: United Nations, A/59/565, December 2004), para. 184.

community exists to the extent that there is a shared understanding of what constitutes legitimate behaviour.<sup>2</sup> A growing gulf between lawful and legitimate use of force is evidence therefore of an erosion of the sense of international community.<sup>3</sup> To the extent that the material capacity to deploy and use force anywhere in the world is concentrated in the United States while the authority to do so is legally vested in the UNSC, the third strand concerns the US–UN relationship.

Part of the tension in UN–US relations arises from the American desire to use the organisation to prescribe justice within borders, to reach deep into the domestic jurisdictions of other states, while preserving the status quo order among states. But many developing countries reverse the priority and wish to use the UN as the forum in which to bring greater justice in relations among nations while privileging the status quo-oriented order within states.<sup>4</sup> The industrial–developing countries divide provides the fourth undercurrent of analysis throughout the book. Both the UN and the US intelligence community have underlined the continuing shift of wealth, power and influence from the major Western powers to some of the emerging powers.<sup>5</sup> In an article published on the eve of the Paris climate change conference in December 2015, India's Prime Minister Narendra Modi wrote: 'The lifestyles of a few must not crowd out opportunities for the many still on the first steps of the development ladder.' Noting that 'advanced countries powered their way to prosperity on fossil fuel when humanity was unaware of its impact', he argued that 'while some face a choice between lifestyles and technologies, others stand between deprivation and hope'.<sup>6</sup>

Modi was articulating a more general pushback from the global South against Western standards and normative expectations that work to their disadvantage. They are demanding with increasing assertiveness the right to be at the table, in order to avoid being on the menu, for writing the rules of the global game and designing and controlling the institutions of

<sup>2</sup> For an exploration of the types of international community that can be constructed, see David C. Ellis, 'On the Possibility of "International Community"', *International Studies Review* 11:1 (2009), pp. 1–26.

<sup>3</sup> Ramesh Thakur, 'Law, Legitimacy and United Nations', *Melbourne Journal of International Law* 11:1 (2010), pp. 1–26.

<sup>4</sup> Mohammed Ayoob, 'Humanitarian Intervention and State Sovereignty', *International Journal of Human Rights* 6:1 (2002), pp. 98–9.

<sup>5</sup> UNDP, *Human Development Report 2013: The Rise of the South* (New York: Oxford University Press, 2013); US National Intelligence Council, *Global Trends 2025: A Transformed World* (Washington, DC: US Government Printing Office, 2008).

<sup>6</sup> Narendra Modi, 'The rich world must take greater responsibility for climate change', *Financial Times*, 29 November 2015.

global governance. Against that backdrop, the rise of new groupings like the BRICS (Brazil, Russia, India, China, South Africa) presents an opportunity to the less powerful and poor majority of countries to have their concerns raised in the councils of the powerful, from climate change to access to affordable pharmaceuticals, environmental and labour standards in global trade, access to international development finance and credit lines, protection of indigenous intellectual property rights, and the like.<sup>7</sup>

The fifth and final strand in the fabric of my analysis is the central importance of the rule of law in international affairs (which includes various ethical and institutional components<sup>8</sup>), and hence of a rules-based order centred on the United Nations, as the foundation of a civilised state of international relations. Established to provide predictability and order in a world in constant flux, the United Nations – a bridge between power and principles, between state-based realism and international idealism – is at once the symbol of humanity's collective aspirations for a better life in a safer world for all, a forum for negotiating the terms of converting the collective aspirations into a common programme of action, and the principal global instrument for the realisation of the aspirations and the implementation of the plans. On balance, the world has been a better and safer place with the UN than would have been the case without it. In the theatre of world politics, the UN has had either star billing or supporting roles in preventing and managing conflicts, regulating armaments, championing human rights and international humanitarian law, liberating the colonised, providing economic and technical aid in newly liberated countries, organising elections, empowering women, educating children, feeding the hungry, sheltering the dispossessed and displaced, housing the refugees, tending to the sick and coordinating disaster relief and assistance. Moreover, the organisation is required to manage all this on a 24/7 basis.

The UN's primary purpose is the maintenance of international peace and security. It seeks to do so both as a site of and an actor in global governance.<sup>9</sup> The incidence of war in human society is as pervasive as the wish for peace is universal. The use of force and the possibility of controlling it

<sup>7</sup> Ramesh Thakur, 'How Representative Are BRICS?', *Third World Quarterly* 35:10 (2014), pp. 1791–808.

<sup>8</sup> Charles Sampford, 'Reconceiving the Rule of Law for a Globalizing World', in Spencer Zifcak, ed., *Globalisation and the Rule of Law* (London: Routledge, 2006), pp. 9–31.

<sup>9</sup> Ramesh Thakur, 'Multilateral Diplomacy and the United Nations: Global Governance Venue or Actor?', in James P. Muldoon, JoAnn Fagot Aviel, Richard Reitano and Earl Sullivan, eds., *The New Dynamics of Multilateralism: Diplomacy, International Organizations, and Global Governance* (Boulder, CO: Westview, 2011), pp. 249–65.

and so controlling others has preoccupied the minds of rulers and scholars alike since time immemorial. But so too have some of the most charismatic and influential personalities in human history reflected on the renunciation of force and the possibility of eliminating it from human relationships. The twentieth century captured the paradox only too well. On the one hand, we tried to place increasing normative, legislative and operational fetters on the right of states to go to war. Yet the last century turned out to be the most murderous in human history, with more dead than in all previous wars of the past two thousand years put together.

Just three years into the new century, the Iraq War roiled the UN-centred world of diplomacy as few other issues since 1945.<sup>10</sup> At the heart of the dispute in the UN as a site was not Iraq, nor even its dictator-President Saddam Hussein, but the nature and exercise of American power. By the end of 2015 Afghanistan, Libya and Syria had joined the list of countries that – with or without external interventions – were experiencing violent upheavals and expanding ungoverned spaces filled by unsavoury militants of various stripes. The fragility of post-invasion Iraq, post-intervention Afghanistan and Libya and no-intervention Syria, the mass exodus of displaced persons and refugees from their homelands to resettlement camps in near and distant destinations, and the proliferation of terrorist groups in these regions underlined the complex challenges and absence of easy answers to the goal of a secure peace. The crises highlighted the urgent need for a new institutional framework and vision that can marry prudent anticipatory self-defence against imminent threats to the centuries-old dream of a world where force is put to the service of law that protects the innocent without shielding the criminals.

The manifold security crises, along with the challenges of climate change, global pandemics, food and water scarcity, drug and people trafficking, national and global inequalities, and the like, dramatised how the evolution of institutions of international governance lags behind the rapid emergence of collective problems.<sup>11</sup> The Brundtland Commission's report began with a memorable opening sentence: 'The Earth is one but the world is not.'<sup>12</sup> The intergovernmental institutions that collectively underpin global governance are insufficient in number, inadequately resourced and

<sup>10</sup> Ramesh Thakur and Waheguru Pal Singh Sidhu, eds., *The Iraq Crisis and World Order: Structural, Institutional and Normative Challenges* (Tokyo: United Nations University Press, 2006).

<sup>11</sup> Thomas G. Weiss and Ramesh Thakur, *Global Governance and the UN: An Unfinished Journey* (Bloomington: Indiana University Press, 2010).

<sup>12</sup> Gro Harlem Brundtland et al., *Our Common Future*, Report of the World Commission on Environment and Development (Oxford: Oxford University Press, 1987), p. 27.

sometimes incoherent in their separate policies and philosophies. The *problématique* of global security governance is the disconnect between the distribution of authority within existing international intergovernmental institutions, which is still fragmented and based on the assumption of a multipolar structure, and the international distribution of military power, which is still concentrated in just one pole.

The basis of world order has come under strain in recent years due to eight major disconnects:

1. The gap between the exalted expectations of what the UN can accomplish and the modest resources given to it;
2. The threats to peace and security, and the obstacles to economic development, lying within rather than between states;
3. The persistence of policy authority and the requisite resources for tackling problems being vested in states, while the source and scope of the problems are global and require multilateral solutions and the globalisation of the process of policy-making. Kofi Annan's 'problems without passports' require solutions without passports;<sup>13</sup>
4. The greater recognition given to individuals as both subjects and objects of international relations, reflecting an internationalised human conscience, while the basic unit of international order remains the sovereign state;
5. The growing gravity of threats rooted in non-state actors, including but not limited to terrorists;
6. Weapons of mass destruction (WMD) that, in their reach and destructiveness, challenge the basis of the territorial state and which, when acquired by non-state actors, have democratised some of the most potent means of using violence;
7. The worsening misalignment between the distribution of military, political and economic power in the real world, and the distribution of decision-making authority in the artificially constructed world of intergovernmental organisations;
8. A similar mismatch between the numbers and types of actors playing ever-expanding roles in civil, political and economic affairs within and among nations,<sup>14</sup> and the concentration of decision-making authority in intergovernmental institutions.

<sup>13</sup> Kofi Annan, 'Problems without Passports', *Foreign Policy* 132 (September–October 2002), pp. 30–1.

<sup>14</sup> Thus the ratio of international NGOs to intergovernmental organisations had almost doubled from 3.77 in the first decade of the nineteenth century to 7.01 in the twentieth; Thomas G. Weiss, D. Conor Seyle and Kelsey Coolidge, *The Rise of Non-State Actors in Global Governance* (Denver, CO: One Earth Future Foundation, 2013), table 1, p. 8.

Thus the crises of state authority and state-building afflicting Afghanistan, Iraq, Libya, Syria and Ukraine – and how they intersect with engagement and interventions by external actors – can be viewed as symptoms of underlying seismic shifts in world politics. The book begins with an account of the growth of international organisation, the UN's origins and nature and the conceptual roots of pacific settlement and collective security as the main instruments for the maintenance of international peace and security. The shortcomings and failures of pacific settlement and collective security were the backdrop to the emergence of a new form of international activity that came to be called peacekeeping. This too metamorphosed under the impact of changing circumstances and requirements over the decades. Not surprisingly, the most delicate and critical element in UN peace operations was the relationship between the international organisation and the dominant international power, which is taken up for discussion in Chapter 2.

The UN has also been the natural home for the evolving concept of human security that links the two major items of development and security on the agenda of the global policy community; and the major intergovernmental forum for promoting and universalising the human rights norm and institutionalising an international criminal justice system. Yet this has also brought to the fore tensions between a number of competing principles and interests: *realpolitik* and idealism, force and diplomacy, power and justice, efficiency and legitimacy, enforcement mandate and humanitarian agenda, wealth and equity, and so on. These comprise the substance of the discussion in Part II of the book from Chapters 3 to 5.

The nuclear breakout by India and Pakistan in 1998, the threats of nuclear proliferation in the Middle East and the Korean Peninsula, the terrorist attacks of 11 September 2001 (9/11), the upheavals of the Arab Spring and the eruption of geopolitical tensions over Ukraine and East Asian seas put the issues of hard security back on the international agenda. So too did the examples of horrific slaughter of large numbers of people by state-sponsored killers or in conditions of state collapse and the resulting 'challenge of humanitarian intervention'. To the extent that 'rogue regimes' and non-state actors could credibly pursue the acquisition of WMD, individual states as well as the international community collectively had to confront familiar policy dilemmas with a new sense of urgency. Specifically, is the existing normative architecture of world order – at the policy, structural and operational levels – adequate to cope with the new

threats? Does the fracturing of the international consensus reflect sharply and irretrievably diverging interests, priorities and preferences among the major groups of countries? These contested issues are discussed in Part III, Chapters 6–11.

In the final part of the book, Chapters 12–13, I return to look at some of the critical institutional aspects of the UN system, specifically, reforms of the Secretariat, UNSC and General Assembly (GA), and the role of the Secretary-General (SG). Once again, changing contexts, norms, balance-of-power relations and state practices are reflected in the demands for and obstacles to reform, in the disillusionment and disenchantment with the UN on the one hand, but equally also in the continuing expectations and hopes of it on the other.

### Authority, power, legitimacy

This book is not meant as a primer on the UN system. There are plenty of very good books that introduce readers to the structures, institutions and processes of the UN system with varying degrees of brevity and detail and differing degrees of sophistication of analysis and commentary. Rather, my purpose in this book is to explore the United Nations as the principal site of engagement with the great debates and controversies of the day on the issues of peace and security at a time when the principle of multilateralism and the manifestations of a multilateral world order centred on the UN are under serious scrutiny.<sup>15</sup> In 2012 Amnesty International, attacking the determination of some members ‘to shield Syria at any cost’ despite ‘a clear and compelling case for the situation’ there ‘to be referred to the International Criminal Court for investigation of crimes against humanity’, argued that the UNSC was becoming ‘tired, out of step and increasingly unfit for purpose’.<sup>16</sup>

The organisation and structure of the book are based on my belief that the evolution of the UN as the principal provider of international security reflects the interplay of changing norms and state practices at this critical crossroads of world politics. The book is thus an attempt to delve into

<sup>15</sup> Edward Newman, Ramesh Thakur and John Tirman, eds., *Multilateralism under Challenge? Power, International Order, and Structural Change* (Tokyo: United Nations University Press, 2006).

<sup>16</sup> Amnesty International, ‘Report 2012: No Longer Business as Usual for Tyranny and Injustice’, Press Release, 24 May 2012, [www.amnesty.org/en/press-releases/2012/05/report-2012-no-longer-business-usual-tyranny-and-injustice](http://www.amnesty.org/en/press-releases/2012/05/report-2012-no-longer-business-usual-tyranny-and-injustice).



some of the major cross-cutting controversies of our times through the UN lens. Has the organisation been a central or peripheral player; what have been its strengths and shortcomings; how do we account for its successes and failures? After all, it was founded in the belief that our collective destiny is tied to its being the site for the convergence of national interests, for a congruence between interests and ideals and for the locus of diplomacy that protects the individual interests of member states while promoting global norms and values underpinning a community of states and an international society.

Power is the capacity simply to enforce a particular form of behaviour. Authority signifies the capacity to create and enforce rights and obligations that are accepted as legitimate and binding by members of an all-inclusive society subject to the authority. Authority, even when associated with power or force, necessarily connotes legitimacy; that is, authority is distinct from power to the extent that it entails acceptance of right by those to whom it is applied. Attempts to *enforce* authority can only be made by the legitimate agents of that authority. What distinguishes enforcement by criminal thugs from that by police officers is the principle of legitimacy. The concept of legitimacy therefore acts as the connecting link between the exercise of authority and the recourse to power.

While lawful authority remains vested in the UN, in the post-Cold War unipolar moment power became concentrated in the USA before diffusing again over the last decade. Even so, while some regional powers can engage in on-border military operations, in the foreseeable future only the USA has the capacity to project power around the globe and only one standing military defence organisation, the North Atlantic Treaty Organization (NATO), has the capacity to undertake out-of-area operations. Questions of the lawfulness and legitimacy of overseas military action by individual or groups of states in practice therefore means the USA, NATO or coalitions of the willing with them at the core.

Ian Hurd distinguishes between coercion, self-interest and legitimacy as alternative grounds for rule obedience and argues that, precisely because there is no international government to enforce them, states' compliance with international rules is a function of the legitimacy of those rules *as perceived by the norm-conforming states*.<sup>17</sup> That is, they are regarded as proper or appropriate by the actors to whom they are addressed within a socially

<sup>17</sup> Ian Hurd, 'Legitimacy and Authority in International Politics', *International Organization* 53:2 (1999), pp. 379–408.



constructed system of values and beliefs. Moreover, rules internalised as legitimate, either because of the source or the procedure by which they were constituted, help to define the actors' self-interest. This in turn makes them an efficient mode of social control, as habitual compliance becomes the norm and non-compliance is abnormal and deviant. If the source of legitimacy is institutions (either formal organisations or recurring and stable patterns of behaviour), then those institutions indicate the existence of an international authority even in the absence of world government.<sup>18</sup>

The twentieth century brought many efforts to broaden the base of the institutions responsible for speaking with the authoritative voice of international society. The League of Nations and the United Nations represent the two major attempts to rationalise the institutional means for allocating international values authoritatively. The UN seeks to replace the balance of power with a community of power and represents the dream of a world ruled by reason. It is the means of outlawing war and mobilising the collective will of the world community to deter, apprehend and punish international law-breakers. UN decisions command authority because they are the outcome of an international political process of assertion and reconciliation of national interests. It is the political process that authenticates UN resolutions and converts them into authoritative prescriptions for the common good of humanity. The UN was meant to be the framework within which members of the international system negotiated agreements on the rules of behaviour and the legal norms of proper conduct in order to preserve the society of states.

The UN is the only truly global institution of a general purpose that approximates universality. The role of custodian of collective legitimacy<sup>19</sup> enables the UN to articulate authoritative standards of state behaviour. For the UN to function effectively as a law-enforcing collective security organisation, states must accept two propositions regarding their own abilities to dispose of power. First, they must renounce the unilateral use of force for national purposes but, second, they must be prepared to use force on behalf of, as directed by and for the goals of the UN. The refusal of states to repudiate all possible national resort to force forecloses the possibility of the UN exercising sole international coercive authority.

<sup>18</sup> See Jean-Marc Coicaud and Veijo Heiskanen, eds., *The Legitimacy of International Organizations* (Tokyo: United Nations University Press, 2001); Ian Hurd, *After Anarchy: Legitimacy and Power in the United Nations Security Council* (Princeton, NJ: Princeton University Press, 2007).

<sup>19</sup> Inis L. Claude, *The Changing United Nations* (New York: Random House, 1967), p. 73.

In recent times, the pivotal problem is what action is permitted when no action is taken by the Security Council? If UN authorisation is not a *necessary* condition, what is the alternative set of rules and the institutions and regimes in which they are embedded? Reversing direction, is UN authorisation a *sufficient* condition for overseas military action? Great powers play particular roles both in relations with one another and in relations between themselves and the lesser powers.<sup>20</sup> They claim and are granted the right to a determining role in issues of world peace and security; but they are also burdened by the corresponding duty to modify national policies in light of their international managerial responsibilities. Permanent membership of the Security Council consecrated the special position of the five major powers (P5) in the UN scheme of helping to shape and safeguard international peace. The veto clause conferred the further competence upon the great powers to protect international encroachments upon their own vital interests. In return, as part of their obligations towards a responsible management of international order, the great powers agreed to eschew unilateral resort to force in favour of concerted action through the UN system.

### Ideas and norms as drivers of policy

The debate over when and how force may be used in today's world lies at the intersection of law, politics and norms. The UN is the forum of choice for debating and deciding on collective action requiring the use of military force. Contrary to popular belief, it also has been the principal forum for the progressive advancement of the human rights agenda in its totality, including group-based social, economic and cultural rights as well as individual civil and political rights.

Ideas matter and institutions matter as conduits for ideas.<sup>21</sup> In the broad sweep of history, empires rise and fall, kings and queens come and go. They are remembered chiefly if they leave behind ideas, embedded in institutions or practices, for improved governance or quality of life. Ideas impart vitality to a society. A society in intellectual ferment is fertile ground for progress and advancement, provided the clash of ideas is given free play. Conversely, a society that is bereft of and represses new ideas is a society

<sup>20</sup> Hedley Bull, *Anarchical Society: A Study of Order in World Politics* (London: Macmillan, 1977), pp. 200–29.

<sup>21</sup> Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton, NJ: Princeton University Press, 2001).