International Law: The Trials of Global Norms

by Steven R. Ratner

The move from describing the world to prescribing for it forms the core of international law. Can those committing human rights atrocities—war criminals from Bosnia or political leaders from Cambodia—be tried in foreign courts or before international tribunals? How can members of the United Nations ensure respect for the decisions of its Security Council? What is the best way to regulate transnational environmental hazards such as greenhouse gas emissions or ocean dumping? Can the United States allow its citizens to sue European companies for their use of land and factories confiscated by the Cuban government from Americans more than a generation ago?

All these questions turn on political decisions by states—but what international lawyers see and seek in such scenarios is a process whose actions are informed and influenced by principles of law, not just raw power. For international lawyers, devising and enforcing universal rules of conduct for states means overcoming two cardinal challenges: how to make such precepts legitimate in a diverse community of nations; and how to make them stick in the absence of any one sovereign authority or supranational enforcement mechanism. The mission of international law, as described in 1950 by Hersch Lauterpacht, perhaps this century's greatest international law scholar, is to lead "to enhancing the

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stability of international peace, to the protection of the rights of man, and to reducing the evils and abuses of national power."

For much of this century, however, many practitioners and observers in the two fields straddled by international law regarded such pronouncements with skepticism, if not outright scorn. Diplomats and international relations scholars questioned whether norms counted for much in the behavior of states. And domestic lawyers rejected the idea that law could even exist without the same kind of sanctioning system found within sovereign states.

The shape of the international system during the Cold War reinforced this realist perspective. International institutions and judicial bodies such as the United Nations and the International Court of Justice (otherwise known as the World Court) were hobbled by both the bipolar split in world politics and its aggravation of tensions between the developed and developing worlds. Responding to the inability of organizations to exercise their mandates, or of treaties such as the General Agreement on Tariffs and Trade and the UN Convention on the Law of the Sea to garner global endorsement, legal scholars asked what states could do alone, largely accepting as fixed the limits on what they might do together.

Today, the end of the Cold War has loosened many of the blockages to international lawmaking and implementation. Although legal scholars still ask what states can do on their own—pass extraterritorial laws, use force, or prosecute war criminals—they do so assuming that coordinated action is now more feasible than in the past. Global and regional treaties such as the Chemical Weapons Convention, the Convention on the Prohibition of Anti-Personnel Mines, the Maastricht Treaty, and the North American Free Trade Agreement now serve as the starting point for scrutinizing state behavior according to some objective standard.

The ground seems ready then for an acceleration of this century's great trend in international law: the increasing international regulation of more and more issues once typically seen as part of state domestic jurisdiction. But any attempt to create the lofty, supranational legal edifice idealized by some of the field's practitioners and scholars promises to be problematic at best. Once paralyzed by the deadlock between East and West, and between North and South, the international legal system must now contend not just with the challenge of persuading new states such as Belarus or Croatia to comply with established norms but of coping with Somalia and other failed states, whose circumstances make a

mockery of international rules. International law must seek to embrace a growing range of forms, topics, and technologies, as well as a host of new actors. And as it moves further away from strictly "foreign" concerns—the treatment of diplomats or ships on the seas—to traditionally domestic areas—environmental or labor standards—its proponents must increasingly confront new obstacles head-on.

New Realities, New Ideas

This new global context surrounding the field has led to at least four fundamental shifts in the kinds of issues that legal scholars now talk about and study:

New Forms, New Players

Traditionally, most rules of international law could be found in one of two places: treaties—binding, written agreements between states; or customary law—uncodified, but equally binding rules based on long-standing behavior that states accept as compulsory. The strategic arms reduction treaties requiring the United States and Russia to cut their nuclear weapons arsenals offer examples of the former; the rule that governments cannot be sued in the courts of another state for most of their public acts provides an example of the latter. Historically, treaties have gradually displaced much customary law, as international rules have become increasingly codified.

But as new domains from the environment to the Internet come to be seen as appropriate for international regulation, states are sometimes reluctant to embrace any sort of binding rule. In the past, many legal scholars and international courts simply accepted the notion that no law governed a particular subject until a new treaty was concluded or states signaled their consent to a new customary-law rule (witness the reluctance with which human rights norms were considered law prior to the UN's two key treaties in 1966) or, alternatively, struggled to find customary law where none existed. However, today all but the most doctrinaire of scholars see a role for so-called soft law—precepts emanating from international bodies that conform in some sense to expectations of required behavior but that are not binding on states.

For example, in 1992 the World Bank completed a set of Guidelines on the Treatment of Foreign Direct Investment. Though these are not binding on any bank member, states and corporations invoke them as

Odd Man Out?

Total number of bilateral and multilateral treaties registered with the UN since its creation: approximately 50,000

Total number of registered treaties in force to which the United States is a party: approximately 10,000

Major multilateral treaties to which the United States is not a party:

- **Convention on the Rights of the Child (1989)***—191 parties, all but the United States and Somalia
- **Convention on Biological Diversity (1992)***—172 parties
- **Convention on the Elimination of All Forms of Discrimination Against Women (1979)***—161 parties
- **Comprehensive Nuclear Test-Ban Treaty (1996)***—149 signatories (not yet in force)
- **International Covenant on Economic, Social and Cultural Rights (1966)***—137 parties
- **UN Convention on the Law of the Sea (1982, amended 1994)***—123 parties
- **Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (1997)**—122 signatories (not yet in force)

*indicates the United States has signed but the Senate has yet to give its advice and consent.

the standard for how developing nations should treat foreign capital to encourage investment. This soft law enables states to adjust to the regulation of many new areas of international concern without fearing a violation (and possible legal countermeasures) if they fail to comply. Normative expectations are built more quickly than they would through the evolution of a customary-law rule, and more gently than if a new treaty rule were foisted on states. Soft law principles also represent a starting point for new hard law, which attaches a penalty to noncompliance. In this case, the bank's guidelines have served as the basis for the negotiation of a new treaty—the Multilateral Agreement on

Investment (MAI)—by the Organization for Economic Cooperation and Development (OECD). The MAI gives foreign investors the right to take any government to international arbitration for compensation when a law or state practice limits their freedom to invest or divest.

Whether in the case of hard or soft law, new participants are making increased demands for representation in international bodies, conferences, and other legal groupings and processes. They include substate entities, both those recognized in some way by the international community (Chechnya, Hong Kong) and those not (Tibet, Kashmir); nongovernmental organizations (NGOs); and corporations. Claiming that the states to which they belong do not always adequately represent their interests, these nonstate actors demand a say in the content of new norms. Some have faced staunch opposition to their participation in decision making: In 1995, China's government relegated NGOs to a distant venue during the UN's Fourth World Conference on Women in Beijing.

But other groups may succeed even as far as effectively taking over an official delegation. For example, U.S. telecommunications companies such as Motorola have seemed almost to dictate U.S. positions in the International Telecommunication Union (ITU), the UN agency responsible for setting global telecommunications standards. At the ITU's 1992 conference on allocating the radio spectrum for new technologies, Motorola's stake in protecting its plans for new satellites became a paramount U.S. interest, resulting in a sizeable Motorola team attending as part of the U.S. delegation. Other corporations have acted outside government channels entirely by promulgating private codes: in response to public pressure, Nike issued a set of self-imposed rules to protect worker rights in the developing world. It is not that states are no longer the primary makers of international law. But scholars accept that these other actors have independent views—and the resources to push them—that do not fit neatly into traditional theories of how law is made and enforced [see box on page 72].

New Enforcement Strategies

Most states comply with much, even most, international law almost continually—whether the law of the sea, diplomatic immunity, or civil aviation rules. But without mechanisms to bring transgressors into line, international law will be "law" in name only. This state of affairs, when it occurs, is ignored by too many lawyers, who delight in

Nice robes, but do they matter?

large bodies of rules but often discount patterns of noncompliance. For example, Western governments, and many scholars, insisted throughout the 1960s and 1970s that when nationalizing foreign property, developing states were legally bound to compensate former owners for the full economic value, despite those states' repeated refusals to pay such huge sums.

The traditional toolbox to secure compliance with the law of nations consists of negotiations, mediation, countermeasures (reciprocal action against the violator) or, in rare cases, recourse to supranational judicial bodies such as the International Court of Justice. (The last of these was the linchpin of the world of law that Americans such as Andrew Carnegie and Elihu Root sought to bring into being.) For many years, these tools have been supplemented by the work of international institutions, whose reports and resolutions often help "mobilize shame" against violators. But today, states, NGOs, and private entities, aided by their lawyers, have striven for sanctions with more teeth. They have galvanized the UN Security Council to issue economic sanctions against Iraq, Haiti, Libya, Serbia, Sudan, and other nations refusing to comply with UN resolutions.

On the free-trade front, the dispute settlement panels in the World Trade Organization (WTO) now have the legal authority to issue binding rulings that allow the victor in a trade dispute to impose special tariffs on the loser. In September 1997, for example, the WTO's Dispute Settlement Body recommended that the European Union modify its banana import regime following complaints by Ecuador, Guatemala, Honduras, Mexico, and the United States, paving the way for those states to suspend free trade if the EU fails to comply. And the UN's ad hoc criminal tribunals for the former Yugoslavia and Rwanda show that it is at least possible to devise institutions to punish individuals for human rights atrocities.

Nonetheless, as the impunity to date of former Bosnian Serb president Radovan Karadzic and General Ratko Mladic reveals, the success of these enforcement mechanisms depends on the willingness of states to support them: legalism meets realism. When global institutions do not work, regional bodies may offer more promise due to their "club" atmosphere. Organizations such as the EU and the Organization of American States have demonstrated their influence over member conduct in economics, human rights, and other areas.

Increasingly, domestic courts provide an additional venue to enforce international law. In Spain, for example, Judge Manuel García Castellón of the National Court has agreed to hear a controversial human rights case involving charges against Chile's former dictator, General Augusto Pinochet. Meanwhile, Castellón's colleague, Judge Baltasar Garzón, hears testimony against those responsible for the "Dirty War" of the 1970s in Argentina. (Spain is asserting jurisdiction in both cases because its nationals were among the thousands of victims tortured and killed.) And though Karadzic remains at large, he has been sued in U.S. federal court under the Alien Tort Claims Act, which allows foreign nationals recovery against Karadzic for the rape and torture of civilians during his "ethnic cleansing" campaign in the former Yugoslavia. At a minimum, this provides a symbolic measure of solace for his victims.

The Legitimacy Problem

Even as scholars seek to devise better enforcement mechanisms, a serious debate is brewing about the legitimacy of such measures. As international organizations are freed up to take more actions by the end of the East-West conflict and the tempering of North-South tensions, the United States and its like-minded allies seem well positioned to impose their agenda on all. Legal scholars question whether Western domi-

International Law, Inc.

International law is no longer the province of states alone. Private actors contribute to its development and enforcement as never before:

Private Lawmakers: The UN's spate of global conferences all featured a heavy presence of NGOs. For the 1992 Rio conference and 1997 Kyoto conference, environmental NGOs were continually briefed by governments and had the chance to contribute their ideas to the final documents. NGO and corporate officials can even serve on governmental delegations and direct their positions at negotiations.

Private Codes: Besieged by stockholders critical of U.S. investment in apartheid South Africa during the 1970s and 1980s, more than 100 U.S. companies signed onto the Sullivan Principles—a code of conduct drafted in 1977 by Reverend Leon Sullivan, which called for desegregation in the workplace, equal pay, and equal employment practices. Today, private codes govern much U.S. business in poor nations. Written by the companies themselves and not binding, they can affect the welfare of workers and the environment more than most treaties. Big players include the Gap, J.C. Penny, K-Mart, Levi Strauss, Liz Claiborne, L.L. Bean, and Nike. In one of the most progressive of such efforts, members of the U.S. Apparel Industry Partnership voluntarily agreed to a standard code of conduct that prohibits forced labor, child labor, and workweeks exceeding 60 hours.

Private Rightholders: Companies and individuals investing overseas have rights under contracts and bilateral investment treaties to take states to arbitration over expropriation and other investment disputes. Some arbitrations are done by private organizations such as the International Chamber of Commerce in Paris, others by public institutions including the International Centre for the Settlement of Investment Disputes, an arm of the World Bank in Washington, DC.

Private Armies: As seen with the Bosnian Serbs or Congolese president Laurent Kabila's guerrilla army, subnational groups have succeeded in tearing states apart and overthrowing governments. Although legally bound by international law such as the Red Cross rules on civil wars or peace accords that they sign, their observance is often hard to secure. Enforcing these norms often means working with, or putting pressure on, neighboring states that support these groups; but those states can frustrate these efforts by denying such ties.

nance of the Organization for Security and Cooperation in Europe, UN, WTO, and other international institutions is not merely raw power asserting its muscle again, albeit through multilateral bodies, to the detriment of a genuine rule of law. That this debate is more than academic can be seen vividly in the ongoing discussion about reforming the Security Council. Many Americans may laud the council's new muscle—during the last five years, it has slapped a debilitating embargo and weapons inspection regime on Iraq, prohibited air traffic with Libya due to its sanctuary for those accused of the Pan Am 103 bombing, and approved a U.S.–led occupation of Haiti. But smaller states feel threatened by a Security Council in which the West is often able to convince enough states to approve such council actions, and only a Chinese veto (which was used only once in the last 25 years) seems to protect them.

International legal scholars address the normative elements behind these enforcement measures:

- Thomas Franck, Lori Fisler Damrosch, and others ask classic lawyer questions such as whether similar cases are being treated alike. For example, why was a UN operation sent to force out the junta that ousted the winner of Haiti's UN-supervised election but not to remove Hun Sen, Cambodia's strongman, who did the same thing?; and whether international organizations are acting consistently with their own legal charters. Does Chapter VII of the UN Charter—which permits the Security Council to restore international peace if it has been breached—allow the UN to force a border on Iraq?
- Scholars such as Richard Falk or Martti Koskenniemi, who accuse the Security Council of overreaching its jurisdiction, view law as playing a legitimate role only when the power of mighty states has been diluted by a sort of international consensus on each issue. Many look to the World Court (15 judges, nominated by member states, who sit in The Hague) to review council decisions, just as U.S. courts review federal and state laws for constitutionality—a somewhat romantic notion about courts as the best organs to uphold the law.
- W. Michael Reisman, Judge Rosalyn Higgins, and other legal scholars perceive law and power as inextricably linked. They acknowledge an inevitable place for realpolitik—such as the retention of the veto by the Permanent Five of the Security Council. They accept, albeit reluctantly, inconsistent enforcement of core norms backed by powerful states as preferable to a least common denominator of no enforcement.

Focusing on enforcement and legitimacy also provides a useful lens through which to evaluate U.S. reactions to international norms: Even as the United States seeks to strengthen the enforcement of international law for its own ends, it has often recoiled at the prospect that these norms might be enforced against it. In the WTO, the very dispute resolution panels that the United States hopes to use to force open closed markets could order it to choose between environmental protection laws (such as those banning imports of tuna caught in nets that kill dolphins) and the prospects of retaliatory sanctions if those laws have incidental discriminatory effects on trade. In such a scenario, international law, as interpreted by the WTO, becomes the friend of business and bugaboo of environmentalists. But when the UN seeks to promulgate environmental law, as it has with the proposed greenhouse gas convention just concluded at Kyoto, then the tables are turned.

Similarly, the United States wants to use the Security Council to keep in place a comprehensive sanctions regime on Iraq that has the diplomatic appeal of being "international" rather than "U.S.–imposed," all the while holding back on paying its dues because not all UN programs conform to Washington's wishes. As the world's sole superpower, the United States can defy international standards with little fear of immediate sanction; but other states will begin to question its motives in trying to strengthen important legal regimes such as those covering nuclear and chemical nonproliferation.

New Linkages

The notion of hermetically sealed areas of international law—each a nice chapter in a treatise—is increasingly anachronistic. Environmental and trade law can no longer be discussed separately as the tuna-dolphin example shows; and when private investors have to reckon with serious abuses by local governments, foreign investment law cannot be examined without some consideration of human rights and labor law. The result is a new breed of scholarship linking previously distinct subjects and the realization among some practitioners that overspecialization leads to myopic lawyering.

Moreover, beyond the legal field, international lawyers must address the two-way interaction between international law and broader sociological and cultural trends in society. In one notable example, the debate on a clash of cultures involving so-called Asian values has forced students of human rights to stand back and consider whether rights granted in

human rights treaties mean the same thing in all states. Can Singapore suppress free speech for the goal of national unity and development, especially if it claims that its culture sees uninhibited political speech as less than a birthright? Of course, cultural assertions tend to be overly broad, and many human rights activists interpret these claims as excuses for authoritarianism; the arguments, however, can no longer be ignored, and black and white rules of treaty interpretation will not help much.

In the other direction, the proliferation of new norms has direct effects on debates over globalization—the "Jihad versus McWorld" controversy. A global treaty on ozone or greenhouse gases, for instance, will clearly accommodate different perspectives on the priority of environmental protection versus development, but once adopted it cannot tolerate violations in the name of "diversity." Indeed, almost by definition, the decision by states to subject a once strictly domestic concern to international regulation means that cultural, value-based, or "sovereignty" arguments no longer enjoy the upper hand. If a state elects not to sign a major treaty, or ignores one it has signed—as with the United States and the agreement on the elimination of landmines or Iraq and the one on nuclear nonproliferation—it is more likely to be condemned as a pariah than admired for its rugged individualism.

Expanding Old Boundaries

Given that international legal academics are changing how they conduct their conversations and their scholarship, in what subject areas should foreign policymakers and observers expect contributions from them? Several intellectual hot spots deserve mention.

First, trade law is becoming the locus of many critical areas of foreign policy and its primary enforcement mechanism—the WTO—the repository of new powers. International lawyers are busy seeking ways to integrate the environment, intellectual property, investment, labor rights, and perhaps other subjects, including antitrust, into a framework thus far dominated by considerations of free trade. If the WTO is to have a powerful enforcement role, those responsible for interpreting trade agreements or drafting new ones will need to take explicit account of these other interests and the treaties that deal with them. For example, when one state alleges that another state's environmental laws impede trade, such accusations should be evaluated against the backdrop of existing treaties on international environmental mat-

ters. Arbitrators and negotiators thus need to approach their task with more than a one-sided "free trade at all costs" outlook. If they do not, then cramming more issues into the WTO's mandate will face major obstacles. Developing nations will see it as yet another attempt to force American views of antitrust or labor rights on them. Moreover, groups within the Western states will fear WTO rulings that could eclipse or override the more balanced norms emanating from other international organizations. These pressures may well prevent the WTO from enlarging its agenda too quickly.

Second, the most pressing transboundary issue in which international law will play a decisive role is the environment. The last decade has seen critical treaties concluded on the protection of the ozone layer, movement of hazardous wastes, and protection of fishing stocks. More will follow. Of course, these regimes need to remain flexible enough to accommodate new scientific discoveries and technology. One particularly promising legal avenue has been the so-called framework convention, which allows all parties to a treaty to adjust their commitments over time (e.g., accelerate their reductions in emissions of a toxic substance) without redrafting the treaty and, in some cases, without subjecting the revisions to renewed ratification by domestic organs. International lawyers are also devising schemes to make those treaties work. Among the most exciting developments are liability regimes to shift the costs of pollution from states to private polluters.

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Third, the human rights agenda remains a central area of research and advocacy. Fifty years of codification have yielded much law, from the Genocide Convention in 1948 to the Convention on the Rights of the Child in 1989. But in few areas of international relations have legal norms been so fundamental to understanding a problem and yet so terribly slow at rectifying odious practices.

One area of progress in enforcement, although barely known to foreign policy specialists, is that of regional human rights commissions and courts. The European Commission and Court of Human Rights have scrutinized questionable domestic laws for decades and given individuals an avenue of relief from them. In the last three decades, the

Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have investigated the killing, torture, and disappearance of thousands across Latin America and, in recent years, have successfully urged those states responsible to change their behavior. The achievements of these institutions in both regions should serve as a model for the nascent regional human rights commission (and likely future court) for Africa. In addition, domestic truth commissions in countries such as South Africa and the UN's criminal tribunals direct global attention to personal criminal liability for abuses. Although some lawyers and scholars have embraced the criminal remedy so readily that they seem to have forgotten the importance of old-fashioned pressure on states to respect rights, the legal field's work in creating new law and mechanisms to hold individuals accountable should be welcomed and watched by policymakers.

Fourth, international legal academics will be forced more and more to grapple with the increasingly extraterritorial reach of domestic laws. The United States has thrown down the gauntlet at Europe through the ambitious reach of its antitrust laws, as well as through the Helms-Burton Act of 1996, which allows victims of the Cuban government's expropriations to sue in U.S. courts the companies using their former property. The U.S. Supreme Court appears to be upholding such initiatives, adopting an extremely loose interpretation of congressional prerogatives in passing laws with extraterritorial effect. The Europeans responded to U.S. actions last year through a threat issued by the European Commission to prohibit the merger of Boeing and McDonnell Douglas because of its potentially adverse effects on the market for Airbus Industrie.

American and European businesses are likely to continue to be confused by the requirements of different systems and foreign policymakers annoyed by the consequences for relations with old allies. Academic international lawyers have mostly been ignored in this dispute. It seems that only bilateral (e.g., U.S.–EU) or multilateral treaties (perhaps through the OECD or WTO) will remedy the situation. But no solution is in sight, as politicians and corporations have recognized the advantages of regulating overseas conduct, even when such conduct has only the slightest impact on the domestic economy.

Lastly, though the average foreign policy aficionado may see no immediate contributions to solving global problems, legal scholars—newly informed by the developments of the post–Cold War era—will continue to engage core theoretical issues. One will be the relevance of

customary international law in an era where treaties are seen as the primary locus of lawmaking. The UN Convention on the Law of the Sea of 1982, for example, codified or replaced numerous customary-law rules on the oceans. Perhaps the demise of custom is to be welcomed as a sign of maturation in international law. Another issue will be the general problem of diffusion of lawmaking at different levels in the international system. This latter issue resonates in many areas of foreign policy, as demonstrated by the resentment in some quarters in Europe and the United States when the European Court of Human Rights or the WTO strikes down domestic legislation. A promising solution, which some scholars have explored in detail, involves a shift to implementing international norms via domestic courts. Instead of top-down diktats from distant tribunals made up of unknown, mostly foreign judges, litigants will have their cases judged at home but according to international standards. The challenge of this style of law enforcement is not to be underestimated, however, as the average American judge (or legislator for that matter) remains ignorant of most international norms.

Most international lawyers, fortunately, are grounded well enough in the real world not to advocate as an immediate priority the creation of some sort of legal superstructure similar to our national government or, like Carnegie and Root, of international courts with mandatory jurisdiction. But they do believe that most issues of transnational concern are best addressed through legal frameworks that render the behavior of global actors more predictable and induce compliance from potential or actual violators. As much as some political realists refuse to admit it, those with the decision-making power in the world appear to support this view, as they continue to subject new issues to treaty negotiations or seek ways to enforce existing law.

At the same time, however, the days are gone when international lawyers could assume that states would eventually come to their senses and agree on the need to regulate their conduct according to rules. Scholars and practitioners are now realizing that as they continue to delve into issues that for so long seemed to be wholly domestic or, as they seek to enforce norms more assertively, the resistance will be sharper. The old talisman of "sovereignty" will surely rear its ugly head—under the banner of nonintervention, Asian values, EU-trashing, or some such term. International lawyers can no longer dismiss these claims, and they have no bold new paradigm to guide them in creating a more comprehensive legal order. Thus, they must accept that the suffusion of norms

into decision making is a long-term process. They must also acknowledge, in Lauterpacht's words, that "any startling developments in international law cannot be the work of international lawyers, [but] must be the outcome of a changed attitude of Governments prompted and supported in this matter by an enlightened public opinion." International lawyers must therefore hope that the reactions of foreign policymakers will prove a reliable gauge of the power of their ideas.

WANT TO KNOW MORE?

Two useful introductory texts to the entire field are Mark Janis' ***An Introduction to International Law***, second edition (New York, NY: Little, Brown and Company, 1993) and Robert Beck, Anthony Clark Arend & Robert Vander Lugt, eds., ***International Rules: Approaches from International Law and International Relations*** (New York, NY: Oxford University Press, 1996).

More detailed treatises of the field include Rudolf Bernhardt, ed., ***Encyclopedia of Public International Law*** (Amsterdam: North-Holland, 1992); Robert Jennings & Arthur Watts, eds., ***Oppenheim's International Law***, ninth edition (London: Longman, 1996); and Ian Brownlie's ***Principles of Public International Law***, fourth edition (Oxford: Clarendon Press, 1990).

To gain a sense of the prior debates in international law over unilateral versus coordinated action in the use of force, read the essays in Lori Fisler Damrosch & David Scheffer, eds., ***Law and Force in the New International Order*** (Boulder, CO: Westview Press, 1991).

As for the new forms and participants in lawmaking, the idea of soft law is discussed by leading scholars in ***A Hard Look at Soft Law*** (*Proceedings of the American Society of International Law*, 1988). The role of nonstate actors is described well in Peter Spiro's **"New Global Communities: Nongovernmental Organizations in International Decision-Making Institutions"** (*Washington Quarterly*, Winter 1995). Strategies for enforcement of norms are the subject of Abram Chayes & Antonia Handler Chayes' ***The New Sovereignty: Compliance with International Regulatory Agreements*** (Cambridge, MA: Harvard University Press, 1995) and Christopher Joyner, ed., ***The United Nations and International Law*** (Washington, DC: American Society of International Law, 1997). The power of the WTO is the subject of I.M. Destler's ***American Trade Politics***,

third edition (Washington, DC: Institute for International Economics, 1995) and John Jackson & Alan Sykes' ***Implementing the Uruguay Round*** (Oxford: Clarendon Press, 1997). The work of criminal tribunals is examined in Steven Ratner & Jason Abrams' ***Accountability for Human Rights Atrocities in International Law*** (Oxford: Clarendon Press, 1997).

The legitimacy of Security Council action is well considered in Jose Alvarez's **"The Once and Future Security Council"** (*Washington Quarterly*, Spring 1995) and Martti Koskenniemi's **"The Police in the Temple. Order, Justice and the UN: A Dialectical View"** (*European Journal of International Law*, vol. 6, 1995)

As for linkages between international law and broader societal trends, a debate over the role of culture in human rights is found in Bilahari Kausikan's **"Asia's Different Standard"** and Aryeh Neier's **"Asia's Unacceptable Standard"** in the Fall 1993 issue of FOREIGN POLICY.

On future hot spots, an introduction to the changes in trade law since the creation of the WTO can be found in Ernst-Ulrich Petersmann's **"The Transformation of the World Trading System through the 1994 Agreement Establishing the World Trade Organization"** (*European Journal of International Law*, vol. 6, 1995). For a sense of the key issues in international environmental law, read Christopher Stone's ***The Gnat is Older than Man: Global Environment and Human Agenda*** (Princeton, NJ: Princeton University Press, 1993) and Philippe Sands, ed., ***Greening International Law*** (New York, NY: New Press, 1994). The literature on human rights is enormous. Two starting points are Richard Pierre Claude & Burns Weston, eds., ***Human Rights in the World Community: Issues and Action***, second edition (Philadelphia, PA: University of Pennsylvania Press, 1992) and Henry Steiner & Philip Alston, eds., ***International Human Rights in Context*** (Oxford: Clarendon Press, 1996). An exemplary debate over jurisdiction and the extraterritorial reach of U.S. laws can be found in Andreas Lowenfeld & Brice Clagett's **"Agora: The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act"** (*American Journal of International Law*, July 1996).

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