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Reviewed for H-Diplo by **Ramesh Thakur**, Balsillie School of International Affairs

Some years ago, the distinguished Singaporean diplomat Kishore Mahbubani famously asked if Asians can think.¹ For the editors of this volume, going by their selection of authors, the answer to Mahbubani's seemingly rhetorical question would appear to be in the negative in respect of non-Westerners in general. Leaving aside the editors' introduction, of the 27 chapters, one is by an Asian (based in London), another by an African, and the rest are by Westerners. The result is a book that seriously misses what is the central element of its topic, namely the *politics* of the high politics of war and peace as addressed by the U.N. Security Council. The bulk of scholarly analyses and discourse "privilege the experience, interests, and contemporary dilemmas of a certain portion of the society of states at the expense of... the large majority of states."² Mahbubani, for example, could have provided a counter-point to the practitioner perspective offered by Britain's Jeremy Greenstock in his chapter on the Security Council in the post-Cold War world. Other potential contributors could have come from the list of those acknowledged (p. v).

U.N. member states can be grouped according to their relationship with the theme of the book: those who authorize the international use of force, with the five permanent members of the Security Council (P5) being the most prominent; those who do most of the heavy fighting; the troop contributors to U.N. peace operations who are now almost all developing countries, with South Asia by itself contributing around 45 percent of all

¹ Kishore Mahbubani, *Can Asians Think? Understanding the Divide Between East and West* (Steerforth, 2001).

² Mohammed Ayoob, "Inequality and Theorizing in International Relations: The Case for Subaltern Realism," *International Studies Review* 4: 3 (Fall 2002), p. 29. For a rejoinder to the charge of theoretical imperialism, see Michael Barnett, "Radical Chic? Subaltern Realism: A Rejoinder," *ibid.*, pp. 49-62.

blue helmets; those who fund the operations; and those on whose territories, or against whose governments, international troops are – and in future are likely to be – deployed.

The editors write that “The tension between the body doing the authorizing, and the states working at the sharp end, is an unresolved problem at the heart of the now-familiar U.N. practice of using authorized coalitions to enforce resolutions” (p. 25). This makes it all the more puzzling that they did not extend this insight to the broader point about potential tensions between the different groups of states in relation to armed conflict.

This is not to gainsay the competence of any of the authors. Outstanding chapters include Adam Roberts on U.N. standing forces (although he seems to have missed Lester Pearson’s 1957 *Foreign Affairs* article), Nico Krisch on the role of the great powers, Mats Berdal on peacekeeping, Bruce Jones on the Arab-Israeli wars, Charles Tripp on the Iran-Iraq war, James Cockayne and David Malone on the Iraq War, Susan Woodward on the wars in former Yugoslavia, and David Scheffer on the international law of military occupations. Wm. Roger Louis is skillful in teasing out the unexpected consequences of the 1956 Suez crisis in leading to U.N. peacekeeping.

But the balance is not quite right. After all, the United Nations’ claim to a unique legitimacy derives from its universality. That universality is not represented among the contributors, with the result that the range of perspectives that are key to grasping the politics of Security Council decision-making – the perceptions of the Council by different segments of “the international community,” the respect in which the Council is held and the authority its resolutions command – are all badly missed. A particular manifestation of this pathology is the relative inattention or de-emphasis of the importance of Security Council reform. U.N.-hostile neo-conservatives are not the only ones to believe that the organization exhibits symptoms of a life of drift, futility and illusion. It groans and heaves along the fault-line where the complex reality of the 21st century presses against its antiquated structure inherited from the middle of the last century. The old certainties have disappeared, yet there is no purpose and vision to replace them.

In their lengthy introduction, the editors note that negotiations aimed at resolving many regional problems have seen a mixture of U.N. and extra-U.N. activity, “with the UN regularly laying down the guiding principles, helping keep the parties to them, and then acting as the rallying-point in gathering political support for the end result” (p. 19). In addition to the new element of U.N.-centered multilateral diplomacy, the period since 1945 has also seen “the continuation of all the classical institutions of the international system: great powers, alliances, spheres of interest, balances of power, and bilateral diplomacy” (p. 19). In other words, politics did not end with the creation of the United Nations. If victors get to write history, the powerful get to write analysis. But when the power hierarchy is itself changing, and countries like China and India return to the norm of being producers as well as mere consumers of history as happened during the temporary aberration of the 19th and 20th centuries, a more genuinely open dialogue is called for instead of the West talking *among* themselves (the closed inner circle of the

enlightened) and to the rest (the outer circle of the excluded), be it in the worlds of academia or diplomacy.³

An excellent framing device for the book would have been the law-legitimacy distinction: “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.”⁴ The Independent International Commission on Kosovo famously concluded that the North Atlantic Treaty Organization’s (NATO) intervention was illegal but legitimate.⁵ The distinction was to resurface four years later over Iraq and leave many Westerners rather less comfortable than the Kosovo precedent.

To the extent that the material capacity to deploy and use force at various trouble spots around the world is concentrated in the United States while the authority to do so is legally vested in the Security Council, the U.N.-U.S. relationship is a central dynamic in the Council’s record on war. Burying that relationship within a larger discussion on the role of the great powers (Krisch) does not do justice to its richness and importance.

Part of the tension in U.N.-US relations arises from the American desire to use the organization 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 United Nations as the forum in which to bring greater justice in relations among nations while privileging the status quo-oriented order within states.⁶ The industrial-developing countries divide is a constant undercurrent of tension at the United Nations,⁷ yet its significance is vastly underplayed in this volume. The chapter by Sarah Percy on the use of private force is the most overtly tilted against developing country suspicions of private force. Percy argues by adjectives for the “cautious” Security Council to override “the more radical GA [General Assembly] approach” (p. 635). What she means is that the General Assembly has been

³ Kishore Mahbubani, *The New Asian Hemisphere: The Irresistible Shift of Global Power to the East* (PublicAffairs, 2008).

⁴ 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.

⁵ *Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press for the Independent International Commission on Kosovo, 2000). For discussions of the lawfulness and legitimacy of the war, see Christine M. Chinkin, “Kosovo: A ‘Good’ or ‘Bad’ War?,” *American Journal of International Law* 93:4 (October 1999), pp. 841–47; Michael J. Glennon, *Limits of Law, Prerogatives of Power: Interventionism After Kosovo* (New York: Palgrave, 2001); Louis Henkin, “Kosovo and the Law of ‘Humanitarian Intervention’,” *American Journal of International Law* 93:4 (October 1999), pp. 824–28, and Ruth Wedgwood, “NATO’s Campaign in Yugoslavia,” *American Journal of International Law* 93:4 (October 1999), pp. 828–34.

⁶ Mohammed Ayoob, ‘Humanitarian Intervention and State Sovereignty’, *International Journal of Human Rights* 6:1 (Spring 2002), pp. 98–99.

⁷ See Ramesh Thakur, *Towards a Less Imperfect State of the World: The Gulf between North and South* (Berlin: Friedrich Ebert Stiftung, Dialogue on Globalization Briefing Paper 4, April 2008).

cautious about the use of private force as a threat to sovereignty, self-determination and territorial integrity. Given the record, such caution is understandable.

The gulf between law and legitimacy is a serious crisis-in-the-making for the United Nations. The reason for underestimating its extent and gravity may be that different segments of the international community have problems with different elements of the gap and fail to capture the different dimensions in their cumulatively devastating impact.

The Security Council

For legality and legitimacy to converge, the Security Council's composition and procedures must reflect today's military and ideational realities. As the Council experiences a slow but steady erosion of international legitimacy, many show a growing willingness to defy it. Georg Nolte addresses but underestimates the political problem posed by the fusion of executive, legislative and judicial functions in the Council. In recent times the Council has co-opted functions that belong properly to legislative and judicial spheres. It has taken on a legislative role in resolutions on terrorism and nonproliferation. This is intruding into the realm of state prerogatives as negotiated in international conferences and conventions. Security Council decisions are binding, so 192 legislatures are denied their right of review over international treaties.

The Council imposed sanctions on Libya for its failure to extradite two citizens accused of being the brains behind the Lockerbie bombing. That is, without a trial and conviction, the Council compelled one sovereign state to hand over its citizens to another sovereign state on the basis of allegations from the latter – which had itself, just a few years earlier, defied the World Court's verdict in a case brought against it by Nicaragua. In August 2004, the Council approved a U.S.-backed resolution demanding the immediate withdrawal of all foreign forces from Lebanon – at a time when more than 100,000 U.S. troops were occupying Iraq. On 31 May 2007 the Council voted 10-0-5 to establish an international criminal tribunal to prosecute the perpetrators of the suicide-assassination of Lebanon's prime minister Rafiq Hariri and 22 others in February 2005, which put the organization "in the business of stigmatizing and punishing individuals for a political crime."⁸ The five abstainers – China, Indonesia, Qatar, Russia and South Africa – explained that the resolution bypassed the Lebanese Parliament's constitutional role in approving international agreements.⁹ Hezbollah issued a statement denouncing the UNSC resolution as "illegal and illegitimate at the national and international level."¹⁰

Rupert Smith concludes that "If the Security Council... is to change so as to wield force for good, then structural and organizational changes are necessary (p. 451). Gilles Dorronsoro

⁸ Gary J. Bass, "Does the U.N. Understand What It's Getting Itself Into?" *Washington Post*, 30 October 2005.

⁹ Colum Lynch, "U.N. backs Hariri murder tribunal," *New York Times*, 1 June 2007.

¹⁰ "Hezbollah condemns Hariri court," *BBC News*, 31 May 2007, accessed on 31 May 2007 from http://news.bbc.co.uk/2/hi/middle_east/6707315.stm.

argues in relation to Afghanistan that the failure of the Council to articulate a coherent policy is due to its being “instrumentalized by the interests of its Permanent Members” (p. 465), a point made also by Tripp in relation to the Iran-Iraq War (p. 382). Edward Luck is very good in reminding us of the reasoning behind the Council being structured as it is, but suspect in his arguments against calls for reforming it to reflect today’s geopolitical and normative realities. The Council may be as “undependable, unaccountable, and unrepresentative” today as it was in 1945 (p. 85), but the consequences of these shortcomings are graver and their acceptability to an increasingly impatient membership and global civil society is diminishing, in the process eroding the Council’s and hence also the U.N.’s legitimacy.

Conflict Resolution

Jones offers an important insight that could have served as the organizing framework for all the case studies. Council resolutions by themselves have little or no effect on the behaviors of parties to the Middle East conflict. “Rather, it is in the direct connection between political action by the Security Council and diplomatic and operational action on the ground by the Secretariat that we find the United Nations contributing to the resolution of conflicts on the ground” (p. 323). The trick to successful U.N. conflict resolution, therefore, is “to combine the political weight of the Security Council, the diplomatic weight of the Secretary-General,” and the realities on the ground (p. 323).

The system of collective security proved illusory from the start. Korea, discussed by William Stueck, was an example of collective defense through alliances. It “established the United Nations neither as a reliable instrument of collective security nor as an effective arbiter of international disputes” (p. 278). And it brought home to Washington how taking the U.N. route had committed it “to a process that could not be lightly abandoned,” “an added source of restraint” (p. 275) that would be fiercely resisted in 2003.

Roberts’ essay explores “what is realistically achievable in a world where the demand for U.N. rapid-response forces is likely to be huge, the interest of states in responding to that demand is not unlimited, and the capacity of the Security Council to manage crises effectively is often questioned” (p. 100). Malone and Cockayne note that the failure to prevent the Iraq war caused grave damage to U.N. authority: “the Security Council’s long engagement with Iraq has produced many losers” (p. 403). But U.N. involvement and engagement – or lack thereof – in the subcontinent has similarly damaged its reputation and credibility in both India and Pakistan, while in the Arab-Israeli conflict it would be interesting to know which side holds the organization in greater contempt.

The procedures for resolving disputes peacefully have also proven to be generally elusive. The major U.N. contribution to peace and security during the Cold War took the form of consensual peacekeeping operations. Berdal recalls how they had a double function: to mitigate violence between the warring parties locally and to manage relations and prevent a more catastrophic war among the great powers (p. 176). In a concrete

illustration of how we highlight aspects of the same event based on our different worldviews, Berdal ascribes the failure to bring “effective pressure to bear on Egypt” to reverse its expulsion of the U.N. force in 1967 to a lack of “unity of purpose in the Security Council” (p. 181). For most developing country scholars, Egypt was the victim of aggression by Britain, France and Israel in 1956. The U.N. force was interposed between Egypt and Israel in response. For the United Nations to have kept it on Egyptian territory against Egypt’s will would have meant punishing the victim. Even with “a unity of purpose,” a Chapter 7 Council resolution might have been legal but would have been widely rejected as illegitimate. (Berdal rightly notes that the U.N.’s Congo experience [1960–64] “was largely overlooked in much of the new writings on peacekeeping” [p. 183].)

Adekeye Adebajo draws four important lessons from his case study of West Africa: establish an effective division of labor between the United Nations and regional organizations; acknowledge the role of the P5 in ensuring an effective U.N. role in regional conflicts; develop strategies to deal with spoilers; and work with regional hegemony (pp. 487–91). The chapter on the Iran-Iraq war by Tripp will help any reader understand why the Security Council has little legitimacy among Iranians. For eight years, despite clear evidence of aggression by Saddam Hussein (who during this time was the West’s useful idiot) and his use of chemical weapons, the Council’s standard response was to suggest that “both belligerents were equally at fault” (p. 374).

Woodward makes the telling point that the Security Council still does not have “a policy on how to address and manage conflicts that threaten the territorial integrity of a country from within” (p. 407). This is a policy dilemma for Serbia that most developing countries could identify with and most Western countries did not. The result was “a cavalier invocation by the Security Council of Chapter VII authority without providing the mandate or resources necessary to stop the war” (p. 407). She goes on to indict the Council for bearing “the larger moral responsibility, for never having sought to craft a policy of its own independent of the actions of its members... either for the Yugoslav conflicts or for the generic problem which it will continue to face” (p. 441). It “failed to defend the territorial integrity of a member state, and it then failed to establish and enforce rules on the recognition of statehood and borders” (p. 440).¹¹ Similarly, Smith concludes that in Bosnia, “The existence and actions of the Security Council negatively affected events... The consequence of this failing was the destruction of the credibility of the UN” (p. 451).

The Secretary-General (SG)

If, as Jones notes, the U.N.’s record on conflict resolution is a function of the political weight of the Council and diplomatic efforts in the field led by the SG, then the problem

¹¹ See Albrecht Schnabel and Ramesh Thakur, eds., *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, and International Citizenship* (Tokyo: United Nations University Press, 2000).

of the Council's legitimacy is compounded if the SG is perceived as a creature of the Council. On 1 January 2007, Ban Ki-moon took office as the new SG. The basis of his "election" was a series of straw polls in the Council in which he received the most votes while escaping a single negative P5 vote. Shashi Tharoor, who consistently ranked second in the polls, attracted one P5 "discouragement" from the United States and withdrew. Ban was then elected unanimously by the Council and his election was ratified by acclamation by the GA.

Two conclusions follow: Ban is the duly elected SG; the choice between him and Tharoor was made effectively by Washington with 177 member states having neither voice nor vote. In an age of democratic legitimacy, why should the bulk of the world's countries and people accept Ban as "their" representative? The antiquated and opaque selection procedures qualify the legitimacy of the perfectly legal outcome. During his tour of the Middle East in April 2007, Ban pointedly did not meet the Palestinian prime minister Ismail Haniya of Hamas, even though he is the legally elected leader in a region rather short of elected leaders.¹² The reason? Israel and the United States regard Hamas as a terrorist organization, and therefore illegitimate.

Sanctions and Interventions

The same could be said of sanctions, discussed in this volume by David Cortright, George A. Lopez, and Linda Gerber-Stellingwerf. The Council's legal competence to impose sanctions is clear. Support for sanctions rests in their image as a humane alternative. Yet, in contrast to wars, sanctions shift the burden of harm solely to civilians and cause death and suffering through "structural violence" (starvation, malnutrition and disease) on a scale exceeding the "cleaner" alternative of war. This has steadily undermined their legitimacy.

Sanctions have also been imposed to enforce nonproliferation demands. 9/11 concentrated minds on the prospect of terrorists acquiring weapons of mass destruction (WMD). Security Council Resolution 1540 (28 April 2004) crossed a conceptual Rubicon in directing sovereign states to enact and enforce laws to prohibit nonstate actors to develop, acquire, transfer or use WMD; and to take and enforce effective domestic control, physical protection, accounting and border control measures to prevent proliferation. Jane Boulden gives a very good overview of Council action in relation to terrorism and its intrusive activism on this since 9/11, but fails to probe the implications of this for the organization's reputation, credibility and authority in the majority of the developing countries for whom terrorism is not the most pressing challenge.¹³

¹² Warren Hoge, "U.N. chief starting to wield personal authority in Mideast," *International Herald Tribune*, 2 April 2007. The title of the article notwithstanding, everything that Ban did on the trip as reported in it conformed to Washington's priorities and perceptions.

¹³ See Abdalmahmood Abdalhaleem Mohammad, "Security Council and non-proliferation," *Hindu* (Chennai), 28 May 2004; Jim Wurst, "NGOs criticize nonproliferation draft for ignoring disarmament," *U.N. Wire* (www.unwire.org), 1 April 2004.

The tension between nonproliferation and disarmament raises question marks about the legality of the Council in imposing sanctions as a tool of geopolitical dominance rather than lawful enforcement, and about the legitimacy of the nuclear order as presently constituted.¹⁴ Rahul Roy-Chaudhury mentions the Council's condemnation of the 1998 nuclear tests by India and Pakistan, but fails to note how the lawfulness and legitimacy of this was widely questioned in both countries. Neither has signed the Nuclear Non-Proliferation Treaty (NPT) but were being held to its obligations by the P5 who have ignored their own NPT obligations to disarm. The same inconsistency haunts the Council's efforts to rein in Iran's nuclear ambitions, especially given its harsh history and security environment.

Double standards and selective morality come into play also on the subject of interventions. NATO made up rules "on the fly" in Kosovo.¹⁵ The attempt "to limit the reach of the Kosovo precedent did not prevent the advocates of the Iraq war from invoking it to justify toppling Saddam."¹⁶ For restricting the right solely to NATO is "an open argument for law-making by an elite group of Western powers sitting in judgment over their own actions"¹⁷ – as well as that of all others. In effect the West's position vis-à-vis the rest is: we shall hold you to account for your use of force domestically while exempting our international use of force from any external accountability.

As Krisch acknowledges, for weak states, "international institutions often represent... tools of the powerful that are intended to conceal or even legitimate dominance" (p. 134). The discriminatory treatment is evident in casualty figures that are introduced with a casualness in the case of developing countries that contrasts sharply with the caution employed in the case of the powerful Western countries. Who now uses the alarmingly high casualty figures for Iraq published in the respected medical journal *Lancet*?¹⁸ The U.S. government succeeded in throwing doubt on the motivations of the researchers and the journal, questioning the methodology, and generally responding to their figures with scornful disdain that obviated the need to actually answer the charges or provide their own figures that could also be cross-checked. The end result was to intimidate the media and the scholarly community alike so that, if they refer to those figures at all, they generally qualify it by labeling them as controversial. Yet the same methodology of excess deaths and high end of reported casualty figures is routinely bandied about in the case of

¹⁴ See *The United Nations and Nuclear Orders*, edited by Jane Boulden, Ramesh Thakur, and Thomas G. Weiss (Tokyo: U.N. University Press, 2009).

¹⁵ Michael J. Glennon, "The New Interventionism: The Search for a Just International Law," *Foreign Affairs* 78:3 (May/June 1999), p. 6.

¹⁶ Robert W. Tucker and David C. Hendrickson, "The Sources of American Legitimacy," *Foreign Affairs*, 83:6 (November/December 2004), p. 31.

¹⁷ David Chandler, *From Kosovo to Kabul: Human Rights and International Intervention* (London: Pluto, 2002), p. 135.

¹⁸ Les Roberts, Riyadh Lafta, Richard Garfield, Jamal Khudhairi, Gilbert Burnham, "Mortality before and after the 2003 invasion of Iraq: cluster sample survey," *Lancet* 364 (30 October 2004), pp. 1857–64.

conflicts like Sudan and the Democratic Republic of the Congo. U.S. government researchers followed the same methodology in Kosovo and again in Afghanistan. The United Nations uses similarly calculated death rates for dozens of conflicts around the world every year. The standard technique is to say “as high as” or “up to.” Thus Peter Carey and Pat Walsh about East Timor: “perhaps as many as 183,000 out of a pre-1975 population of 700,000 perished from war-related causes” (p. 347; emphasis added). The source they cite listed a death toll of between 102,800 and 183,000. Contrast this with the caution of the *Lancet* authors who cited a range of possible death numbers from 8,000 to 194,000, and then settled on the median figure 98,000 of as the most likely within that range. Forget about analysts using the high end of their calculation; they don’t even use their median figure. And one of the techniques the American, Australian and British administrations used to discredit the study in the public mind was to say how can you trust a survey that itself gives such a wide range – clearly they don’t know what they are talking about. Thus was scientific merit turned on its head.

The U.N.’s authority to preach the virtues of good governance and accountability to others will be gravely compromised by any departures from these values in its own behavior. The oil-for-food scandal showed up lapses and weaknesses in the internal management culture and practices of the U.N. Secretariat. But, in the total sweep of the scandal, these were minor. The really important lessons were four. First, the United Nations does not have the capacity, in size and technical resources, to manage such a program and should firmly refuse any such task in the future. Second, U.N. officials did in fact raise queries about potential shenanigans with the appropriate oversight committee of the Security Council, but their concerns were not taken up for serious investigation. The main players in the Council had other priorities. If judgments are to be made, they should be about the Council members, not U.N. officials.¹⁹ Besides, even the record of U.S. authorities since 2003 is considerably worse.²⁰ Third, the real money was changing hands between business firms and executives and ministers and officials of member governments, not U.N. officials. Finally, for all these flaws, the program actually succeeded in its humanitarian goals, just as the U.N. inspection teams succeeded in disarming Saddam of WMD. Cockayne and Malone get it more right (p. 390–92) than the editors (p. 52). That said, the real U.N. scandal of the last dozen years or so has been with respect to predatory peacekeepers.²¹ This does not receive the attention it deserves in this volume.

¹⁹ “... the one nation which shoved the inquiry forward from the beginning was most culpable – the United States”; Stephen Schlesinger, “Where Volcker Got It Wrong,” *MaximsNews.Com*, downloaded from www.maximsnews.com/2005schlesingeridecember.htm on 2 December 2005.

²⁰ See, for example, Philip Shenon, “Did billions sent by U.S. to Iraq fund insurgents?” *International Herald Tribune*, 8 February 2007, and the New York Times editorial on the same subject, “The fog of accountability,” *International Herald Tribune*, 9 February 2007.

²¹ See Chiyuki Aoi, Cedric deConing and Ramesh Thakur, eds., *Unintended Consequences of Peacekeeping Operations* (Tokyo: United Nations University Press, 2007).

Conclusion: The Rule of Law

Kosovo and Iraq underlined widespread perceptions that powerful countries can break the rules of the Charter regime with impunity. This has widened the gulf between law and legitimacy. The editors spend 18 pages on the Council's legitimacy and relationship to law. Noting that legitimacy derives from "embedded beliefs about the ends to which it exercises power, and about the processes through which power is exercised" (p. 30), they acknowledge "a tension" between the Council's "authoritative role" in the U.N. Charter and "in the eyes of international society" (p. 31, 50-53). But, the gist of their discussion and analysis of the history of reform efforts ends up explaining and justifying all expansions of Council power, and explaining and excusing all flaws and inconsistencies in how that power is exercised, even to the point of asserting that Council resolutions "can override international law" (p. 37). Readers will get no inkling from their introduction, or indeed from anyone else in the book, that the major reason for the train wreck of the 2005 U.N. reform effort was that the membership at large has developed an active distrust of the Council's expanding powers and would rather see reforms fail than add to its power. This explains why the GA took ownership of the responsibility to protect in the 2005 outcome document and has jealously protected that ownership in the years since, including a request to the SG to report to the Assembly on implementing this responsibility.²²

Discarding diplomatic language in favor of blunt talking, on 17 March Secretary of State Hillary Clinton warned Sudan's President Omar Hassan al-Bashir that he "will be held responsible for every single death that occurs" in Darfur's refugee camps.²³ Left unsaid was that no American can be held internationally responsible for a single death that occurs anywhere in the world. An initiative of international criminal justice meant to protect vulnerable people from brutal national rulers has been subverted into an instrument of power against vulnerable countries. All four ICC indictments to date have been against Africans whose alleged atrocities were limited to national jurisdictions. The George W. Bush administration asserted and exercised the right to kidnap suspected enemies in the war on terror anywhere in the world and take them anywhere else, including countries known to torture suspects.²⁴ Many Western allies colluded in the distasteful practice of rendition. No Westerner has faced criminal trial for it. We are unlikely to get an international accounting of what happened in Fallujah in April 2004.²⁵ Scheffer concludes that the transformations effected in Iraq since 2003 have been done "in a manner largely inconsistent with occupation law" (p. 605): should we expect anyone

²² Ban Ki-moon, *Implementing the responsibility to protect: Report of the Secretary-General* (A/63/677, 12 January 2009).

²³ CNN, March 17, 2009, <http://edition.cnn.com/2009/WORLD/africa/03/17/us.sudan/index.html>, accessed on 18 March 2009.

²⁴ For details of the secret but leaked ICRC report on the Guantanamo detainees, see Mark Danner, "US torture: voices from the dark sites," *New York Review of Books*, 56:6 (9 April 2009).

²⁵ See Jonathan Holmes, "The legacy of Fallujah," *Guardian*, 4 April 2007.

to be charged anytime soon? What of charges of war crimes by Hamas and Israelis in Gaza earlier this year?²⁶

We are in the realm both of *normative inconsistency*, the selective application and enforcement of global norms against friends and adversaries, and *normative incoherence*, when different norms clash with each other, as between human rights requirements and prohibitions against the use of force. Is it permissible – legitimate – to violate some aspects of international law in order to enforce respect for human rights laws? Is it still legitimate if some states are more equal than others in facing international pressure and sanctions for committing atrocity crimes? Satisfactory answers to these important questions will have to be found elsewhere.

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²⁶ Ethan Bronner, "Soldiers' accounts of Gaza killings raise furor in Israel," *New York Times*, 20 March 2009, and Rory McCarthy, "Israeli troops describe shooting Gaza civilians," *Guardian*, 20 March 2009. The conquerors' arrogance can be seen also in Israeli sharpshooters ordering T-shirts showing a pregnant Arab woman with a bullseye superimposed on her belly, accompanied by the slogan "1 shot, 2 kills"; Donald Macintyre, "Israel military condemns soldiers' shocking T-shirts," *Independent*, 22 March 2009.