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THE PROBLEMATIC RHETORIC OF A “RULES-BASED INTERNATIONAL ORDER” AND SELECTIVE SUPPORT FOR PROCEEDINGS BEFORE INTERNATIONAL COURTS

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The idea of a “rules-based” international order evokes a system governed by rules and institutions, rather than power and self-interest. In 2010, the U.S. National Security Strategy (NSS) posited that the United States “must pursue a rules-based international system that can advance our own interests by serving mutual interests.”¹ The 2015 NSS used the term “rules-based” five times, arguing that “[s]trong and sustained American leadership is essential to a rules-based international order that promotes global security and prosperity as well as the dignity and human rights of all peoples.”² While the term did not appear in the 2017 NSS,³ it appeared eight times in the 2022 NSS.⁴ Prior to the second Trump administration, the term pervaded U.S. foreign policy discourse.⁵

The United States’ invocation of a “rules-based order” (RBO) has become a focal point for criticism of U.S. foreign policy. For example, Russian Foreign Minister Sergey Lavrov stated in 2019:

There have been attempts . . . to replace the universal norms of international law with a “rules-based order.” This term was recently coined to camouflage a striving to invent rules depending on changes in

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1. THE WHITE HOUSE, *National Security Strategy* (2010), https://obamawhitehouse.archives.gov/sites/default/files/rss_viewer/national_security_strategy.pdf.

2. U.S. Dep’t of Def., *National Security Strategy* (2015), <https://history.defense.gov/Portals/70/Documents/nss/NSS2015.pdf>.

3. Defense Secretary Jim Mattis reportedly began a July 2017 briefing with a slide that read, “The post-war international rules-based order is the greatest gift of the greatest generation.” Steve Bannon, then-President Trump’s adviser, remarked: “If you stood up and threatened to shoot [Trump], he couldn’t say ‘post-war rules-based international order.’ It’s just not the way he thinks.” See *National Security Strategy of the United States of America* (Dec. 2017), <https://history.defense.gov/Portals/70/Documents/nss/NSS2017.pdf>; LOWY INST., *The Rules-Based Order: Interactive Timeline*, <https://interactives.lowyinstitute.org/features/rules-based-order/>; Jeremy Cliffe, *Why the West Should Stop Talking About the Rules-Based Order*, NEW STATESMAN (June 2024), <https://www.newstatesman.com/international-politics/geopolitics/2024/06/why-the-west-should-stop-talking-about-the-rules-based-order> (noting that “[e]ven under Trump, senior US officials continued to use the RBIO as a stick with which to beat their rivals”).

4. THE WHITE HOUSE, *Biden-Harris Administration’s National Security Strategy* (Oct. 2022), <https://bidenwhitehouse.archives.gov/wp-content/uploads/2022/10/Biden-Harris-Administrations-National-Security-Strategy-10.2022.pdf>.

5. Google Books Ngram Viewer, https://books.google.com/ngrams/graph?content=rulesbased+order%2Crulesbased+international+order&year_start=2002&year_end=2022&corpus=en&smooth ng=0&case_insensitive=false.

*the political situation so as to be able to put pressure on disagreeable states and often even on allies.*⁶

*Critics, including South African jurist John Dugard, contrast a “rules-based order” with a universal system of international law and argue that a “rules-based order” is “an order employed by the West, [and] particularly the United States, to ensure its dominance.”*⁷

*The United States has undoubtedly used the language of a “rules-based order” to further its own perceived interests.*⁸ *This is not surprising, since governments are charged with protecting and promoting the well-being of their populations. The more fundamental problem with deploying the concept of a “rules-based order” is that the United States has portrayed itself as the defender of this order, even though it has stretched or ignored widely accepted rules-based constraints on its behavior—sometimes in the name of exigent circumstances, and sometimes without any clear public explanation.*⁹ *Although greater self-restraint by the United States would not necessarily lead to greater compliance by other powerful states, it could deprive those states of the rhetorical force of credible allegations of hypocrisy. This, in turn, could help the United States secure greater buy-in from other countries on issues that require international cooperation and in which the United States could exercise leadership in the common interest.*

An important caveat: Talking about U.S. “self-restraint” and “leadership in the common interest” might seem anachronistic, especially in late 2025. In the time between this Article’s drafting and its publication, the second Trump administration has disregarded both domestic and international law with little

6. Stefan Talmon, *Rules-Based Order v. International Law*, GPIL - GERMAN PRACTICE IN INTERNATIONAL LAW (Jan. 20, 2019), <https://gpil.jura.uni-bonn.de/2019/01/rules-based-order-v-international-law/>.

7. John Dugard, *The Choice Before Us: International Law or a Rules-Based International Order?*, 34 LEIDEN J. INT'L L. 223 (2023), <https://www.cambridge.org/core/journals/leiden-journal-of-international-law/article/choice-before-us-international-law-or-a-rulesbased-international-order/7BEDE2312FDF9D6225E16988FD18BAF0>.

8. This contribution focuses on the United States, although the idea of a “rules-based order” has also been prevalent in Australian rhetoric and was reportedly first used in 2008 by then-Australian Prime Minister Kevin Rudd. See CSS ETH Zurich, *A Rules-Based International Order and Its Opponents*, CSS Analyses in Security Policy No. 317 (May 2018), <https://ethz.ch/content/dam/ethz/special-interest/gess/ci/s/center-for-securities-studies/pdfs/CSSAnalyse317-EN.pdf>; LOWY INST., *The Rules-Based Order: Interactive Timeline*, <https://interactives.lowyinstitute.org/features/rules-based-order/>. The government of Narendra Modi in India has also adopted the rhetoric of a rules-based order. See Harsh V. Pant & Ambika Vishwanath, *India’s Role in the Emerging World Order*, 44 STRATEGIC ANALYSIS 91 (2020), <https://www.jstor.org/stable/26924336>. The concept has also been invoked by the U.N. Secretary-General. See United Nations Operational Support, *World Needs Commitment to Rules-Based Order: Secretary-General Guterres Tells UN Assembly*, <https://news.un.org/en/story/2018/09/1019962>.

9. I have written previously about the importance of public reason-giving as part of international law’s “culture of justification.” Chimène I. Keitner, *Explaining International Acts*, 63 MCGILL L.J. 1 (2018), <https://lawjournal.mcgill.ca/article/explaining-international-acts/>.

pretense of compliance.¹⁰ This Article argues that the United States' use of the term "rules-based international order" in recent years functioned less as a synonym for international law than as a rhetorical substitute for it—one that legitimized selective compliance and double standards by the very states that claimed to defend it. This, in turn, makes it more difficult to push back against what I call "international law gaslighting"—the deliberate deployment of pretextual legal justifications or "law talk" as window dressing for blatantly unlawful actions.¹¹ Authoritarian leaders are adept at gaslighting and even outright mockery of law and legal institutions.¹² The antidote to erosion of legal norms in the face of double standards is to encourage greater consistency and emphasize the long-term systemic benefits of leading by example; the antidote to gaslighting and mockery is a much deeper social reconstruction of the value of truth and the importance of standing and reputation in both domestic and international politics.

This brief contribution proceeds as follows: Part II situates the concept of a "rules-based order" in the context of ongoing debates about double standards in international law. Part III explores several examples of inconsistent U.S. attitudes towards proceedings in international courts that have fueled allegations of selectivity. Part IV offers concluding thoughts.

I. Rule-Makers and Rule-Takers

International law has long been criticized as entrenching, rather than remedying, power inequalities. Critics like John Dugard view the "rules-based order" as something worse: "the United States' alternative to international law, an order that encapsulates international law as interpreted by the United States to accord with its national interests."¹³ This critique presupposes the existence

10. See, e.g., Marty Lederman, *The Many Ways in Which the September 2 Caribbean Strike Was Unlawful . . . and the Grave Line the Military Has Crossed*, JUST SECURITY (Sep. 10, 2025), <https://www.justsecurity.org/120296/many-ways-caribbean-strike-unlawful/>; Mark Nevitt, *Labels, Not Law, to Justify Lethal Force: Inside the Venezuelan Boat Strike*, JUST SECURITY (Sep. 5, 2025), <https://www.justsecurity.org/119985/labels-ustify-lethal-force-venezuelan-boat-strike/>.

11. The distinction between double standards and gaslighting might be difficult to draw in certain circumstances, and can turn in large part on the intent of the person deploying legal language. This is the main thrust of Fuad Zarbiyev's distinction between "lies and creative interpretation," on the one hand, and "bullshit," on the other. See Fuad Zarbiyev, *Of Bullshit, Lies, and "Demonstrably Rubbish" Justifications in International Law*, VÖLKERRECHTSBLOG (Mar. 18, 2022), <https://voelkerrechtsblog.org/of-bullshit-lies-and-demonstrably-rubbish-justifications-in-international-law/>.

12. These observations resonate with Tom Ginsburg's exploration of what he calls "authoritarian international law." See Tom Ginsburg, *Authoritarian International Law?*, 114 AM. J. INT'L L. 221 (2020), <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/authoritarian-international-law/FEE3604900EE3EF547B5A87BEA265571>.

13. Russia and China have been the most vocal in attempting to de-legitimize the U.S. vision, for example in works cited by Dugard. Grenville Cross, *Rules-Based Order: Hypocrisy Masquerading as Principle*, CHINA DAILY (May 3, 2022), <https://www.chinadaily.com.cn/a/202205/03/WS6270b265a310fd2b29e5aacc6.html>; A. N. Vylegzhanin et

of an authentic body of international law, free from U.S.-driven distortions. Certainly, one can look to the U.N. General Assembly and other international fora to discern where U.S. positions appear to deviate from the majority view. However, the idea that “international law” exists independently from those who interpret and invoke it underplays its inherent dynamism. Moreover, as Dugard acknowledges, “double standards, exceptionalism, and hypocrisy are[also] a feature of the foreign policies of states that accept international law and do not favor the RBO.”¹⁴ The real target of criticism might not be the concept of a “rules-based order” per se, but the way in which this concept has been invoked in contemporary political discourse.

The term “rules-based order” gained traction in the post-Cold War era as an alternative to the dominant concept of “liberal” order associated with Western capitalist democracies.¹⁵ Political economist Jerome Roos attributes early uses of the term “rules-based system” to the “Clintonite and Blairite brand of neoliberalism” that sought to shield their trade policies from political opposition by framing them as technical and impartial.¹⁶ Rather than describing an inclusive international order, the United States has deployed the idea of a “rules-based order” more recently to distinguish “countries that subscribe to the rules-based international order” from those that do not.¹⁷ Some have even characterized recent global dynamics as involving a “new Cold War.”¹⁸ For example, the 2022 NSS asserts that Russia and China “concluded that the success of a free and open rules-based international order pose[s] a threat to their regimes and stifled their ambitions.”¹⁹ Consequently, “they now seek to remake the international order to create a world conducive to their highly personalized and repressive type of autocracy.”²⁰ In this telling, the Cold War-era competition between communism and capitalism has been reframed as a

al., *The Concept “Rules-Based Order” in International Legal Discourse*, 2 MOSCOW J. INT’L L. 35 (2021), https://www.mjil.ru/jour/article/view/1190?locale=en_US.

14. Dugard, *supra* note 7, at 228.

15. G. John Ikenberry, *The End of Liberal International Order?*, 94 INT’L AFF. 7 (2018), <https://academic.oup.com/ia/article/94/1/7/4762691>.

16. Jerome Roos, *Why the West Should Stop Talking About the Rules-Based Order*, NEW STATESMAN (June 6, 2024), <https://www.newstatesman.com/international-politics/geopolitics/2024/06/why-the-west-should-stop-talking-about-the-rules-based-order>.

17. THE WHITE HOUSE, *Biden-Harris Administration’s National Security Strategy* (Oct. 2022), <https://bidenwhitehouse.archives.gov/wp-content/uploads/2022/10/Biden-Harris-Administrations-National-Security-Strategy-10.2022.pdf>.

18. Richard Haass & Charles A. Kupchan, *Should the U.S. Pursue a New Cold War with China?*, BROOKINGS (Mar. 24, 2021), <https://www.brookings.edu/articles/should-the-us-pursue-a-new-cold-war-with-china/>.

19. THE WHITE HOUSE, *National Security Strategy* (Oct. 12, 2022), <https://bidenwhitehouse.archives.gov/wp-content/uploads/2022/10/Biden-Harris-Administrations-National-Security-Strategy-10.2022.pdf>.

20. *Id.* at 8-9.

competition between democracy and autocracy, in which a singular “rules-based order”—defined largely by the United States—offers the key to global stability and prosperity.

The ability to shape global rules of engagement through persuasion rather than coercion has long been understood as a core feature of “soft power.”²¹ RBO critic Roos observes that:

The [RBO] was never about the rules themselves. It was about preserving the capacity of the United States to shape the rules on its own terms. As Obama stated in 2016, “America should write the rules. America should call the shots. Other countries should play by the rules that America and our partners set, and not the other way around.”²²

President Obama made this point as part of his attempt to persuade a skeptical domestic audience to support the Trans-Pacific Partnership.²³ Domestic opposition to (and misunderstanding of) international law and institutions has also been a routine feature of U.S. politics. Persuading national constituencies (and some national leaders) of the value of adhering to agreed-upon international rules, even when doing so seems inconsistent with the country’s short-term interest, is a perennial challenge for global governance in a system of sovereign states. Yet, securing domestic buy-in can come at the expense of alienating other countries whose cooperation and coalescence around shared goals (if not shared values) is essential.

To the extent that there ever was a post-World War II consensus within and among a critical mass of countries on core questions of governance, this consensus has been breaking down.²⁴ As Heike Krieger and Georg Nolte (now a judge on the International Court of Justice) warned in 2016, “we may now be seeing a crisis of unusual proportions” in the development of international law and international relations, “which could require a reassessment of the state and role of international law.”²⁵ Foreign policy experts Jon Alterman and Lily McElwee explain this dynamic as follows:

21. Joseph Nye, *Soft power: the origins and political progress of a concept*, 3 PALGRAVE COMM’NS, Feb. 21, 2017, at 1, <https://www.nature.com/articles/palcomms20178>.

22. Roos, *supra* note 16.

23. *President Obama: The TPP Would Let America, Not China, Lead the Way on Global Trade*, WASH. POST (May 2, 2016), https://www.washingtonpost.com/opinions/president-obama-the-tpp-would-let-america-not-china-lead-the-way-on-global-trade/2016/05/02/680540e4-0fd0-11e6-93ae-50921721165d_story.html.

24. Judy Dempsey, *Judy Asks: Is the Post-WWII Global Order Finally Breaking Down?*, CARNEGIE EUR. (May 6, 2015), <https://carnegieendowment.org/europe/strategic-europe/2015/05/judy-asks-is-the-post-wwii-global-order-finally-breaking-down?lang=en>.

25. Heike Krieger & Georg Nolte, *The International Rule of Law—Rise or Decline?* POINTS OF DEPARTURE 5 (KFG Int’l L., Working Paper No. 1, Oct. 2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2866940.

The fragmented global response to the war in Ukraine shows that while the United States and its allies often see their policies as rooted in efforts to preserve the rules-based international order, many rising states see them differently. These rising states see those policies as part of an effort by a small number of countries to preserve their own decades-old advantages at the expense of an increasingly large and consequential fraction of the world's population.²⁶

Even if the United States decided to embrace and internalize international legal rules more fulsomely than it has in the past (an ever-dwindling prospect in the current political climate), it appears unlikely that large swaths of the world would view U.S. definitions and interpretations of those rules as sincere and legitimate.

The potential indeterminacy and flexibility of international law have often been perceived as a strength in a pluralist system of sovereign nation-states. However, to the extent that powerful states interpret international law strategically and engage in actions that many other states view as internationally unlawful, this elasticity can be stretched to a breaking point. As Krieger and Nolte observed, “[u]nilateral interventions and unilateral interpretations of U.N. Security Council resolutions in the cases of Kosovo, Iraq and Libya may have contributed to undermining the credibility not only of the intervening States, but may even have called into question the Charter system as a whole.”²⁷ The consent-based nature of international law means that countries must rely on authoritative institutions and procedures to resolve interpretive disagreements if they are unable to persuade each other of the strength of their respective views. These institutions and procedures have come under tremendous pressure, as illustrated by proceedings in the International Court of Justice (ICJ) and the International Criminal Court (ICC).

II. Selective Support for International Courts

The armed conflicts in Ukraine and Gaza have put international courts in the spotlight. The U.N. Security Council's role in maintaining international

26. Jon B. Alterman & Lily McElwee, *Pursuing Global Order in the Twenty-First Century*, CTR. FOR STRATEGIC & INT'L STUD. (Apr. 22, 2024), <https://features.csis.org/pursuing-global-order/>. See also Andrew Hurrell, *Beyond the BRICS: Power, Pluralism, and the Future of Global Order*, 32 ETHICS & INT'L AFF. (SPECIAL ISSUE 1: RISING POWERS AND THE INTERNATIONAL ORDER) 89–101 (2018) (“The shared recognition of the problem to be solved, the shared sense of potential benefits from cooperation, the legitimacy of all the players around the table, and the existence of a shared language for communication and contracting were all simply assumed.”), <https://www.ethicsandinternationalaffairs.org/journal/beyond-the-brics-power-pluralism-and-the-future-of-global-order>.

27. Stefan Talmon, *Rules-based order v. international law?*, GPIL—GER. PRAC. IN INT'L L. (Jan. 20, 2019), <https://gpil.jura.uni-bonn.de/2019/01/rules-based-order-v-international-law/>.

peace and security has been eviscerated by the permanent members' veto. This has led affected parties to turn to the General Assembly (for example, under the Uniting for Peace procedures) and to other institutions with international legal authority. Although the jurisdiction of treaty-based international courts is grounded in state consent, the fact that courts determine their own jurisdiction means that recalcitrant states can find themselves party to international proceedings.

Fuad Zarbiyev has used the term "*Nicaragua Moment*" to denote instances in which an international court stands up to a powerful state.²⁸ The circumstances giving rise to that name are worth revisiting. The ICJ was created after World War II to provide a forum for the peaceful resolution of international disputes. Article 36(2) of the ICJ Statute allows states to accept the court's compulsory jurisdiction with respect to enumerated categories of disputes, subject to any reservations the state makes at the time of acceptance. In November 1984, the ICJ ruled that it had jurisdiction over claims brought by Nicaragua against the United States relating to military and paramilitary activities conducted in Nicaragua and in the waters off its coasts.²⁹ The United States had raised multiple jurisdictional objections, including (1) that Nicaragua had not properly accepted the court's compulsory jurisdiction (which must exist on a reciprocal basis under the terms of Article 36(2)), (2) that the United States had sought to exclude disputes with any Central American state from its consent to ICJ jurisdiction, and (3) that the United States' consent to the court's compulsory jurisdiction explicitly excluded disputes arising under multilateral treaties, including the U.N. Charter.

The ICJ rejected all three arguments. It found that Nicaragua's 1945 ratification of the U.N. Charter and ICJ Statute had the legal effect of confirming its previous consent in 1929 to be sued before the old Permanent Court of International Justice (PCIJ), even though Nicaragua had not effectively ratified the PCIJ's Statute. It then found that the United States' attempted modification of the scope of its consent to be sued should be treated as a termination of consent, which the United States had previously indicated would only take effect with six months' notice. Finally, it found that Nicaragua's claims arose both under the U.N. Charter and under parallel provisions of customary international law and were therefore not affected by the multilateral treaty exclusion. Harvard law professor Detlev Vagts observed

28. Fuad Zarbiyev, *Not Having Your International Law and Eating It. On the Nicaragua Moment of International Criminal Justice*, EJIL:TALK! (Dec. 16, 2024), <https://www.ejiltalk.org/not-having-your-international-law-and-eating-it-on-the-nicaragua-moment-of-international-criminal-justice/>.

29. *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. U.S.), Judgment, 1984 I.C.J. 392 (Nov. 26).

that “[a]fter nearly thirty years of treating jurisdictional questions in a most cautious and conservative way, the Court stretched to bring this case within its jurisdictional scope.”³⁰ The United States declined to participate further in the proceedings, leaving the court to issue a merits judgment without the benefit of U.S. argumentation.³¹

Keith Highet, then-President of the American Society of International Law, called the ICJ’s merits judgment “one of [the Court’s] most important judgments in forty years” and “certainly the most important for the United States.”³² The crux of the United States’ defense to Nicaragua’s allegations was that it had been acting in “collective” self-defense against Nicaragua on behalf of El Salvador, Costa Rica, and Honduras. In Highet’s view, “[b]y appearing [at the merits stage], the United States . . . might actually have prevailed on a number of these major points, or have shaped the decision of the Court more consistently with the positions it espoused.”³³ Instead, the United States found itself vetoing attempts by Nicaragua to obtain confirmation of the court’s decision by the U.N. Security Council, which Highet noted was “the first instance of a veto of article 94 enforcement in the U.N. repertory of practice.”³⁴ He worried that “the present position of the United States [in vetoing enforcement] reflect[s] an assumption that no judgment of the International Court is enforceable against a permanent member of the Security Council.”³⁵ That said, he also predicted that “[b]y seeming to attack the Court as an institution, however, the United States’ action could precipitate and reinforce a more positive attitude toward the Court on the part of the vast preponderance of other member States.”³⁶ Indeed, international courts have been upheld as an important forum in which weaker states can challenge more powerful ones.³⁷ Writing nearly forty years after Highet, Zarbiyev writes that the *Nicaragua* case “prominently features in the collective memory of international law scholars as a moment of pride for their discipline.”³⁸

30. Detlev F. Vagts, *Going to Court, Internationally*, 87 MICH. L. REV. 1712, 1714 (1989), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=3400&context=mlr>.

31. Statement by the U.S. Department of State, Jan. 18, 1985, <https://iilj.org/wp-content/uploads/2016/08/Nicaragua-v.-USA-Statement-by-the-US-Department-of-State-Jan.-18-1985.pdf>. The ICJ had previously declined El Salvador’s application to intervene in the proceedings,

32. Keith Highet, *Between a Rock and a Hard Place - The United States, the International Court, and the Nicaragua Case*, 21 INT’L L. 1083, 1083 (1987) (writing in his personal capacity).

33. *Id.* at 1092.

34. *Id.* at 1093 (expressing skepticism about the lawfulness of exercising the veto in these circumstances).

35. *Id.* at 1095.

36. *Id.* at 1096.

37. Douglas Guilfoyle, *Small States, Legal Argument, and International Disputes*, CTR. FOR INT’L L. (July 7, 2023), <https://cil.nus.edu.sg/blogs/small-states-legal-argument-and-international-disputes/>.

38. Zarbiyev, *supra* note 28.

The *Nicaragua* case prompted the United States to withdraw from the ICJ's compulsory jurisdiction.³⁹ The United States has continued to appear before the ICJ in both contentious and advisory proceedings, and it has not refused to participate since the *Nicaragua* case. It has, however, withdrawn from other treaties that countries used as a basis for ICJ jurisdiction in disputes with the United States.⁴⁰ The United States has also had a permanent judge on the ICJ since the court's creation, in line with the General Assembly's and the Security Council's non-binding practice (broken for the first time in 2017) of electing a judge from each of the five permanent members of the Security Council to the fifteen-member court.⁴¹ Yet the United States is clearly wary of the ways in which U.N. institutions can be mobilized against perceived U.S. interests. Consider the use of the word "infect" in the State Department's January 18, 1985 announcement:

We have seen in the United Nations, in the last decade or more, how international organizations have become more and more politicized against the interests of the Western democracies. It would be a tragedy if these trends were to infect the International Court of Justice.⁴²

As Vagts suggested candidly at the time, "the underlying problem with the ICJ from an American perspective [may be] that the attitudes of the Third World play too large a role in the Court's thinking."⁴³ Yet, as he also acknowledged, withdrawing from adjudication by genuinely international courts would forsake "something significant: the concept of a true world court generating law for the whole community of nations."⁴⁴ As Zarbiyev observes, "Precisely because international legal discourse—even when deployed by powerful countries—cannot avoid the egalitarian language (at the very least, for appearance purposes), it can always be turned and used against those

39. Letter from George P. Shultz, U.S. Sec'y of State, to Javier Pérez de Cuéllar, U.N. Sec'y-Gen. (Oct. 7, 1985), <https://ijl.org/wp-content/uploads/2016/08/Nicaragua-v.-USA-Statement-by-the-US-Department-of-State-Jan.-18-1985.pdf>.

40. See generally Chimène Keitner, *What Are the Consequences of the Trump Administration's Recent Treaty Withdrawals?*, JUST SECURITY (Oct. 17, 2018), <https://www.justsecurity.org/61101/consequences-trump-administrations-treaty-withdrawals/>.

41. Owen Bowcott, *No British Judge on World Court for First Time in its 71-Year History*, THE GUARDIAN (Nov. 20, 2017), <https://www.theguardian.com/law/2017/nov/20/no-british-judge-on-world-court-for-first-time-in-its-71-year-history>.

42. Statement by the U.S. Dep't of State, *U.S. Withdrawal from the Proceedings Initiated by Nicaragua in the International Court of Justice* (Jan. 18, 1985), <https://www.nytimes.com/1985/01/19/world/text-of-us-statement-on-withdrawal-from-case-before-the-world-court.html>.

43. Vagts, *supra* note 30 at 1717.

44. *Id.*

countries.”⁴⁵ That is a feature, not a bug, of an international system based on reciprocity.⁴⁶

Fast-forward forty years, to Ukraine’s case against Russia in the ICJ for alleged violations of the Genocide Convention.⁴⁷ Jurisdiction in that case was founded on another provision in the ICJ Statute: Article 36(1), which refers to jurisdiction over “matters specially provided for . . . in treaties and conventions in force.”⁴⁸ The Genocide Convention contains a compromissory clause indicating that “[d]isputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention . . . shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.”⁴⁹ Ukraine and Russia are both parties to the Genocide Convention, and Ukraine argued that a dispute existed under the treaty because Russia had used unfounded allegations of genocide against Ukraine as a pretext for its full-scale invasion in February 2022.

The ICJ issued a provisional measures order in March 2022 based on a determination “that Ukraine can plausibly assert a right under the Genocide Convention and that there is a link between this right and the provisional measures requested.”⁵⁰ Given the urgency and risk of irreparable harm, the ICJ ordered Russia to “immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine.”⁵¹ The United

45. Zarbiyev, *supra* note 28.

46. See Guy de Lacharrière, quoted in Zarbiyev, *supra* note 28; Guy de Lacharrière, *LA POLITIQUE JURIDIQUE EXTÉRIEURE*, 2023, at 85, <https://www.lgdj.fr/la-politique-juridique-exterieure-9782802771531.html> (“In search for the closest possible correspondence between international law and its own convenience, a government does not consider it automatically appropriate that the rule valid for itself should also be valid for others. Neither spontaneously nor primarily does it think in terms of general rules, and nothing is further from its preferences than the very idea of the automatic and necessary generality of rules applying to the conduct of all states.”). My experience working in the Legal Adviser’s office at the U.S. State Department revealed greater attention to the implications of the general applicability of international legal rules, at least among State Department lawyers. How strongly this recognition shapes political decision-making depends on a range of factors. See, e.g., Rebecca Ingber, *Interpretation Catalysts and Executive Branch Legal Decisionmaking*, 38 YALE J. INT’L L. 359 (2013), <https://campuspress.yale.edu/yjil/files/2016/09/38-2-ingber-interpretation-catalysts-z4fnt1.pdf>; Oona A. Hathaway, *National Security Lawyering in the Post-War Era: Can Law Constrain Power?*, 68 UCLA L. REV. 2 (2021), <https://www.uclalawreview.org/wp-content/uploads/securepdfs/2021/01/Vol-68-1-Hathaway.pdf>; Ashley S. Deeks, *Secret Reason-Giving*, 129 YALE L.J. 612 (2020), <https://yalelawjournal.org/article/secret-reason-giving>.

47. *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide* (Ukr. v. Russ.).

48. Statute of the International Court of Justice, art. 36 ¶ 1.

49. The Convention on the Prevention and Punishment of the Crime of Genocide, art. IX, 78 U.N.T.S. 277 (1951).

50. *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide*, Order, 2022 I.C.J. ¶ 73 (Mar. 16, 2022).

51. *Id.*; see generally Chimène Keitner & Zoe Tatarsky, *Q&A: The ICJ’s Order on Provisional Measures in Ukraine v. Russian Federation*, JUST SECURITY (Mar. 16, 2022), <https://www.justsecurity.org/80703/qa-icj-order-on-provisional-measures-ukraine-russia/>.

States subsequently sought to intervene in the case and affirmed in its submission that “[n]o provision of the Genocide Convention, properly interpreted in good faith, explicitly or implicitly authorizes a Contracting Party, acting on the pretext of preventing or punishing genocide, to commit aggression, including territorial acquisition resulting from aggression.”⁵² In addition, the United States argued that “the Contracting Parties intended the scope of the compromissory clause to be understood broadly.”⁵³

In its February 2024 judgment on Russia’s preliminary objections, the court ultimately found that it lacked jurisdiction over claims regarding Russia’s use of force because those claims “do not fall within the scope *ratione materiae* of the [Genocide] Convention.”⁵⁴ Instead, the ICJ’s subject matter jurisdiction is limited to addressing Ukraine’s request that it “[a]djudge and declare that there is no credible evidence that Ukraine is responsible for committing genocide” in the Donetsk and Luhansk oblasts of Ukraine.⁵⁵

The United States’ support for Ukraine’s broad interpretation of the compromissory clause in the Genocide Convention does not necessarily contradict its narrow construction of ICJ jurisdiction in other cases, but it does underscore the role of political factors in U.S. interactions with the ICJ. While this apparently contradictory stance might not be surprising, it has an undeniably corrosive effect on the idea of international law as an equalizing force in international relations. For example, the United States welcomed the ICJ’s February 2024 provisional measures order, stating:

The Court—which plays a vital role in the peaceful settlement of disputes under the U.N. Charter—stressed the need for States to act in conformity with their obligations under international law, including the laws of war. And the Court expressed deep concern about the extreme vulnerability of the civilian population of Ukraine, the numerous civilian deaths and injuries that have resulted from the Kremlin’s actions, and the significant material damage, including the destruction of buildings and infrastructure. . . . We welcome the Court’s order and call on the Russian Federation to comply with the

52. *Allegations of Genocide*, Order, 2022 I.C.J. ¶ 29 (Mar. 16, 2022).

53. *Id.* ¶ 30; see also Chimène Keitner, *US Intervention in Ukraine v. Russia at the ICJ: A Q&A with Chimène Keitner*, JUST SECURITY (Sep. 27, 2022), <https://www.justsecurity.org/83144/us-intervention-ukraine-russia-icj-keitner/>.

54. *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide* (Ukr. v. Russ.), Preliminary Objections, ¶ 144 (Feb. 2, 2024), <https://www.icj-cij.org/sites/default/files/case-related/182/182-20240202-jud-01-00-en.pdf>.

55. *Id.* ¶ 54.

order, immediately cease its military operations in Ukraine, and to establish unhindered humanitarian access in Ukraine.⁵⁶

Less than two years later, the United States took a very different position when another country instituted proceedings in the ICJ under the Genocide Convention. This application was brought by South Africa against Israel, a long-standing U.S. strategic ally.⁵⁷ Again, the court granted provisional measures.⁵⁸ In reacting to those provisional measures, the United States affirmed the role of the ICJ as “the principal judicial organ of the United Nations” and emphasized that it “plays a vital role in the peaceful settlement of disputes.”⁵⁹ Yet it also deemed allegations that Israel is committing genocide “unfounded,” and emphasized that “Israel is operating in an exceptionally challenging environment in Gaza, an urban battlespace where Hamas intentionally embeds itself with and hides behind civilians.”⁶⁰

Secretary of State Antony Blinken opined in January 2024 that “the submission against Israel to the International Court of Justice distracts the world from all of these important efforts” to secure the release of hostages, address the humanitarian crisis in Gaza, and prevent the conflict from spreading.⁶¹ He urged the importance of “increasing the amount of aid getting into Gaza” and noted that “[ninety] percent of Gaza’s population continues to face acute food insecurity,” but he appeared to discount the ICJ’s potential role

56. Press Release, Department of State, Welcoming the International Court of Justice’s Order Directing the Russian Federation to Immediately Suspend Military Operations in Ukraine (Mar. 16, 2022), <https://2021-2025.state.gov/welcoming-the-international-court-of-justices-order-directing-the-russian-federation-to-immediately-suspend-military-operations-in-ukraine/>.

57. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (S. Afr. v. Isr.), Provisional Measures, (Jan. 26, 2024), <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>. The ICJ has recognized the ability of any party to the Genocide Convention to assert a legal interest in the protection of obligations *erga omnes partes*. See Pearce Clancy, *Erga Omnes Partes Standing after South Africa v Israel*, EJIL: TALK! (Feb. 1, 2024), <https://www.ejiltalk.org/erga-omnes-partes-standing-after-south-africa-v-israel/>.

58. For explainers of the multiple provisional measures orders, see Chimène Keitner, *Making Sense of the ICJ’s Provisional Measures in South Africa v. Israel*, LAWFARE (Jan. 26, 2024), <https://www.lawfaremedia.org/article/making-sense-of-the-icj%27s-provisional-measures-in-south-africa-v.-israel>; Chimène Keitner, *The ICJ’s Modified Provisional Measures Order in South Africa v. Israel*, LAWFARE (Apr. 2, 2024), <https://www.lawfaremedia.org/article/the-icj-s-modified-provisional-measures-order-in-south-africa-v.-israel>; Chimène Keitner, *Thoughts on the ICJ’s Modified Provisional Measures Order in South Africa v. Israel*, LAWFARE (May 29, 2024), <https://www.lawfaremedia.org/article/thoughts-on-the-icj-s-modified-provisional-measures-order-in-south-africa-v.-israel>. On the “diminishing returns” of successive provisional measures requests, see Michael A. Becker, *Desperate Times, Desperate (Provisional) Measures*, VERFASSUNGSBLOG (Feb. 14, 2024), <https://verfassungsblog.de/desperate-times-desperate-provisional-measures/>.

59. See Press Release, Department of State, This Week’s International Court of Justice Hearings (Jan. 10, 2024), <https://2021-2025.state.gov/this-weeks-international-court-of-justice-hearings/>.

60. *Id.*

61. Press Release, Anthony J. Blinken, Secretary of State, Secretary Antony J. Blinken at a Press Availability (Dec. 14, 2024), <https://2021-2025.state.gov/secretary-antony-j-blinken-at-a-press-availability-56/>.

in protecting civilians in Gaza.⁶² The United States consistently vetoed U.N. Security Council resolutions that would have imposed a ceasefire.⁶³

The geopolitical alignments underlying the two Genocide Convention cases illustrate the expressive and strategic purposes of international adjudication, even apart from any merits decision. There are clear reverberations from Cold War-era alignments.⁶⁴ For example, the African National Congress (ANC) in South Africa has accused the United States of “provok[ing] the war with Russia over Ukraine.”⁶⁵ South Africa’s application against Israel has been viewed as the “Global South Tak[ing] Israel to Court”⁶⁶ and appears to have been motivated both by humanitarian principles and domestic politics.⁶⁷ Although parties invariably bring political and historical baggage to contemporary disputes, the perceived “double standards” applied by the United States to situations in Ukraine and Palestine exacerbated a loss of confidence in the credibility of the United States and its close allies.⁶⁸

U.S. reactions to the International Criminal Court’s investigations in Ukraine and Palestine, respectively, have also been deeply shaped by U.S.

62. *Id.* In a press conference, National Security Council (NSC) Coordinator John Kirby stuck to his talking points on the ICJ; when asked “will the [United States] accept the court’s decisions or penalties if Israel is found by the court to have committed genocide,” he answered “I’m not going to get ahead of where we are in the process.” Press Briefing by Press Secretary Karine Jean-Pierre, NSC Coordinator For Strategic Communications John Kirby, and National Economic Council Director Lael Brainard (Jan. 11, 2024), <https://www.presidency.ucsb.edu/documents/press-briefing-press-secretary-karine-jean-pierre-national-economic-council-director-lael>. He provided the same answer when asked “can Israel count on the [United States] to block any potential sanctions that are levied by the court should it come to that.” *Id.* He also said—apparently overestimating U.S. influence on Israeli actions—that “[w]e’re also going to continue to make sure that humanitarian assistance can get to the people of Gaza; that Israel conducts its operations in the most precise, careful, deliberate way possible so that they can minimize civilian casualties.” *Id.*

63. See, e.g., *United States Vetoes Gaza Ceasefire Resolution at Security Council*, UN NEWS (Nov. 20, 2024), <https://news.un.org/en/story/2024/11/1157216>; *US Vetoes Resolution on Gaza Which Called for ‘Immediate Humanitarian Ceasefire’*, UN NEWS (Dec. 8, 2023), <https://news.un.org/en/story/2023/12/1144562>.

64. See, e.g., Keith Gottschalk, *History May Explain South Africa’s Refusal to Condemn Russia’s Invasion of Ukraine*, THE CONVERSATION (Mar. 11, 2022), <https://theconversation.com/history-may-explain-south-africas-refusal-to-condemn-russias-invasion-of-ukraine-178657>; *How African States Voted on Russia’s War in Ukraine at the United Nations—and What it Means for the West*, DANISH INSTITUTE FOR INT’L STUD. (Nov. 15, 2023), <https://www.diiis.dk/en/research/how-african-states-voted-on-russias-war-in-ukraine-the-united-nations-and-what-it-means>.

65. Tim Mak, *South Africa’s Belated Reckoning Over the War in Ukraine*, POLITICO (Jun. 6, 2024), <https://www.politico.com/news/magazine/2024/06/06/south-africa-ukraine-war-reckoning-00161508>; see also Malte Brosig, *Aligned or Non-aligned: South Africa’s Response to the War in Ukraine*, 15 GLOB. POL’Y 757 (2023).

66. *The Global South Takes Israel to Court: The Third Newsletter* (2024), TRICONTINENTAL: INSTITUTE FOR SOCIAL RESEARCH (Jan. 18, 2024), <https://thetricontinental.org/newsletterissue/south-africa-israel-international-court-of-justice/>.

67. Peter Fabricius, *The Complex Politics of South Africa’s Genocide Case Against Israel*, THE NATION (Feb. 1, 2024), <https://www.thenation.com/article/world/the-complex-politics-of-south-africas-genocide-case-against-israel/>.

68. Evan Dyer, *Angry Claims of ‘Double Standards’ in International Law Roil the UN*, CBC NEWS (Sept. 26, 2024), <https://www.cbc.ca/news/politics/united-nations-israel-gaza-1.7334158>.

political interests and have eroded U.S. credibility. The U.S. Department of Defense has been consistently wary of potential ICC actions against U.S. servicemembers, and the United States has long opposed the assertion of ICC jurisdiction over nationals of non-party states.⁶⁹ Russia is not a state party to the ICC (until recently, neither was Ukraine, but Ukraine accepted the ICC's jurisdiction on an ad hoc basis).⁷⁰ When several members of Congress pressed the Biden Administration to share information with the Office of the Prosecutor relating to Russian crimes in Ukraine, they argued in a letter to the President that "[d]espite your public condemnation of Russian crimes against humanity and war crimes in Ukraine, our current posture on the ICC sends a message to the world that parochial self-interested concerns, even where unfounded, take priority over seeking justice for Putin's crimes."⁷¹ Prior hostility towards the ICC by U.S. lawmakers was all but forgotten—temporarily.⁷²

When the court issued an arrest warrant for Russian President Vladimir Putin, states' reactions were mixed. For example, Alonso Gurmendi notes that Brazil, a state party to the Rome Statute, might have felt "unable to support the warrants without feeling like it is taking sides for the West," given the West's practice of "weaponizing international institutions to isolate its geopolitical rivals."⁷³ That said, Brazil did not come out in stark criticism of the warrant, since "compliance with international law [is] one of the key tenets of Brazilian foreign policy."⁷⁴ South Africa, also a state party to the Rome Statute, was unable to provide Putin with guarantees that it would not arrest him if he attended the BRICS summit hosted there, and so he did not attend in person.⁷⁵

69. See Adam Keith, *Is the Pentagon Relenting?: A Close Study of Opposition to the International Criminal Court's Ukraine Investigation*, JUST SECURITY (July 12, 2023), <https://www.justsecurity.org/87231/is-pentagon-opposition-to-the-international-criminal-courts-ukraine-investigation-relying/>.

70. Ukraine had deep misgivings about ratifying the Rome Statute for the ICC and initially consented to ICC jurisdiction over crimes on its territory on a purely ad hoc basis under Article 12(3) of the Statute. Dmytro Koval and Mykhailo Soldatenko, *Why is Ukraine Ratifying the Rome Statute With an Article 124 Caveat?* LAWFARE (Oct. 8, 2024), <https://www.lawfaremedia.org/article/why-is-ukraine-ratifying-the-rome-statute-with-an-article-124-caveat>.

71. See Press Release, Dick Durbin, Senator from Illinois, Durbin & Graham Continue to Press the Biden Administration to Support the ICC's Investigation into Atrocities in Ukraine (Jun. 23, 2023), <https://www.durbin.senate.gov/newsroom/press-releases/durbin-and-graham-continue-to-press-the-biden-administration-to-support-the-iccs-investigation-into-atrocities-in-ukraine>.

72. See Adam Keith, *Sweeping ICC Sanctions Bill Would Harm Victims, U.S. Interests*, JUST SECURITY (July 17, 2024), <https://www.justsecurity.org/97770/icc-sanctions-bill-harm/>.

73. See Alonso Gurmendi, *Tracking State Reactions to the ICC's Arrest Warrant against Vladimir Putin*, OPINIOJURIS (Mar. 29, 2023), <https://opiniojuris.org/2023/03/29/tracking-state-reactions-to-the-iccs-arrest-warrant-against-vladimir-putin/>.

74. *Id.*

75. See Max Du Plessis & Andreas Coutsooudis, *The Putin-South Africa arrest warrant saga: A tale of the shrinking world of an accused war criminal*, EJIL: TALK! (Aug. 18, 2023), <https://www.ejiltalk.org/the-putin->

France's Foreign Affairs Ministry issued a statement that "[n]o one responsible for crimes committed by Russia in Ukraine, regardless of their status, should escape justice."⁷⁶

When the ICC announced the issuance of an arrest warrant for Israeli Prime Minister Binyamin Netanyahu, states' reactions did not necessarily track their reactions to the Putin warrant.⁷⁷ For example, France's Foreign Affairs Ministry opined that the Rome Statute does not require a state to act inconsistently with its international obligation to respect a foreign head of state's immunity.⁷⁸ A White House National Security Council spokesperson said that the United States "fundamentally rejects the Court's decision to issue arrest warrants for senior Israeli officials," and cited "troubling process errors that led to this decision."⁷⁹ Accusations of hypocrisy and double standards against the United States swiftly followed.⁸⁰ Setting aside the question of whether it makes sense as a matter of policy for an international tribunal to indict sitting heads of state during an ongoing armed conflict, the United States' contradictory reactions to the Russian and Israeli warrants in the ICC—like the two Genocide Convention cases in the ICJ—further eroded the United States' ability to portray itself as a champion of the international rule of law. It also

south-africa-arrest-warrant-saga-a-tale-of-the-shrinking-world-of-an-accused-war-criminal/. South Africa had previously failed to comply with its obligation under the Rome Statute to arrest and surrender Sudanese President Omar al-Bashir in response to an ICC arrest warrant. *See Al Bashir Case: ICC Pre-Trial Chamber II Decides Not to Refer South Africa's Non-Cooperation to the ASP or the UNSC*, INT'L CRIM. CT. (July 6, 2017), <https://www.icc-cpi.int/news/al-bashir-case-icc-pre-trial-chamber-ii-decides-not-refer-south-africas-non-cooperation-asp-or>.

76. *See France on ICC arrest warrant for Putin: No-one should escape justice*, REUTERS (Mar. 17, 2023), <https://www.reuters.com/world/europe/france-icc-arrest-warrant-putin-no-one-should-escape-justice-2023-03-17/>.

77. *See* Rebecca Ingber, *Mapping State Reactions to the ICC Arrest Warrants for Netanyahu and Gallant*, JUST SECURITY (Mar. 6, 2025), <https://www.justsecurity.org/105064/mapping-state-reactions-icc/>.

78. *See Israël - Cour Pénale Internationale*, MINISTÈRE DE L'EUROPE ET DES AFFAIRES ÉTRANGÈRES (Nov. 27, 2024), <https://www.diplomatie.gouv.fr/fr/dossiers-pays/israel-territoires-palestiniens/article/israel-cour-penale-internationale-27-11-24>; *see also* Tyler McBrien, *France's Convoluted and Contradictory ICC Immunity Position*, LAWFARE (Dec. 10, 2024), <https://www.lawfaremedia.org/article/france-s-convoluted-and-contradictory-icc-immunity-position>.

79. *See US Rejects ICC Arrest Warrants for Israeli Officials, White House Spokesperson Says*, REUTERS (Nov. 21, 2024), <https://www.reuters.com/world/us-rejects-icc-arrest-warrants-israeli-officials-white-house-spokesperson-says-2024-11-21/>. On the warrants, *see, e.g.*, Chimène Keitner, *Understanding the ICC Prosecutor's Request for Arrest Warrants*, LAWFARE (May 21, 2024), <https://www.lawfaremedia.org/article/understanding-the-icc-prosecutor-s-request-for-arrest-warrants>; Chimène Keitner, *The ICC's Unsurprising Decision on Arrest Warrants for Netanyahu, Gallant, and Deif*, LAWFARE (Nov. 25, 2024), <https://www.lawfaremedia.org/article/the-icc-s-unsurprising-decision-on-arrest-warrants-for-netanyahu-gallant-and-deif>; Tom Dannenbaum, *Nuts & Bolts of the International Criminal Court Arrest Warrants in the 'Situation in Palestine'*, JUST SECURITY (Nov. 22, 2024), <https://www.justsecurity.org/105048/icc-arrest-warrants/>.

80. *See, e.g., Russia Says United States Is Being Hypocritical over ICC and Israel*, REUTERS (Apr. 30, 2024), <https://www.reuters.com/world/russia-says-united-states-is-being-hypocritical-over-icc-israel-2024-04-30/>.

fueled claims that the “rules-based order” amounts to whatever the United States favors as a matter of political expediency.

Conclusion and Post-Script

Law and politics will always be intertwined, especially—but not exclusively—in the international sphere. Even so, the United States cannot persuade other countries of the value of a “rules-based order” if it appears to be cherry-picking the “rules” on a case-by-case basis, let alone disregarding them. As a rhetorical matter, the term “rules-based order” has become closely associated with U.S. efforts to impose its views on the rest of the world.⁸¹ The United States’ rhetorical emphasis on a “rules-based international order” rang hollow because the United States proved largely unwilling to subordinate its perceived short-term interests to the longer-term systemic interest in living in a more stable, predictable, and just world. Martti Koskeniemi has observed of international law more generally:

The fight for an international Rule of Law is a fight against politics, understood as a matter of furthering subjective desires and leading into an international anarchy. Though some measure of politics is inevitable (as we commonly assume), it should be constrained by non-political rules.⁸²

By speaking the language of a “rules-based order” without accepting the results of more broadly inclusive decision-making processes, the United States undermined its ability to rely on persuasion rather than coercion in pursuing its international aims.

As this contribution goes to press, the second Trump administration has largely abandoned attempts at persuasion and has instead embraced threats and coercion as its *modus operandi*. In doing so, it has moved even farther away from a world in which the United States can lead by example. It has also created more room for other countries to engage in double standards and international law gaslighting. This has further undermined the post-World War II promise of international law in fostering peaceful relations among states and protecting individuals. The challenge of imagining and creating a more peaceful and just world order remains urgent, and even existential, in an

81. Other countries have used this term in other ways, but it comes with a particular meaning when used by the United States. See Boas Lieberherr, *The “Rules-Based Order”: Conflicting Understandings*, 317 CSS ANALYSES IN SEC. POL’Y 1, 2-3 (2023), <https://css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/CSSAnalyse317-EN.pdf>; see also Malcolm Jorgensen, *The Jurisprudence of the Rules-Based Order: the Power of Rules Consistent with but Not Binding Under International Law*, 22 MELB. J. OF INT’L L. 221 (2021), <https://classic.austlii.edu.au/au/journals/MelbJIL/2021/24.html>.

82. Martti Koskeniemi, *The Politics of International Law*, 1 EUR. J. INT’L L. 4, 5 (1990), <https://ejil.org/pdfs/1/1/1144.pdf>.

era of climate change and resurgent nuclear risk. It remains to be seen whether the United States will decide to play a constructive role, or whether erstwhile allies will view the United States not only as a selective enforcer of international order, but as a fundamental threat to it.