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Review Essay

Dystopian International Law

*By Marko Milanovic**

The Origins of Totalitarianism. By Hannah Arendt. San Diego, CA: Harcourt Brace & Co., 1951. Pp. xvi, 477. Index.

Autocracy, Inc.: The Dictators Who Want to Run the World. By Anne Applebaum. New York, NY: Doubleday, 2024. Pp. 224.

I. At the Precipice

In 2025, we international lawyers—and the legal system in which we operate—are standing at the precipice. That things are beyond bad should not be in doubt.[1] This is not some run-of-the-mill crisis of the kind that international lawyers revel in, as Hilary Charlesworth warned us against.[2] This is collapse, or something collapse-adjacent. And we are not alone, here at the precipice. Everyone else is here too. Some don't think things are as catastrophic as they first seem. Some are delighted with how things are going (though there are few international lawyers among them). Some are despairing (and here the international lawyers are legion). Everyone is anxious.

I, too, am anxious, standing here at the precipice. I see the looming catastrophe, for our world and for our field. The catastrophe is already here. It is in Gaza, in Sudan, in Ukraine. It is in the global decline of democracy and rising authoritarianism, including in the United States, the linchpin of the current international order. The question is how big this catastrophe is going to get, and what will come after it. And that we just don't know. We *can't* know, standing, as we are, here at the precipice.

In this Essay, I would like to imagine, as an international lawyer, where the international legal system could go as we leave this precipice behind. The world we will live in in ten or

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[1] *See* Monica Hakimi & Jacob Katz Cogan, *The End of the U.S.-Backed International Order and the Future of International Law*, 119 AJIL 279 (2025); Anne Peters, *International Law and Its Scholarship in the Time of Monsters* (Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2025-05, May 6, 2025), *at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5242721.

[2] *See* Hilary Charlesworth, *International Law: A Discipline of Crisis*, 65 Mod. L. Rev. 377 (2002).

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twenty years' time will in many ways be worse than when I write this. The international legal system will be worse with it.

But dystopias are not inevitable. Where we go from this precipice, and just how bad things really end up being, is contingent. It depends on what we choose to do, or not do. Anyone who has lived through a dictatorship—and I have lived through three (kind of)—will know that the good guys don't always win, but the bad guys don't either. There are forks in the road, decisions and choices that people make. The decisions and choices of international lawyers are far from the most consequential, but they are ours.

I have chosen to engage with two books—both written by non-lawyers, for a general, mass market audience—as a starting point for discussing the precipice on which we stand. The first is a classic: Hannah Arendt's *The Origins of Totalitarianism*, the first edition of which was published in 1951.[3] The second is of more recent vintage: Anne Applebaum's *Autocracy, Inc.*, published in 2024.[4]

Arendt's work has provoked decades of scholarly commentary (to which I have little to add). She has also, for good reasons, experienced a surge in popularity in recent years, in response to the unraveling of democracy in a substantial number of states.[5] Applebaum's work is, of course, not canonical in the same way. Her book is not one for the ages. But, despite their differences, and the seven decades' gap between them, there are some important commonalities between these two books. Both resulted from an effort by scholars, who are not traditional academics but essayists writing books with a popular appeal, to make sense of the radical transformation of the world around them. Both books were written on a precipice. Both are intensely personal. (As will quickly become apparent to the reader, this Essay too is, for me, intensely personal.)

In writing *Origins*, Arendt was trying to understand how, in her lifetime, the world experienced two world wars and the emergence of two totalitarian regimes, Hitler's and Stalin's, which appeared to be radically different from common, ordinary dictatorships. In doing so, Arendt (like anyone) could not escape her background. She was born in Germany in 1906, raised in a Jewish (but secular), left-wing and politically active family, and obtained a PhD in philosophy from Heidelberg in 1929. She was then forced to flee her country in 1933, first to France (where she spent some time in a French internment camp until France had capitulated, since the French treated her as a German citizen and therefore an enemy alien) and then to the United States, in 1940, where she learned English quickly upon her arrival.[6] She lived the rest of her life there.[7]

Arendt wrote *Origins* in 1950. The Third Reich was defeated (and in that sense her precipice was partly crossed, unlike with the one we are at today), but Stalin's totalitarian regime was still in power (Stalin himself would die in 1953), and had spread its control over most of Eastern Europe. The Cold War had started, and the two opposing superpowers

[3] HANNAH ARENDT, THE ORIGINS OF TOTALITARIANISM (1973).

[4] ANNE APPLEBAUM, AUTOCRACY, INC.: THE DICTATORS WHO WANT TO RUN THE WORLD (2024).

[5] For a user-friendly and well-informed introduction to Arendt's thought, see RICHARD J. BERNSTEIN, WHY READ HANNAH ARENDT NOW (2018). *See also* DANA VILLA, HANNAH ARENDT: A VERY SHORT INTRODUCTION (2023).

[6] *See* Hanna Arendt Center for Politics and Humanities, *Arendt's Plurality of Languages* (Jan. 12, 2015), *at* https://hac.bard.edu/amor-mundi/arendts-plurality-of-languages-2015-01-12.

[7] For a recent and accessible biography, see SAMANTHA ROSE HILL, HANNAH ARENDT (2021).

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armed themselves with nuclear weapons. Civilization itself was at stake. The world was insane, somehow inexorably slipping toward catastrophe. As Arendt wrote:

> Never has our future been more unpredictable, never have we depended so much on political forces that cannot be trusted to follow the rules of common sense and self-interest—forces that look like sheer insanity, if judged by the standards of other centuries. It is as though mankind had divided itself between those who believe in human omnipotence (who think that everything is possible if one knows how to organize masses for it) and those for whom powerlessness has become the major experience of their lives. (Arendt, p. vii.)

Compared to Arendt's precipice, our current challenges—grave as they are—seem less terrifying. No modern autocrat is genuinely equivalent to a Hitler or a Stalin. But the sheer insanity is back with a vengeance. So is the arrogance of politicians and (techno-)plutocrats who believe that they are entitled to act without any constraint. So is the ordinary people's experience of powerlessness, now channeled into populism by opportunists seeking to erode established democracies. So is saber-rattling with nuclear weapons, with the added risks of unbound AI and climate change.

Origins is a collection of three extended essays, with prefaces to each, written in 1966 and 1967, added in a revised edition. The first essay (and the most controversial) provides a theory of antisemitism, seeking to explain how it became a political force capable of supporting totalitarian regimes. Arendt argues against the view that German antisemitism was simply an "eternal" social prejudice, and against the view that Jews were just convenient scapegoats or victims of predatory elites. Rather, she argues that European Jews had agency, and that, over the course of history, Jews individually and collectively made choices that enabled their own persecution. Foremost among these, according to Arendt, was a decision to avoid all political action. This argument has, at least partly due to the subtlety of Arendt's argument and the opaqueness of some of language, sometimes been interpreted as victim-blaming. What is certainly true is that the tendency of Jewish people (and in particular their elites in European capitals) to largely avoid political activity and agency left them vulnerable to those who chose to prey on them.

The second essay, on imperialism, argues that the imperialist expansion of European powers in the late nineteenth and early twentieth centuries laid the groundwork for the rise of totalitarian regimes. That expansion was, in Arendt's view, radically different from the kind of territorial conquest that (proto-)states have practiced since the dawn of history. It was driven, in her view, by the private economic interests of the newly emancipated bourgeoisie, channeled into political action, and led to the pursuit of expansion for expansion's sake. The export of capital necessitated the export of power through an ever larger bureaucracy, justified by spurious theories of racial superiority. The unchecked use of violence in the colonies would then boomerang back to Europe, enabling the rise of the police state. The mechanisms of exclusion and dehumanization developed in the colonies, used against people whom the state deemed superfluous, would later be turned against minorities and dissidents within Europe itself.

In the third and final essay, Arendt's focus turns on totalitarianism as such. At the core of her project was distinguishing between totalitarianism and ordinary, "plain vanilla"

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dictatorships. She adopts a very strict approach to understanding totalitarian systems, with Nazi and Soviet regimes as the ideal types. They are characterized primarily by the use of arbitrary terror as the instrument of maintaining their power, terrorizing even those populations that were already cowed into obedience, including objectively perfectly innocent victims, while destroying all social ties (Arendt, pp. 6–7). In her view, even Mussolini's Fascist Italy could not be classified as totalitarian, because the level of violent repression it used was orders of magnitude lower than that of its Nazi and Soviet contemporaries (Arendt, pp. 308–09, 323).

Arendt also argues that totalitarian terror inherently leads to, and requires, mass population losses, so that only those countries that can afford to treat masses as unnecessary, exterminable "surplus" can become truly totalitarian (Arendt, p. 311). And while totalitarian movements proclaim various ideologies, the specifics of their various programs do not really matter—the only real ideology is that of "a movement that is constantly kept in motion . . . [and] the permanent domination of each single individual in each and every sphere of life" (Arendt, p. 326).

It is in the very nature of totalitarian movements and regimes, Arendt argues, that they attempt to erase any distinction between truth and falsehood. And this is particularly evident in the regime's elite, which is trained to have "supreme contempt for all facts and all reality" (Arendt, p. 385). This carefully cultivated ability to ignore reality is, in Arendt's view, more important for a totalitarian movement's acquisition of power than any ideological indoctrination:

> Without the elite and its artificially induced inability to understand facts as facts, to distinguish between truth and falsehood, the movement could never move in the direction of realizing its fiction. The outstanding negative quality of the totalitarian elite is that it never stops to think about the world as it really is and never compares the lies with reality. Its most cherished virtue, correspondingly, is loyalty to the Leader, who, like a talisman, assures the ultimate victory of lie and fiction over truth and reality. (Arendt, p. 385.)

This ultimate victory of lies is also one of total, global conquest, because totalitarianism, as Arendt sees it, is incapable of being bound to a single country—its ambitions cannot bear restriction or "become subject to the law of the nations" (Arendt, p. 391). Rather, the "struggle for total domination of the total population of the earth, the elimination of every competing nontotalitarian reality, is inherent in the totalitarian regimes themselves; if they do not pursue global rule as their ultimate goal, they are only too likely to lose whatever power they have already seized" (Arendt, p. 392). Further, this struggle for total domination is constantly justified by the need to defeat an "objective" enemy or opponent, such as the Jews, whose destruction is warranted regardless of any subjective guilt of the individual victims. "So far as one may speak at all of any legal thinking within the totalitarian system, the 'objective opponent' is its central idea" (Arendt, p. 425).

Origins is a rich book, to which an essay like this can hardly do justice. As with much of Arendt's other work, one can always benefit from re-reading it. It is rightly a classic. It is *very* quotable (viz. "If lawfulness is the essence of non-tyrannical government and lawlessness is the essence of tyranny, then terror is the essence of totalitarian domination." (Arendt, p. 464)). But, despite its quotability, *Origins* is not notable for its readability. Arendt's

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argument often moves from tangent to tangent, with many different stands often woven into a greater whole that does not necessarily have a fully coherent structure. Her method is an eclectic mix of different disciplines, which is at times lacking in rigor. Arendt also has a tendency, like many scholars, greater or lesser, to overstate her thesis. The antisemitism essay is the most problematic in that regard, as it underestimates the sheer power of prejudice, and poses a false dichotomy between agency and victimhood (the Jewish people have had both, then and now). The neat line connecting colonial imperialism and totalitarianism is also not always persuasive, and indeed one can digest her discussion of totalitarianism without necessarily examining the first two parts.

Arendt's fear, when she was standing at her precipice, was that totalitarianism was a form of government that would stay with humankind. Yet, her approach to defining this type of regime (and social movements that precede it) is so strict that Stalin and Hitler can be joined only by Mao, and perhaps by Cambodia under the Khmer Rouge and North Korea under the Kim dynasty as examples of genuine totalitarians. Today's China is of course a one-party dictatorship, but, despite its many human rights violations (including those against minority groups, such as the Uyghurs) it does not engage in mass murder and arbitrary terror as it did under Mao. Putin's Russia is a far cry from Stalin's. And even in North Korea, the regime simply cannot afford treating whole masses of people as surplus. Doing so would precipitate its collapse, and it is focused on its own preservation rather than on a project of global domination. The totalitarian catastrophe that Arendt had witnessed was ultimately contained.

This brings us to Applebaum, standing with us today at our precipice. Modern autocrats are the object of her inquiry. Some of them are old school dictators. Others—those that are her main focus—run failed or failing democracies, in which they have succeeded in capturing state institutions while pretending that the democratic character of the state has not altered (or has indeed improved) (Applebaum, pp. 1–4).[8] Their Weimar Republics have not turned into totalitarian regimes, but they are nonetheless very effective in controlling their societies. They do not need to use much political violence to stay in power, and at least theoretically the system remains competitive in the sense that there is a possibility that the ruling clique will lose a future election, however unfair it might be.[9] In all of them, however, "governments weaponize the state by using its power to systematically disadvantage and weaken the opposition."[10]

Applebaum's core argument—which resonates powerfully—is that today's autocrats frequently operate as part of the cooperative network that she dubs *Autocracy, Inc.* For example, they assist each other in evading the impact of Western sanctions, including those imposed due to breaches of international law (Applebaum, pp. 3–5). That network is not bound by ideology or shared values, but by transactional interests and a sense of having a common enemy in the democratic West. The absence of a shared ideology is explainable by the absence of any real ideology internal to most of these regimes.[11] While the

[8] *See* Tom Ginsburg, *Authoritarian International Law?*, 114 AJIL 221 (2020).

[9] *See generally* Steven Levitsky & Lucan A. Way, Competitive Authoritarianism: Hybrid Regimes After the Cold War (2010); *see also* Ivan Krastev & Stephen Holmes, The Light That Failed: Why the West Is Losing the Fight for Democracy (2020).

[10] Steven Levitsky & Lucan A. Way, *The Path to American Authoritarianism: What Comes After Democratic Breakdown*, For. Aff. (Feb. 11, 2025).

[11] *See also* Ginsburg, *supra* note 8, at 222.

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totalitarian systems studied by Arendt were, at least on their surface, highly ideological, modern autocracies are kleptocratic in nature—their whole purpose is to maintain the power of an oligarchic elite, which is syphoning wealth from their state and society. Whatever ideology these regimes publicly espouse tends to be purely instrumental (Applebaum, pp. 19, 43–64).[12] Putin's Russia is the prime example: "a full-blown autocratic kleptocracy, a mafia state built and managed entirely for the purpose of enriching its leaders" (Applebaum, p. 30). Applebaum notes, rightly, that Russia's autocratic kleptocracy, and others, were enabled by Western companies, lawyers, bankers, real estate agents and financial institutions, which effectively laundered the proceeds of grand state larceny (Applebaum, pp. 32–35).

Applebaum also notes how the regimes and movements networked in *Autocracy, Inc.* manage to learn from each other. (That observation is of course not only her own—the authoritarian playbook has received much attention in academic and other literature.)[13] This is especially the case with those intent on capturing and subverting democracies. For example, many of them engage in various forms of autocratic legalism, not only in order to obtain control over state institutions (e.g., the courts or state media) and weaponize them against their opponents, but also to secure themselves in the event that they lose elections that remain competitive, even if unfair.[14] Similarly, autocrats have become adept in exploiting electronic surveillance, as well as social media and other technology-induced changes in how we communicate, in order to more effectively polarize and influence their audiences, while effectively engaging in smear-campaigns against their opponents (Applebaum, pp. 136–49). At the international level, networks of propagandistic media, old and new, under their control influence the populations of other states and often disseminate and amplify disinformation (Applebaum, pp. 79–97). For Applebaum, autocrats' information operations "pay or promote the most extreme voices, hoping to make them more extreme, and perhaps more violent; they hope to encourage people to question the state, to doubt authority, and eventually to question democracy itself" (Applebaum, p. 97). Their propagandists will use any tools, technologies or ideologies at their disposal: "[o]nly the purpose never changes: Autocracy, Inc., hopes to rewrite the rules of the international system itself" (Applebaum, p. 97).

While no modern dictatorship—not even Putin's Russia—is close to being totalitarian in the Arendtian sense, it is striking to observe how modern softish, thieving autocrats use some of the same methods. Like totalitarians, modern populists (which if in power almost always take an autocratic turn) prey on masses of people who were abandoned by or disenchanted with mainstream political parties and movements (Arendt, pp. 311–12). Like totalitarians, modern autocrats *lie all the time*, attempting to destroy or devalue the very idea of truth (Applebaum, pp. 78–79).[15] This is especially true of those autocrats who succeeded in subverting democracies—they tend to revel in trolling and gaslighting, with their biggest lie being that democracy is not only dead, but is flourishing (Viktor Orbán is

[12] *But see* Ralph Schroeder, *The Dangerous Myth of Populism as a Thin Ideology*, 3 POPULISM 13 (2020).

[13] *See, e.g.*, Protect Democracy, *The Authoritarian Playbook* (June 2022), *at* https://protectdemocracy.org/wp-content/uploads/2024/03/The-Authoritarian-Playbook-Updated.pdf.

[14] *See further* Kim Lane Scheppele, *Autocratic Legalism*, 85 U. CHI. L. REV. 545 (2018).

[15] For an argument that lies by state agents, including their leaders, can violate the state's human rights obligations, see Marko Milanovic, *State Lies as Violations of Human Rights*, 47 HUM. RTS. Q. 667 (2025).

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the prime example here).[16] Like totalitarians, modern autocrats invariably need objective enemies, the struggle against whom justifies their power—the morally corrupt West, NGOs, migrants, gays, academics, socialists, Muslims, Jews (Applebaum, pp. 74–77). The continuing relevance of antisemitism in the assumption and exercise of power, almost a century after the rise of Nazi and Soviet totalitarian dictatorships, is particularly striking. Like before, hatred against Jews is weaponized by some autocrats to mobilize their own nationalist audiences—the best example again being Orbán in Hungary, who manages to do this while simultaneously cultivating an alliance with Benjamin Netanyahu.[17] But, in a twist that I am sure Arendt would have appreciated, the struggle *against* antisemitism is today also used by modern autocrats to justify their policies, as with the Trump administration's continuing assault on universities and immigrants.[18]

The ambitions of some modern autocrats go well beyond their borders. They are directly concerned with the international (legal) order. Russia under Putin is probably the best example here. In Applebaum's view, Russia's invasion of Ukraine, and the way it conducted that invasion, "were part of a conscious plan to undermine the network of ideas, rules, and treaties that had been built into international law since 1945, to destroy the European order created after 1989, and, most important, to damage the influence and reputation of the United States and its democratic allies" (Applebaum, p. 14).

As I noted above, both *Origins* and *Autocracy, Inc.* are intensely personal books. Their authors' attempts to make sense of what happened to them, and to the world around them, is inevitably shaped by their authors' identity (how could it be otherwise?). In trying to understand totalitarianism, Arendt could not escape being both German and Jewish—as a scholar of Arendt noted, "her experience as a Jew, is literally the foundation of her thought: it supports her thinking even when she is not thinking about Jews or Jewish questions."[19] But, in writing *Origins*, Arendt is frequently Eurocentric; she castigates racism but, when writing about Africa, is at times in its clutches.[20]

Applebaum too is Jewish, but also American and (more recently) Polish. Like Arendt, she writes for a general audience, rather than an academic one—among her works is a book on the Soviet gulags, an essential part of that totalitarian system, for which she won the Pulitzer Prize.[21] While Arendt had made herself as anti-ideological as she could be,[22] partly as a

[16] *See further* Ashifa Kassam & Flora Garamvolgyi, *He Is the Strongman Who Inspired Trump – But Is Viktor Orbán Losing His Grip on Power?*, GUARDIAN (June 1, 2025), *at* https://www.theguardian.com/news/ng-interactive/2025/jun/01/he-is-the-strongman-who-inspired-trump-but-is-viktor-orban-losing-his-grip-on-power. *See also* APPLEBAUM, *supra* note 4, at 45 (discussing Chavez).

[17] *See, e.g.*, Patrick Kingsley, *A Friend to Israel, and to Bigots: Viktor Orban's "Double Game" on Anti-Semitism*, N.Y. TIMES (May 14, 2019), *at* https://www.nytimes.com/2019/05/14/world/europe/orban-hungary-antisemitism.html.

[18] *See, e.g.*, Alice Speri, *Jewish Organizers Are Increasingly Confronting Trump: "The Repression Is Growing, But So Is the Resistance,"* GUARDIAN (May 31, 2025), *at* https://www.theguardian.com/us-news/2025/may/31/jewish-americans-antisemitism-gaza-trump.

[19] Jerome Kohn, *Preface: A Jewish Life: 1906–1975, in* THE JEWISH WRITINGS: HANNAH ARENDT, ix, xxviii (Jerome Kohn & Ron H. Feldman eds., 2007).

[20] For example, when discussing racism in the context of colonialism, she frequently refers to African peoples as "savages." *See* ARENDT, *supra* note 3, at 185–206.

[21] ANNE APPLEBAUM, GULAG: A HISTORY (2003).

[22] *Cf.* ARENDT, *supra* note 3, at 474 ("the self-compulsion of ideological thinking ruins all relationships with reality").

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response to the horrors that ideologues had wrought in her lifetime, Applebaum is different.[23] She is a committed right-wing, free-market liberal intellectual of long standing. Among other things, she supported the 2003 U.S. invasion of Iraq despite its illegality under international law.[24] But her ideological commitments did not lead her to embrace right-wing populism—on the contrary, she developed an allergy to it, observing many people in her own intellectual and political circle falling prey to it and starting to advocate authoritarian positions.[25] And she became involved in resistance to authoritarianism not only in her native America, but also in Poland. Her husband, Radek Sikorski, is the incumbent foreign minister of Poland within a coalition led by Donald Tusk that managed to defeat the authoritarian Law and Justice Party (PiS) in the 2023 parliamentary elections—a precarious success at best, bearing in mind that a pro-PiS candidate won the 2025 presidential election.[26] (It is worth noting that Applebaum herself was for a time targeted by PiS-controlled media as the supposed Jewish mastermind behind negative international reactions that the Polish turn to authoritarianism was receiving.)[27]

Applebaum's understanding of the precipice we are on is thus inevitably shaped by her personal background and experience—again, how could it be otherwise? My sense from her book was that her ideology led her to almost always see concerted, deliberate anti-Western alliances in what are probably, and frequently, more opportunistic decisions to cooperate. Not all of the world's autocrats are members of Autocracy, Inc., certainly not all of the time. Applebaum has devoted herself to fighting modern autocrats; she has also been vocal about some of the other challenges to the international system, such as Russia's aggression against Ukraine. Yet she has been conspicuously silent on other issues of comparable gravity, especially the war in Gaza—for a commentator as prolific as she is, that war and the atrocities it engendered seem to be topics she carefully seeks to avoid.[28] She did briefly discuss the war at its very beginning, in an article that is rightly critical of Netanyahu and the extremist authoritarian movement in Israel—but has kept largely silent

[23] For an account of her background in her own words, see Tim Adams, *Pulitzer-Winning Author Anne Applebaum: "Often, for Autocrats, The Second Time in Power Is Worse,"* GUARDIAN (July 21, 2024), *at* https://www.theguardian.com/books/article/2024/jul/21/anne-applebaum-autocracy-inc-donald-trump-vladimir-putin-gaza-european-elections-propaganda-keir-starmer.

[24] *See* Anne Applebaum, *George's Big Mistake Was to Listen to Tony*, TELEGRAPH (Mar. 16, 2003), *at* https://www.telegraph.co.uk/comment/personal-view/3588878/Georges-big-mistake-was-to-listen-to-Tony.html (showing a rather dismissive attitude toward the UN, the Security Council, and collective decision making on the use of force).

[25] For her own account, see ANNE APPLEBAUM, TWILIGHT OF DEMOCRACY: THE SEDUCTIVE LURE OF AUTHORITARIANISM (2020).

[26] *See further* Wojciech Zomerski, *Anatomy of a Liberal Fall: Poland's 2025 Presidential Election*, VERFASSUNGSBLOG (June 11, 2025) (arguing, *inter alia*, that the defeat of the liberal candidate "reflected a deeper, recurring failure of the liberal camp to demonstrate that democracy, pluralism, and liberalism can meaningfully deliver—materially, through substantial reforms, and symbolically, by offering a unifying narrative that fosters belonging and gives meaning in an increasingly anxious and fragmented world").

[27] *See* Terry Gross, *Journalist: Poland's Shift Toward Authoritarianism Is a "Red Flag" For Democracy*, NPR (Sept. 27, 2018), *at* https://www.npr.org/2018/09/27/652127648/journalist-polands-shift-toward-authoritarianism-is-a-red-flag-for-democracy.

[28] In an interview she gave while promoting her book, Applebaum explained her silence as follows: "The nature of the rhetoric around the war emphasised that for her [the Gaza war was becoming a simplistic wedge issue] . . . . 'The fact that the [commentary] became so toxic online so fast, when I saw that happening, I thought: "OK, I'm staying out of this,"' she says. 'I'm not an expert in the region. I'm not there. I'm certainly not going to talk about it on Twitter.'" Adams, *supra* note 23.

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on the topic of the war since, especially with regard to what that war portends for the wider international order.[29] (It is also worth noting that Applebaum has attracted criticism for a piece published more than twenty years ago, which appeared to suggest that Palestinian media engaging in dehumanizing propaganda are legitimate military targets during armed conflict—a position which does not reflect international law.[30] She has since stated that this position was implied mainly in a headline that she did not write, and that this was not her view then or now.[31])

II. International Law, and Lawyers, at the Precipice

How, then, can reading Arendt and Applebaum help us, as international lawyers, to understand the precipice on which we are now standing? Neither of them was trained as a lawyer, let alone an international lawyer. But that does not mean that their reflections on the past and present precipices cannot inform our understanding, within our own discipline. Several points come to mind in that regard. First, how Arendt, in particular, saw law as crucial for ordering international society to prevent the kind of atrocities that she had witnessed. Here is how she put it:

> Antisemitism (not merely the hatred of Jews), imperialism (not merely conquest), totalitarianism (not merely dictatorship)—one after the other, one more brutally than the other, have demonstrated that human dignity needs a new guarantee which can be found only in a new political principle, in a new law on earth, whose validity this time must comprehend the whole of humanity while its power must remain strictly limited, rooted in and controlled by newly defined territorial entities. (Arendt, p. ix.)

Second, how both Arendt and Applebaum insist on seeing reality as it is (whether they succeed fully in doing so or not). Here is how Arendt puts this in *Origins*: "Everything that happens on earth must be comprehensible to man . . . . Comprehension, in short, means the unpremeditated, attentive facing up to, and resisting of, reality—whatever it may be" (Arendt, p. viii). We need to face up to reality without prejudice and pre-judgment, as a habit of the mind. And we must resist reality, not by deceiving ourselves as to what is actually happening, but in that we must be aware of its contingency—the reality as it exists today is

[29] Anne Applebaum, *Netanyahu's Attack on Democracy Left Israel Unprepared*, Atlantic (Oct. 21, 2023), *at* https://www.theatlantic.com/ideas/archive/2023/10/israel-democracy-judicial-reform-netanyahu-hamas-attacks/675713.

[30] *See* Anne Applebaum, *Kill the Messenger: Why Palestine Radio and TV Studios Are Fair Targets in the Palestine/Israeli War*, Slate (Jan. 21, 2002), *at* https://slate.com/news-and-politics/2002/01/targeting-radio-and-tv-stations.html ("Establishing a credible media will be, for the Palestinians, part of what it takes to establish a credible state. Until then, the Voice of Palestine will remain what it has become: a combatant—and therefore a legitimate target—in a painful, never-ending, low-intensity war.").

[31] *See* Kathryn Wilkens, *"He's Talking Like Hitler": The Atlantic's Anne Applebaum Warns Trump Wants "Absolute Power" in Second Term*, Mediaite Press Club (Oct. 25, 2024), *at* https://www.mediaite.com/media/podcasts/hes-talking-like-hitler-the-atlantics-anne-applebaum-warns-trump-wants-absolute-power-in-second-term ("I did not believe then, and do not believe now, that radio stations or television stations are actually legitimate military targets.").

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not something pre-determined, but the result of choices that people make. The reality of the future can only result from such choices.[32] Applebaum is similarly laser-focused on explaining how in the Manichean struggle against democracy and autocracy all sides learn from their successes and failures, and how the bad guys can and often do win.[33]

Today, the reality to be confronted is one of a radical change in, and possibly even a collapse of, the international order established after World War II, but particularly after the end of the Cold War. This will inevitably affect international law and institutions, some of which will likely not survive. But the reality is also that this collapse is not primarily a failure of international law as such. And this is likewise true of precipices of the past—World War II did not happen because the Kellogg-Briand Pact outlawing resort to war as an instrument of national policy was poorly written, or the rule was misconceived. Rather, then and now, there was a failure of the political foundations international law is built on. We *did* develop Arendt's new law on Earth. Yes, it is one with origins in European imperialism, which it has never entirely shed. Yes, it can be colonialist, sexist, racist. Yes, it is one that often privileges the interests of the powerful. But, critically, it is also one that protects the weak *from* the powerful. Its rules have, to a large extent, been universalizable and capable of equal application to both the powerful and the weak.[34]

So, when we see gross violations of some of its cardinal rules, such as those on the use of force, the law of armed conflict, and human rights, it is important to underline that these violations do not happen because of the *content* of these rules. We could not improve compliance with the essence of these rules simply by rewriting them, except to turn them on their head. Just like, for example, the fact that (say) thousands of drug-related killings that go unpunished in Mexico each year, or the fact that in virtually every state most rapists go unpunished, have little to do with the content of the Mexican law on murder or the French law on rape or whatever. That there is a lower incidence of murder, and better compliance with the law across the board, in say Sweden when compared to Mexico, is not because Swedish laws are superior in their substance than Mexican laws. Rather, it is the failure of political action in Mexico that has led to its current situation. Like in international law, these failures are institutional, failures of commitment and political principle, as Arendt put it. To be clear, some parts of international law—especially the law of armed conflict—contain rules that are very easily abused, for example because they often privilege (alleged) military necessity over the protection of the civilian population.[35] But what we see today in Gaza, Sudan, or Ukraine is less a product of the admittedly low, flexible legal standards we currently have, and more the result of the lack of any commitment to even try to comply with the law in good faith. Those in power in many states today simply do not want to be bound by *any* rules, whether internally or externally.

It is also a reality, I think, that in a world organized around states as sovereign territorial entities—which is what Arendt wanted (Arendt, p. ix)—the quality of the international order (and law) are largely a function of the quality of domestic order (and law), and not the

[32] *See* Marilyn Nissim-Sabat, *Facing and Resisting Reality with Hannah Arendt* (May 5, 2024), *at* https://medium.com/quote-of-the-week/facing-and-resisting-reality-with-hannah-arendt-36f6829e4a16.

[33] *See* APPLEBAUM, *supra* note 4, at 130–31 (discussing the defeat of the Hong Kong protest movement at the hands of the Chinese authorities).

[34] *See also* Peters, *supra* note 1, at 6.

[35] See *id.* at 2.

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other way around. Arendt herself was very much in favor of international institutions that could limit national sovereignty—for example, she argued for establishing an international criminal court and for regional and international federalism.[36] But, the fact remains that today the greatest concentration of power is still at the national level. This means that, within the international system, a rise of authoritarian states (or those with hybrid regimes) as compared to democracies, quantitatively and qualitatively in terms of overall power and influence, will inevitably affect those parts of the system that are normatively grounded in values antithetical to the interests of such states.[37] Authoritarian states will also use international law to pursue their interests, just like democratic ones do—and they will shape it in the process. That is just the reality of things. As Applebaum noted, a "world in which autocracies work together to stay in power, work together to promote their system, and work together to damage democracies is not some distant dystopia. That world is the one we are living in right now" (Applebaum, p. 121).

But it is also true that the ongoing rise of authoritarianism is not *caused* by any faults in international law, even if the existing international institutions have been unable to prevent it. It is true that, in many important respects, such as the rights and duties of statehood, or membership in the UN and most other international organizations, international law has treated democratic and authoritarian states equally. Yet even if one was to imagine an international law today that more robustly required genuine democracy,[38] it is in my view unlikely that such legal protection for democracy would have substantially helped save democracy in those countries in which it has declined. We could, after all, observe such decline precisely in those states that *were* bound by more robust legal protections for democracy than those found in general international law. The protections for democracy in the law of the European Union were unable to stop decline in Hungary or Poland, and such decline remains a real possibility in many other member states. Nor did protections for democracy in the Council of Europe manage to prevent decline in Russia or Turkey, among others. Nor did such protections in the law of the Organization of American States save democracy in Nicaragua or Venezuela—and whether the one in the United States will survive likewise does not depend at all on international legal obligations.

Of course, one can point to the various economic consequences of globalization, such as de-industrialization in the West, which were enabled by international law, as a contributing factor to the susceptibility of the peoples of certain states to polarizing populist politics. I do not deny, as a leading theorist of international relations has put it, that the "international system is not only a consequence of domestic politics and structures but a cause of them."[39] Yet in many states the rise in authoritarianism has literally nothing to do with *international law* and its (un)intended effects. The three bouts of Yugoslav or Serbian dictatorship that I personally experienced had little or nothing to do with any real

[36] *See further* Jeffrey C. Isaac, *A New Guarantee on Earth: Hannah Arendt on Human Dignity and the Politics of Human Rights*, 90 AM. POL. SCI. REV. 61 (1996).

[37] *See also* Peters, *supra* note 1, at 5–6.

[38] See, most famously, Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AJIL 46 (1992). See further the various contributions in DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW (Gregory H. Fox & Brad R. Roth eds., 2010).

[39] *See* Peter Gourevitch, *The Second Image Reversed: The International Sources of Domestic Politics*, 32 INT'L ORG. 881, 911 (1978); *see also* KENNETH N. WALTZ, MAN, THE STATE, AND WAR (1959).

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or imagined failings of international law. Putin's pursuit of dictatorship in Russia had nothing to do with international law—although prior breaches of international law by Western states did facilitate arguments that he made, to internal or external audience, to justify his imperialist use of force abroad. Orbán's destruction of what was a robust Hungarian democracy, or Erdoğan's ravaging of the fragile Turkish one, had nothing to do with international law. The devastation of India's democracy by Modi had nothing to do with international law. And so on.

It is true that, in the examples I have given, international institutions are often used by autocrats as scapegoats for all sorts of ills befalling society, and are convenient targets for their rhetoric. It is also true that international institutions could have done more to prevent democratic decline. This is evident, for instance, in the piecemeal approach to democratic decline by the European Court of Human Rights (whose jurisdiction, at the relevant time, covered many of the states mentioned above). It is even more evident that the political institutions of the Council of Europe, such as the Committee of Ministers or the Parliamentary Assembly, could have done much more to curb this decline. (As, indeed, could the governments of the other member states).[40] But this failure to prevent or limit such decline does not mean that *they caused it*. And it is more likely than not, in my view, that the decline would have happened even if all of these institutions did their very best to stop it.

In short, blaming international law (or lawyers) for the current situation misses the point. It is an easy thing to say, but it does not reflect the reality that Arendt insists we have to see unvarnished. To be sure, there are many issues on which international law, or the Western "rules-based international order," are at fault.[41] But it is a serious misdiagnosis to see in international law, and especially in its substantive content, the cause of the collapse of the order that we now have—just like it would be a misdiagnosis to say that it was the failure of international law, as it then was, that caused the rise of Hitler's or Stalin's totalitarianism. Causing and being unable to stop something are not the same thing.

The final point I would make, when it comes to facing up to reality, is that what is happening currently is not the destruction of the *rule of law* at the international level. Whether we accept a "thin" or a "thick" definition of the notion of a rule of law,[42] there

[40] *See also* Dilek Kurban, *Authoritarian Resistance and Judicial Complicity: Turkey and the European Court of Human Rights*, 35 EUR. J. INT'L L. 355 (2024).

[41] For a critique of this term from a scholar who sees it as undermining the authority of, and commitment to, international law, see John Dugard, *The Choice Before Us: International Law or a "Rules-Based International Order"?*, 36 LEIDEN J. INT'L. L 223 (2023). The term is also often criticized by some states and scholars who see it, or portray it, simply as code for Western hegemony.

[42] "Thin" conceptions of the rule of law focus on formal, procedural criteria, such as the publication of laws, their coherence, non-retroactivity, stability, non-discrimination, with a reasonable level of compliance with the law in practice and an independent judiciary capable of holding rulers to account. *See, e.g.*, LON FULLER, THE MORALITY OF LAW 39–41(1969); Joseph Raz, *The Rule of Law and Its Virtue*, 93 L. Q. REV. (1977). A great majority of states have historically had severe problems with the final two criteria—compliance in practice and effective judicial review. This is not to say that these states do not have *law*, but they do not have the *rule* of law, again except as an aspirational ideal. "Thick" conceptions of the rule of law incorporate all of the elements of the "thin" accounts, but then add to them criteria such as substantive justice, democracy, and human rights. *See, e.g.*, TOM BINGHAM, THE RULE OF LAW (2010). *See also* BRIAN Z. TAMANAHA, ON THE RULE OF LAW: HISTORY, POLITICS, THEORY (2004). Again, in most states their law may nominally include such considerations of substantive justice (even the Constitution of North Korea

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never, ever was such a thing at the international level.[43] This should not come as a surprise. When observing the domestic legal orders of states, in recent history or over the long term, the vast majority never attained what can be called the rule of law. The experience with *law* of most humans living today, or those who have ever lived, is decidedly *not* one of the *rule* of law. There never, ever was such a thing in China, in India, in Russia, in Serbia, in Nigeria, in Mexico. In most states, the rule of law has (at best) been an ideal aspired to,[44] not something already attained—and the same goes for the international order.[45]

What we *did* have, from the end of the Cold War onward, was an overall sense of progress and an expansion of international law's regulatory and international reach. Now, however, we are confronting a regression—and not a small one. And, in the Arendtian spirit of facing up to reality, it is crucial for those lawyers who grew up, were educated, lived, and worked in Western democracies to understand that their sense of loss and regression is not necessarily identical to the one experienced elsewhere in the world—especially in those countries in which the overall situation has always been some variety of bad.[46] This does not mean, however, that our precipice is any less real—even if for some outside the West the sense of loss is not felt as strongly. That would only be the case if the international law that we have today could feasibly be replaced by a better, fairer version—and one less dependent on Western hegemony. But that is not our reality. Our reality is that for most states outside the West the ongoing disordering will be for the worse—and in that regard the decline of commitment to international law goes hand in hand with the decline of commitment to domestic law.[47]

proclaims various fundamental rights), but there will be a huge gulf between the "ought" and the "is"—and no real judicial control of the executive in particular.

[43] The international legal order very much contains rules of substantive justice that could have it satisfy a "thick" understanding of the rule of law, even if that justice itself may be imperfect or thin. *See* STEVEN R. RATNER, THE THIN JUSTICE OF INTERNATIONAL LAW: A MORAL RECKONING OF THE LAW OF NATIONS (2015). The core problem of the rule of law internationally is the same as that of the rule of law domestically: the variable level of compliance and lack of effective judicial control of arbitrary state power. Despite the proliferation of international courts and tribunals in recent decades, there are vast swathes of international law in which judicial dispute settlement plays a minor role, if that. Then there are issues of radical inequality of treatment, for example with the five permanent members of the UN Security Council being able to shield themselves or their friends from any enforcement action. Again, this is not to deny that there is international law—not at all—but a world in which (to pick just a couple of examples) the invasions of Iraq or Ukraine happen, and their main protagonists are by and large unpunished, is not a world in which the rule of law exists, however much we aspire to it. The only way in which the rule of law can already be said to exist internationally is if the concept is watered down so much that it loses any real meaning. *But see* Robert McCorquodale, *Defining the International Rule of Law: Defying Gravity?*, 65 INT'L COMP. L. Q. 277 (2016).

[44] Needless to say, in many dictatorships the rule of law is not even an ideal aspired to, except by any surviving opposition movements.

[45] Simon Chesterman, *An International Rule of Law?,* 56 AM. J. COMP. L. 331, 361 (2008) ("At the international level anything resembling even this limited idea of the rule of law remains an aspiration.").

[46] *See also* Hakimi & Cogan, *supra* note 1, at 281 ("Many, from all parts of the world, will say good riddance to an order that did not incorporate, assist, or protect them, that treated them unjustly and unequally, that did not share equitably the material benefits of its economic development, did not assign responsibility for the environmental harms associated with that development, did not sufficiently acknowledge or provide reparation for the legacies of colonialism and imperialism that undergirded it, and did not make good on its universalist promises.").

[47] *See* World Justice Project, *2025 WJP Rule of Law Index*, *at* https://worldjusticeproject.org/rule-of-law-index/global (finding that "[f]or the eighth year in a row, the rule of law has declined in most countries"). The Index sees the rule of law in a "thicker" sense, based on eight factors divided into forty-four sub-factors, and performs its measurements through surveys of households and expert legal practitioners in the relevant countries.

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III. Three Paths Ahead

There seem to be three possible paths leading from this precipice. The first is one of the total collapse of the existing international order, potentially one heading to another world war. The second (really many possible realities sitting on a spectrum) is one of partial collapse, in which authoritarian states become increasingly dominant in the international system. The third is one leading to resurgence, to utopia rather than dystopia.

The first scenario is one of overwhelming catastrophe—the question is simply how overwhelming it will be. On the extreme end, the unravelling of the existing order will be so complete, including as to its basic rules restraining the resort to war, that the end result will be another world war—perhaps even a nuclear one. And then there are the parallel threats of unchained general AI or rapid, spiraling climate change and environmental ruin. Two points here may be especially important for international lawyers. First, the immediate triggering point for such a collapse could be, for instance, China's decision to invade Taiwan (and America's decision to go to war over this—both very real possibilities[48]), even though such a decision by China would not be an *obviously* illegal one under international law as it stands, because China's argument that it is the rightful sovereign of Taiwan is at a minimum plausible. That is, any Chinese invasion of Taiwan would not, legally at least, be an exact equivalent of Hitler's invasion of Poland, or Putin's invasion of Ukraine—and there would be something ironic if the fall of the international order (and the international *legal* order with it) was precipitated by a policy that is at least arguably legal. Second, in the scenario of total collapse we would experience a complete failure of state commitment to the basic tenets of international law. Arendt discusses such a failure in the context of the totalitarian ambition of consciously breaking down "that *consensus iuris* which, according to Cicero, constitutes a 'people,' and which, as international law, in modern times has constituted the civilized world insofar as it remains the foundation-stone of international relations even under the conditions of war" (Arendt, p. 462). In a situation of complete breakdown international law would likely lose any real-world relevance whatsoever, at least until a moment of resurgence (hopefully) came.

The risk of such a complete collapse in our lifetime is a very real one. This is not mere catastrophizing. We need to face up to reality, not sleepwalk into disaster, as our ancestors have done.[49] But while this risk is real, a total collapse is not, in my judgment at least, the likeliest scenario—it is the second path ahead, one of partial collapse and transformation of the existing order, which appears far more likely. As the saying goes, it is difficult to make predictions, especially about the future—I certainly cannot assign numerical possibilities to these different paths on the basis of hard evidence. It does not seem to me, at least as things stand, that powerful states are more bent on totally dismantling the existing order than they are on refashioning it.

This second path is really a whole spectrum of possible outcomes, from bad to worse. Common to all of them is that there will be a critical mass of states consisting of authoritarian or hybrid regimes—including, very possibly, the United States and other fallen

[48] *See* Bonny Lin, John Culver & Brian Hart, *The Risk of War in the Taiwan Strait Is High – and Getting Higher*, For. Aff. (May 15, 2025).

[49] *See* Christopher Clark, The Sleepwalkers: How Europe Went to War in 1914 (2012).

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historical democracies. This authoritarian world may still witness a new Cold War between the United States and China, for example, even if this iteration would be less ideological than its predecessor. The Western alliance of democracies will be broken or transfigured. States committed to democracy, human rights and the rule of law will wane in number, power and influence. That situation may be one of a long-term, relatively stable equilibrium, or one of chronic instability.

The third scenario, one of resurgence of the liberal order, seems even less likely than the first. As Applebaum puts it, "[t]here is no liberal world order anymore, and the aspiration to create one no longer seems real" (Applebaum, p. 175). A resurgence of that order in the near-term does not seem real either. If it happens, it will happen after the total or partial collapse—much as has been the case with previous cycles of construction and deconstruction and reconstruction of the system. If we are lucky, resurgence may take a decade or two. If we are not, it may take much longer—if it ever happens. While this is not certain—unlikely turns of events happen all the time, and somehow we might still pull through—the odds are that things will get (much) worse before they get better. But they *can* get better. The experience of past catastrophes has been that the new order that emerges presents an improvement on the one that failed. It is thus at least possible that a new law on Earth that follows collapse could be a much better one (and would need to be a better one, in terms of institutions and commitment) than the one we have now.

IV. International Law for Authoritarians

If the second, more moderate dystopia comes to pass, international law will not die. There will be a new law on Earth. But it will not be the one that Arendt wanted and told us we needed. There still will be (some) rules, and a level of compliance with, and real-world relevance of, those rules. The question is what these rules will be, and whether we—those studying and practicing international law today—will want to be part of whatever new system emerges.[50]

In a scenario in which a critical mass of states is authoritarian, strongly or more softly, with some islands of liberty remaining, that critical autocratic mass will still need order—just like they needed (some) order in the eighteenth or nineteenth centuries, when such a critical mass previously existed. But it is inevitable that that order will be substantially different from the one, however imperfect, that we have now. As Ginsburg has rightly observed, "[a]s the number of authoritarian regimes increases, we should expect international law to increasingly take on the character of that demanded by authoritarians."[51] Of course, these autocratic states will not be committed to the *rule of law*—they are not committed to it internally, so why would they be so committed externally? But this does not entail that they will not need, and have no use for, international law, or that their record of compliance will be radically different from what it was in the past. This is simply because, as Applebaum shows, authoritarian states need to and frequently do cooperate—with each other, to weaken democracies, preserve their power and pursue other insidious ends, but also with the (remaining) democracies). And they will need international law to facilitate such cooperation.

[50] For an insightful discussion of authoritarian international law, see in particular Ginsburg, *supra* note 8.
[51] *Id.* at 231.

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What will happen, however, is the gradual destruction or neutering of those parts of today's international law that are antithetical to autocracy. For authoritarian regimes, "[i]nternational cooperation that facilitates internal repression is desirable; that which risks empowering domestic political opponents is anathema."[52] Once a tipping point is reached, states will not simply (naturally) prioritize their self-interest, but will disregard the interests of others and those of the community as a whole. From community interest, we will revert back to transactional bilateralism.[53]

The obvious first targets will be international human rights law and international criminal law—and especially their institutions—because they are most directly antagonistic to autocrats. Their dismantling will not happen (at least not initially) through the adoption of new treaties or resolutions proclaiming the old law to be dead. New treaties, resolutions or other normative efforts will tend to provide a gloss on the existing order, but they will not attempt to rework it entirely—attempts to put the (human) right to development on a stronger legal footing are a good example in that regard,[54] as Applebaum also notes (Applebaum, p. 102). It is easier to continue engaging in some kind of lip service to these rules, while capturing and destroying their institutional superstructure. Courts and treaty bodies will be divested of their jurisdiction. Their prosecutors and judges may be sanctioned, as Trump has shamefully already done with the ICC—one can only imagine Arendt's reaction to her adoptive country doing such a thing. They will also be captured, with subservient individuals appointed as experts or judges. Mandates will be left to expire. And so forth. Indeed, a level of capture is already evident in the UN human rights machinery, and this trend will only escalate if sufficient resources are not marshalled to resist it.[55] To give just some examples, China has effectively obstructed independent civil society organizations from accessing the UN Human Rights Council, while simultaneously promoting various puppet organizations under its control.[56] It has repeatedly been elected to the Council, where it has frequently used its massive diplomatic clout. It was able to pressure the Office of the High Commissioner for Human Rights (OHCHR) to delay the release of its report China's violations of human rights of the Uyghurs in Xinjiang, which was ultimately published by the then High Commissioner, Michelle Bachelet, literally on her last day in office.[57] While the OHCHR report is rightly critical of China's practices, it contains one

[52] *Id.* at 230.

[53] *See* Peters, *supra* note 1, at 5; *see also* BRUNO SIMMA, FROM BILATERALISM TO COMMUNITY INTEREST IN INTERNATIONAL LAW (1994).

[54] *See further* Monika Polzin, *The Global Illiberal Dawn: Toward a Definition of "Authoritarian International Law Norms*," 93 NORD. J. INT'L L. 237, 256–62 (2024).

[55] *See also* Ginsburg, *supra* note 8, at 255–56; Andréa Worden, *China's Win-Win at the UN Human Rights Council: Just Not for Human Rights*, SINOPSIS (May 28, 2020), *at* https://sinopsis.cz/en/worden-win-win/ (arguing that China intends to turn the Council into "a shell, emptied of universal values, substantive rights, and independent human rights monitoring mechanisms—a body in which individuals and civil society organizations seeking to hold governments to account for human rights violations have no place and no voice").

[56] *See* Raphaël Viana David, *Report: China's Efforts to Block Civil Society Access to the United Nations*, INT'L SERV. HUM. RTS. (Apr. 28, 2025), *at* https://ishr.ch/defenders-toolbox/resources/un-access-china-report.

[57] *See* OHCHR Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China (Aug. 31, 2022), *at* https://www.ohchr.org/en/documents/country-reports/ohchr-assessment-human-rights-concerns-xinjiang-uyghur-autonomous-region.

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paltry sentence on potential criminal responsibility[58]—and one can only imagine how much massaging that sad little sentence received during the drafting process.[59]

We will not, therefore, somehow experience a complete reversal to international law as it was in the nineteenth century—this is simply too difficult to do, and autocrats will not find it necessary to do so. This is especially the case because of the problems that exist today that warrant international cooperation—be it the climate, trade, or the impacts of new technologies. The world is too interconnected to suffer a full-scale reversal.[60] It is therefore likely that autocrats will continue to engage in multilateral cooperation on such issues, as well as on those that Applebaum has identified, such as regime preservation and transnational repression.

A good case study is the recent adoption of a new UN Convention on Cybercrime, which was opened for signature in Hanoi in 2025. This was an authoritarian-led project—the whole thing was a Russian initiative, an initiative which succeeded despite the enormous harm Russia suffered reputationally due to its invasion of Ukraine.[61] The need to cooperate in combatting cybercrime, due to its transnational character, is manifest—and that need exists regardless of the democratic or autocratic nature of any state's regime, because they are all at risk. This is why there already was a treaty on this topic concluded within the Council of Europe, the Budapest Convention.[62] But this new UN treaty poses unique risks that *are* dependent on regime nature, since the mechanisms for the sharing of electronic evidence it establishes, not just for cybercrime but for other serious crimes as well, can easily be abused to facilitate the prosecution of political dissidents and engage in transnational repression. The negotiations of the treaty were fraught, and human rights safeguards are in the treaty—albeit in less powerful a form than Western states and civil society organizations wanted. Who "won" these negotiations and what the actual impact of this treaty will be of course remains to be seen—but this is a good example of how autocratic states can engage in multilateralism when they perceive it in their interest to do so.

Even in an autocratic world, therefore, international law will remain.[63] So will, however, the risk of slippage to a scenario of total collapse. The most important question for the system will be that of the fate of the cardinal rules of the new law on Earth that managed to consolidate even during the height of the Cold War: the prohibitions on the use of force, intervention in the internal or external affairs of other states, and acquisition of sovereign title over territory through force. That is where the biggest danger lies. It should be noted

[58] *Id.*, para. 148 ("The extent of arbitrary and discriminatory detention of members of Uyghur and other predominantly Muslim groups, pursuant to law and policy, in context of restrictions and deprivation more generally of fundamental rights enjoyed individually and collectively, may constitute international crimes, in particular crimes against humanity.").

[59] As one of the three high-level experts appointed by Bachelet to serve on an OHCHR examination of human rights violations in Belarus, I can imagine a great deal. *Cf.* Report of the United Nations High Commissioner for Human Rights, Situation of Human Rights in Belarus in the Run-up to the 2020 Presidential Election and Its Aftermath, paras. 84–86, UN Doc. A/HRC/49/71 (Mar. 4, 2022).

[60] *See* Peters, *supra* note 1, at 4.

[61] *See further* Jason Pielemeier, *Rethinking the United Nations Cybercrime Treaty*, JUST SECURITY (Sept. 23, 2024), *at* https://www.justsecurity.org/100333/rethinking-united-nations-cybercrime-treaty.

[62] *See also* Ginsburg, *supra* note 8, at 253–55 (providing more background on the initiatives that led to the treaty).

[63] *See also* Heike Krieger, *Populist Governments and International Law*, 30 EUR. J. INT'L L. 971 (2019).

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here that the autocratization of the international order will not *necessarily* mean that these rules will find themselves dead (or, at least, not any more dead than they have been so far). For example, the new superpower, China, has acted aggressively toward its neighbors in the South China Sea and toward Taiwan. Nationalism has also become an established part of state ideology. These are all huge warning signs, as is its enormous investment in military spending. But the fact remains that China has not fought a war since its involvement in the Korean war, and can be said to have a much better record of compliance with the *jus ad bellum* than many Western democracies.

To sum up, while the decline of the Western alliance and the rise of authoritarianism will inevitably be seriously harmful to some branches of international law, such as human rights and international criminal law, this does not mean that all of international law will somehow collapse. Autocracies too need to cooperate. In some technical areas, such as civil aviation, the old law will remain and will work as effectively as before—unless, of course, we experience a scenario of total collapse, or are on the extreme end of the partial collapse scenario. In other areas that are currently under sustained assault, such as trade, new legalized regimes may emerge even if the current global regulatory structure withers away.[64] Overall, "authoritarian states will play an increasingly important role in articulating norms that will both insulate them from external pressures to liberalize, and also to consolidate internal control through cross-border cooperation. Authoritarians learn and repurpose institutions toward their own ends, and international law is no exception."[65]

Even those parts of the current legal system that are under greatest threat will likely remain on the books, as it were, while their real-world impact will be greatly diminished or confined to a much smaller number of states. Similarly, a more authoritarian world will not necessarily be one in which there is vastly greater incidence of interstate conflict, including a new world war.[66] That said, there is a very good reason why human rights are directly tied, from their inception, with the maintenance of international peace.[67] Their decline and the decline of multilateralism more generally will necessarily mean that the risk of further collapse will remain. But the fact that these parts of international law will formally remain unextinguished—at least for a time—will also be a factor that can enable a later resurgence. And that resurgence cannot simply restore international law as it exists today, but build a better, fairer one—especially institutionally.

[64] *See further* A POST-WTO INTERNATIONAL LEGAL ORDER: UTOPIAN, DYSTOPIAN AND OTHER SCENARIOS (Meredith Kolsky Lewis et al. eds., 2020).

[65] Ginsburg, *supra* note 8, at 258.

[66] The question to what extent the character of a state's government affects the likelihood that it will engage in war has long been debated in international relations scholarship. *See further* BRUCE RUSSETT, GRASPING THE DEMOCRATIC PEACE: PRINCIPLES FOR A POST-COLD WAR WORLD (1994); Sebastian Rosato, *The Flawed Logic of Democratic Peace Theory*, 97 AM. POL. SCI. REV. 585 (2003); Erik Gartzke, *The Capitalist Peace*, 51 AM. J. POL. SCI. 166 (2007); Allan Dafoe, John R. Oneal & Bruce Russett, *The Democratic Peace: Weighing the Evidence and Cautious Inference*, 57 INT'L STUD. Q. 201 (2013).

[67] Cf. the first preambular paragraph of the Universal Declaration on Human Rights, proclaiming that the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." GA Res. 217(III), Universal Declaration on Human Rights (Dec. 10, 1948).

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V. Being an Authoritarian International Lawyer

In this new world dominated by authoritarians, international lawyers will be faced with a series of choices. What can we do to soften the consequences of the collapse, or to try to arrest it? Do we still want to be international lawyers, if our discipline becomes less relevant or no longer corresponds to our core values? If our own country turns to autocracy, do we stay to fight or do we try to leave?

These choices will be new only to colleagues who had the privilege of growing up and working in Western democracies.[68] Those elsewhere have had to face them for a long time, as did Arendt, when she fled Hitler's Germany in 1933. Obviously, it is not only international lawyers who face such dilemmas.

There is a major difference between being born in such a system and living through its establishment. Choices are much more heavily constrained for the former—a Chinese international lawyer is not in the same position as one in Trump's America. But in any authoritarian regime, old or new, we can observe international lawyers (and other lawyers, scholars, and citizens) making choices about who they want to be. There are those who are genuinely ideologically committed to autocracy, then there are the opportunistic willing servants, then the masses of the passive and the cowed, and then there are the dissidents, who may be bold or subtle.

Autocracies and hybrid regimes have many tools at their disposal to discipline academics. The cost of resistance is real. You can lose your job, lose funding, be blacklisted, be unable to publish, get arrested, beaten, killed—or have that happen to your friends and family. The threat of losing jobs and status is often effective enough. Until one finds oneself in such a situation, it is easy to think that one would be brave and fight. Most are not. For every Sakharov, there were a hundred servants and a thousand cowards.

The committed ideologues are not that many, and fewer still rise to the intellectual level of a Carl Schmitt. But there are many opportunists. The history of such opportunism is as long as it is shameful. Arendt's immediate circle provides us with at least one example: her mentor (and one-time lover) the philosopher Martin Heidegger, who became rector of the University of Freiburg in April 1933 and joined the Nazi party a week thereafter. Not only did Heidegger sign a vow of allegiance to Hitler later that year, he even chose to wear a Hitler moustache, and he *chose* to tell his students horrid stuff like this: "Let not theories and 'ideas' be the rules of your being. The *Führer* himself and he alone is German reality and its law, today and for the future."[69] The especially sad thing about Heidegger is that he, like many others in his position, did not really *need* to do all that—nobody forced him at gunpoint to be the rector or join the party, and he already enjoyed plenty of status and prestige. His intellectual achievements were also genuine. But he *chose* to do all this nonetheless. And for every Heidegger there were a dozen mediocrities who opportunistically made the same choice, purely for personal profit.

Others chose to flee—not that Arendt herself had much of a choice. So have some of our colleagues, international lawyers, who fled Russia after its invasion of Ukraine. Yet this

[68] For a study of the lived experience of international law throughout the world, see Anthea Roberts, Is International Law International? (2017).

[69] *See* Joshua Rothman, *Is Heidegger Contaminated by Nazism?*, New Yorker (Apr. 28, 2014) (emphasis in original); *see further* Richard Wolin, Heidegger in Ruins: Between Philosophy and Ideology (2022).

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choice too is heavily constrained—by personal and family circumstances, by money, by immigration rules, by the availability of jobs elsewhere. And so, today, most Russian international lawyers live and work in Russia still, some vocally supporting the regime (not that this has any external impact), some staying silent. Very few can afford to publicly dissent.[70] Those who stayed (and here of course I am not speaking just about international lawyers) are on a daily basis presented with a stark question: how to stay decent in an indecent society?[71] Unfortunately, a great many will choose indecency, even if, in some other society, they would have been decent people.

This kind of experience will now start to become more intimately familiar to international lawyers in the West. Interestingly, in a globalized economy some have in recent years chosen to emigrate *to* authoritarian states, such as China, the United Arab Emirates or Qatar, which have actively been trying to attract foreign academics, offering relatively plush working conditions. But we will definitely be seeing more international lawyers abandoning countries falling to authoritarianism, assuming that they have somewhere to go—and we should not blame them for doing that. Yet, it is simply inevitable that autocrats will win without sustained, collective resistance, and that every act of emigration during the emergence of such an authoritarian regime (I say this as an émigré myself) weakens that resistance.

For those who are born into an authoritarian regime, the price of resistance may simply be too high. But not all autocracies are the same, and resistance can be subtle. The example that immediately comes to me here is that of Vojin Dimitrijević, a great international lawyer and human rights scholar and activist from Serbia and the former Yugoslavia. (One of the privileges of my life was to have him as a friend and mentor.) When Dimitrijević decided to become an international lawyer in the communist Yugoslavia, the authoritarian regime was already established. There was no way of becoming a university professor, or remaining in post, while openly, steadfastly resisting the regime. But a level of freedom was nonetheless possible in that regime, academically and otherwise. Dimitrijević thus could, and did, became a scholar of human rights (which included, *inter alia*, service on the UN Human Rights Committee). In 1985 (after Tito's death, but still during the communist dictatorship, which was relatively soft in terms of repression, on par with modern autocracies) he published a book called *Strahovlada*—the reign of terror.[72] Writing the book was a subversive act of resistance, but a subtle and carefully worded one—at no point, for example, did Dimitrijević criticize communist Yugoslavia as ever employing terror. He was not the kind of brave dissident who would speak truth to power, always, come what may—but he did dissent, in his own way. In a second, revised edition published in 1997, he noted that when he wrote the book originally he did the best he could and the best he dared, but that

[70] *See further* JOHANNES SOCHER, RUSSIA AND THE RIGHT TO SELF-DETERMINATION IN THE POST-SOVIET SPACE (2021) (discussing Russian approaches to self-determination and noting that most Russian international law academics supported Russia's official positions, even when these were manifestly inconsistent with Russia's prior positions or with the international legal framework more broadly); Polina Kulish & Tero Lundstedt, *A Journey for Understanding (Part II)*, VÖLKERRECHTSBLOG (June 12, 2024), *at* https://voelkerrechtsblog.org/de/a-journey-for-understanding-2 (reviewing Socher's book and discussing the situation of Russian international lawyers today, including the few dissidents supporting the prosecution of Russia's leadership of aggression, most of whom have fled the country).

[71] *See* Ian Buruma, *Staying Decent in an Indecent Society*, 5 LIBERTIES (Summer 2025).

[72] VOJIN DIMITRIJEVIĆ, STRAHOVLADA (1985). The book is available online, in a 2016 English translation, VOJIN DIMITRIJEVIĆ, THE REIGN OF TERROR: A STUDY ON HUMAN RIGHTS AND STATE TERROR (Ana Knežević Bojović trans., 2016), *at* https://pescanik.net/wp-content/uploads/2016/10/Strahovlada-engleski.pdf.

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today one knows and dares more.[73] And he *did* dare to do more, becoming one of the country's foremost activists for peace, democracy, and human rights, as war and atrocities engulfed Yugoslavia and Milošević's dictatorship succeeded the communist one in Serbia. He ultimately *did* pay a price for his principles, as he was illegally forced into early retirement from the University of Belgrade for opposing a new statute passed by Milošević in 1998 that enabled full state control over universities (many other professors were fired by deans willingly serving the regime).

Yet, on October 5, 2000, Milošević fell, and a brief period of democracy followed. Dimitrijević died twelve years to the day from Milošević's fall, a mere few months into the reign of Serbia's freshest, softest, and most perfidious autocrat, Aleksandar Vučić. As I write this, brave Serbian students have, for a year, been leading a mass popular movement against him and his catastrophically corrupt regime, with hundreds of thousands on the streets. As they should, whether they (we) will ultimately win or not. As Dimitrijević put it in the final sentence of his book, within their own communities the struggle against terror must be fought by people of courage and dignity.[74]

VI. Contingency, Action, Despair, Hope

It is perfectly reasonable to feel despair at the state of the world today, at its unraveling—especially because it affects so directly those issues on which we have spent our lives working on. It is fine to feel angry. This is even more the case because, in so many states, the collapse is not being driven by overwhelmingly competent evil geniuses, but by a rather horrible bunch of sad, thieving little men, whose one gift is mobilizing public anger.[75] In researching this Essay, I came across a short book that resonated quite powerfully. It was written by a self-styled German aristocrat opposed to Hitler, an unabashed elitist snob if there ever was one, who periodically vented into his secret diary, full of seditious thoughts, which he would then hide in a hole on the grounds of his estate. He was ultimately arrested (for no major act of resistance) and was shot in Dachau in 1945. The book—which Arendt proclaimed "one of the most important documents of the Hitler period"[76]—is aptly called the *Diary of a Man in Despair*:

> My life in this pit [Germany under Nazi rule] will soon enter its fifth year. For more than forty-two months, I have thought hate, have lain down with hate in my heart, have dreamed hate and awakened with hate. I suffocate in the knowledge that I am the prisoner of a horde of vicious apes, and I rack my brains over the perpetual riddle of how this same [German] people which so jealously watched over its rights a few years ago can have sunk into this stupor, in which it not only allows itself to be dominated by the street-corner idlers of yesterday, but actually, height of shame, is *incapable any longer of perceiving its shame for the shame that it is*.[77]

[73] *Id.* at 13 (in the English edition).
[74] *Id.* at 221.
[75] *See also* Peters, *supra* note 1, at 12.
[76] As quoted on the website of the New York Review of Books, *at* https://www.nyrb.com/products/diary-of-a-man-in-despair.
[77] Friedrich Reck, Diary of a Man in Despair 22 (2013) (emphasis in original).

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Arendt attempted to explain this riddle. But, while despair and rage are completely understandable, then and now as the riddle is repeating itself, an important point comes out of Arendt's work, and her determination that we need to face up to reality as it is, and resist it. None of this was pre-determined. None of this is inevitable. All of it is contingent.[78] The same goes for international law, whose future will be determined by the contingent future character of political power.[79]

Arendt's precipice ultimately led to (broadly speaking) good outcomes—and her time was in many respects more worthy of despair than ours. When she was writing *Origins*, trying to make sense of the world around her, she could not have imagined that, in the middle of Berlin, within sight of the Bundestag and mere meters away from the site of the bunker in which Hitler took his own life, a memorial to the murdered Jews of Europe would be erected on the corner of Hannah-Arendt-Strasse and Ebertstrasse. Nor were the rise of Hitler or the murder of the Jews of Europe themselves somehow inevitable:

> Had Hitler's predecessor in the chancellery, Kurt von Schleicher, remained in office another six months, or had German President Paul von Hindenburg exercised his constitutional powers more judiciously, or had a faction of moderate conservative Reichstag delegates cast their votes differently, then history may well have taken a very different turn . . . . Both Hitler's ascendancy to chancellor and his smashing of the constitutional guardrails once he got there . . . are stories of political contingency rather than historical inevitability.[80]

Where we go from the precipice at which we stand today depends on the choices that people will make, on how they choose to act. This does not mean that we should be hopeful rather than angry or despairing. Hoping, without any basis in fact, is not resisting reality, as Arendt required, but is rather refusing to face it. Indeed, "faith and hope are not articles of belief for Arendt, but action."[81] It is action that, in dark times, can be the "miracle that saves the world."[82] Acting courageously, while knowing that one might well lose, is what is needed today.

That said, this Essay is not meant to provide some kind of platform for action—for leaders, lawyers, or citizens. What I will say is that different people can contribute in different ways. It is through collective action that the good in today's international law can be preserved, or the harm to it minimized. Yet there is only so much that we, as international lawyers, can do, domestically or internationally, in that regard. We are limited by the very nature of our position, especially those of us in academia—although the influence of those in

[78] *See also* Hanns W. Maull, *Conclusions: The Rise and Decline of the Liberal International Order*, *in* THE RISE AND DECLINE OF THE POST-COLD WAR INTERNATIONAL ORDER 272, 311–12 (Hanns W. Maull ed., 2018).

[79] *See also* Hakimi & Cogan, *supra* note 1, at 290 ("Thus, whatever else changes in the coming decades, the kind of international law that we get, and the work that that international law does, will also change as law becomes co-constituted with new constellations of power. Nothing from the current order, including the legalization of international relations itself, is guaranteed.").

[80] Timothy W. Ryback, *How Hitler Dismantled a Democracy in 53 Days*, ATLANTIC (Jan. 8, 2025), *at* https://www.theatlantic.com/ideas/archive/2025/01/hitler-germany-constitution-authoritarianism/681233.

[81] Samantha Rose Hill, *When Hope is a Hindrance*, AEON (Oct. 4, 2021), *at* https://aeon.co/essays/for-arendt-hope-in-dark-times-is-no-match-for-action.

[82] *Id.*

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government is somewhat greater. Those who want to try to do more should go into politics, because that is where the greatest stakes are. It is only political action, not lawyers and lawyering, that can save democracy domestically or globally—the idea that, for example, the judiciary will save American democracy from its slide into authoritarianism is simply unreal. It is only a new politics that can preserve what is good about today's international order; when the foundations of legality are collapsing, mere legalism cannot save them. But the legal turf—what the law means, meant, or should mean—is ours, and we should not leave it to others.[83]

Not all of the current trend toward collapse is the result of rising authoritarianism. To give but one example, Israel's violations of international law in Gaza are being committed by a democracy (albeit a rapidly failing one), and are being actively assisted, tolerated or insufficiently condemned by other democracies. That said, the rise of autocracy is the main factor in the current unravelling. If we examine the various policies of the second Trump administration, the issue is not simply that international law is being violated, but that it is completely ignored. As Anne Peters perceptively noted, the "abandonment even of lip service to fundamental international legal principles" ultimately leads to "the end of international law even in its modest role as a language of international relations."[84] Preserving democracy, warts and all, is therefore the most important factor in arresting the collapse of the international legal order. To quote Applebaum, yes, democracies "are hardly perfect. [They] have deep flaws, profound divisions, and terrible historical scars. But that's all the more reason to defend and protect them . . . . [Saving them can only be done] if those of us who live in them are willing to make the effort to save them" (Applebaum, p. 176).

The first action point is the most important: defending democracy and the rule of law at home. As noted above, the quality of the international system is inevitably a function of the quality of national legal systems. Lawyers and courts cannot, on their own, save a democracy from autocratic onslaught—but they can be part of a wider political and social effort, working together through broad fronts and movements, to restore and build commitment to basic democratic values.[85] They (we) need to act courageously and resist apathy. "When fear, exhaustion, or resignation crowds out citizens' commitment to democracy, emergent authoritarianism begins to take root."[86] International lawyers need to be part of this effort. They need to advocate internally, within their societies, that respect for international law is necessary and beneficial. And this includes resisting efforts by those members of the legal profession who are actively working to bring democratic structures down—and there will always be such.[87] International and other lawyers can also work on stopping the network of transnational kleptocracy that modern autocrats are so keen on using (Applebaum, pp. 159–63).

[83] *See* Peters, *supra* note 1, at 7–8.

[84] *Id.* at 3.

[85] *See* Maria J. Stephan, *Big Tents and Collective Action Can Defeat Authoritarianism*, JUST SECURITY (June 3, 2025), *at* https://www.justsecurity.org/113995/collective-action-defeats-authoritarianism.

[86] Levitsky & Way, *supra* note 10.

[87] *See* Scott L. Cummings, *Lawyers in Backsliding Democracy*, 112 CAL. L. REV. 513 (2024).

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Second, international lawyers need to hold their own states to account for violations of international law, in particular regarding those norms that will be most at risk in an increasingly authoritarian world. This takes courage, even in democracies. It is both so common and so sad to see some lawyers from powerful states spend their whole professional careers justifying what their states are doing. This is a phenomenon directly corrosive of the credibility of international law, as it immediately enables critiques of double standards and the like. While this is understandable in autocracies, in which a substantial price is to be paid for falling out of line, those lawyers working in democracies have fewer justifications for their apology of power. Therefore, it is important to applaud those international lawyers who raise their voices to push back, on legal grounds, against what their own state is doing.[88] But it is also important to acknowledge how arguments deployed by powerful Western states to advance their interests by, for example, stretching the parameters of permissible self-defense, have directly enabled the use of similar arguments by autocrats, as with Putin's invasion of Ukraine.[89]

Finally, we—and states interested in preserving the existing international legal system as much as possible—need to focus our efforts on those rules that are most at risk: the prohibition on the use of force and the related prohibition of forcible annexation (conquest) of territory;[90] the prohibition of intervention (which, when properly understood, strikes a balance between protecting states from illegitimate outside pressure and not prohibiting such pressure in situations in which the state concerned violates international law[91]); and human rights and international humanitarian law. These efforts must include labeling breaches of the law as such, even when committed by powerful states or one's own allies.[92] Crucially, this also includes efforts at preventing institutional capture, for example with regard to the UN human rights bodies in Geneva, and preventing their neutralization through defunding.[93] This requires an investment of political and (relatively minimal) financial capital to buttress these institutions, but keeping these institutions alive can at least provide some foundations for any resurgence to come.

[88] For a recent example, see Eliav Lieblich & Tamar Megiddo, *Manifestly Illegal: Israeli International Law Scholars on the Stated Plan to "Concentrate" the Palestinian Population in South Gaza*, JUST SECURITY (July 11, 2025), *at* https://www.justsecurity.org/116904/israeli-international-law-scholars-gaza.

[89] *See, e.g.*, Marko Milanovic, *The Illegal Israeli-American Use of Force Against Iran: A Follow-Up*, EJIL:*TALK!* (June 23, 2025), *at* https://www.ejiltalk.org/the-illegal-israeli-american-use-of-force-against-iran-a-follow-up.

[90] *See also* Ingrid Brunk & Monica Hakimi, *The Prohibition of Annexations and the Foundations of Modern International Law*, 118 AJIL 417 (2024); Oona A. Hathaway & Scott J. Shapiro, *Might Unmakes Right: The Catastrophic Collapse of Norms Against the Use of Force*, FOR. AFF. (June 24, 2025).

[91] *See further* Marko Milanovic, *Revisiting Coercion as an Element of Prohibited Intervention in International Law*, 117 AJIL 601 (2023); *see also* Kal Raustiala, *Normative Contestation in the International Order: Is China Remaking Global Governance?*, 106 INT'L L. STUD. 301, 321–24 (2025) (discussing normative efforts led, *inter alia*, by China, which seek to cast all unilateral sanctions as a form of prohibited intervention).

[92] *See* Eyal Benvenisti, *The Resilience of International Law in the Face of Empire*, JUST SECURITY (Feb. 17, 2025), *at* https://www.justsecurity.org/107820/resilience-international-empire.

[93] *See also* Polzin, *supra* note 54, at 266.

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