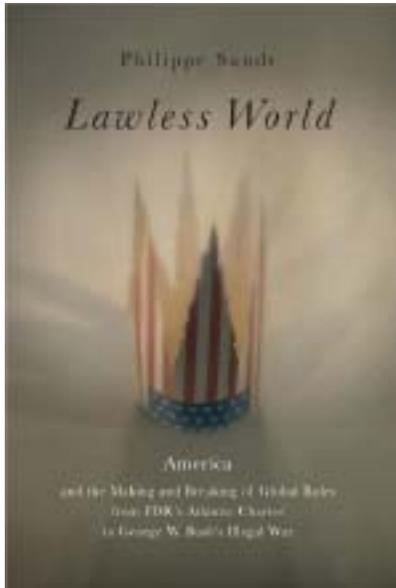

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LAWLESS
WORLD

AMERICA AND THE BREAKING
OF GLOBAL RULES FROM FDR'S
ATLANTIC CHARTER TO GEORGE
W. BUSH'S ILLEGAL WAR



PHILIPPE SANDS



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PREFACE

In the 1940s the United States and Britain led efforts to replace a world of chaos and conflict with a new, rules-based system. Although their views were not exactly identical – one had an empire to protect and the other did not, one had a constitutional order promoting individual rights and the other did not – they hoped to make the world a better place, free from fear or want. They proposed new international rules to place limits on the use of force, promote the protection of fundamental human rights, and enshrine free trade and international economic liberalization. Together with many other countries, they created a coalition under the banner of a United Nations. Their project was premised on a belief that the rules would create opportunities and promote values which were widely shared.

Over the next fifty years the mission to deepen and develop international law was, broadly speaking, successful. By the 1990s the cold war had been won, the United States was the most powerful nation on earth, and Britain was fighting above its weight class. But it may have been too successful a mission. The rules which were intended to constrain others became constraining of their creators. Human rights norms took on a life of their own. They came to be applied in ways which were politically inconvenient, as the Pinochet case showed. Economic obligations began to undermine domestic decision-making on jobs and the environment. And the rules prohibiting the use of force came to be seen as insufficiently flexible to allow intervention when thought necessary, as Kosovo proved.

At the opening of the twenty-first century the world was a very different place from the one restructured by Franklin Roosevelt and Winston Churchill half a century earlier. International law had wrought a revolution, with rules

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reaching into the nooks and crannies of everyday life. But it had been a silent revolution. Most people were unaware of the great extent to which their daily lives were being touched by the new global rules. And the relationship between the U.S. and Britain had changed, with a distinct reversal of positions. The U.S. was more powerful, and increasingly antagonistic toward some of the rules which went too far in undermining sovereignty and vital interests. Britain was less powerful and more comfortable with its international commitments, although there were growing concerns in some quarters that the regional rules of the European Community and the European Convention on Human Rights might be changing the national identity forever.

With the election of George W. Bush in November 2000, a U.S. administration took office that was outspoken in its determination to challenge global rules. Soon it turned into a full-scale assault, a war on law. This began even before 9/11, although that day's appalling events provided an added spur with the argument that international rules were somehow not up to the new challenges which the world now faced. I disagree fundamentally with that argument, and in this book I explain why. I trace the efforts of the first George W. Bush administration to remake the system of global rules, from the abandonment of the Rome Statute on the International Criminal Court and the Kyoto Protocol on global warming, through the attempt to disapply the Geneva Conventions and other human rights norms at Guantánamo and other places, to the virtual disavowal of the United Nations' prescriptions prohibiting the use of force. Even when it comes to the international economic rules on free trade and the protection of foreign investments, which the administration claims to support, there are signs of new thinking. Faced with this onslaught the British government was often silent or, in certain respects, a willing handmaiden to some of the worst violations of international law. Together, the two countries were trying to remake the global rules. But they were doing so without a proper script. As with the scenario for post-Saddam Iraq, no thought seems to have been given to the question, what do we replace them with?

At the most personal level I could say that the roots of my interest in this subject go back to the decimation of my mother's family in the 1930s, in the premodern international law world which allowed massacre with impunity. Or my interest may have been sparked by my first teacher of international law, Robbie

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Jennings, a Yorkshireman with so much common sense that even the most ardent disbelievers could be brought to heel. But probably the catalyst was an execution in Virginia, well before George W. Bush took office. In the middle of Bill Clinton's second term of office, I spent a week in Richmond, Virginia, teaching a short course on the resolution of international disputes. The Commonwealth of Virginia is America's most important tobacco state, and fiercely insistent on its right to regulate its own affairs free from external interference. That means both federal and international interference. The message I brought – that international rules which the federal government could sign up to might constrain the actions of a state like Virginia – was going against the grain in that part of the world. It has parallels in the powerful national sentiment against the growing incursions of the European Community into British sovereignty, only at a far greater level of intensity.

The students at the T. C. Williams School of Law were smart, but skeptical about the themes which ran through my seminars. The idea that the influence of global rules was expanding rapidly and that this was, in itself, not necessarily a bad thing was not a line they were used to hearing. During my week in Virginia a case reached the fifteen judges of the International Court of Justice in The Hague (a body that is sometimes referred to as the World Court). It concerned Virginia's right to execute a man who had brutally murdered a woman in Arlington, not too far from Richmond. The coincidence was remarkable because the World Court hears so few cases (only two or three a year) and also because the issues before the court touched so directly on the subject of my seminars. What is the effect of international laws on domestic actions? How do global rules impinge on sovereignty? Who makes the global rules, and how democratic are they? Should the International Court of Justice defer to the U.S., or to Virginia, and how?

These are familiar issues to British and other European lawyers because we are used to the everyday impact of European Community rules and the law of the separate European Convention on Human Rights. But most Americans, even the well-traveled lawyers among them, are uncomfortable with the idea that foreign judges in a faraway international court, in a country they may never have visited (or even heard of), could halt an execution in Virginia, even temporarily. "International law is for others, not for us" was the way an irate caller put it on a

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local radio phone-in program.

The man to be executed was a Paraguayan named Angel Breard. He had been convicted of raping and murdering Ruth Dickie. Originally he had denied guilt, but eventually he confessed, believing that if he did so he would be spared the death penalty. “I acted under a satanic curse” was his improbable defense. He had been given access to defense lawyers, but was not put in contact with Paraguayan consular officials, and they were not informed of his arrest. Only after he had been convicted and sentenced did he and his lawyers learn about an obscure international treaty – the 1963 Vienna Convention on Consular Relations – which obliged the U.S. to ensure that he was informed immediately of his right to have access to a consular official. By then it was much too late. Federal and state laws meant he could no longer raise procedural rights of consular access in new appeals to the Virginia courts, or to the U.S. federal courts. The Clinton administration admitted that in Breard’s case it had violated the international rules. It offered an apology. It promised to do better next time. But it was not willing to suspend Breard’s execution in the face of the claim that he might have argued his criminal defense differently – for example, by pleading guilty from the outset.

So Paraguay brought a case to the International Court. It argued that the U.S. had violated its obligations under the 1963 convention and that the execution should be suspended. On April 9, 1998, just five days before Breard was due to be executed, the International Court ordered the U.S. to take steps to ensure that Breard was not executed before the court had given its final decision in the case. This was an injunction, an order to suspend the execution. A spokesman for Senator Jesse Helms, then chairman of the Senate Foreign Relations Committee, and one of the U.S. Senate’s most reactionary members, declared that the court’s order was “an appalling intrusion by the United Nations into the affairs of the state of Virginia.”

From my cozy European perspective it was unimaginable that the law-abiding authorities in Virginia and the United States could not find some way to respect the International Court’s injunction and stop the execution, at least temporarily. “The governor, I take it, is a pretty reasonable chap,” I naively told a reporter from the Richmond Times-Dispatch. “He’s not going to want to do anything that would bring Virginia into disrepute.” But the International Court’s order cut no ice with the U.S. Supreme Court (to which Breard and Paraguay had appealed) or

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the governor of Virginia. The Clinton administration fudged. It was caught between a desire to respect the international rules and American constitutional constraints on federal interference in Virginia's actions. Clinton offered Secretary of State Madeleine Albright to urge Virginia's Governor James Gilmore III to suspend the execution until the International Court had given its final ruling. But simultaneously he sent his solicitor general to the U.S. Supreme Court to argue that it could and should ignore the order from The Hague.

On the day the Supreme Court heard the case, I returned to London. That same evening, by a 6–3 decision, the Supreme Court declined to give effect to the International Court's order. It ruled that Breard's argument that he might have run his case differently if he had had access to Paraguayan consular officials was not plausible. It concluded that this was an area in which Virginia retained full authority, unfettered by restrictions under the U.S. Constitution or international law. As a matter of American law, Virginia was free to execute. Virginia's governor refused to exercise clemency. Even before my plane had landed at Heathrow Airport, Breard had been executed. There was global outrage. The BBC ran the story as a lead. Even CNN asked: "Paraguayan Execution: Do Americans Detained Overseas Face New Dangers?"

I was shocked by the failure to suspend Breard's execution. The same treaty which Jimmy Carter had invoked to secure the release of the Tehran hostages, back in 1979, now produced a contemptuous response to the judges at the International Court. An article I wrote for the Los Angeles Times produced a welter of aggressive e-mails, as well as the accusation (on the letters pages of the LA Times) that my arguments seeking respect for international law made me a "Third World loyalist trying to set international precedent to undermine U.S. sovereignty." The story continued to niggle away at a number of levels. How could it be that a country as profoundly attached to the rule of law and principles of constitutionality as the United States could have so little regard for international law? Why was the country that led the negotiations of the 1963 Vienna Convention, and which brought fundamental human rights into international law, able to show such disdain for international rules and for the International Court? And what of my own European prejudices, favoring rules and international law: were they preventing me from taking a more realistic approach to the limits of international law? Why were my friends and colleagues in American acad-

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eme not agitating? And would it have been any different in Britain?

Within a year we had an answer to the last question. In March 1999, the Privy Council in London (as the highest court of appeal for Trinidad and Tobago) ordered the execution of two Trinidadians to be suspended until their cases before the Inter-American Commission on Human Rights had been decided. These judges in London were willing to allow international law arguments to halt a government from riding roughshod over international legal proceedings. How can the difference in attitude to international law be explained? Is it political or cultural? Or a result of the fact that most American law schools do not teach international law, and those that do tend to treat it more as a poor relation of political science, international relations, or social theory, with the result that its normative value is diminished?

Over the past few years I have seen these issues both from an academic perspective and also firsthand as a practicing barrister, working on many of the international cases and negotiations that are touched on in the chapters of this book. I have discovered that things look rather different from the inside, that the international law that I was taught bears little relation to how the system works in practice. Most states take most rules seriously, most of the time. Governments, legal advisers, and judges pay considerable attention to the rules of international law. The media focus on the exceptions. That is not to say that law and politics are not intimately connected. Plainly they are, at both the national and the international levels. The stories in this book may be understood as conflicts, between political values and legal rules, between competing conceptions as to the hierarchy of moral choices, between different interpretations of what the rules require.

What is striking is how little is known by the public at large of the transformation of international relations that has taken place over the past fifty years. Notions of sovereignty have changed with growing interdependence. To claim that states are as sovereign today as they were fifty years ago is to ignore reality. The extent of interdependence caused by the avalanche of international laws means that states are constrained by international obligations over an increasingly wide range of actions. And the rules, once adopted, take on a logic and a life of their own. They do not stay within the neat boundaries that states thought they were creating when they were negotiated. You can see that most clearly in the rules on free trade and foreign investment. What began in Europe as a discrete

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effort with the Treaty of Rome in 1957 to create the European Economic Community – a common market – has morphed into a system of rules regulating everything from the requirement that European fishermen wear hairnets to the harmonization of Value Added Tax. The same tendency is seen with the North American Free Trade Agreement, with inevitable impacts on noneconomic issues, including standards on labor, health, and the environment. The new European Constitution, signed in the autumn of 2004, does not mean the end of sovereignty, or the end of Britain as an independent European state. But if it comes into force it will inevitably mean even more limits on sovereign freedoms for the twenty-five members of the European Community. Anyone who says otherwise is deluding himself, or being dishonest. Every international treaty has a constraining effect. If it did not it would not be doing its job. No international treaty is ever just a “tidying-up exercise.”

The emergence of a new body of international laws – more extensive rules, more detail, greater enforceability – has a profound impact on democratic governance and accountability. In Britain, as in most countries, the great majority of treaties are not scrutinized or debated by the national parliament; there is no parliamentary committee which oversees Britain’s treaty negotiations, or a decision on whether or not to ratify a particular treaty. This is a startling gap, especially as the European Community increasingly signs treaties on behalf of its members. This democratic deficit is made all the more significant by the fact that new rules are often accompanied by new international courts and tribunals to ensure that obligations are complied with. The emergence of an independent and increasingly powerful international judiciary, deciding on issues from human rights to trade, from environmental protection to foreign investment, raises vital questions. Who are the judges? How are they appointed? What are the limits on their powers? Why should they be making decisions with profound consequences for life at the grass roots?

One main purpose of this book, then, is to shed some light on international law, to explain in a little more detail what the rules are, how they are made, and how they are argued when contentious issues come up. It is not intended as an academic work. It is a practical book based on the personal experiences of a pragmatic Anglo-Saxon who is not seeking to apply Cartesian logic or develop some overarching international legal theory which can explain where we are and where we

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may be heading. I am conscious that by focusing on the United States and Britain there may be an assumption that other countries have not played equally important roles. That would be wrong, and is certainly not my intention.

But the book has another and more central purpose. It unashamedly makes the case for international rules. In this globalizing, interdependent world it is impossible to conceive of a return to nature, to a preregulatory planet in which each state is free to act as it wishes, unfettered by international obligations. This is wishful thinking, as the U.S. and Britain have learned in Iraq and in their “war on terrorism.” Imperfect as the rules of international law may be, they are necessary and they reflect minimum standards of acceptable behavior. They provide a standard for judging the legitimacy of international actions. They are in place and they need to be complied with if actions are to be treated as legitimate. Abandoning the rules is not cost-free. That is not to say that the rules do not need regular reevaluation. The system of international law faces a great many challenges, including challenges to the assumptions which Roosevelt and Churchill and other leaders may have had in the 1940s. The world legal order is no longer monopolized by states. Not all states are fully functioning entities; some have failed altogether, and a new breed of nonstate actors has emerged of a less amenable kind, such as terrorist organizations which are not based within a single state, and which do not respect the rules.

In the face of these changes there is a temptation to argue that the international laws do not work, that they need to be changed. President Bush has made the argument. So has Prime Minister Tony Blair, in an elegant but confused speech in his parliamentary constituency in March 2004. I disagree with this approach, at least as a general proposition. There are good reasons why most international laws have been adopted. For the most part they work reasonably well. They reflect common values, to the extent that these can be ascertained. I do not believe that idealized notions of the sovereign state, or 9/11, or events in Iraq have fundamentally changed the basic assumptions or created new paradigms.

In the 1940s the United States and Britain reconceived their notions of a world legal order. Faced with constraints on the exercise of its sovereignty, the U.S. has sought to sidestep those rules, particularly where they provide no direct economic benefits. In recent years Britain has tended to turn a blind eye, or even to col-

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lude. In its first term the Bush administration embarked on a course which threatens significant damage to the rules-based system which was put in place after the Second World War, but without making the world a safer or a fairer place. It proposed no viable alternative. And it undermined its own long-term interest by alienating many of its allies and delegitimizing its own actions. In all of this it has been assisted by an idealistic and compliant British prime minister. While he may have been well intentioned, his principal role has been to legitimate much that is not defensible. At a time of great challenge, the rules – and respect for them – are more important than ever. The politics of international law may have changed. But, with all the will in the world, the rules cannot be wished or blown away. Belatedly, the second Bush administration seems to have recognized this, although it remains to be seen whether the new mood music translates into hard action.

The chapters which follow illustrate some general trends. Rules of international law become richer and deeper, and even more connected to daily political issues, and moral choices. As this has happened, more invasive rules have become more constraining on political choices. This in turn has emboldened the voices calling for a return to an earlier era. I begin in chapter 1 with a short history of the period between the end of the Second World War and recent times, and the factors that have transformed the world in which a new legal order was constructed. Chapter 2 focuses on the Pinochet case and the end of presidential immunity and impunity, a high point in the dismantling of a system which classically gave states unfettered powers over their citizens. Chapter 3 looks at the circumstances in which the international community finally created the International Criminal Court, part of the same “Pinochet moment.” Both these chapters show that the forces driving the neoconservative and nationalistic approaches of the Bush administration were already emerging in the late 1990s. Chapter 4 is concerned with the environment, and the abandonment by the U.S. of the complex mechanisms of the Kyoto Protocol to combat global warming. Chapters 5 and 6 examine two areas in which the U.S. maintains – for the time being at least – a stronger commitment to international law, namely the rules to increase global free trade and safeguard overseas investments. Chapters 7, 8, and 9 deal with the post-9/11 disgraces of Guantánamo, Iraq, and Abu Ghraib, when the constraints of interna-

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tional law were willfully abandoned in the name of national interests and security. In chapter 10, I piece together the threads which link these seemingly disparate and apparently self-contained stories, which show that international law is, at the end of the day, about people and politics. In the concluding chapter, I consider whether President Bush's second term could signal a change of direction, or whether the modest and limited improvements are little more than window dressing. There are no grounds for real optimism, as the National Defense Strategy of 2005 makes clear. The views expressed in these chapters are mine alone, as is the responsibility for any errors which might have crept in.

May 2005
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CHAPTER ONE

INTERNATIONAL LAW: A SHORT AND RECENT HISTORY

The best defence of our security lies in the spread of our values. But we cannot advance these values except within a framework that recognizes their universality. If it is a global threat, it needs a global response, based on global rules.

– Tony Blair, March 5, 2004

Although international law has a long history, it is only in recent years that it has emerged as a more regular feature of modern political life. Diplomatic immunities, genocide and other international crimes, trade wars, global warming, the detainees held at Guantánamo Bay, the war in Iraq, the abuses at Abu Ghraib prison, have brought the politics of international law into everyday life. This is particularly so in Britain, a middle-ranking power which relies on respect for international laws. In the weeks before the Iraq War in March 2003, British prime minister Tony Blair pledged his adherence to international rules: British troops would be committed to a war in Iraq only if international law allowed, and the conditions of any occupation would respect global rules. Blair had little option.

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He faced festering public disquiet about the treatment of British detainees at Guantánamo, the lack of respect for the Geneva Conventions, and his government's silence.

Tony Blair's public commitment was a necessary response to a growing concern that Britain was on the verge of a second Suez, using force with little international support and dubious legality. In 1956 Prime Minister Anthony Eden did not bother to seek an official opinion from his attorney general and overrode the objections of Sir Gerald Fitzmaurice, the senior legal adviser at the Foreign Office.

Eden chose instead to rely on the more supportive views of Professor Arthur Goodhart, former professor of jurisprudence at Oxford and master of University College, which had been set out in a letter to the London Times. Blair at least did consult with his attorney general, Lord Goldsmith QC, on several occasions, although it is not clear that he got the same advice on each occasion.

In March 2003 the government took the unprecedented step of publishing the attorney general's late-formed view that the use of military force did not require an explicit Security Council mandate. This unusual step was needed for political reasons: to address public and media concerns, to encourage wavering Labour MPs to vote for war, and to persuade Britain's chief of defence to commit troops. It may have succeeded on the latter two counts, but it failed in the court of public opinion: letters appeared in the press, and notable public figures weighed in on the illegality of the war. The attorney general's argument continues to be the subject of almost unprecedented media and parliamentary attention. Lord Alexander, a conservative and highly respected former head of the Bar Council of England and Wales, thought the attorney general's advice "risible" and said so publicly. Issues concerning the legality of the Iraq War will dog the reputation of the prime minister and his attorney general for years to come. Peter Hennessy, the British political commentator, described the issue as "the great faultline beneath the Blair premiership," which "syringed the trust out of the Prime Minister's office."

By December 2004 more than six hundred detainees were still held at Guantánamo Bay, including four Britons. Only a small number of these individuals had been charged before military commissions. Until the U.S. Supreme Court intervened in June 2004 to declare their right of access to U.S. federal courts, for more than two and a half years they had no access to legal representation, nor to

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any court of law or tribunal. Lord Steyn, a serving judge in Britain's highest court, the House of Lords, described detention under these conditions as a "stain on American justice," wholly contrary to international law. Steyn also called on the British government to do more to protect the international rights of its citizens. His intervention was unparalleled, a reflection of concern at the very highest levels of the British legal establishment. A few months later, in December 2004, the Judicial Committee of the House of Lords ruled that a law enacted after 9/11 permitting the indefinite detention without charge of nonnationals alleged to be involved in international terrorism was in clear violation of Britain's international treaty obligations.

In the United States there had been less public interest in the finer detail of the legality of the Iraq War or the conditions of detention at Guantánamo. That changed dramatically in March 2004, when the Western world's attention was focused on international rules by the publication of photographs depicting graphically the abuse of Iraqi and other Muslim detainees at Abu Ghraib prison in Baghdad. The Geneva Conventions became the subject of angry exchanges at hearings in the U.S. Senate. There followed the publication of a leaked Pentagon memorandum which appeared to authorize the use of torture, contrary to America's obligations under the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Actions taken in the aftermath of 9/11 were now raising serious questions about American commitment to basic rules of international law, including human rights and the treatment of detainees. Do those events signal the abandonment by Britain and the United States of their commitment to the post-Second World War legal and institutional arrangements which they, more than any other countries, put in place? What does this say about the future of international law in the twenty-first century?

The British public has become accustomed to issues of international law affecting political discourse. This flows from membership in the European Community and obligations under the European Convention on Human Rights. Both international conventions have had a significant effect on British life. In the view of a sizable minority of the population, that effect gives rise to calls for withdrawal and the reclaiming of British sovereignty. But these international rules are seen as being in some way special, and not a part of the general rules of international law

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which have emerged since the Second World War.

The change in British public interest in international law dates back to October 1998, when I was at the University of London's School of Oriental and African Studies. My areas of focus included the environment – still a relatively new subject – and international courts and tribunals. International courts had been a very specialized topic but then began attracting greater attention with the impact of human rights courts (including the European Court of Human Rights) and the World Trade Organization's new system for resolving trade disputes. In July 1998 agreement had been reached on the creation of a permanent International Criminal Court. This attracted great attention in the media. I was maintaining a discrete practice as a barrister, specializing in international law. The field was of little practical interest to most of my colleagues in my barristers' chambers, many of whom maintained a polite but distant bemusement regarding this area of the law. Occasionally an international legal issue would break into public consciousness. There would be debate, for example, on sovereignty and whether or not some new EC treaty amendments should be ratified, or whether the new Labour government's proposal to incorporate the European Convention on Human Rights into English law would change Britain's constitutional order and further diminish its sovereignty. But the vast majority of the many developments in international law which had occurred since the 1940s were ignored. They were not subject to any real public scrutiny, either in Parliament or in the media.

Important international treaties were not even being discussed in cabinet: I remember watching Question Time on television one autumn evening in 1997 and being struck by the fact that Jack Straw, who was the home secretary at the time, had no knowledge of the controversial intergovernmental negotiations for a proposed new treaty which would regulate global investments (the so-called Multilateral Agreement on Investment, which collapsed later in 1998 in the face of objections from a coalition of governments and nongovernmental organizations [NGOs]). A cabinet minister later confirmed that this treaty, like most, was never discussed or even mentioned. International law was a tightly guarded secret, monopolized by a small elite of foreign offices and civil servants, a handful of transnational corporations and NGOs such as Amnesty International and Greenpeace, a small number of academics, and an even smaller number of lawyers

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in private practice.

Judging by media attention and dinner party chat, that situation has changed significantly over the past few years. To pinpoint a precise date for the change I would say October 16, 1998. This was the day on which the former president of Chile, Senator Augusto Pinochet, was arrested while recuperating in a private London clinic from back surgery. His arrest followed a request by Judge Baltasar Garzón, an independent Spanish criminal prosecutor, who was seeking Pinochet's extradition to Spain to face criminal charges for violating international laws between September 11, 1973, when he seized power from Salvador Allende in a coup d'état, and March 1990, when he relinquished Chile's presidency. The arrest was to raise a fundamental question of international law: Was Pinochet entitled to claim immunity from the jurisdiction of the English courts on the grounds that the alleged crimes were committed while he was Chile's head of state? Politically, the question was of vital importance because it signaled a move away from the old international legal order, which was essentially dedicated to the protection of good relations between states. During the legal proceedings which were held before various English courts over the next two years, obscure rules of international law moved into the mainstream of political and public debate. The rules, the judges, and the lawyers were scrutinized and discussed in the press, and the debate became a global one. From London to Santiago, from Kingston to Reykjavík, the media covered the case in the minutest detail. The courtrooms were packed with local and international journalists, and they had many questions. What rules of international law permitted Britain to exercise jurisdiction over a Chilean at the request of Spain? Where did the rules of international law come from? How were they enforced? How were they to be interpreted? What if different countries applied them differently? How did international law balance the interest of a sovereign state not to have its former head of state subjected to the indignity of criminal proceedings abroad with the interests of victims and the need to end impunity for the most serious international crimes?

The House of Lords' first judgment, on November 25, 1998, was broadcast live on the BBC and CNN and transmitted on radio broadcasts around the world, the first time this had ever happened. The following day the judgment led the front pages of virtually every newspaper in the world. It was a landmark day: under

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international law the former head of state of one country could not claim immunity from the jurisdiction of the courts of another country to avoid facing charges that he had committed the international crime of torture. In the end the decision of the House of Lords was based on a single treaty, the little-known (but now mightily important) 1984 Convention against Torture. The case gave rise to copy-cat litigation, new constraints on the actions of governments, and an unparalleled interest in international law. The 1984 convention became significant five years later in the controversies over the detention camps at Guantánamo Bay and Abu Ghraib prison in Iraq.

The Pinochet case was significant for another reason. It coincided with greater attention to other rules of international law which had been put in place over the past fifty years, and which increasingly (but silently) impacted on people's daily lives. Rules of international law which had been adopted since the end of the Second World War have provided the foundations for globalization. By the late 1990s there had been a sustained period of economic liberalization, and this was now marked by large demonstrations in Seattle and elsewhere against globalization and the rules of the new World Trade Organization. These, it was said, would prevent countries from applying their own health, environmental, and labor standards. They were a new form of colonialism. During the 1990s, following the collapse of the Soviet bloc and the end of the cold war, the international community created the new International Criminal Court (after fifty years of discussion) to end impunity for the most serious international crimes, including genocide and war crimes. It was during this period, in 1999, that President Milos̃ević of the Federal Republic of Yugoslavia became the first serving head of state to be indicted by an international criminal tribunal, in The Hague. But it was also a time when sharp disagreements emerged between states as to how far the rules of international law should go. Negotiations for a global agreement on foreign investments collapsed. The United States withdrew from the negotiations to prevent global warming, as well as from other international treaties and negotiations. In the aftermath of the 9/11 attacks on the World Trade Center and the Pentagon, attention was focused on the rules of international law to combat terrorism, as well as on the conditions of detention of prisoners at Guantánamo Bay and other camps in Afghanistan and Iraq. Throughout this period there was also

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sustained public debate on the continued validity and effectiveness of the rules prohibiting the use of armed force, which had been forged in the aftermath of the Second World War, and the adequacy of a United Nations organization also created in the aftermath of the Second World War. The events in the Balkans in 1992, Rwanda in 1994, the Great Lakes region in Africa since 1997, Kosovo in 1999, Afghanistan in 2001, and, most bitterly, in the spring of 2003 in Iraq raised serious questions about the adequacy of international rules to protect fundamental human rights and to use force in self-defense or under the aegis of the United Nations Security Council.

International rules are now frequently seen as providing an independent benchmark against which to assess the justification of behavior – and in particular the behavior of states – which is politically or morally contentious. When I first studied the subject in the early 1980s, taught by a diminutive and remarkable Yorkshireman named Robbie Jennings, who went on to become a judge at the International Court of Justice, international law was presented as a topic which only one or two of the three hundred students attending the international law lectures at Cambridge would ever come across in real life. We were taught that international law governs relations between states at the international level with little, if any, impact on citizens or on local issues.

Before the Second World War international rules had been minimal in content, and addressed only a small number of areas of human activity. The two main sources of international legal obligation were – and continue to be – treaties and customary law. But there were very few treaties, and the practice of states which gave rise to customary law was difficult to discern. Beyond the League of Nations and the International Labor Organization – both established in 1919 by the Treaty of Versailles, which brought the First World War to an end – there were almost no international organizations. Apart from the Central American Court of Justice, created in 1908, the first truly international court was the Permanent Court of International Justice in The Hague, related to the League of Nations. In 1927, in a dispute between France and Turkey, the court declared, without pause or embarrassment, that states were basically free to do anything that was not expressly prohibited by international law. This was a world of sovereign freedom, with few international rules to constrain the behavior of governments.

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However, there were rules of international law protecting the rights of minorities in certain parts of Europe, and emerging rules on the employment of women (particularly if they were pregnant or engaged as night workers) and of children. There were rules governing the treatment of foreigners and their property, including the investments of corporations abroad. But there were no rules of international law protecting fundamental human rights. International law did not prohibit the wholesale slaughter or elimination of groups of people on grounds of religion or ethnicity or political belief – as had happened in Nazi Germany, the Soviet Union, and many other parts of the world. Nor were there restraints on territorial domination or the creation of colonies. The idea that a group of people had a right to self-determination was a distant dream. Piracy and slavery were outlawed, but discrimination, racism, apartheid, and colonial domination and exploitation were not.

Nor was there any general prohibition on the use of force. In 1928 the United States, Britain, France, and Germany, among others, had agreed in the Kellogg-Briand Pact to condemn war and renounce it as an instrument of national policy “in their relations with one another.” There were rules on how warfare could be conducted, including how prisoners of war should be treated and the types of weapons which could not be used, but these were extremely limited in scope. No global free trade rules existed, although a small number of bilateral trade rules had been adopted, and preferences existed, for example in the British Empire. There were no rules of general international law committing states to conserve nature and protect the environment. In short, the world of international law was premised on the principle that sovereign and independent states could do more or less what they wanted, except where they had expressly agreed otherwise. Since very little was prohibited, their freedom to act was virtually unlimited.

A little more than half a century ago, this permissive legal landscape became the subject of an ambitious and sustained effort by various countries to build a rules-based system. From 1941 onward the United States and Britain, with their allies (known as the United Nations), adopted a blueprint for a series of new institutions and laws to serve as the foundation for a rules-based approach to the international order. The Atlantic Charter was the starting point. On August 14, 1941, meeting aboard the U.S. flagship *Augusta* in Ship Harbor, Newfoundland,

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American president Franklin Delano Roosevelt and British prime minister Winston Churchill adopted a charter declaring “certain common principles in the national policies of their respective countries on which they base their hopes for a better future for the world.” The Atlantic Charter, as it was known, committed America and Britain to a new order based on a few key principles: an end to territorial aggrandizement or territorial changes; respect for self-government; social security; peace, and freedom from fear or want; high seas freedoms; and restraints on the use of force.

These principles served as the guidelines for a new world order and were later enshrined in the United Nations Charter. The Roosevelt-Churchill scheme can be reduced even further to three simple pillars, which have remained in place for the last sixty years: a general obligation on states to refrain from the use of force in their international relations, except under strict conditions of self-defense or where authorized by the international community acting through the Security Council or a regional body; a new commitment to maintain the “inherent dignity” and the “equal and inalienable rights” of all members of the human family, through the adoption of international instruments which would protect human rights by the rule of law; and an undertaking to promote economic liberalization through the adoption of free trade rules and related international obligations in the fields of foreign investment and intellectual property.

The Atlantic Charter inspired actions by states and also by individuals. Writing in his autobiography, Nelson Mandela saw the charter as reaffirming his faith in the dignity of each human being and propagating a host of democratic principles:

Some in the West saw the charter as empty promises, but not those of us in Africa. Inspired by the Atlantic Charter and the fight of the Allies against tyranny and aggression, the ANC created its own charter, called African Claims, which called for full citizenship for all Africans, the right to buy land and the repeal of all discriminating legislation.

The Atlantic Charter captured the public imagination. A few months after it was adopted, on January 1, 1942, America and Britain expanded their partnership to include the USSR, China, and twenty-two other countries, joining together in the United Nations declaration. Within weeks of the end of the Second World War a series of international conferences had been convened to create a world order

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based on common values and minimum international rules, around the three pillars which Roosevelt and Churchill had agreed on.

In April 1945 delegates from fifty countries met in San Francisco to negotiate a charter for the United Nations to replace the defunct League of Nations. In his opening speech President Truman set out America's strong commitment to international law, sweeping aside the opposition from hard-core Republicans in the U.S. Senate. The UN Charter was signed on June 26, 1945, and came into force four months later. Its stated objectives included the development of international law, in particular to protect human rights, prevent war, and promote economic and social progress. This was the starting point for the system of modern global rules. Although the U.S. had never joined the League of Nations, it did become a party to the UN Charter.

Within a decade a totally new system of international law and organizations had been created. By the 1950s there existed an embryonic global constitutional order, with rules that remain in place – albeit rather shakily in some cases – to this day. The system which emerged largely reflected an effort to export Anglo-American values, and was motivated in part to distinguish the values of the West from those of the Soviet bloc, which had become entrenched behind the Iron Curtain which divided Europe. The development of the global rules was to become a major battleground for the cold war.

In the field of human rights and humanitarian law an important first step was the agreement to prosecute Nazi war criminals. The Charter for the Nuremberg Military Tribunal was agreed to on August 8, 1945, by Britain, America, France, and the Soviet Union. This radical and far-reaching document aimed to codify the rules of international law on war crimes and crimes against humanity. The head of the American delegation was Robert Jackson, a justice of the United States Supreme Court, who went on to be the chief prosecutor at Nuremberg. In his memoirs he described how British officials wanted to dispose of the six or seven leading Nazis without trial, fearing that an open trial would provide a sounding board for Nazi propaganda. But Roosevelt disagreed: according to Jackson he “was determined that a speedy but fair trial should be accorded to war criminals . . . the President insisted that there be a documentation of their crimes.”

A few weeks later, the Commission on Human Rights was established at the

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United Nations. The American delegation was led by Eleanor Roosevelt, the recently widowed first lady. Over the next few years she led efforts to negotiate what became the Universal Declaration of Human Rights, adopted in December 1948 by the UN General Assembly. It is arguably the single most important international instrument ever negotiated. She considered this text to be her finest accomplishment for its promotion of the values reflected in the U.S. Constitution:

We wanted as many nations as possible to accept the fact that men, for one reason or another, were born free and equal in dignity and rights, that they were endowed with reason and conscience, and should act toward one another in a spirit of brotherhood. The way to do that was to find words that everyone would accept.

The declaration set out the first ever code of basic human rights, which would give effect to the United Nations' determination that "human rights should be protected by the rule of law." It was a nonbinding instrument, but it led directly to binding obligations and new instruments in Europe, the Americas, and Africa. In 1966 many of its provisions were incorporated into two legally binding instruments of potentially global application, the International Covenant on Civil and Political Rights and the International Covenant on Economic and Social Rights.

The day before the Universal Declaration was adopted, on December 9, 1948, the world's first global human rights treaty was agreed to: forty-one countries signed the Convention on the Prevention and Punishment of Genocide, in Paris. The treaty characterized genocide as "a crime under international law," and committed the parties to prevent and punish genocide. The United States did not become a party for another forty years. When it did so, however, in signing the implementing legislation President Ronald Reagan declared that he was fulfilling "the promise made earlier by Harry Truman to all the peoples of the world," and rejected the argument that the convention somehow infringed on American sovereignty. The year after the Genocide Convention, on August 12, 1949, forty-three countries adopted the four Geneva Conventions for the Protection of War Victims, including treaties on the treatment of prisoners of war (Geneva III) and the protection of civilians (Geneva IV). These instruments criminalized various acts, and made individuals – as well as governments – responsible. These are the international instruments which President George W. Bush sought to circumvent

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half a century later.

New international agreements were pursued equally vigorously on economic matters. On December 27, 1945, after just three weeks of earlier negotiations, the Bretton Woods Agreements were concluded, named after the vacation resort in New Hampshire where they were negotiated by forty-four countries. The agreements created the World Bank and the International Monetary Fund (IMF), the basic framework for international financial relations, which was considered indispensable to postwar economic reconstruction and development, as well as longer-term banking and currency stability. The vision of economist John Maynard Keynes was central to these two agreements, inspired by the same theories which had influenced Roosevelt's New Deal. Two years later, on October 30, 1947, twenty-three countries adopted the General Agreement on Tariffs and Trade (GATT), the global framework of rules committing parties to remove barriers to international trade in goods. GATT did not, however, include any formal institutional structures. That was left to a third organization, which was intended to exist alongside the IMF and the World Bank. The Statute of the International Trade Organization (ITO) was adopted in Havana in March 1948, and was supposed to provide the institutional framework for the GATT free trade rules, as well as new rules to encourage overseas investments and end monopoly and other restrictive business practices. This seems to have been a treaty too far, at least for the U.S. Congress, reflecting its distrust of global government. Under pressure, President Truman announced that he would not seek congressional approval for ratification of the ITO. It was effectively killed off until the mid-1990s, when the World Trade Organization (WTO) was created, ironically with strong American support. The failure of the ITO was an early sign that American endorsement for these new rules and institutions was not a foregone conclusion.

Nevertheless, by the 1950s the foundations of a new international legal order had been created, and the vision of Churchill and Roosevelt largely accomplished. Over the next fifty years a growing body of international rules was put in place, largely in the form of treaties, most of which have received widespread support. During this period of decolonization the number of states multiplied and the membership of the United Nations expanded rapidly. It reached 100 in 1961 and now stands at 191. Important arms control agreements were negotiated in the

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1960s, with the treaty banning atmospheric nuclear tests (1960) and the treaty on nuclear nonproliferation (1968) attracting considerable public attention. In the early 1970s a systematic effort began – with the strong support of President Richard Nixon – to put in place rules for the protection of the global environment, including those relating to biodiversity, the ozone layer, and the climate system. And beyond the global instruments were an even more extensive raft of regional treaties, aiming to protect fundamental human rights and creating economic unions and other regional trading and financial arrangements in Europe, Latin America, and Africa, as well as in the Islamic world and with the Western group of members of the Organization for Economic Cooperation and Development (OECD).

By the early 1990s, after the cold war had ended and the Berlin wall had been torn down, the liberal Anglo-American vision of a rules-based international system appeared to be becoming a reality, albeit an imperfect one. Civil society and the private sector became actively interested in international rules, which also became the subject of increased media attention. That is not to say that during this period global order had been established and the rules were always complied with. Vietnam, the overthrow of Salvador Allende, Pol Pot, Idi Amin, the Balkans, and Rwanda are merely the tip of a half century of violence, abuse, and gross illegality. But the new international rules provided a framework for judging individual behavior and government acts and, in theory at least, an end to impunity. It could no longer be said that international law allowed such atrocities.

The United States and Britain had provided leadership and lent their support because they saw rules as a means of bringing stability. But this was not altruism at play: a rules-based system would promote Anglo-American values, create markets, and protect established economic and social interests. It would also provide an instrument around which to build support against the Soviet bloc and gain influence over a decolonized developing world. The rules created opportunities and promoted interests. Also in the 1980s and the 1990s a different and stronger voice emerged, reflecting an American and British approach which was considerably more skeptical about international rules and multilateralism. In the United States, Ronald Reagan was elected into office, aiming to protect American sovereignty and an American way of life seen to be threatened by international law.

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With the rise of neoconservatism in the United States, many of the rules were seen as making unjustified encroachments on American power. Reagan, Margaret Thatcher, and Helmut Kohl of Germany walked away from the Law of the Sea Convention after fifteen years of negotiations, refusing to sign a treaty which, they claimed, undermined entrepreneurship and deregulation. In the context of the Iran-contra scandal and the conflict in Nicaragua and other parts of Central America, the United States withdrew its acceptance of the jurisdiction of the International Court of Justice. (Britain did not follow suit, and to this day remains the only UN permanent member to accept that court's general jurisdiction, albeit with important and recently added caveats.)

Well before 9/11, the United States had turned against many of the international rules which lay outside the economic domain, including some which had attracted very broad support. Whereas President Jimmy Carter had invoked the rules of consular protection in the Iran hostages crisis in 1979, twenty years later President Bill Clinton had no compunction in instructing his solicitor general to tell the U.S. Supreme Court that his administration would not object if the Supreme Court ignored the International Court of Justice's order that the execution of Angel Breard be temporarily suspended. Treaties were negotiated, but not signed. Many that were signed were not ratified. So the United States became one of just two countries, with Somalia, not to join the Convention on the Rights of the Child, because it outlawed the death penalty for juvenile criminals. The 1997 Kyoto Protocol (aimed at combating global warming) was demonized as a unique threat to the economy and American lifestyle (gas guzzlers in particular). And the 1998 Rome Statute of the International Criminal Court was treated as though it were a great threat to American power, constraining military activity and subjecting American soldiers and leaders to the risk of politically motivated prosecution by an independent international prosecutor.

The United States was entirely free to choose not to become a party to these or other treaties, but its reasons for not doing so marked a dramatic change of perspective. There emerged a presumption against international rules: they no longer created opportunities, but were seen as imposing significant constraints. This was a return to American exceptionalism, an attitude which had periodically – and powerfully – dominated its thinking earlier in the century. We are different, said

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the neoconservatives; the rules cannot apply to us. We need to create an international order which is friendly to America's security, prosperity, and principles, proclaimed the sponsors of the Project for the New American Century in 1997, including Dick Cheney, Donald Rumsfeld, and Paul Wolfowitz, the architects of the post-9/11 "war on terrorism." Ironically, the retreat from the established international order coincided with the United States' ever-greater dependence on the global economy, one area where respect for the rules was seen as vital.

And as this new approach emerged, Britain too found itself pulled in different directions. On the one hand, as a declining power with no empire to protect, it was more committed than ever to the international rule of law. On the other hand, it did not wish to alienate its great friend and ally.

In the meantime public perceptions of international law have been transformed. At some point in the 1990s these arcane rules moved out of the corridors of foreign ministries and into the boardrooms of businesses, the lobbying newsletters of nongovernmental organizations, and the front pages of our newspapers. International law went public. The monopoly which states held over the rules began to crumble. How did this happen?

The conditions under which the changes have occurred are complex, and already the subject of a body of literature and ideas to which I will not add. Against the background of changes which took place in the 1980s and 1990s – the end of the cold war, the economic and social integration of Europe, the rise of religious fundamentalism – four factors have emerged to transform perceptions about the function and nature of international laws.

The first of these is "globalization," a concept which caught on in the 1990s but which is, in reality, premised on a rules-based system of international relations, and international economic relations in particular. There would be no globalization without international law. Professor Anthony Giddens has depicted globalization as a "stretching process," in which connections are made between different social contexts and regions, which then become networked across the earth as a whole. This creates the perception that there exists a connection between the interests of different countries and communities. What one country does to the environment, or to the human rights of its citizens, may be of legitimate interest to another community outside that country. The Pinochet case is a simple exam-

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ple of legal globalization in action: the British courts entertain a request from Spain to extradite to that country a Chilean for acts he is alleged to have carried out in Chile and Argentina, and then deny Pinochet's claim to immunity on the basis of an international convention to which the three countries are parties and which treats the acts in question as international crimes. Without the treaty the case collapses: Spain would not have had a legal interest to which the English courts were able to accede. Chile would be able to claim immunity for the acts of Pinochet while head of state. In a globalizing world, international law recognizes the competing interests of different communities and finds ways to prioritize them.

By providing a minimum set of rules, international law underpins globalization. It encourages and eases air transport, trade, and telecommunications, the factors necessary for economic globalization to occur. Activities which were previously limited to the local or national level are internationalized, requiring lawmaking beyond the single state. Ironically, this in turn contributes to the very conditions which give rise to manifest feelings of disempowerment – citizens feel they have had no role in the development of the new international rules which disempower them. This feeling generated the anti-WTO demonstrations in Seattle in November 1999. So international law provides the foundations for globalization and, at the same time, becomes the object of discontent. And perhaps even more curiously, other international rules – promoting human rights and protecting the environment – become a source of transformative power to attack some of the harsher economic and social consequences of globalization.

International rules alone are not responsible for globalization, which is catalyzed by technological innovation, the second factor in the change in perception of the international legal order. It is not only the nature of the changes which prompt interest and action, but also their extent. We are only now becoming aware of the tremendous capacity for new technologies to produce harmful effects over extended geographic distances. The accident at the Chernobyl nuclear power plant in April 1986 illustrated the permeability of national boundaries in a manner which was not previously understood: hill farmers in Cumbria in the northwest of England had their pasturelands polluted and their livelihood destroyed by restrictions on sheep grazing, and the British government continues

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to compensate them for pastures which remain off-limits nearly twenty years later. The depletion of the ozone layer and the onset of global warming reveal a greater understanding of the impact which new technologies may have over time and distance. We now know that releasing the contents of an aerosol spray in one country can ultimately harm the environment and citizens of another. A Londoner's hairstyle may be an Australian's cancer. The legal fiction of the sovereign state crumbles in the face of natural realities and economic impulses. Regulating an ever-broader range of activities necessarily becomes an international task.

New technologies also transform the means of communication, with significant consequences for access to the products and processes of international law. Telephones, faxes, e-mail, and the Internet have hugely increased the global exchange of information, and the speed at which it is communicated. These technologies have made generally accessible the documentation which forms part of international negotiations and decision-making processes. When I first studied international law, many of the most important United Nations' documents – such as Security Council resolutions – were not available in the libraries of major universities until several years after they had been adopted. Security Council resolutions are now available to every person in the world with Internet access, within minutes of their adoption. Security Council Resolution 1546, which addressed the conditions of Iraqi governance after June 30, 2004, was instantly available once it had been adopted. People could read it and form their own views, and many did.

Similarly, judgments of international courts can be downloaded from their Web sites on the very same day that they are presented to the parties. In June 1999, I sat with an Albanian government minister in Tirana viewing the Web site of the International Court of Justice as that body refused to order a halt to the bombing of Yugoslavia by NATO, in the actions taken to protect Kosovan Albanians. On the day the court gave its judgment in that case I am told that there were almost one million hits on the court's Web site. An even greater number accessed the court's Web site in July 2004, to read the advisory opinion that Israel's construction of a wall in the Occupied Palestinian Territory, including in and around East Jerusalem, was contrary to international law and should cease forthwith.

There is a third factor for change, which is gradually weaving its way into inter-

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national legal consciousness. This is the notion of “democratization,” which Professor Thomas Franck of New York University Law School has described as “becoming a global entitlement.” Democracy reflects the emergence of a universal expectation that those who seek a validation of their empowerment – the governors – should govern with the consent of the governed. Democracy has invariably been addressed as a national issue, giving rise to principles of self-determination and freedom of expression, and the emergence of a normative entitlement to participate in electoral and other decision-making processes. Increasingly it is seen as encompassing rights of access to information, and to administrative and judicial remedies to challenge administrative acts which wrongly interfere with rights. Democratic claims too are being internationalized. If participatory democracy is relevant to the national levels of governments, then why should it not also apply at the international level, where so many decisions which affect people’s lives are now being taken?

There is ample evidence that access to information, decision making, and remedies is now being sought in relation to the activities of international organizations, such as the World Trade Organization. You need look no further than the powerful claims concerning the “democratic deficit” in the European Community to see the extent to which issues of democratic governance challenge international decision making and provoke powerful grassroots opinions. With the Internet people now have a great deal more information than before, and with that information corporations and NGOs – whose interests are at issue – are increasingly keen to influence governmental decisions. This has led to radical changes even within such conservative bodies as the World Bank; a decade ago it would have been unimaginable that private groups would be able to challenge some of the bank’s lending decisions. But that is precisely what has happened with the creation of the World Bank Inspection Panel in 1993, a radical initiative which was taken as a result of efforts by disenchanted citizens. Against this background the exclusion of civil society from access to the WTO and other international bodies is hard to justify. Rules of international law which perpetuate feelings of exclusion will generate public disquiet and anger in the U.S. and elsewhere around the world. International laws and organizations exist to serve people, not governments.

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Finally, the trend toward deregulation and the enhancement of the role of private enterprise and ownership as a dominant feature of modern, postindustrial society is the fourth factor in increasing public interest in international law. If the frontiers of the state are to be pushed back at the national level, as Margaret Thatcher famously declared in 1977 before she became prime minister, then why should they not also be pushed back at the international level? Deregulating international capital flows, promoting private investments overseas, and increasing global trade have greatly extended the international role of the private and corporate sectors. Not surprisingly, these players are not content with a backseat role in the making and applying of international law. They want to influence the content of the rules and contribute to their enforcement. They do so by pressuring governments and, increasingly, participating directly in international treaty negotiations. The result is that governmental and commercial interests act together at the international level, so that international laws accommodate changing requirements and provide for an increased role for the private sectors in the design of those rules. One example is the Kyoto Protocol on global warming. This commits developed countries to cut their emissions of carbon dioxide and other greenhouse gases. With Russia's ratification on November 18, 2004, the Kyoto Protocol came into force on February 16, 2005. It is creating an international market for trading in the right to emit greenhouse gases, with a direct role for the private sector.

Global free trade rules are another area where corporate interests are directly affected. If the private sector is to have rights and obligations under international instruments, on what basis can they be excluded from the lawmaking process, or the traditional intergovernmental arrangements for dispute settlement? These issues coalesce around a new reality: as the activities of the private sector are directly affected by international laws, they can legitimately expect to play a greater role in international affairs, and in international lawmaking.

Globalization, advanced technologies, democratization, privatization, and deregulation were not part of the traditional, state-centered background against which the United States and Britain made their visionary proposals in the 1940s. The four factors described above not only pose challenges to the established system, they help to transform it. By the 1990s the basic norms of international law

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were broadly established and accepted. As decolonization was followed by the fall of the Berlin wall and the collapse of the Soviet bloc, Francis Fukuyama famously (and prematurely) declared the “end of history.” The world seemed to be poised on the verge of a new global order, reflecting shared values, commitments, and rules.

Or so we were led to believe. During the Clinton administration a powerful group of neoconservatives plotted to remake the international legal order. Their plan was set out in various manifestos, such as the Statement of Principles and other documents associated with the Project for the New American Century. The main targets included the rules which had allowed the detention of Pinochet, the new International Criminal Court, and the Kyoto Protocol on global warming. It was said that these threatened American national security. In November 2000, George W. Bush was elected to office, bringing with him many of the signatories of the Committee for the New American Century. John Bolton became one of President Bush’s senior foreign policy advisers and was appointed undersecretary for arms control and international security at the U.S. State Department. In 1997, as senior vice president of the American Enterprise Institute in Washington, D.C., he declared that treaties were simply political “and not legally binding.” Richard Haass, director of policy planning at the U.S. State Department and now president of the prestigious Council on Foreign Relations, declared the Bush administration’s commitment to “à la carte multilateralism”; in other words, the U.S. could pick and choose those rules which it wished to follow, and in other areas dispense with multilateral rules and proceed according to its own interests.

Then came 9/11, and the wars in Afghanistan and Iraq. Shortly after the end of the war in Iraq in April 2003, Richard Perle, an architect of the neoconservative agenda in the United States, went even further, declaring publicly that the war in Iraq provided an opportunity to refashion international law and undermine the United Nations. Such actions began to look like part of a systematic neoconservative effort to refashion the international legal order in the light of new priorities and values. British prime minister Tony Blair seemed sympathetic to the call. After Iraq, in a speech at his constituency in Sedgefield, in the northeast of England, he too argued for a new international law:

It may well be that under international law as presently constituted, a regime

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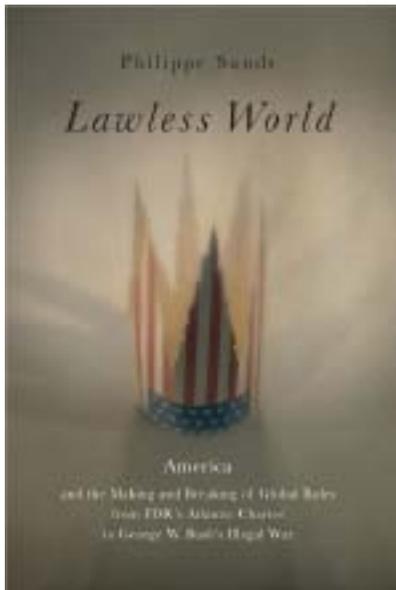
can systematically brutalize and oppress its people and there is nothing anyone can do, when dialogue, diplomacy and even sanctions fail, unless it comes within the definition of a humanitarian catastrophe....This may be the law, but should it be? be?

I am not starry-eyed about international law. I recognize that it has frequently failed millions around the world and will continue to do so. But do recent events justify a wholesale change of approach? In the aftermath of 9/11, the “war on terrorism” has been used to justify an assault on established international legal rules. One has to be clear that 9/11 did not require the rules to be suspended, let alone abandoned altogether. Even before that day, George W. Bush’s administration had walked away from new international rules tackling global warming and biological weapons, and had been taking active steps to undermine the International Criminal Court. Even so, it is not the case that the United States has turned its back on the entire body of international law, or even most of it: the U.S. is broadly committed to international free trade rules, for example those of the World Trade Organization and the North American Free Trade Agreement. It is seeking to adopt new rules in Central and South America and elsewhere in the world. It is strongly committed to the use of international laws to protect the rights of American investors overseas, and to rules protecting intellectual property rights. But do we want an international legal order which is essentially limited to the economic side of globalization? Or do we want international rules which promote other values and interests, as the U.S. and Britain originally conceived?

While the events of September 11, 2001, became a catalyst for the systematic disregard of established international rules on human rights, the treatment of combatant prisoners, and the use of military force around the world, I would maintain that this is not the moment to abandon the vision set out in the Atlantic Charter. Quite the contrary. International law at the beginning of the twenty-first century is more important than ever. The role of the Bush administration in trying to remake global rules needs to be seen for what it is, namely an abandonment of values that are more vital than ever. In large part, the British government has colluded or turned a blind eye, and has much diminished its ability to have a positive influence on the essential debate about the function of those international rules. Meanwhile public emotions are provoked by governments’ failures to

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abide by these rules. Sixty years after the Atlantic Charter was adopted, two key questions need to be addressed. Do we need new global rules, as the British prime minister has proclaimed? Or do we need fewer rules, as the Bush administration proposes?



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