Why the Security Council Failed

Michael J. Glennon

SHOWDOWN AT TURTLE BAY

"THE TENTS have been struck," declared South Africa's prime minister, Jan Christian Smuts, about the League of Nations' founding. "The great caravan of humanity is again on the march." A generation later, this mass movement toward the international rule of law still seemed very much in progress. In 1945, the League was replaced with a more robust United Nations, and no less a personage than U.S. Secretary of State Cordell Hull hailed it as the key to "the fulfillment of humanity's highest aspirations." The world was once more on the move.

Earlier this year, however, the caravan finally ground to a halt. With the dramatic rupture of the UN Security Council, it became clear that the grand attempt to subject the use of force to the rule of law had failed.

In truth, there had been no progress for years. The UN's rules governing the use of force, laid out in the charter and managed by the Security Council, had fallen victim to geopolitical forces too strong for a legalist institution to withstand. By 2003, the main question facing countries considering whether to use force was not whether it was lawful. Instead, as in the nineteenth century, they simply questioned whether it was wise.

The beginning of the end of the international security system had actually come slightly earlier, on September 12, 2002, when President

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George W. Bush, to the surprise of many, brought his case against Iraq to the General Assembly and challenged the UN to take action against Baghdad for failing to disarm. "We will work with the UN Security Council for the necessary resolutions," Bush said. But he warned that he would act alone if the UN failed to cooperate.

Washington's threat was reaffirmed a month later by Congress, when it gave Bush the authority to use force against Iraq without getting approval from the UN first. The American message seemed clear: as a senior administration official put it at the time, "we don't need the Security Council."

Two weeks later, on October 25, the United States formally proposed a resolution that would have implicitly authorized war against Iraq. But Bush again warned that he would not be deterred if the Security Council rejected the measure. "If the United Nations doesn't have the will or the courage to disarm Saddam Hussein and if Saddam Hussein will not disarm," he said, "the United States will lead a coalition to disarm [him]." After intensive, behind-the-scenes haggling, the council responded to Bush's challenge on November 7 by unanimously adopting Resolution 1441, which found Iraq in "material breach" of prior resolutions, set up a new inspections regime, and warned once again of "serious consequences" if Iraq again failed to disarm. The resolution did not explicitly authorize force, however, and Washington pledged to return to the council for another discussion before resorting to arms.

The vote for Resolution 1441 was a huge personal victory for Secretary of State Colin Powell, who had spent much political capital urging his government to go the UN route in the first place and had fought hard diplomatically to win international backing. Nonetheless, doubts soon emerged concerning the effectiveness of the new inspections regime and the extent of Iraq's cooperation. On January 21, 2003, Powell himself declared that the "inspections will not work." He returned to the UN on February 5 and made the case that Iraq was still hiding its weapons of mass destruction (WMD). France and Germany responded by pressing for more time. Tensions between the allies, already high, began to mount and divisions deepened still further when 18 European countries signed letters in support of the American position.

On February 14, the inspectors returned to the Security Council to report that, after 11 weeks of investigation in Iraq, they had discovered

no evidence of WMD (although many items remained unaccounted for). Ten days later, on February 24, the United States, the United Kingdom, and Spain introduced a resolution that would have had the council simply declare, under Chapter VII of the UN Charter (the section dealing with threats to the peace), that "Iraq has failed to take the final opportunity afforded to it in Resolution 1441." France, Germany, and Russia once more proposed giving Iraq still more time. On February 28, the White House, increasingly frustrated, upped the ante: Press Secretary Ari Fleischer announced that the American goal was no longer simply Iraq's disarmament but now included "regime change."

A period of intense lobbying followed. Then, on March 5, France and Russia announced they would block any subsequent resolution authorizing the use of force against Saddam. The next day, China declared that it was taking the same position. The United Kingdom floated a compromise proposal, but the council's five permanent members could not agree. In the face of a serious threat to international peace and stability, the Security Council fatally deadlocked.

POWER POLITICS

AT THIS POINT it was easy to conclude, as did President Bush, that the UN's failure to confront Iraq would cause the world body to "fade into history as an ineffective, irrelevant debating society." In reality, however, the council's fate had long since been sealed. The problem was not the second Persian Gulf War, but rather an earlier shift in world power toward a configuration that was simply incompatible with the way the UN was meant to function. It was the rise in American unipolarity—not the Iraq crisis—that, along with cultural clashes and different attitudes toward the use of force, gradually eroded the council's credibility. Although the body had managed to limp along and function adequately in more tranquil times, it proved incapable of performing under periods of great stress. The fault for this failure did not lie with any one country; rather, it was the largely inexorable upshot of the development and evolution of the international system.

Consider first the changes in power politics. Reactions to the United States' gradual ascent to towering preeminence have been predictable: coalitions of competitors have emerged. Since the end of the Cold

CORBIS

Going down: Secretary of State Colin Powell with Russian Foreign Minister Igor Ivanov at the Security Council, January 20, 2003

War, the French, the Chinese, and the Russians have sought to return the world to a more balanced system. France's former foreign minister Hubert Védrine openly confessed this goal in 1998: "We cannot accept ... a politically unipolar world," he said, and "that is why we are fighting for a multipolar" one. French President Jacques Chirac has battled tirelessly to achieve this end. According to Pierre Lellouche, who was Chirac's foreign policy adviser in the early 1990s, his boss wants "a multipolar world in which Europe is the counterweight to American political and military power." Explained Chirac himself, "any community with only one dominant power is always a dangerous one and provokes reactions."

In recent years, Russia and China have displayed a similar preoccupation; indeed, this objective was formalized in a treaty the two countries signed in July 2001, explicitly confirming their commitment to "a multipolar world." President Vladimir Putin has declared that Russia will not tolerate a unipolar system, and China's former president

Jiang Zemin has said the same. Germany, although it joined the cause late, has recently become a highly visible partner in the effort to confront American hegemony. Foreign Minister Joschka Fischer said in 2000 that the "core concept of Europe after 1945 was and still is a rejection of ... the hegemonic ambitions of individual states." Even Germany's former chancellor Helmut Schmidt recently weighed in, opining that Germany and France "share a common interest in not delivering ourselves into the hegemony of our mighty ally, the United States."

In the face of such opposition, Washington has made it clear that it intends to do all it can to maintain its preeminence. The Bush administration released a paper detailing its national security strategy in September 2002 that left no doubt about its plans to ensure that no other nation could rival its military strength. More controversially, the now infamous document also proclaimed a doctrine of preemption—one that, incidentally, flatly contradicts the precepts of the UN Charter. Article 51 of the charter permits the use of force only in self-defense, and only "if an armed attack occurs against a Member of the United Nations." The American policy, on the other hand, proceeds from the premise that Americans "cannot let our enemies strike first." Therefore, "to forestall or prevent ... hostile acts by our adversaries," the statement announced, "the United States will, if necessary, act preemptively"—that is, strike first.

Since the end of the Cold War, the French, the Russians, and the Chinese have worked tirelessly to balance American power.

Apart from the power divide, a second fault line, one deeper and longer, has also separated the United States from other countries at the UN. This split is cultural. It divides nations of the North and West from those of the South and East on the most fundamental of issues: namely, when armed intervention is appropriate. On September 20, 1999, Secretary-General Kofi Annan spoke in historic terms about the need to "forge unity behind the principle that massive and systematic violations of human rights—wherever they take place—should never be allowed to stand." This speech led to weeks of debate among UN members. Of the nations that spoke out in public, roughly a third appeared to favor humanitarian intervention under some circumstances.

Another third opposed it across the board, and the remaining third were equivocal or noncommittal. The proponents, it is important to note, were primarily Western democracies. The opponents, meanwhile, were mostly Latin American, African, and Arab states.

The disagreement was not, it soon became clear, confined merely to humanitarian intervention. On February 22 of this year, foreign ministers from the Nonaligned Movement, meeting in Kuala Lumpur, signed a declaration opposing the use of force against Iraq. This faction, composed of 114 states (primarily from the developing world), represents 55 percent of the planet's population and nearly two-thirds of the UN's membership.

As all of this suggests, although the UN's rules purport to represent a single global view—indeed, universal law—on when and whether force can be justified, the UN's members (not to mention their populations) are clearly not in agreement.

Moreover, cultural divisions concerning the use of force do not merely separate the West from the rest. Increasingly, they also separate the United States from the rest of the West. On one key subject in particular, European and American attitudes diverge and are moving further apart by the day. That subject is the role of law in international relations. There are two sources for this disagreement. The first concerns who should make the rules: namely, should it be the states themselves, or supranational institutions?

Americans largely reject supranationalism. It is hard to imagine any circumstance in which Washington would permit an international regime to limit the size of the U.S. budget deficit, control its currency and coinage, or settle the issue of gays in the military. Yet these and a host of other similar questions are now regularly decided for European states by the supranational institutions (such as the European Union and the European Court of Human Rights) of which they are members. "Americans," Francis Fukuyama has written, "tend not to see any source of democratic legitimacy higher than the nation-state." But Europeans see democratic legitimacy as flowing from the will of the international community. Thus they comfortably submit to impingements on their sovereignty that Americans would find anathema. Security Council decisions limiting the use of force are but one example.

DEATH OF A LAW

ANOTHER general source of disagreement that has undermined the UN concerns when international rules should be made. Americans prefer after-the-fact, corrective laws. They tend to favor leaving the field open to competition as long as possible and view regulations as a last resort, to be employed only after free markets have failed. Europeans, in contrast, prefer preventive rules aimed at averting crises and market failures before they take place. Europeans tend to identify ultimate goals, try to anticipate future difficulties, and then strive to regulate in advance, before problems develop. This approach suggests a preference for stability and predictability; Americans, on the other hand, seem more comfortable with innovation and occasional chaos. Contrasting responses across the Atlantic to emerging high-technology and telecommunications industries are a prime example of these differences in spirit. So are divergent transatlantic reactions to the use of force.

More than anything else, however, it has been still another underlying difference in attitude—over the need to comply with the UN's rules on the use of force—that has proved most disabling to the UN system. Since 1945, so many states have used armed force on so many occasions, in flagrant violation of the charter, that the regime can only be said to have collapsed. In framing the charter, the international community failed to anticipate accurately when force would be deemed unacceptable. Nor did it apply sufficient disincentives to instances when it would be so deemed. Given that the UN's is a voluntary system that depends for compliance on state consent, this short-sightedness proved fatal.

This conclusion can be expressed a number of different ways under traditional international legal doctrine. Massive violation of a treaty by numerous states over a prolonged period can be seen as casting that treaty into desuetude—that is, reducing it to a paper rule that is no longer binding. The violations can also be regarded as subsequent custom that creates new law, supplanting old treaty norms and permitting conduct that was once a violation. Finally, contrary state practice can also be considered to have created a *non liquet,* to have thrown the law into a state of confusion such that legal rules are no

longer clear and no authoritative answer is possible. In effect, however, it makes no practical difference which analytic framework is applied. The default position of international law has long been that when no restriction can be authoritatively established, a country is considered free to act. Whatever doctrinal formula is chosen to describe the current crisis, therefore, the conclusion is the same. "If you want to know whether a man is religious," Wittgenstein said, "don't ask him, observe him." And so it is if you want to know what law a state accepts. If countries had ever truly intended to make the UN's use-of-force rules binding, they would have made the costs of violation greater than the costs of compliance.

But they did not. Anyone who doubts this observation might consider precisely why North Korea now so insistently seeks a nonaggression pact with the United States. Such a provision, after all, is supposedly the centerpiece of the UN Charter. But no one could seriously expect that assurance to comfort Pyongyang. The charter has gone the way of the Kellogg-Briand Pact, the 1928 treaty by which every major country that would go on to fight in World War II solemnly committed itself not to resort to war as an instrument of national policy. The pact, as the diplomatic historian Thomas Bailey has written, "proved a monument to illusion. It was not only delusive but dangerous, for it ... lulled the public ... into a false sense of security." These days, on the other hand, no rational state will be deluded into believing that the UN Charter protects its security.

Surprisingly, despite the manifest warning signs, some international lawyers have insisted in the face of the Iraq crisis that there is no reason for alarm about the state of the UN. On March 2, just days before France, Russia, and China declared their intention to cast a veto that the United States had announced it would ignore, Anne-Marie Slaughter (president of the American Society of International Law and dean of Princeton's Woodrow Wilson School) wrote, "What is happening today is exactly what the UN founders envisaged." Other experts contend that, because countries have not openly declared that the charter's use-of-force rules are no longer binding, those rules must still be regarded as obligatory. But state practice itself often provides the best evidence of what states regard as binding. The truth is that no state—surely not the United States—has ever accepted a

rule saying, in effect, that rules can be changed only by openly declaring the old rules to be dead. States simply do not behave that way. They avoid needless confrontation. After all, states have not openly declared that the Kellogg-Briand Pact is no longer good law, but few would seriously contend that it is.

Still other analysts worry that admitting to the death of the UN's rules on the use of force would be tantamount to giving up completely on the international rule of law. The fact that public opinion forced President Bush to go to Congress and the UN, such experts further argue, shows that international law still shapes power politics. But distinguishing working rules from paper rules is not the same as giving up on the rule of law. Although the effort to subject the use of force to the rule of law was the monumental internationalist experiment of the twentieth century, the fact is that that experiment has failed. Refusing to recognize that failure will not enhance prospects for another such experiment in the future.

Indeed, it should have come as no surprise that, in September 2002, the United States felt free to announce in its national security document that it would no longer be bound by the charter's rules governing the use of force. Those rules have collapsed. "Lawful" and "unlawful" have ceased to be meaningful terms as applied to the use of force. As Powell said on October 20, "the president believes he now has the authority [to intervene in Iraq] ... *just as we did in Kosovo.*" There was, of course, no Security Council authorization for the use of force by NATO against Yugoslavia. That action blatantly violated the UN Charter, which does not permit humanitarian intervention any more than it does preventive war. But Powell was nonetheless right: the United States did indeed have all the authority it needed to attack Iraq—not because the Security Council authorized it, but because there was no international law forbidding it. It was therefore impossible to act unlawfully.

HOT AIR

THESE, THEN, were the principal forces that dismasted the Security Council. Other international institutions also snapped in the gale, including NATO—when France, Germany, and Belgium tried to block

it from helping to defend Turkey's borders in the event of a war in Iraq. ("Welcome to the end of the Atlantic alliance," said François Heisbourg, an adviser to the French foreign ministry).

Why did the winds of power, culture, and security overturn the legalist bulwarks that had been designed to weather the fiercest geopolitical gusts? To help answer this question, consider the following sentence: "We have to keep defending our vital interests just as before; we can say no, alone, to anything that may be unacceptable." It may come as a surprise that those were not the words of administration hawks such as Paul Wolfowitz, Donald Rumsfeld, or John Bolton. In fact, they were written in 2001 by Védrine, then France's foreign minister. Similarly, critics of American "hyperpower" might guess that the statement, "I do not feel obliged to other governments," must surely have been uttered by an American. It was in fact made by German Chancellor Gerhard Schröder on February 10, 2003. The first and last geopolitical truth is that states pursue security by pursuing power. Legalist institutions that manage that pursuit maladroitly are ultimately swept away.

The French goal was never to disarm Iraq; it was to strenghten France.

A corollary of this principle is that, in pursuing power, states use those institutional tools that are available to them. For France, Russia, and China, one of those tools is the Security Council and the veto that the charter affords them. It was therefore entirely predictable that these three countries would wield their veto to snub the United States and advance the project that they had undertaken: to return the world to a multipolar system. During the Security Council debate on Iraq, the French were candid about their objective. The goal was never to disarm Iraq. Instead, "the main and constant objective for France throughout the negotiations," according to its UN ambassador, was to "strengthen the role and authority of the Security Council" (and, he might have added, of France). France's interest lay in forcing the United States to back down, thus appearing to capitulate in the face of French diplomacy. The United States, similarly, could reasonably have been expected to use the council—or to ignore it—to advance Washington's own project: the maintenance of a unipolar system.

"The course of this nation," President Bush said in his 2003 State of the Union speech, "does not depend on the decisions of others."

The likelihood is that had France, Russia, or China found itself in the position of the United States during the Iraq crisis, each of these countries would have used the council—or threatened to ignore it—just as the United States did. Similarly, had Washington found itself in the position of Paris, Moscow, or Beijing, it would likely have used its veto in the same way they did. States act to enhance their own power—not that of potential competitors. That is no novel insight; it traces at least to Thucydides, who had his Athenian generals tell the hapless Melians, "You and everybody else, having the same power as we have, would do the same as we do." This insight involves no normative judgment; it simply describes how nations behave.

The truth, therefore, is that the Security Council's fate never turned on what it did or did not do on Iraq. American unipolarity had already debilitated the council, just as bipolarity paralyzed it during the Cold War. The old power structure gave the Soviet Union an incentive to deadlock the council; the current power structure encourages the United States to bypass it. Meanwhile, the council itself had no good option. Approve an American attack, and it would have seemed to rubber-stamp what it could not stop. Express disapproval of a war, and the United States would have vetoed the attempt. Decline to take any action, and the council would again have been ignored. Disagreement over Iraq did not doom the council; geopolitical reality did. That was the message of Powell's extraordinary, seemingly contradictory declaration on November 10, 2002, that the United States would not consider itself bound by the council's decision—even though it expected Iraq to be declared in "material breach."

It has been argued that Resolution 1441 and its acceptance by Iraq somehow represented a victory for the UN and a triumph of the rule of law. But it did not. Had the United States not threatened Iraq with the use of force, the Iraqis almost surely would have rejected the new inspections regime. Yet such threats of force violate the charter. The Security Council never authorized the United States to announce a policy of regime change in Iraq or to take military steps in that direction. Thus the council's "victory," such as it was, was a victory of diplomacy backed by force—or more accurately, of diplomacy backed by the threat

of unilateral force in violation of the charter. The unlawful threat of unilateralism enabled the "legitimate" exercise of multilateralism. The Security Council reaped the benefit of the charter's violation.

As surely as Resolution 1441 represented a triumph of American diplomacy, it represented a defeat for the international rule of law. Once the measure was passed after eight weeks of debate, the French, Chinese, and Russian diplomats left the council chamber claiming that they had not authorized the United States to strike Iraq—that 1441 contained no element of "automaticity." American diplomats, meanwhile, claimed that the council had done precisely that. As for the language of the resolution itself, it can accurately be said to lend support to both claims. This is not the hallmark of great legislation. The first task of any lawgiver is to speak intelligibly, to lay down clear rules in words that all can understand and that have the same meaning for everyone. The UN's members have an obligation under the charter to comply with Security Council decisions. They therefore have a right to expect the council to render its decisions clearly. Shrinking from that task in the face of threats undermines the rule of law.

The second, February 24 resolution, whatever its diplomatic utility, confirmed this marginalization of the security council. Its vague terms were directed at attracting maximal support but at the price of juridical vapidity. The resolution's broad wording lent itself, as intended, to any possible interpretation. A legal instrument that means everything, however, also means nothing. In its death throes, it had become more important that the council say something than that it say something important. The proposed compromise would have allowed states to claim, once again, that private, collateral understandings gave meaning to the council's empty words, as they had when Resolution 1441 was adopted. Eighty-five years after Woodrow Wilson's Fourteen Points, international law's most solemn obligations had come to be memorialized in winks and nods, in secret covenants, secretly arrived at.

APOLOGIES FOR IMPOTENCE

STATES AND COMMENTATORS, intent on returning the world to a multipolar structure, have devised various strategies for responding to the council's decline. Some European countries, such as France, believed

that the council could overcome power imbalances and disparities of culture and security by acting as a supranational check on American action. To be more precise, the French hoped to use the battering ram of the Security Council to check American power. Had it worked, this strategy would have returned the world to multipolarity through supranationalism. But this approach involved an inescapable dilemma: what would have constituted success for the European supranationalists?

The French could, of course, have vetoed America's Iraq project. But to succeed in this way would be to fail, because the declared American intent was to proceed anyway—and in the process break the only institutional chain with which France could hold the United States back. Their inability to resolve this dilemma reduced the French to diplomatic ankle-biting. France's foreign minister could wave his finger in the face of the American secretary of state as the cameras rolled, or ambush him by raising the subject of Iraq at a meeting called on another subject. But the inability of the Security Council to actually stop a war that France had clamorously opposed underscored French weakness as much as it did the impotence of the council.

Commentators, meanwhile, developed verbal strategies to forestall perceived American threats to the rule of law. Some argued in a communitarian spirit that countries should act in the common interest, rather than, in the words of Védrine, "making decisions under [their] own interpretations and for [their] own interests." The United States should remain engaged in the United Nations, argued Slaughter, because other nations "need a forum … in which to … restrain the United States." "Whatever became," asked *The New Yorker's* Hendrik Hertzberg, "of the conservative suspicion of untrammeled power … ? Where is the conservative belief in limited government, in checks and balances? Burke spins in his grave. Madison and Hamilton torque it up, too." Washington, Hertzberg argued, should voluntarily relinquish its power and forgo hegemony in favor of a multipolar world in which the United States would be equal with and balanced by other powers.

No one can doubt the utility of checks and balances, deployed domestically, to curb the exercise of arbitrary power. Setting ambition against ambition was the framers' formula for preserving liberty. The problem with applying this approach in the international arena, however, is that it would require the United States to act against its own interests,

to advance the cause of its power competitors—and, indeed, of power competitors whose values are very different from its own. Hertzberg and others seem not to recognize that it simply is not realistic to expect the United States to permit itself to be checked by China or Russia. After all, would China, France, or Russia—or any other country—voluntarily abandon preeminent power if it found itself in the position of the United States? Remember too that France now aims to narrow the disparity between itself and the United States—but not the imbalance between itself and lesser powers (some of which Chirac has chided for acting as though "not well brought-up") that might check France's own strength.

There is, moreover, little reason to believe that some new and untried locus of power, possibly under the influence of states with a long history of repression, would be more trustworthy than would the exercise of hegemonic power by the United States. Those who would entrust the planet's destiny to some nebulous guardian of global pluralism seem strangely oblivious of the age-old question: Who guards that guardian? And how will that guardian preserve international peace—by asking dictators to legislate prohibitions against weapons of mass destruction (as the French did with Saddam)?

In one respect James Madison is on point, although the communitarians have failed to note it. In drafting the U.S. Constitution, Madison and the other founders confronted very much the same dilemma that the world community confronts today in dealing with American hegemony. The question, as the framers posed it, was why the powerful should have any incentive to obey the law. Madison's answer, in the Federalist Papers, was that the incentive lies in an assessment of future circumstances—in the unnerving possibility that the strong may one day become weak and then need the protection of the law. It is the "uncertainty of their condition," Madison wrote, that prompts the strong to play by the rules today. But if the future were certain, or if the strong believed it to be certain, and if that future forecast a continued reign of power, then the incentive on the powerful to obey the law would fall away. Hegemony thus sits in tension with the principle of equality. Hegemons have ever resisted subjecting their power to legal constraint. When Britannia ruled the waves, Whitehall opposed limits on the use of force to execute its naval

blockades—limits that were vigorously supported by the new United States and other weaker states. Any system dominated by a "hyperpower" will have great difficulty maintaining or establishing an authentic rule of law. That is the great Madisonian dilemma confronted by the international community today. And that is the dilemma that played out so dramatically at the Security Council in the fateful clash this winter.

BACK TO THE DRAWING BOARD

THE HIGH DUTY of the Security Council, assigned it by the charter, was the maintenance of international peace and security. The charter laid out a blueprint for managing this task under the council's auspices. The UN's founders constructed a Gothic edifice of multiple levels, with grand porticos, ponderous buttresses, and lofty spires—and with convincing façades and scary gargoyles to keep away evil spirits.

In the winter of 2003, that entire edifice came crashing down. It is tempting, in searching for reasons, to return to the blueprints and blame the architects. The fact is, however, that the fault for the council's collapse lies elsewhere: in the shifting ground beneath the construct. As became painfully clear this year, the terrain on which the UN's temple rested was shot through with fissures. The ground was unable to support humanity's lofty legalist shrine. Power disparities, cultural disparities, and differing views on the use of force toppled the temple.

Law normally influences conduct; that is, of course, its purpose. At their best, however, international legalist institutions, regimes, and rules relating to international security are largely epiphenomenal—that is, reflections of underlying causes. They are not autonomous, independent determinants of state behavior but are the effects of larger forces that shape that behavior. As the deeper currents shift and as new realities and new relations (new "phenomena") emerge, states reposition themselves to take advantage of new opportunities for enhancing their power. Violations of security rules occur when that repositioning leaves states out of sync with fixed institutions that cannot adapt. What were once working rules become paper rules.

This process occurs even with the best-drafted rules to maintain international security, those that once reflected underlying geopolitical dynamics. As for the worst rules—those drafted without regard to the

dynamics—they last even less time and often are discarded as soon as compliance is required. In either case, validity ultimately proves ephemeral, as the UN's decline has illustrated. Its Military Staff Committee died almost immediately. The charter's use-of-force regime, on the other hand, petered out over a period of years. The Security Council itself hobbled along during the Cold War, underwent a brief resurgence in the 1990s, and then flamed out with Kosovo and Iraq.

Some day policymakers will return to the drawing board. When they do, the first lesson of the Security Council's breakdown should become the first principle of institutional engineering: what the design *should* look like must be a function of what it *can* look like. A new international legal order, if it is to function effectively, must reflect the underlying dynamics of power, culture, and security. If it does not—if its norms are again unrealistic and do not reflect the way states actually behave and the real forces to which they respond—the community of nations will again end up with mere paper rules. The UN system's dysfunctionality was not, at bottom, a legal problem. It was a geopolitical one. The juridical distortions that proved debilitating were effects, not causes. "The UN was founded on the premise," Slaughter has observed in its defense, "that some truths transcend politics." Precisely—and therein lay the problem. If they are to comprise working rules rather than paper ones, legalist institutions—and the "truths" on which they act—must flow from political commitments, not vice versa.

A second, related lesson from the UN's failure is thus that rules must flow from the way states actually behave, not how they ought to behave. "The first requirement of a sound body of law," wrote Oliver Wendell Holmes, "is that it should correspond with the actual feelings and demands of the community, whether right or wrong." This insight will be anathema to continuing believers in natural law, the armchair philosophers who "know" what principles must control states, whether states accept those principles or not. But these idealists might remind themselves that the international legal system is, again, voluntarist. For better or worse, its rules are based on state consent. States are not bound by rules to which they do not agree. Like it or not, that is the Westphalian system, and it is still very much with us. Pretending that the system can be based on idealists' own subjective notions of morality won't make it so.

Architects of an authentic new world order must therefore move beyond castles in the air—beyond imaginary truths that transcend politics—such as, for example, just war theory and the notion of the sovereign equality of states. These and other stale dogmas rest on archaic notions of universal truth, justice, and morality. The planet today is fractured as seldom before by competing ideas of transcendent truth, by true believers on all continents who think, with Shaw's Caesar, "that the customs of his tribe and island are the laws of nature." Medieval ideas about natural law and natural rights ("nonsense on stilts," Bentham called them) do little more than provide convenient labels for enculturated preferences—yet serve as rallying cries for belligerents everywhere.

As the world moves into a new, transitional era, the old moralist vocabulary should be cleared away so that decision-makers can focus pragmatically on what is really at stake. The real questions for achieving international peace and security are clear-cut: What are our objectives? What means have we chosen to meet those objectives? Are those means working? If not, why not? Are better alternatives available? If so, what tradeoffs are required? Are we willing to make those tradeoffs? What are the costs and benefits of competing alternatives? What support would they command?

Answering those questions does not require an overarching legalist metaphysic. There is no need for grand theory and no place for self-righteousness. The life of the law, Holmes said, is not logic but experience. Humanity need not achieve an ultimate consensus on good and evil. The task before it is empirical, not theoretical. Getting to a consensus will be accelerated by dropping abstractions, moving beyond the polemical rhetoric of "right" and "wrong," and focusing pragmatically on the concrete needs and preferences of real people who endure suffering that may be unnecessary. Policymakers may not yet be able to answer these questions. The forces that brought down the Security Council—the "deeper sources of international instability," in George Kennan's words—will not go away. But at least policymakers can get the questions right.

One particularly pernicious outgrowth of natural law is the idea that states are sovereign equals. As Kennan pointed out, the notion of sovereign equality is a myth; disparities among states "make a mockery" of the concept. Applied to states, the proposition that all are equal is

belied by evidence everywhere that they are not—neither in their power, nor in their wealth, nor in their respect for international order or for human rights. Yet the principle of sovereign equality animates the entire structure of the United Nations—and disables it from effectively addressing emerging crises, such as access to WMD, that derive precisely from the presupposition of sovereign equality. Treating states as equals prevents treating individuals as equals: if Yugoslavia truly enjoyed a right to nonintervention equal to that of every other state, its citizens would have been denied human rights equal to those of individuals in other states, because their human rights could be vindicated only by intervention. This year, the irrationality of treating states as equals was brought home as never before when it emerged that the will of the Security Council could be determined by Angola, Guinea, or Cameroon—nations whose representatives sat side by side and exercised an equal voice and vote with those of Spain, Pakistan, and Germany. The equality principle permitted any rotating council member to cast a de facto veto (by denying a majority the critical ninth vote necessary for potential victory). Granting a de jure veto to the permanent five was, of course, the charter's intended antidote to unbridled egalitarianism. But it didn't work: the de jure veto simultaneously undercorrected and overcorrected for the problem, lowering the United States to the level of France and raising France above India, which did not even hold a rotating seat on the council during the Iraq debate. Yet the de jure veto did nothing to dilute the rotating members' de facto veto. The upshot was a Security Council that reflected the real world's power structure with the accuracy of a fun-house mirror—and performed accordingly. Hence the third great lesson of last winter: institutions cannot be expected to correct distortions that are embedded in their own structures.

STAYING ALIVE?

THERE IS LITTLE REASON to believe, then, that the Security Council will soon be resuscitated to tackle nerve-center security issues, however the war against Iraq turns out. If the war is swift and successful, if the United States uncovers Iraqi WMD that supposedly did not exist, and if nation-building in Iraq goes well, there likely will be little impulse

to revive the council. In that event, the council will have gone the way of the League of Nations. American decision-makers will thereafter react to the council much as they did to NATO following Kosovo: Never again. Ad hoc coalitions of the willing will effectively succeed it.

If, on the other hand, the war is long and bloody, if the United States does not uncover Iraqi WMD, and if nation-building in Iraq falters, the war's opponents will benefit, claiming that the United States would not have run aground if only it had abided by the charter. But the Security Council will not profit from America's ill fortune. Coalitions of adversaries will emerge and harden, lying in wait in the council and making it, paradoxically, all the more difficult for the United States to participate dutifully in a forum in which an increasingly ready veto awaits it.

The Security Council will still on occasion prove useful for dealing with matters that do not bear directly on the upper hierarchy of world power. Every major country faces imminent danger from terrorism, for example, and from the new surge in WMD proliferation. None will gain by permitting these threats to reach fruition. Yet even when the required remedy is nonmilitary, enduring suspicions among the council's permanent members and the body's loss of credibility will impair its effectiveness in dealing with these issues.

However the war turns out, the United States will likely confront pressures to curb its use of force. These it must resist. Chirac's admonitions notwithstanding, war is not "always, always, the worst solution." The use of force was a better option than diplomacy in dealing with numerous tyrants, from Milosevic to Hitler. It may, regrettably, sometimes emerge as the only and therefore the best way to deal with WMD proliferation. If judged by the suffering of noncombatants, the use of force can often be more humane than economic sanctions, which starve more children than soldiers (as their application to Iraq demonstrated). The greater danger after the second Persian Gulf War is not that the United States will use force when it should not, but that, chastened by the war's horror, the public's opposition, and the economy's gyrations, it will not use force when it should. That the world is at risk of cascading disorder places a greater rather than a lesser responsibility on the United States to use its power assertively to halt or slow the pace of disintegration.

All who believe in the rule of law are eager to see the great caravan of humanity resume its march. In moving against the centers of disorder, the United States could profit from a beneficent sharing of its power to construct new international mechanisms directed at maintaining global peace and security. American hegemony will not last forever. Prudence therefore counsels creating realistically structured institutions capable of protecting or advancing U.S. national interests even when military power is unavailable or unsuitable. Such institutions could enhance American preeminence, potentially prolonging the period of unipolarity.

Yet legalists must be hard-headed about the possibility of devising a new institutional framework anytime soon to replace the battered structure of the Security Council. The forces that led to the council's undoing will not disappear. Neither a triumphant nor a chastened United States will have sufficient incentive to resubmit to old constraints in new contexts. Neither vindicated nor humbled competitors will have sufficient disincentives to forgo efforts to impose those constraints. Nations will continue to seek greater power and security at the expense of others. Nations will continue to disagree on when force should be used. Like it or not, that is the way of the world. In resuming humanity's march toward the rule of law, recognizing that reality will be the first step.