Global Norms in the Twenty-First Century
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Edited by

Klaus-Gerd Giesen and Kees van der Pijl

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Global Norms
CHAPTER 1
INTRODUCTION: GLOBAL NORMS AS A CHALLENGE TO THE NATION-STATE

KLAUS-GERD GIESEN AND KEES VAN DER PIJL

Norms and Dominant Intellectual Production

When Hans Morgenthau in 1934 published his work *La réalité des normes, en particulier des normes du droit international* (“The Reality of Norms, in Particular the Norms of International Law”), he simultaneously laid the foundations for the Realist theory of International Relations as it would emerge fifteen years later in the United States. The issue of international norms in this work thus was placed from the beginning at the centre of Morgenthau’s concern, revealing the rupture with the “Idealist” tradition in the field.

Morgenthau argues that legal norms must be distinguished from other types of norms, notably moral ones, because they are not in any way dependent on the will of the individual.¹ Their validity is ensured, instead, by the prospect of the application of sanctions. But as he notes in the further elaboration of his argument, the objective structure of the international community does not allow the sanctions attached to legal norms to be applied as a result of their very existence. The only way in which international law can be enforced, is by finding executors willing to uphold the norms and apply the sanctions and thus maintain the real order inscribed in the material norms of international law. Since only states can be the guarantors of such an order,

> The essential problem therefore resides in the nature and hence, the validity, of sanctions .... International law, deprived practically entirely of sanctions of its own, can find no other carriers of its normative reality than its own subjects.²

There is no possibility, in this perspective, for any valid norms that can impose themselves, as it were from the outside, on states. Indeed by emphasising the absence of sanctions capable of dealing with the breaking of international norms in the inter-war years, which condemned the League of Nations to impotence, Morgenthau dealt the death-blow to Idealist doctrines still riding high at that juncture.

A year earlier, Morgenthau had published another work in French, entitled *La notion du ‘politique’ et la théorie des différents internationaux* (“The Concept of the Political and the Theory of International Disputes”). Relying
heavily on the work of Carl Schmitt, Morgenthau argues in that study that there simply cannot be common norms pursued by all or even a majority of states because they are in the end driven by a “will to power” that forcibly divide them into “friends and enemies”. “The specifically political distinction to which in the end all political acts and motivations lead, is that between friend and foe.”3 Certainly he characterises this Schmittian vision, propounded in the latter’s The Concept of the Political of 1932, and which Morgenthau quotes explicitly from that source, as a true “metaphysics of the elementary forces at work in international relations”. Hence, “all foreign policy is nothing but the will to maintain, increase, and assert one’s power”.4 This has the effect that whenever a certain level of pressure has been reached, the norms of international law will simply break apart. Thus elaborating the critique of the League of Nations formulated by Schmitt, Morgenthau traces the origin of the latent pressures at work in the tensions between states, to “a sphere beyond conceptual clarity”; a sphere that cannot be understood rationally.5

After World War Two, Morgenthau developed his theses in the United States, and in English. International norms, or rather their practical impossibility, continued to play a key role in them. Rejecting, with even more vehemence, the Idealist doctrines (responsible in his view for submerging international thinking in “half a century of ever more complete intoxication”)6, he characterises their universal principles as a plain absurdity which cannot be left to linger. In his celebrated Realist manifesto, Politics among Nations, Morgenthau repeats, often verbatim, his earlier theses on international norms, refining the original French formulas where necessary.7 Thus the Nietzschean concept of the “will to power” is transformed into the famous “struggle for power” as the ultimate (metaphysical) foundation of international anarchy. The rising tide of nationalisms and fascisms once and for all brought out the fragmentation of international society “into a multiplicity of morally self-sufficient national communities”, beyond which no common norm can durably persist.8

It is true of course that already in Morgenthau’s very first work, published in German and likewise dedicated to the norms of international relations, one finds not only the Schmittian references and general background of the Realist argument. He also refers there to certain “dark tensions” among states which can only be grasped intuitively, “instinctively”, rather than conceptualising them scientifically.9 These tensions stand in the way of any viable application of supranational norms. In other words, right from the publication of Die internationale Rechtspflege, ihr Wesen und ihre Grenzen, Morgenthau adopts the idea of the nation-state as the supreme and autonomous normative instance; henceforth, indeed for decades, he will wage his battle to defend and propagate this central concept in a range of writings.
The above study, the only book Morgenthau wrote in German, was published in 1929, the year of the stock market crash that triggered the Great Depression. Now there is no doubt that one has to be careful not to make inferences too easily when the relationship between social and political development and scholarly work in the social sciences is concerned. Yet the hypothesis can be made that at this juncture, when the international political economy collapsed into an unprecedented, new phase, the Realist ideology gained new credence and cogency. Therefore we see the normative strand of Realist thought not primarily as the result of the Second World War and the cold war, but more profoundly as an attribute of changes in the international political economy associated with the Fordist accumulation regime. This took hold in the period from 1929 to the late 1960s, first in the United States, and extrapolated to Western Europe under the Marshall Plan.

Already in the 1930s, Antonio Gramsci analysed Fordism as a new way of articulating mass production and consumption. However, it also entailed an intensified competition between large corporations of different nationalities and state-mediated wage compacts with workers, all framed in a rigorously inter-state political system. States in this setting ensured the connection between the domestic accumulation regime (which in each case required specific class compromises and forms of stimulating productive capital) and the exchange relations with the outside world—utilising and exploiting the very differences in terms of the production conditions under their jurisdiction. Once the Fordist pattern became embedded in the *Pax Americana* of the cold war era, this role of the state was not suspended. Indeed the differences between state regulation in terms of applying the principles of Fordism, the compromises between social classes, support for national mass-production enterprises, national taxation of imports, and the degree to which states submitted to US leadership of the wider West, only enhanced the functional necessity of regulative autonomy for each state apparatus in its relations with others. Paradoxically, these national differences and the ways in which they worked out in terms of productivity and industry specialisation, ensured the coherence of the international Fordist system, anchored in the notion of the Keynesian state that was relatively strong and very much autonomous.

A state autonomy of this kind, however, is ill-suited to serve as a relay of supranational or even international norms. On the contrary, it requires a doctrine that assigns absolute normative priority to the state. Morgenthau and other Realists in this light provided the ideological armoury for precisely that. As Joseph Starke has written, “reduced to its lowest terms, the doctrine of state primacy is a denial of international law as law, and an affirmation of international anarchy. International law becomes merely that portion of the law of the state which governs its relations vis-à-vis other states.” Indeed in the
more radical Realist view, the doctrine of the state as the supreme normative institution engenders the strand of discourse that goes back to the supposed international anarchy and to the “state of nature” in Hobbes’s formulation. Hence a world without common juridical norms, where power alone governs the relations between states, who are themselves not subject to ethical norms. In 1932, in his *Moral Man and Immoral Society*, Reinhold Niebuhr famously argued that “it is natural that national attitudes can hardly approximate the ethical”; whilst Edward Hallett Carr, in his equally renowned *The Twenty Years’ Crisis* of 1939 maintained that “there is no authority above the state capable of imposing moral behaviour on it.”

**After Fordism**

Now if the Realist theory of norms was an organic attribute and functional aspect of the Fordist accumulation regime, it certainly shared in its demise in the 1970s and 80s. We are looking here at a rupture inaugurating a systemic change in the international political economy: the cycles of trade negotiations in the context of GATT were progressively opening state borders; the end of the monetary system of Bretton Woods in 1973 and the complete liberalisation of the exchange rates between national currencies entailed a weakening of the individual national state relative to market forces; whilst the more and more prominent role of multinational firms definitively terminated the international autonomy and norm-generating capacity of the state.

Initially, the ideological articulation of the changes underway crystallised in political science in theories of transnationalism and interdependence. Against the background of the quagmire of the Vietnam War, a growing number of political scientists and philosophers began to apply ethical norms to a moral evaluation of the acts of states. They started to codify the demise of the notion of the strong, truly sovereign state, and the necessity of adopting norms that were inter-national. Henceforth, it is the aspect of interstate cooperation that comes to prevail and this in itself modifies the process in which norms are created, spread and applied. From then on they definitely could originate outside the state, and also be applied to the state from outside.

In this context, one of the first authors to theorise the multiplication of non-state actors (from NGOs to multinational corporations) was Karl Kaiser. In 1969 he highlighted the permeability of national frontiers to all kinds of cross-border flows, creating dense webs of interaction between civil societies. According to Kaiser, this produces a “multinational politics” with two main characteristics: the possibility of a penetration of society from outside; and the growing interdependence between national political systems. Henceforth we may see
truly *inter*-national norms which are bound to influence the internal of states, including their constitutional makeup.\(^\text{18}\)

Robert Keohane and Joseph Nye and others developed this argument further.\(^\text{19}\) Thus Peter Katzenstein explained that “in the present era of [international interdependence], strategies of foreign economic policy depend on the interplay of domestic and international forces”.\(^\text{20}\) This lent credence to the role of international organisations in the generation and diffusion of *inter-*national norms facilitating trade, communication and resource distribution.

On the political level, such norms were initially proposed also by a coalition of Third World states clamouring for a New International Economic Order (NIEO). They were cast in a multilateral framework centring on the United Nations. The NIEO plan(s) sought to reduce economic precariousness of Third World countries which were facing rapid population growth without being willing or able to take full control of economic development in the sense of compulsory state planning and suspension of market forces. The NIEO movement crystallised at a juncture of severe disarray of the West’s global power and of détente with the Soviet bloc. When monetary disorder and dollar inflation was responded to the oil producers” cartel, OPEC, in the form of a substantial price hike, the Third World states obtained the clout to press their demands more forcefully and wrest concessions, or so it seemed. But the NIEO project of the Third World state classes did not itself break with state sovereignty, but merely extended it into an instrumental use of the quasi-parliamentary majority system of the UN and its functional organisations.\(^\text{21}\)

The material claims of the NIEO, by which the Third World state classes hoped to shore up their legitimacy at home whilst entrenching in their sovereign jurisdictions,\(^\text{22}\) had obvious normative implications. The argument made by the Third World NIEO coalition was that decolonisation had been unduly limited to a transfer of formal state independence, a constitution of political sovereignty which precisely by its liberal assumptions allowed the continued economic exploitation of domestic labour and resources by foreign capital. Against this state of affairs, the NIEO states raised the normative claim that each country is entitled to its own human and natural resources. In light of the colonial past and its consequences, the West was asked to respect this, and beyond that, to aid the countries it had formerly colonised to achieve real development.

Hence the claim to state sovereignty was not formulated defensively, as non-interference, but offensively, as a set of rights which did involve interference, albeit on the conditions set by the claimants—as aid, technology transfer, and training. It was this particular interpretation of state sovereignty that was reflected in the central place accorded to the expanded United Nations system as main producer of international norms. The UN would provide the legitimate framework for a production of norms aiming the realisation of *inter-state*
cooperation for economic betterment. Whilst there is certainly no need to idealise the NIEO movement as democratic, or in any way morally superior to the forces resisting it, the normative mutation it represented remains meaningful.

The response to the NIEO movement in Europe and among the personnel of multilateral organisations, was of a technocratic nature, but it also brought normative aspects to the broader NIEO concept. Each of these enlarged the Third World demands away from their state-centric economic foundations towards a more comprehensive inter-national approach. First and foremost, this approach posited the ethical imperative to adjust the mode of production and its consumption patterns to available global resources and preserve the biosphere as a life-sustaining condition. This position was pioneered by the 1971 MIT Report, *The Limits of Growth* (written for the Club of Rome). Secondly, it was considered inadmissible that the world’s population continued to live under the threat of nuclear annihilation. Hence the task of breaking out of the cold war stalemate, and the need to exit from the nuclear balance of terror (also in light of the threat of proliferation). But thirdly and crucially, this strand of NIEO thinking argued that *the era of national sovereignty had passed*. The world’s resources, the biosphere, and the imperative of averting nuclear catastrophe were issues of human survival that could not be left to single states and their parochial concerns. As a result, a convergence occurred between the aspirations of the NIEO and the dominant trend in political science on the need to articulate truly inter-national norms.

**The Normative Structure of Neoliberal Globalisation**

In broad terms, the decade of the 1980s and the early 1990s, accelerated and deepened the liberalisation of trade and financial flows. Depriving states of considerable fiscal resources, capital movements were practically entirely liberalised across the West by the actions of the states themselves; this entailed, on a world scale, the triumphant ascent of speculative finance capital at the expense of productive capital and also, of the public sector. Finally, the number of multinational firms multiplied via a steep growth of foreign direct investment and the emergence of post-Fordist, “Toyotist” productive systems straddling borders. This created truly transnational “network firms” which put national spaces of social regulation in a relation of competition with each other. It put a severe strain and in many cases terminated Fordist compromises in capital-labour relations.

Through new forms of enrichment such as junk bonds and leveraged buy-outs, and backed up by middle class tax revolts against universal welfare provision, inflation, and trade union power, the new militancy of the property-
owning classes in the English-speaking West translated itself into overt confrontation with the Soviet bloc and the Third World. Reagan and Thatcher effectively dropped the human rights theme for the Manichean idea of a global contest between the forces of freedom and the forces of evil, the latter residing in the Kremlin. Of course, this was not a matter of mere tactics, but reflected deeper trends across the globe and the need to adjust the mode of political control. As William Robinson writes,

The emergence of “democracy promotion” as a new instrument and orientation in US foreign policy in the 1980s represented the beginnings of a shift—still underway—in the method through which the core regions of the capitalist world system exercise their domination over peripheral and semi-peripheral regions, from coercive to consensual mechanisms, in the context of emergent transnational configurations.26

The failure of the Gorbachev reform attempt in the URSS validated the self-confidence of the supporters of a confrontation strategy, as testified by Fukuyama’s thesis on the “End of History”.27 The End of History theorem fundamentally recast the NIEO and Gorbachev versions of planetary consciousness and responsibility into a different version of globalisation. Arguing the historical necessity of possessive individualism, Fukuyama claims the world is a finished project, with the West being the norm for those not yet entirely up to the new standard. That norm is Lockean liberalism, prefigured already in the human rights and democracy promotion strategies.28 Fukuyama seeks to remove entirely the normative foundations of state sovereignty. Here indeed we encounter the “rogue state” for the first time in a comprehensive discourse: whilst there is an irreversible “global” stage of civilisation (liberal capitalism plus parliamentary democracy), states “mired in history” lack any legitimacy because on their own terms, there is no future for them.

From attacking exploitation, unequal exchange, militarism, imperialism, and cultural degradation with their epicentre in the West (the perspective if not entirely of the NIEO, certainly of Gorbachev), the Fukuyama argument holds that with the end of the Cold War, the preparation for war to defend freedom against dictatorship can shift to policing the remaining pockets of non-integration. This view warrants that while inside the post-historic world, the new norms that the modern world requires, such as peaceful settlement of conflict and other instances of civilisation (including “market economy”), have been achieved, these norms do not prevail outside this sphere.

The hegemonic discourse thus was geared to a normative differentiation between the West and the world not conforming to its norms. The implication of this attitude that we represent civilisation (“the international community”) whereas the others lead an existence which is historically meaningless and...
ultimately illegitimate, of course has a long pedigree. It effectively provides the moral grounds for imposing our will without reservations on the natives, whom we have first dehumanised, as Toynbee says, by considering them as part of the local “flora and fauna”. Indeed the Western approach, theorised by Fukuyama, and later hardened into Huntington’s “Clash of Civilisations” thesis, is not for global community but for Western community, with insiders and outsiders, and the right to go to war against the outsiders because they are outsiders is implicit in it. In contemporary Western liberal thought, this idea has been elaborated by various authors whose work serves as a central reference in contemporary debates on ethics, such as John Rawls.

Obviously, the way international norms were henceforth conceived in the academic arena, developed along with these changes. Thus the theory of interdependence mutated into regime theory, in which international norms are understood in a less formal way. In hindsight this might be interpreted as the beginning of a normative deregulation in the sense of emptying the very concept of international norm. On the other hand, the idea of systemic (but still implicit) norms argued by the Neo-Realist theory developed in the same period, effectively reduces the normative sphere to the bare minimum. Finally, the ubiquitous literature on globalisation has effectively enshrined the idea of a complete subordination of the state to the transnational market forces.

Regime theory from the start was focused on interdependence and cooperation in specific areas. “The regime literature ... considers norms to be one component of regimes” for each of these in particular. Indeed in the authoritative definition of Stephen Krasner, regimes are

\[
\text{implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations. Principles are beliefs of fact, causation and rectitude. Norms are standards of behaviour defined in terms of right and obligations. Rules specific prescriptions or proscriptions for actors. Decision-making procedures are prevailing practices for making and implementing collective choice.}
\]

The relations between principles, norms, rules and decision making procedures have not been made explicit in the voluminous literature devoted to regimes. At best one may draw from it the conclusion that international norms as they emerge from inter-state, multilateral negotiations, can be explicit or implicit; in the words of Harald Müller, “a mixture of formal and informal arrangements,” juridical or non-juridical. Compared to the “hard norms” of interdependence theory, the concept of norm if obviously diluted. On the other hand, the theorem of hegemonic stability, originally developed by Kindleberger, stipulates that it is in the interest of all participants in a regime to have dominant norms provided if not actually imposed, by the hegemonic power. At the
juncture of a new Cold War launched by the Reagan administration, this obviously provided an excellent justification of American foreign policy.

The rival theory of the period, Neo-Realism, took a less benevolent view of interdependence and cooperation among states. As a structuralist theory it places the emphasis on the anarchic nature of state interaction which it describes with reference to micro-economics. “International-political systems, like economic markets,” Kenneth Waltz maintains, “are formed by the coaction of self-regarding units. [They] are individualist in origin, spontaneously generated, and unintended.” Hence, “international politics is structurally similar to market economy insofar as the self-help principle is allowed to operate in the latter.”

Even so, the structures thus created bring forth a normative order, just as market forces, in the pursuit of self-interest, spontaneously generate a mercantile order. Indeed as Friedrich Kratochwil rightly notes,

markets are probably the social institution which are most dependent upon normative framework. While markets are anarchical in the sense of lacking a central decision-making institution, it is unimaginable how they could function without the common acceptance of the convention of money, without contracting, which are governed by rules.

This is not denied by Waltz: a normative socialisation takes places as societies “in spontaneous and informal ways … establish norms of behaviour… Socialisation brings members of a group into conformity with its norms.” Therefore, he writes, “the first way in which structures work their effects is through a process of socialisation that limits and moulds behaviour. The second way is through competition.”

The systems analogy of market socialisation carries a powerful ideological message. In order to survive, an actor has no choice but to conform to the prevailing, structural norms and to the prescriptions of hegemonic actors. These norms, unlike those proposed by regime theory, remain informal and implicit. From there it is only a small step to simply conflate (as in so many globalisation theories), political and economic systems and claim that there is little else the state can do than to adopt to the new reality of globalisation; a reality usually presented, in a determinist fashion, as a force of nature which one has not choice but to accommodate.

### The Emergence of Global Norms

In the last ten years, the systemic change in the international political economy described above has been consolidated. With the Marrakech agreements of 1994, which established the WTO, a truly global capitalism under a neoliberal accumulation regime has been unleashed. States now find themselves competing
to attract investments in a situation dominated by transnationally operating, speculative capital; a competition even more overtly pursued now that the cold war has come to an end. Neoliberalism compels the state to retreat in favour of a self-regulation of markets and society. Norms cannot be recast in their prior national-state frameworks; the concept of sovereignty itself has been eroded along with processes of globalisation of capitalist market discipline. This is not, we hold, because the “state” has been forced to recede in the face of overwhelming capitalist power. States are run by a political cadre class which on the whole takes the emerging global capitalist economy as its sole frame of reference, and the role of states has actually lost nothing in terms of upholding the conditions for capital accumulation on a world scale. If today, capital can take refuge in a vast off-shore sector to evade taxation and regulation, this owes much if not all to active state intervention and relatively conscious choices by state managers and politicians.39

The loss of sovereignty that confronts states today rather is a loss of legitimacy, because the same abrogation of the implicit social contract that underlay the decision to restore the freedom of capital to move in and outside the boundaries of states’ sovereign jurisdiction, also applies to the workers, education-age youth, pensioners, and those in ill-health or without jobs, within the national economy. The norm that being a citizen in the state entitles one to social protection, has been scuttled for all practical purposes.

On the other hand, the idea that there have come into being global norms, has spread and is seen to project an alternative framework to the legitimacy enshrined in national sovereignty.40 This new global sweep of norms has been given a quantitative definition by Martha Finnemore and Kathryn Sikking, two leading constructivists who take as the lower limit of an effective global norm the adherence of at least a third of all states, or of a substantial number of directly affected states having ratified it or enacted it in their legislation. This is the required “critical mass” for a global norm.41

In the cases of the crusades against Milosevic and Saddam Hussein, the West appealed to global norms of justice and human rights. The power of this appeal resides in the sense that these norms are the truly universal ones, against which it is difficult to raise objections at first sight. The appeal the leaders of Yugoslavia and Iraq made to their “rights” was clearly of a different order. It rested on state sovereignty, which in the circumstances sounded awkwardly out of place, more as an excuse for maltreatment of one’s own citizens, than anything that can conceivably be argued to derive from a stock of normative principles that include the standard of individual liberty.42 But then, the West has equally strayed from the Enlightenment heritage in its actual policy. In the footsteps of Fukuyama, Huntington, and others leading the way, it has subjected the entire catalogue of rights and principles of justice to an aesthetic in which
real problems are subsumed under a convenient scheme that pits unqualified civilisation against equally unqualified barbarity. This has meanwhile been exposed as profoundly fraudulent. Since the supposed threats (genocide in Yugoslavia, weapons of mass destruction in Iraq) were out of proportion with what really was the case, playing politics with what are genuine problems, may even have set back the chances of tackling ethnic cleansing or weapons proliferation; both of which remain highly topical issues with potentially grave consequences.43

The derivative nature of state sovereignty was also cast in a specific conception of world politics containing, specifically, the right by the “international community” to intervene in the sovereign jurisdictions of states somehow defined as not belonging to this community. Paradoxically, the UN, its functional organisations and the entire system of public international law as the principal potential producers of global norms, were downgraded by walkouts, non-payment, and non-observance by precisely the states claiming to represent the “international community”; whilst several normative codes, notably those in the ecological domain, are made largely ineffectual by these selfsame states.44 There is also a growing reliance for the settlement of international disputes on private law. The UN system was seriously restructured in that non-UN organisations replaced or eclipsed those UN bodies that had specifically articulated the NIEO drive. Thus, to name only the most conspicuous examples, the WTO eventually eclipsed UNCTAD in the trade area, and the UN Centre for Transnational Corporations was abolished, and transnational corporations through their main pressure group, the International Chamber of Commerce, instead was able to impose itself on the UN through the so-called “Global Compact”.45 Even under Clinton, the US Congress kept the administration under fire by demands to reduce the American contribution to the peacekeeping budget and the regular UN budget (aiming to bring these contributions to around $100 million a year, one-tenth of New York City’s firefighting budget).

For an author like Philip Bobbitt, legitimacy of a state resides in its deference towards international capital. Malaysia on this count is a rogue state because it imposes currency controls; indeed even the EU is under suspicion to the extent that it may reconstitute a political sovereign sphere privileging “public over private purposes”.46 Bobbitt thus shares the assumptions of the Bush Jr. administration that the West led by the US should not just defend itself against challenges, but pre-emptively go after any potential adversary as well. The right for liberal states, Bobbitt’s “market states”, to “punish” the outlaw regimes by economic measures or by force for their non-observance of rights, is the common starting point for the project to remake the world after the US image. As Joseph Nye has accurately put it in connection with his concept of
“soft power”, “If [a state] can establish international norms consistent with its society, it is less likely to have to change.”  

These normative constructions, conceived to accompany and back up the 21st-century world projected by Western power, only illustrate the quest for a moral justification of our society as the ultimate achievement. The need for the aestheticisation of the relations of the wealthy West with the rest of the world (mired, if not in history, certainly in misery) as a life-and-death struggle with evil, forms the backdrop of the development of global norms in the current period. The dominant trend in the production of ideas unsurprisingly gravitates to a frame that is broadly consonant with this state of affairs. The concept of “global governance”, a notion derived, significantly, from that of corporate governance, as well as the notion of a “post-national” or “cosmopolitan democracy”, both evoke the transcendence of the state in its capacity of a producer of norms and meaning—as well as the flattening of the hierarchies between private and public actors. The “Third Way”, whether in the versions of Anthony Giddens, David Held, or Jürgen Habermas, charts the new course of thinking here, leading the way for philosophers and political scientists.

The highly fashionable concept of global governance rests, in the words of the French Conseil d’analyse économique,

on procedures of different status, ranging from simple consultation between governments to the adoption of common legislation, and including the formulation of a consensus on goals to be reached, mutual recognition, or the definition of good practice (soft law). It rests on intergovernmental cooperation or on action taken by specialised multilateral institutions endowed with appropriate instruments; in certain cases also on the normalising behaviour of private operators … It derives its legitimacy (or not) from delegation by states, from the ratification of treaties by parliaments, and from taking into account the expressed viewpoints of the different sectors of civil society.  

This definition reveals the semantic and ideological mechanism at work here: by increasing the number of the various types of international actors involved in setting international norms, these lose their formal and authoritative character to a considerable extent. It amounts to a radicalisation of the regime approach in the sense that governance goes well beyond simple intergovernmental cooperation (whether institutionalised or not) by bringing in private actors in the formulation and adoption of new norms. Thus transnational social movements and other non-governmental organisations, conveniently labelled “international civil society”, or private regulation agencies (rating agencies and technical standards bodies) are brought into the process of norm creation alongside independent authorities. There is concern whether this levelling of the playing field does not unduly elevate the standing of, say, lobby
activity for private interests, with little in the way of legitimacy except for the claim they can handle things more efficiently than states, in the global hierarchy. Are they entitled to be treated as equals of states that derive their legitimacy from democratic elections, and with multilateral organisations mandated by such states?

A second problem resides in the non-binding nature of norms which enlarge international public law, from the classical norm to tacit agreements between NGOs or self-regulation standards of private sector operators. Highly informal regulatory mechanisms thus become validated and acquire a status comparable to juridical norms carrying sanctions. The “quality” of norms thus is brought into question because private actors are no longer the subjects of normative intervention by public authorities but even so, take part in the formation of norms. Governance thus conveys the idea that governments and international organisations no longer enjoy the monopoly of legitimate authority, whilst international norms become implicit and informal. This only confirms to which degree the concept of state power has become fluid in the current circumstances.49

Those advocating the theory of “post-national” or “cosmopolitan” democracy, rely heavily on the concept of global governance, too. Jürgen Habermas puts it thus: “quite clearly, traditional power politics is not only normatively constrained by the rules of the [UN], but even more effectively curtailed by the use of “soft power”.”50 David Held, Anthony Giddens and Michael Zürn are even more explicit here. Zürn simply qualifies as a “transnational regime” those “norms and rules agreed upon and applied by non-state transnational actors, without the involvements of governments (governance without government)”—e.g. the anti-doping rules of the International Olympic Committee.51

A Critical Take on Global Norms

The contributions brought together in the present volume have in common that they seek to critically assess the phenomenon of global norm creation and its recent evolution, in ways that depart from the often convenient rationalisations of regime theory, the governance approach, or “post-national/cosmopolitan democracy”. Originally presented at a bi-lingual conference (French and English) held in September 2003 at the Institut d’Etudes Politiques in Aix-en-Provence, France (with Christian Joly as coorganiser), all papers have been rewritten and edited for inclusion as chapters in the present collection. The contributors hail from a range of countries and academic cultures (cf. the biographical details at the end of the volume). It was felt by the organisers that widening the horizon beyond political science and include the reflections of
philosophers and international legal scholars was equally important as recruiting the participants from such a varied geographical background.

Part I deals with the shift of norm creation from the national setting to the global arena. Roger Coate and Jacques Fomerand analyse in this respect the performance of the UN as a source of global norms, taking the Millennium Development Goals as the focus of their analysis. Ronen Palan discusses these norms in the context of how sovereignty is eroding. Gregory Raymond and Charles Kegley, Jr. more specifically investigate the implications of the concept of military preemption for global governance. This part of the collection closes with the chapter by Noé Cornago discussing the new role of subnational entities in the creation of global norms.

The second part of the book deals with global economic norms. Elisabeth de Zuttter analyses the norms involved in the international negotiations on trade-related intellectual property; Noemi Gal-Or develops a legal scholar’s perspective on the phenomenon of international commercial arbitrage which represents a key vector of how private norms not only become part of the overall normative structure but also are adjudicated by private bodies. The same applies to what Jean-Christophe Graz calls the “entrepreneurial democracy” involved in the normalisation of technical standards. Finally, Andreas Nölke in his chapter argues that there is more common ground between topical experts and critical scholars on the issue of private norms than often assumed.

The third and final part of the collection brings together reflections on the status of global norms in different disciplines and areas of application. Jean-Paul Chidiac discusses the concept of “soft law” and its impact on juridical thought; Marjukka Laakso in her contribution investigates the difficulties of applying international environmental norms. In his chapter, Johannes Krause discusses the critiques of arguments on international distributive justice from the point of view of Kantian philosophy, whilst Barbara Delcourt analyses the tradition in international law that seeks to transcend, in the perspective of interdependence, the principles of state primacy in the constitution of global norms. In a concluding chapter, Bob Brecher, finally, makes the claim that the “Third Way” from which so much mainstream thinking on global norms has emerged, should not be accepted as the “communitarianism” which it claims to be, but traced to the neoliberalism from which it really stems.


42. On the background of NATO’ war against Yugoslavia see K. van der Pijl, *Global Rivalries from the Cold War to Iraq* (London, Pluto and New Delhi, Sage, 2006), chapter 8.
PART I

NATIONAL SOVEREIGNTY AND THE NORMATIVE FRAMEWORK OF INTERNATIONAL RELATIONS
Although news coverage of the United Nations tends to focus largely on issues of war and conflict, it is development, not war, which dominates discourse and practice throughout the UN system. The debates have at times been bitter and development paradigms have come and gone—temporarily subsuming UN politics and then giving way again to some new challenging thesis. All the while, the gap separating the very rich and the extremely poor has been getting larger and larger.

The dawn of the new millennium witnessed yet another new development synthesis around a more or less coherent and seemingly consensual framework of development goals, objectives, and sectoral policies. The focus is on eliminating poverty and promoting sustainable human development and human security. This new synthesis was embraced by UN member states in the United Nations Millennium Declaration adopted at the 2000 New York Millennium Summit. The Declaration enjoined the international community to eradicate extreme poverty, create enabling environments conducive to development, promote good governance, mobilize financial resources for development, address the special needs of LDCs and heavily indebted developing countries, promote gender equality and the empowerment of women, develop and implement strategies to increase employment opportunities, make essential drugs more widely available in developing countries, develop strong partnerships with civil society and ensure that the benefits of new technologies, especially information and communication technologies, are available to all.1

The Declaration also spells out specific goals and associated targets and indicators, the so-called Millennium Development Goals (MDGs). They all originate from the extensive series of global conferences and activities over the past decade and, taken as a whole, can be viewed as being mutually reinforcing, poverty reduction being their overarching objective. Six quantified and time-bound objectives focus on the eradication of extreme poverty and hunger, the achievement of universal primary education, the promotion of gender equality, the reduction of child mortality, maternal health, and the spread of HIV-AIDS, malaria, and other diseases. The other goals contained in the Millennium...
Declaration focus on policy means. They call on governments and the international community to integrate the principles of sustainable development into country policies and programs and reverse the loss of environmental resources; to develop global partnerships based on an open, rule-based, predictable, nondiscriminatory trading and financial system; to make firm commitments to good governance, development, and poverty reduction—both nationally and internationally; to address the special needs of the least developed countries through tariff- and quota-free access for exports; and to develop national and international measures designed to deal comprehensively with the debt problem of developing countries in order to make debt sustainable in the long term and to provide more generous official development assistance (ODA) for countries committed to poverty reduction. Since the Millennium Summit, the MDG process has been accepted throughout the UN system, including the Bretton Woods institutions, as an overarching normative objective as well as a framework for assessing progress.

A consensus thus appears to have emerged that new forms of cooperation and partnerships are needed among states, markets, the private sector, voluntary and civic organizations, local communities, and other ‘stakeholders.” How “real” is this development consensus? The question needs to be posed because, over time, the United Nations has legitimized and contributed to the formation of alternative and widely different development paradigms. In fact, the organization was based at its inception on a set of normative liberal assumptions that were subsequently challenged. This chapter explores the development discourse and practice in the UN in order to uncover the nature and evolution of these socially constructed development worlds. As shall be argued, three key factors underpin what we see as the fragile political consensus on which the MDGs vision was based: the distribution of political and economic power among UN members and, in particular, the ideological hegemony of the United States which shaped the UN system’s original underlying normative liberal ideological foundations; the evolution of multilateral processes and changes in global political economy; and the modest but significant role of the United Nations which is neither an impotent mirror of the world’s divisions nor a sheer effector of great power agreements in these processes.

**Normative Underpinnings: The UN System as a Promoter of Liberalism**

The United Nations Organization (UNO) was but one of a “family” of intergovernmental agencies established during and following the Second World War. In the light of current public discourse about an “erosion of sovereignty,”
it would be imprudent to ignore the sovereignty-penetrating liberal and functionalist foundations of the system of international institutions that was envisioned and created by the United Nations Alliance during and after the Second World War. In this regard, it is all too often overlooked that the UN Charter was the outgrowth of a process of reflection and planning undertaken as early as 1941 within the American government.

In the light of the flawed settlement of World War I at Versailles and the failure of the United States to join the League of Nations, from the very outset, a key self-evident “lesson” of the past that guided American planners was that the long-standing isolationism of the United States had to give way to a robust and proactive leadership in the international arena. The cardinal principle of America’s new internationalism rested on the recognition that wartime great power cooperation should continue in the post war era, especially in the field of peace and security. The avoidance of future wars also involved the creation of a variety of institutional instruments for conflict prevention. U.S. membership in an international organization endowed with a wide array of powers to maintain international peace and security and a mandate to sustain its economic underpinnings was the linchpin of this overall scheme.

The logic of the ideology was clear. Growth and prosperity at home in a liberal capitalist world order were directly linked to growth and prosperity in the larger global political economy. For obvious reasons, peace was a prerequisite for economic growth and prosperity. Democracy and the promotion of human rights were prerequisites for sustainable peace. In turn, creating and sustaining democracy in an undemocratic world order required social and economic stability and growth. UNESCO, the origins of which go back to 1941, for example, was assigned the responsibility of promoting democratization through mass education, mass media, scientific cooperation, and cultural preservation. Also important to stress here is the fact that the UN’s role in the economic and social areas was limited, with the main work in those fields being carried out by the specialized agencies and the Bretton Woods institutions in particular. “We are not thinking of a superstate with its own police forces and other paraphernalia of coercive power,” warned Roosevelt in mid 1944. Indeed, the Anglo-American scheme was not to endow a voluntary association of nations with discretionary roles and functions but merely to empower it as “a town meeting of the world where public opinion is focused as an effective force.” As a centre for the harmonization of national policies, the United Nations was thus meant to function merely as a catalyst and a facilitator or, in Roosevelt’s words, as an instrument “to assist the creation, through international cooperation, of conditions of stability and well being necessary for peaceful and friendly relations among nations.” Furthermore, the contribution of the United