

## BOOK NOTE

*Fault Lines of International Legitimacy*. Edited by Hilary Charlesworth and Jean-Marc Coicaud. New York: Cambridge University Press, 2010. Pp. 416, \$102.00 (cloth).

The concept of legitimacy in political thought is usually restricted to discussions of national matters. For instance, when considering this concept, Rousseau focused on an individual nation-state's exercise of coercive power and how such use of coercion could be legitimated. Even earlier, Hobbes did not characterize the Leviathan as a league of nation-states but instead as an absolute sovereign with power over an individual commonwealth.

*Fault Lines of International Legitimacy*, edited by Hilary Charlesworth and Jean-Marc Coicaud, moves away from a nation-based analysis of legitimacy. It recognizes that questions of international legitimacy have increased over the past twenty years, due in part to the collapse of the Soviet Union and to human rights crises in Africa and elsewhere. One of the central messages of *Fault Lines of International Legitimacy* is that, although it is difficult to define international legitimacy, it is absolutely necessary in order to maintain justice and security in an increasingly interconnected world.

In defining international legitimacy, the editors employ the metaphor of "fault lines" to great effect.<sup>1</sup> This metaphor works because fault lines, in geology and in policy, are areas of high tension but also areas of change, of possibility. The editors dismiss the notion that there is a crisis of international legitimacy, arguing instead that the current system, as represented by bodies such as the United Nations, is "holding up."<sup>2</sup>

To support this assertion, the editors analyze international legitimacy in a four-part discussion. The first part, "From the History and Structure of International Legitimacy to Fault Lines in Contemporary International Politics," consists of five chapters. The purpose of these chapters is to set the stage, to define legitimacy as a general concept, along with what distinguishes legitimacy at the national and international levels. Of particular note is Chapter

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1. See, e.g., *FAULT LINES OF INTERNATIONAL LEGITIMACY* 4 (Hilary Charlesworth & Jean-Marc Coicaud eds., 2010) (explaining the book's free use of the expression "fault line") [hereinafter *FAULT LINES*].

2. *Id.*

Four, "Intervention in a 'Divided World': Axes of Legitimacy," by Nathaniel Berman. Professor Berman dismisses the notion that there was a post-Cold War "golden age" of internationalism, lasting from 1989 to sometime after September 11, 2001.<sup>3</sup> This characterization compares the seeming absence of international crises during that golden period to the myriad challenges to international legitimacy thereafter, as exemplified by America's invasion of Iraq and Afghanistan.<sup>4</sup> As Berman notes, however, this is "a retrospective illusion" as "[w]ords like *Srebrenica* and *Rwanda* should be enough to remind us . . ."<sup>5</sup> He proposes that we reject this characterization, or "nostalgia for the long post-Cold War decade,"<sup>6</sup> as historically inaccurate and theoretically flawed and adopt "an understanding of internationalist legitimacy that is less foundational and more vulnerable, less static and more tentative, less certain and messier."<sup>7</sup> In other words, our desire for a not-too-distant, coherent internationalism must give way to the reality that such a state of affairs never existed, and a recognition that challenges to legitimacy such as those cited above are in fact a source of great strength for internationalism.

The second part of the book is entitled "The UN Security Council: Expression, Venue, and Promoter of International Legitimacy?" Inclusion of a discussion on the UN Security Council is fitting, "considering the crucial function of the Security Council as a key organ of global governance, in terms of both interpretation and implementation *but also with regard to its limits.*"<sup>8</sup> This is an insightful observation. Inasmuch as the UN is arguably the most powerful international body and the one with the most widespread recognition, it is useful to define the outer boundaries of international legitimacy as the extent of the UN's reach or efficacy.<sup>9</sup>

Chapter Six, "Legal Deliberation and Argumentation in International Decision Making," addresses the quality of deliberation among the members of the Security Council. One of the critiques of the UN Security Council is that it is emblematic of the "democratic deficit," or the condition in which those who make decisions

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3. *Id.* at 115–16.

4. *See id.* at 116.

5. *Id.* at 116–17.

6. *Id.* at 117.

7. *Id.* at 118.

8. *Id.* at 6 (emphasis added).

9. *See also* John Gerard Ruggie, *The United Nations and Globalization: Patterns and Limits of Institutional Adaptation*, 9 GLOBAL GOVERNANCE 301 (2003) (describing how the United Nations was designed to be decentralized and therefore, in some aspects, limited).

are becoming increasingly remote from those affected by those decisions.<sup>10</sup> Ian Johnstone, the author of this chapter, disagrees. He observes that “[i]nternational law operates largely through a process of justificatory discourse,” which is defined as the effort to gain assent on reasoned rather than idiosyncratic or possibly fabricated grounds.<sup>11</sup> Although the UN Security Council is the ultimate decision maker when it comes to the establishment of sanctions or the use of military force, Johnstone argues that it does not and cannot make its decisions in isolation.<sup>12</sup> Whatever happens behind closed doors (at Security Council meetings, at which there are no official records kept), its decisions must eventually be justified to the UN at large and the world as a whole.<sup>13</sup> Higher-quality deliberations therefore increase the legitimacy and effectiveness of international decision-making.

Chapter Seven, “The UN Security Council, Regional Arrangements, and Peacekeeping Operations,” discusses the relationship between UN intervention and regional efforts in peacekeeping missions. Nishkala Suntharalingam observes that there has been a shift in recent years “such that Security Council authorization is necessary for legitimizing intervention by a coalition of states or by an individual state, regardless of whether the UN has a role as the implementer.”<sup>14</sup> This state of affairs suggests that the UN has become more central to any contemporary discussion of international legitimacy. Suntharalingam, however, argues that this boost to its own legitimacy comes at a cost to the UN, namely that in adopting the role as legitimator the UN has also assumed additional institutional costs.<sup>15</sup>

One of the most interesting chapters in the book is Chapter Eight, Dianne Otto’s “The Security Council’s Alliance of Gender Legitimacy: The Symbolic Capital of Resolution 1325.” Otto notes that the Security Council “relies on ideas to legitimate its decisions and practices.”<sup>16</sup> In such a manner, the Security Council’s unanimous resolution of Resolution 1325 on Women, Peace, and Security increased its legitimacy among grassroots women’s groups.<sup>17</sup>

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10. FAULT LINES, *supra* note 1, at 175.

11. *Id.* at 180.

12. “The Security Council is not a sealed chamber, deaf to voices and immune to pressure from beyond its walls.” *Id.* at 187.

13. *See id.*

14. *Id.* at 206.

15. *Id.* at 236.

16. *Id.* at 243.

17. *Id.* at 240.

But the effects of Resolution 1325 were not unilateral. By recognizing that gender equality is “inextricably” linked with peace, the Security Council also legitimated the positions of women’s groups.<sup>18</sup> But this alliance is not without its internal tensions. Indeed, the “alliance of gender legitimacy” between the Security Council and women’s groups is a prime example of the central fault line metaphor. As Otto observes, full adoption of Resolution 1325 (which is non-binding) would result in a direct conflict with the Security Council’s *modus operandi* in international conflict—namely, “masculine” reactions such as sanctions or military action.<sup>19</sup> She argues that “the inclusion of women does not necessarily challenge militarism”<sup>20</sup> but acknowledges that it is “a more dangerous time for women and nonmilitary narratives of international peace and security.”<sup>21</sup>

Part Three, entitled “Legitimacy of International Interventions and Hierarchy of International Rights,” examines “masculine” international reactions to humanitarian crises. The authors in Part Three recognize the challenge to international legitimacy posed by military intervention in humanitarian crises but conclude that force is often the only solution. In “Cosmopolitan Militaries and Cosmopolitan Force,” Lorraine Elliott analyzes the legitimacy of the proposition that military force—and forces—can and should be used for cosmopolitan or international purposes.<sup>22</sup> A fault line in international legitimacy emerges between the use of force by the UN as authorized in its founding charter—to defend a member state against military attack or during a breach of international peace and security—and the actual use of force since the 1990s, in situations designated as incidents of “morally uncurbed aggression.”<sup>23</sup> An additional fault line appears in militaries themselves: as Elliot puts it, how can militaries serve both cosmopolitan and statist objectives at the same time?<sup>24</sup> She argues that to be legitimate, coercive force should be divorced “as much as possible from statist and Great-Power purposes and based on democratic and accountable international processes.”<sup>25</sup> The end product would be a force

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18. *Id.* at 239–40.

19. *See id.* at 242; *id.* at 251.

20. *Id.* at 274.

21. *Id.* at 275.

22. *Id.* at 280.

23. *Id.* (quoting Axel Honneth, *Is Universalism a Moral Trap? The Presuppositions and Limits of Human Rights*, in *PERPETUAL PEACE: ESSAYS ON KANT’S COSMOPOLITANISM* 159 (James Bohman & Matthias Lutz-Bachmann eds., 1997)).

24. *See id.*

25. *Id.* at 302.

“cosmopolitan in its ends as well as in its means.”<sup>26</sup> B.S. Chimni agrees with Elliott’s observations. In his chapter, “Sovereignty, Rights, and Armed Intervention: A Dialectical Perspective,” he suggests that the only legitimate use of force in upholding cosmopolitan goals, such as preventing genocide, is through the UN system.<sup>27</sup> Armed unilateral humanitarian intervention not approved by the UN is illegitimate because it is mainly practiced by hegemonic states, selectively exercised, and likely to cause more harm than good.<sup>28</sup>

The last part, “In Search of New Forms of International Legitimacy: Between Power and Principles,” goes beyond military intervention and addresses other features of international legitimacy. For instance, Chapter Eleven (Ralph Wilde’s “Determining How the Legitimacy of Intervention Is Discussed: A Case Study of International Territorial Administration”) considers territorial administration by international bodies such as the UN,<sup>29</sup> and Chapter Twelve (Jun Matsukuma’s “The Legitimacy of Economic Sanctions: An Analysis of Humanitarian Exemptions of Sanctions Regimes and the Right to Minimum Sustenance”) discusses a form of international action that has seen increasing use, particularly in Iraq.<sup>30</sup> Although economic sanctions are arguably less destructive than military interventions or occupation, they can produce devastating effects on the civilian population of a sanctioned country,<sup>31</sup> hardly a legitimate use of international power.

Charlesworth and Coicaud do an excellent job in compiling a collection of thought-provoking essays. The questions raised by the individual authors merit serious thought and discussion: they are increasingly relevant in a world that has gone from bipolar, to unipolar, to multipolar in short order. Rather than be daunted by the number and depth of fault lines in international legitimacy, policymakers should take to heart Charlesworth and Coicaud’s observation that the international system is under stress but not at a point of systemic breakdown—indeed, that the fault lines present opportunities for adjustment and preservation.

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26. *Id.* at 295.

27. *See id.* at 304.

28. *Id.* at 324.

29. *Id.* at 327.

30. *Id.* at 360–61.

31. For instance, Matsukuma notes that, due to the economic sanctions against Iraq, “a large and growing number of Iraqis had a lower food intake than the population in disaster-stricken African countries.” *Id.* at 370–71.

Hilary Charlesworth is an Australian Research Council Federation Fellow and Director of the Centre for International Governance and Justice at the Australian National University in Canberra. She has written widely on international law and human-rights law and has held visiting appointments in U.S. and European universities.

Jean-Marc Coicaud is the Director of the United Nations University (UNU) Office at the United Nations in New York. His published books include *L'introuvable démocratie autoritaire; Legitimacy and Politics: A Contribution to the Study of Political Right and Political Responsibility*; and *Beyond the National Interest: The Future of UN Peacekeeping and Multilateralism in an Era of U.S. Primacy*. He is now finishing a new book titled *Kissing War Good-bye*.