

# World Peace Through Law: Rethinking an Old Theory

by James T. Ranney (2010)<sup>1</sup>

From time immemorial, humanity has yearned for peace,<sup>2</sup> but gone to war.<sup>3</sup> Now, with the advent of nuclear weapons, it seems to most people that war, at least major war, is no longer an option. Thus, the question becomes how to avoid it. One possible answer is “world peace through law,” somehow substituting the rule of law for the use of force to resolve international conflict. Many versions of this basic idea, once quite popular but now nearly forgotten, have been advanced over the years.<sup>4</sup> Undoubtedly the “strongest” version of “world peace through

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<sup>2</sup> See, e.g., *Isaiah 2:4* (“and they shall beat their swords into plowshares, and their spears into pruninghooks: nation shall not lift up sword against nation, neither shall they learn war any more.”)(King James Bible)(8<sup>th</sup> c. BCE).

<sup>3</sup> See, e.g., BARBARA TUCHMAN, *THE GUNS OF AUGUST* (1962); PETER H. WILSON, *THE THIRTY YEARS WAR: EUROPE’S TRAGEDY* (2009); and JONATHAN SUMPTION, *THE HUNDRED YEARS WAR, VOL. III* (2009). Cf. also JOHN G. STOEISSINGER, *WHY NATIONS GO TO WAR* (1974).

<sup>4</sup> See JEREMY BENTHAM, *PLAN FOR AN UNIVERSAL AND PERPETUAL PEACE*, 12-27 (1789)(Grotius Society Publ., 1927)(noting with typical aplomb that “[a] proposal of this sort is one of those things that can never come too early nor too late,” he proposes “a plan of general and permanent pacification for all Europe,” with troop reductions, especially in naval forces, and “a Common Court of Judicature” to resolve differences between nations, albeit without coercive powers); IMMANUEL KANT, *PERPETUAL PEACE*, 16-19, 30, 37 (1795)(U.S. Library Assn, 1932)(noting, with uncanny prescience, that “[a] war...which might cause the destruction of both parties at once, together with the annihilation of every right, would permit the conclusion of a perpetual peace only upon the vast burial-ground of the human species,” he argues for totally abolishing “standing armies” and creating “a federation of free states,” which “sanctioned in the end by public laws,” could lead to “a cosmopolitan constitution”); [www.nobelprize.org/nobel\\_prizes/peace/laureates/1906/roosevelt-lecture.html](http://www.nobelprize.org/nobel_prizes/peace/laureates/1906/roosevelt-lecture.html) (Theodore Roosevelt 1910 Nobel Peace Prize lecture urges creation of world court with enforcement powers via “some form of international police power”); David Kennedy, *The Move to Institutions*, 8 *CARDOZO L. REV.* 841, 879-882 (1987)(prior to WWI, many prominent jurists, statesmen, and industrialists, such as William Howard Taft and Andrew Carnegie, favored various forms of “world peace through law”); RANDOLPH S. BOURNE, Compiler, *TOWARDS AN ENDURING PEACE: A SYMPOSIUM OF PEACE PROPOSALS AND PROGRAMS 1914-1916*, Appendix, at 241-332 (1916)(collecting dozens of peace proposals from wide variety of groups, even the Chamber of Commerce, most proposing mediation and judicial arbitration, reductions in armaments or total disarmament, some proposing an international police force, and a few proposing some kind of international congress or council); HANS Kelsen, *PEACE THROUGH LAW*, viii-ix, 13-23 (1944)(while the dream of a world state is “too much,” he looks to “a slow and steady perfection of the legal ordering,” starting with an international court with compulsory jurisdiction and executive enforcement via some kind of “administrative agency” not requiring unanimity, and eventually followed by an international police force with a virtual monopoly on the use of international force, and finally an international legislature); ALLAN McKNIGHT & KEITH SUTER, *THE FORGOTTEN TREATIES: A PRACTICAL PLAN FOR WORLD DISARMAMENT* (1983)(1961 McCloy-Zorin Agreement, initiated by Eisenhower and JFK, for “general and complete disarmament,” with “procedures for peaceful settlement of disputes” and “an international peace force”); and Charles S. Rhyne, *The Athens Conference on World Peace Through Law*, 58 *AM. J. INT’L L.* 138-151 (1964)(Chair of American Bar Association Special Committee on World Peace Through the Rule of Law reports on 7-day 1963 conference, drawing 1800 attendees

law” is that of the world federalists, whose basic argument is that there are only two ways to resolve true conflict (meaning conflict that cannot be mediated) at the international level: (1) by war (no longer a good idea, since it could entail the extinction of at least our species), and (2) by law. Therefore, they say, choose law. And by “law,” world federalists mean law that is the only kind worth having, enforceable law, enforceable upon individuals, i.e., “world law,” created by a global legislature and enforced by global courts and global police, unlike the inadequate currently-existing international “law” and the weak system of UN-based “collective insecurity” that we now have.<sup>5</sup>

This article proceeds on the assumption that while the above syllogistic argument does convey an important truth, there is another possibility, that the “law” in the “world peace through law” formula need not be that of a global legislature, that there are other ways of securing world peace through law, both in the short term and in the long run.

If one takes a long view of our history as a species and as a maturing international society, it becomes apparent that we are already on our way, while scarcely realizing it, to “world peace through law” through the one-step-at-a-time brick-by-brick, law-by-law, norm-by-norm accretion of a body of mere “international law” which is gradually becoming a body of

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from 115 countries, including chief justices such as Earl Warren, the king and queen of Greece, Henry Luce, and John J. McCloy; broad purpose was “to substitute the rule of law for the rule of force in international relations”; declarations passed urged greater use of arbitration, acceptance of compulsory jurisdiction of International Court of Justice, and the drafting of a comprehensive disarmament treaty with “appropriate peace-keeping machinery”).

<sup>5</sup> See generally JOSEPH P. BARATTA, *THE POLITICS OF WORLD FEDERATION* (2004)(excellent history of movement, tracing origins of idea back to at least Dante [ca. 1311], Henry IV of France [1610], William Penn [1693], Abbe de Saint-Pierre [1713], Rousseau [1761], Kant [1795], and early British and American federalists, through huge popular successes post-WWII to its near extinction in the McCarthy Era; appendix has annotated bibliography of 77 books); CHRISTOPHER HAMER, *A GLOBAL PARLIAMENT: PRINCIPLES OF WORLD FEDERALISM*(1998)(excellent exposition of concepts); and GRENVILLE Clark & LOUIS SOHN, *WORLD PEACE THROUGH WORLD LAW* (3d ed. 1966)(the classic work, with a detailed proposal). Also cf. Louis Lusky, **Four Problems in Lawmaking for Peace**, 80 POL. SC. Q. 341 (1965)(assessing obstacles to world federalism) and INIS CLAUDE, *SWORDS INTO PLOWSHARES: THE PROBLEMS AND PROGRESS OF INTERNATIONAL ORGANIZATION*, chs. 18 & 19 (4<sup>th</sup> ed. 1971)(brilliant critique of world federalism).

genuine “world law” right before our unsuspecting eyes. And this world-law-in-the-making has been happening even during the recent administration of a U.S. government more scornful of international law and international institutions than any in U.S. history.

What in the world am I talking about? Well first, I am talking about a vast body of international law, built up primarily over the past several centuries.<sup>6</sup> One can start by looking at a mere short-list of the highlights of international law and institutions over the years, to remind ourselves of the progress that has been made, despite the serious shortcomings that remain.

#### MILESTONES IN INTERNATIONAL LAW

Hugo Grotius’ <i>On the Law of War and Peace</i> (attempts to describe what he insists on calling “a common law of nations,” albeit one that he freely admits is often as not observed in the breach)	1625
Peace of Westphalia (modern system of sovereign European states; early attempt at international arbitration)	1648
Final Act of Congress of Vienna (principles for cooperative use of rivers; etc.)	1815
Paris Declaration on Maritime Law (regulating maritime warfare)	1856
International Red Cross	1864
International Telecommunications Union	1865
Institut de Droit International founded	1873
Universal Postal Union	1875
Int’l Bureau of Weights & Measures & Int’l Meteorological Org.	1878
Int’l Copyright Union	1886
First Hague Convention (against poison gas, dum dum bullets; treatment of war prisoners)	1899
Permanent Court of Arbitration	1900
Second Hague Convention (outlaws war to collect debt; accepts “principle” of compulsory arbitration, but without operative machinery)	1907
International Labor Organization	1919
International Civil Aviation Organization	1919
League of Nations [but not the U.S.]	1920
World Court [later, Int’l Court of Justice (1945)]	1921

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<sup>6</sup> This is not to say that there were not significant developments in international law prior to this. See Harold Berman, **The Law of International Commercial Transactions (*Lex Mercatoria*)**, 2 EMORY J. INT’L DISP. RESOL. 235 (1987)(tracing origins of law merchant from Sea Law of Rhodes, ca. 300 B.C.). But with the evolution of the modern nation-state in the early 1600’s, see Sheri Berman, **From the Sun King to Karzai: Lessons for State Building in Afghanistan**, 89 FOREIGN AFFAIRS 2 (Mar/Apr 2010), we see the growth of inter-nation-al law. Cf. also M.W. Janis, **Jeremy Bentham and the Fashioning of ‘International Law’**, 78 AM. J. INT’L L. 405 (1984)(Jeremy Bentham first to coin term “international law”).

Kellogg-Briand Pact (normative principle outlawing war, but no enforcement mechanism)	1928
Geneva Conventions on Prisoners of War	1929
Bank for International Settlements	1930
UNESCO	1942
World Bank	1944
IMF	1944
United Nations	1945
FAO (food & agriculture)	1945
Nuremberg War Crimes Trials begin	1945
UNICEF	1946
GATT (General Agreement on Tariffs & Trade)	1947
Universal Declaration of Human Rights	1948
World Health Organization	1948
Geneva Conventions on War Crimes	1949
European Coal & Steel Community	1951
European Convention for Protection of Human Rights	1953
European Economic Community (EEC, Treaty of Rome)	1957
IAEA (Int'l Atomic Energy Agency)	1957
Antarctic Treaty	1959
OECD (Organization for Economic Cooperation & Development)	1961
McCloy-Zorin Agreement (draft plan for nuclear disarmament)	1961
Limited Test Ban Treaty	1963
World Food Program	1963
UNCTAD (integrating developing countries into world economy)	1964
UNDP (development)	1965
Outer Space Treaty	1967
Treaty of Tlatelolco (first of several nuclear free zone treaties)	1967
Nuclear Nonproliferation Treaty	1968
Vienna Convention on the Law of Treaties	1969
Seabed Arms Control Treaty	1971
Biological Weapons Convention	1972
ABM Treaty	1972
SALT I Interim Agreement	1972
UNEP (environment)	1972
Threshold Test Ban Treaty	1974
Int'l Covenant on Economic, Social & Cultural Rights [but not U.S.]	1977
Convention on Elimination of Discrimination Against Women [id.]	1979
Law of the Sea Convention [id; entered into force, 1994]	1982
Montreal Protocol (re ozone layer)	1987
Intermediate-Range Nuclear Forces Treaty	1987
Convention on the Rights of the Child [only U.S. & Somalia not]	1989
UN Framework Convention on Climate Change	1992
Chemical Weapons Convention	1993
Int'l Criminal Tribunal for the Former Yugoslavia	1993
WTO (more court-like sanctions than GATT)	1994

Comprehensive Test Ban Treaty [not approved by U.S. Senate]	1996
Ottawa Landmines Treaty [but not U.S.; entered into force, 1999]	1997
Kyoto Protocol [but not U.S.; entered into force, 2005]	1997
Int'l Criminal Court [but not U.S.; entered into force, 2002]	1998
UN General Assembly "Responsibility to Protect" Resolutions	2006
Convention on Cluster Munitions [but not U.S.; entered into force, 2010]	2008

What the above partial list makes clear is that, starting from the smallest measures, on up through the sweeping changes of the post-WWII years, a growing body of global law of considerable depth and breadth has gradually been accumulated.<sup>7</sup> And while current international law and institutions are weak and ineffective (especially in the area of global security),<sup>8</sup> they have grown stronger, despite the desperate opposition and scorn of the real-politikers.<sup>9</sup> To take one example in the area of international trade: Initially the GATT (1947) operated only upon a consensus decision-making basis. Now, however, as of 1994 the new WTO has precisely the reverse rule: sanctions are now automatic upon a finding by the WTO tribunal in the absence of a consensus

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<sup>7</sup> See generally MARY ELLEN O'CONNELL, *THE POWER AND PURPOSE OF INTERNATIONAL LAW: INSIGHTS FROM THE THEORY & PRACTICE OF ENFORCEMENT* (2008). Also compare JUDITH L. GOLDSTEIN, MILES KAHLER, ROBERT O. KEOHANE, & ANNE-MARIE SLAUGHTER, eds., *LEGALIZATION AND WORLD POLITICS*, at 1, 4 (2001)(while disavowing any “teleological view,” the authors find that “[i]n many issue-areas, the world is witnessing a move to law.”); Philip Allott, *The Emerging Universal Legal System*, 3 INT'L L.F. 12 (2001); and MARTTI KOSKENNIEMI, *THE GENTLE CIVILIZER: THE RISE AND FALL OF INTERNATIONAL LAW 1870-1960*, at 200 (2001)(international law increasingly has “practical validity”) with JULIUS STONE, *OF LAW AND NATIONS: BETWEEN POWER POLITICS AND HUMAN HOPES* (1974)(hard-headed analysis of some of the limits of international law per se) and ERIC POSNER, *THE PERILS OF GLOBAL LEGALISM*, at 173 (2009)(criticizing “the global legalist Whig style of history”).

<sup>8</sup> Cf. PERCY E. CORBETT, *THE GROWTH OF WORLD LAW*, at 50 (1971)(the international law system “leaves off precisely at the point where law is most necessary, namely where the urge to unrestrained action is strongest”).

<sup>9</sup> Compare, e.g., NICOLE DELLER, ARJUN MAKHIJANI & JOHN BURROUGHS, eds., *RULE OF POWER OR RULE OF LAW? AN ASSESSMENT OF U.S. POLICIES AND ACTIONS REGARDING SECURITY-RELATED TREATIES* (2003); Oona Hathaway, *Why We Need International Law: Undoing the Bush Administration's Damage*, *THE NATION*, 11-19-07, at 35-36 (remarkable internal documents show deep aversion to international law); and Thomas M. Franck, *The Power of Legitimacy and the Legitimacy of Power: International Law in an Age of Power Disequilibrium*, 100 AM. J. INT'L L. 88 (2006) with Robert J. Delahunty and John C. Yoo, *Peace Through Law? The Failure of a Noble Experiment*, 106 MICH. L. REV. 923 (2008). Cf. also CORBETT, *supra*, at 51 (those scornful of stumbling attempts to create world law “display a lack of perspective no less real than that of the hurried idealists whose visions they deprecate.”).

blocking them.<sup>10</sup> Similarly, the Law of the Sea Treaty (1982) replaces conflicting power-based claims with a comprehensive rule-based framework to regulate all ocean space (70% of the globe), its uses and resources, from navigation rights to definition of territorial waters and related boundaries to fishing limits and other ocean resources regulation, all enforced via compulsory dispute settlement procedures.<sup>11</sup> Although the Law of the Sea Convention was the result of a number of UN-sponsored conferences, the UN has no direct role in its operation, so that it is free of the P-5 veto in the Security Council.<sup>12</sup> These two examples of “stronger” international law are emblematic of the kinds of evolutionary changes that have taken place and will only continue to occur over time. And gradually, as the edifice of international law becomes more and more impressive and gains greater acceptance, philosophical debates as to the nature of international law as “law” will become increasingly moot, as we move ever closer to eventually creating a comprehensive system of international courts empowered to provide the rule of law at the global level.<sup>13</sup>

This ongoing process, which is gradually turning weak “international law” into enforceable “world law,” is very like the growth of the early common law. In twelfth and

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<sup>10</sup> See Richard H. Steinberg, **Judicial Lawmaking at the WTO: Discursive, Constitutional, and Political Constraints**, 98 AM. J. INT’L L. 247 (2004) and Bernhard Zangl, **Judicialization Matters! A Comparison of Dispute Settlement Under GATT and the WTO**, 52 INT’L STUDIES Q. 825 (2008)(also noting increased political independence of the Appellate Body and the use of legal reasoning instead of political bargaining).

<sup>11</sup> Cf. generally LOUIS B. SOHN, KRISTEN G. JURAS, JOHN E. NOYES & ERIK FRANCKX, **LAW OF THE SEA IN A NUTSHELL** (2d ed. 2010) and [www.un.org/Depts/los](http://www.un.org/Depts/los).

<sup>12</sup> This aspect of the Convention is particularly interesting. This “Law of the Sea approach”—a functionalist approach keyed to a particular problem and neatly avoiding the constraints of the P-5 veto—could be utilized in other problem areas. See Center for War/Peace Studies, **What Eliot Richardson Thinks**, GLOBAL REPORT, at 1 (No. 4, 1978)(Amb. Elliot Richardson is interviewed by Richard Hudson, and states: “To me the Law of the Sea Conference offers the hope of a major contribution in the building of a global order. It may well be the single most important potential to build it.”)

<sup>13</sup> See notes 21-23 *infra*. See also Trial of German Major War Criminals (Goering et al), International Military Tribunal (Nuremberg), Judgment and Sentence (Sept. 30 & Oct. 1, 1946)(Cmd 6964, HMSO, London), at 40: “The law of war is to be found not only in treaties, but in the customs and practices of States which gradually obtained universal recognition, and from general principles of justice applied by jurists....” Also cf. HANS KELSEN, **LAW AND PEACE IN INTERNATIONAL RELATIONS: THE OLIVER WELDELL HOLMES LECTURES, 1940-1941**, at 145, 149-51 (1942)(arguing that the natural evolution of law is from courts to legislatures).

thirteenth-century Britain, the common law crimes and torts and other civil claims grew up one by one, gradually converting a hodgepodge of primitive local and feudal folklaws reliant upon self-help remedies (the blood feud and its composition) into a systematic legal structure of pleas of the crown and causes of action enforceable in the central royal courts.<sup>14</sup> Similarly, various legal institutions, such as trial by jury and an independent parliament, only gradually came into existence, after much hard work and acts of individual courage and even occasional battles, transforming what were arms of royal power and control into democratic individual-freedom-enhancing legal institutions.<sup>15</sup> A similar evolutionary process is plainly at work in the field of international law.

It is true, of course, that many of the more recent advances (e.g., the ICC and the Law of the Sea Treaty) have not yet been signed by the United States.<sup>16</sup> This, despite the fact that many in the U.S., such as Ambassador Elliot Richardson, chief U.S. negotiator at the Law of the Sea Conference, and Bill Pace, Convenor of the NGO Coalition for an International Criminal Court, played a key role in their creation. But this will change. America will eventually come to its senses and recover its historic courage, reject the craven politics of fear, and rejoin the world

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<sup>14</sup> See, e.g., WAYNE R. LaFAVE & AUSTIN W. SCOTT Jr., CRIMINAL LAW, at 619 n.3 (1972)(common law crime of larceny by bailee finally recognized in 1473). See generally HAROLD BERMAN, LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION, chs. 1-3, 13 (1983)and JAMES R. RANNEY, HERITAGE OF OUR FREEDOMS: MILESTONES IN LEGAL HISTORY, at 16, 19-20 (1987)(slideshow transcript and coursebook)(on file with author).

<sup>15</sup> See generally RANNEY, HERITAGE, supra, at 20-21, 26-28 (also “Milestones in Legal History” chart appendix at 3-5 nn. 28, 31 & 39)(jury develops from royal inquest of local knights of the shire into independent criminal trial jury by 1220; subsequent development of right to freedom of deliberation in *Bushel’s Case* in 1670; parliament grows out of body mainly “judicial” in nature or merely advisory to king into independent legislature ca. 1258); THEODORE F. PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW, at 118-121, 133-34 (5<sup>th</sup> ed. 1956); and HENRY G. RICHARDSON & GEORGE O. SAYLES, THE ENGLISH PARLIAMENT IN THE MIDDLE AGES (1981).

<sup>16</sup> There is an excellent argument that these and similar treaties should have been adopted via the congressional-executive agreement process rather than via the treaty clause. See Oona Hathaway, **Treaties’ End: the Past, Present, and Future of International Lawmaking in the United States**, 177 YALE L.J. 1236 (2008)(former method more democratic than latter since it involves both houses, the two-thirds requirement being based upon now-discredited concerns of the slaveholding states).

community. America may even come to realize that the cost of being World Cop is something it can no longer afford, with its current financial difficulties perhaps hastening this realization.

As difficult as it is to predict the future, if one were forced to make reasonable projections from the current trajectory of world-law-in-the-making to likely future world law and legal institutions, one can project the following general list (aside from the treaties already in existence but not yet signed by the United States):

(1) Global economic regulations. This appears to be the next big thing on the horizon, if only because the latest financial crisis has pointed out to many businessmen and policymakers that something aside from the occasional chat amongst the G-20 is called for in vast areas of global economic (and environmental) regulation.<sup>17</sup> No opinion is ventured here as to how such important changes might be accomplished, except to note that a “Law of the Sea problem-by-problem approach” is one of many that could be utilized.<sup>18</sup>

(2) Human rights enforcement. There is a sense, of course, in which world peace and justice would follow automatically from the enforcement of global human rights. Nevertheless, it is perhaps worth separating this area out for special attention. Without attempting to do an

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<sup>17</sup> See, e.g., Joseph E. Stiglitz, **A Real Cure for the Global Economic Crackup**, THE NATION, July 13, 2009, at 11 (preview of upcoming UN report on global economic reforms needed); David Kennedy, **The Mystery of Global Governance**, in JEFFREY L. DUNOFF & JOEL P. TRACHTMAN, RULING THE WORLD? CONSTITUTIONALISM, INTERNATIONAL LAW, AND GLOBAL GOVERNANCE, at 59 (2009) (“Speaking loosely, and to put it in the starkest terms, with economic globalization and the continued loss of public capacity, large swaths of the world will, in twenty years, have whatever social security system, whatever environmental regime, whatever labor law, whatever wage rate, prevails in China.”); Jeffrey E. Garten, **The Case for a Global Central Bank**, BUSINESS WEEK, Sept. 28, 2009, at 83; Aaron Bernstein, **A Major Swipe At Sweatshops**, BUSINESS WEEK, May 23, 2005, at 98; RONEN PALAN, RICHARD MURPHY, & CHRISTIAN CHAVAGNEUX, TAX HAVENS: HOW GLOBALIZATION REALLY WORKS (2010) (approximately 56 tax/regulatory/secretcy havens involving 2 million companies and \$12 trillion in assets result in annual tax loss estimated at \$255 billion; GAO report shows that by now 60% of large U.S. corporations pay no taxes; havens also hide risky debt instruments, facilitate corruption, and cause the deaths of over 250,000 children a year due to illegal capital flight and lost tax revenue); JAMES GUSTAVE SPETH & PETER M. HAAS, GLOBAL ENVIRONMENTAL GOVERNANCE (2006); and PIERRE DE SENARCLENS and ALI KAZANCIGIL, REGULATION GLOBALIZATION: CRITICAL APPROACHES TO GLOBAL GOVERNANCE (2007).

<sup>18</sup> See note 12 supra. For a good example of the problem-by-problem type of analysis required, see Jeffrey Dunoff, **Institutional Misfits: The GATT, the ICJ & Trade-Environment Disputes**, 15 MICH. J. INT’L L. 1042 (1994).

exhaustive review of the full set of human rights or how they might best be implemented,<sup>19</sup> just imagine what it might mean to the world, and in particular to the peace issue, if just one right—the right to full gender equity—were granted. It is not idle speculation to suggest that this one measure could by itself go a long way toward bringing about world peace.<sup>20</sup>

(3) Global rule of law. We need to complete the task, only just begun, of creating comprehensive global legal structures that substitute the rule of law for the rule of force at the international level. This will require, at a bare minimum, not only an expanded International Criminal Court<sup>21</sup> and an International Court of Justice with compulsory jurisdiction,<sup>22</sup> but also some kind of international equity tribunal to resolve controversies of any nature whatever.<sup>23</sup>

(4) Arms reductions and a United Nations Peace Force. As noted previously, proposals for some kind of international police force have been around for quite some time, having in fact been endorsed by at least four former U.S. presidents (Theodore Roosevelt, William Howard

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<sup>19</sup> It could be argued that the logic of the “world peace through law” formula would dictate an immediate International Human Rights Court. But as Justice Holmes famously said, “the life of the law has not been logic.” More importantly, the way in which I use the “world peace through law” syllogism does not contemplate “litigating” our way to peace or human rights, at least not until there is a greater global consensus on fundamental values.

<sup>20</sup> See PAUL GORDON LAUREN, *THE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS: VISIONS SEEN* (3d ed. 2010); ANATOLY L. ADAMISHIN & RICHARD SCHIFTER, *HUMAN RIGHTS, PERESTROIKA, AND THE END OF THE COLD WAR* (2009); William Burke-White, **Human Rights and National Security: The Strategic Correlation**, 17 HARV. HUMAN RIGHTS J. 249 (2004); Hilary Mantel, **The War Against Women**, NEW YORK REVIEW OF BOOKS, at 19-21 (April 30, 2009); and Karin Ronnow, **Educate Girls, Change the World**, 3 JOURNEY OF HOPE 32 (2009)(Central Asia Institute).

<sup>21</sup> With expanded coverage of crimes such as possession of nuclear weapons or components.

<sup>22</sup> See Richard B. Bilder, **Judicial Procedures Relating to the Use of Force**, ch. 28 in LORI FISLER DAMROSCH & DAVID J. SCHEFFER, *LAW AND FORCE IN THE NEW INTERNATIONAL ORDER* (1991)(Mikhail Gorbachev in 1987 proposed expansion of the ICJ’s compulsory jurisdiction, discussions taking place for several years amongst the P-5).

<sup>23</sup> See O’CONNELL, *supra* note 7, at 12-13, 31, 46-52, 196 (tracing the history of this idea back to Grotius and his predecessors) and HANS KELSEN, *PEACE THROUGH LAW*, at 49 (1944)(a Central American Court of Justice was created by treaty signed on December 20, 1907 between Costa Rica, Guatemala, Honduras, Nicaragua, and Salvador which provided for compulsory arbitration of “all controversies...of whatsoever nature,” this treaty coming to an end in 1918, after having resolved only a few cases [www.pict-pecti.org/courts/CACJ/html]). It is also possible that a reformed (veto-less) Security Council could handle such matters, at least on an interim basis. A third possibility is that a reformed Security Council could have the option of referring such issues to an equity tribunal or to the ICJ with an added jurisdiction to sit specially as an equity tribunal.

Taft, Dwight David Eisenhower, and John F. Kennedy).<sup>24</sup> But the Cold War and other differences amongst countries have prevented anything like it from coming into existence. With the imminent move to abolition of nuclear weapons,<sup>25</sup> accompanied by reductions in conventional weapons and their restructuring toward “defensive-only” postures (such as fixed anti-tank emplacements, which can be used only defensively),<sup>26</sup> we will be on our way to an infinitely safer world. If we can combine that with increasing reliance upon an international peace force, we can look forward to an eventual situation where a UN Peace Force (UNPF) is considered to be the only legitimate means of confronting violence or threats of violence. As to how this might be effectuated, a UNPF could be instituted via a “Law of the Sea” approach, avoiding the veto problem in the UN Security Council, and without the need to create a global government. The tough issue would be when and how a UNPF could be committed. Not much thought has gone into that issue, and it is admittedly a difficult one. Nevertheless, just as the Law of the Sea Convention was negotiated over time, in that specific context, so too some kind of operational mechanism (left vague on purpose) controlling the UNPF could be negotiated over time, whether some kind of weighted-voting or qualified-majority or other device altogether.

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<sup>24</sup> Note 4 supra. See also LINCOLN P. BLOOMFIELD, ed., *INTERNATIONAL MILITARY FORCES: THE QUESTION OF PEACEKEEPING IN AN ARMED AND DISARMING WORLD* (1964); ELISE BOULDING & RANDALL FORSBERG, *ABOLISHING WAR: DIALOGUE WITH PEACE SCHOLARS* ELISE BOULDING AND RANDALL FORSBERG, at 14, 57-60, 67-68 (1998); Clark and Sohn, supra note 2; and James T. Ranney, **Beyond Minimal Deterrence—An Approach to Nuclear Disarmament**, 4 *J. OF WORLD PEACE* 18, 19-20 (Spring, 1987).

<sup>25</sup> See generally TAD DALEY, *APOCALYPSE NEVER: FORGING THE PATH TO A NUCLEAR WEAPON-FREE WORLD* (2010) and [www.iiss.org/events-calendar/2008-events-archive/September-2008/press-launch-abolishing-nuclear-weapons](http://www.iiss.org/events-calendar/2008-events-archive/September-2008/press-launch-abolishing-nuclear-weapons) (Carnegie Endowment). See also LAWRENCE S. WITTNER, *CONFRONTING THE BOMB: A SHORT HISTORY OF THE WORLD NUCLEAR DISARMAMENT MOVEMENT* (2009).

<sup>26</sup> See JONATHAN SCHELL, *THE ABOLITION*, at 176-77 (1984); Harold Feiveson, Richard Ullman & Frank Von Hippel, **Reducing U.S. and Soviet Arsenals**, 41 *BULLETIN OF THE ATOMIC SCIENTISTS* 144 (Aug. 1985); ROBERT JOHANSEN, *TOWARD AN ALTERNATIVE SECURITY SYSTEM*, at 22-24 (1983); and MARK SOMMER, *BEYOND THE BOMB: LIVING WITHOUT NUCLEAR WEAPONS*, at 52-55 (1985).

While it is true that a UNPF could turn out to be less than perfect,<sup>27</sup> and it might not be, at least initially, precisely the kind of institution that the peace community would thoroughly approve,<sup>28</sup> in the real world there is little that is perfect and there are disadvantages to almost everything. Further, the fact that a UNPF might at some point be co-opted as a good idea by neo-conservatives ought not be upsetting,<sup>29</sup> for unless a few ideas of the peace movement are adopted by “the opposition,” they will never go anywhere.

Gradually, then, as we gain greater experience with already-existing UN peace forces, increasing their capacity and competence, with concomitant decreases in individual-country militaries, we will arrive at a point where the normal expectation will be that a UNPF is the only proper means of dealing with international conflict. Simultaneously, the universal expectation and eventual well-settled norm will become that such conflict should be subjected to a comprehensive array of international legal dispute resolution mechanisms. When that happens, we will have arrived at a place where we have in fact substituted the rule of law for the use of force to resolve international conflict. If and when that day comes, we will have realized humanity’s long-time dream of world peace through law, regardless of whether or not world federalists would want to call it true world federalism and/or world law.

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<sup>27</sup> This is not the place for an extended discussion of what a good UNPF would look like (although obviously it would need to be able to respond timely to diverse challenges in appropriately diverse ways, with fully-equipped well-trained crème de la crème officers and troops with access to adequate logistics, intelligence and communications, operating under well-organized and well-coordinated command and control and a clear mandate). Also, the emphasis upon a UN peace “force” ought not imply a too-ready resort to force. Rather, this must be a “peace and reconciliation” force that makes full use of conflict resolution and other non-violent approaches (e.g., something like the existing Non-Violent Peaceforce should be either a part of a UNPF or available to it).

<sup>28</sup> E.g., one can foresee the objection that a UNPF might look too much like an overgrown NATO. Cf. Christoph Marischka, **How Ban Ki-moon subjugated the UN to NATO**, *Informationsstelle Militarisierung* (June 1, 2009)([www.imi-online.de/2009.php3?id+1925](http://www.imi-online.de/2009.php3?id+1925))(largely unnoticed document of 23 September 2008 signalling cooperation between UN and NATO objected to by Transnational Foundation for Peace & Future Research).

<sup>29</sup> Cf. Nina M. Serafino, **The Global Peace Operations Initiative: Background and Issues for Congress** (Congressional Research Service; March 19, 2009)(even the Bush Administration favored multilateral peacekeeping and stabilization forces).

Although the above proposal does place considerable emphasis upon the role of global law and legal institutions in securing peace, there is no suggestion that the law by itself will somehow miraculously transform the world. Obviously, more than mere “legal change” is required. It will take fundamental social and political change. It will take increased understanding amongst countries, facilitated by vastly increased exchange programs, twinned-universities, worldwide internet and interfaith exchanges, a sharing of the most precious children’s literature of all cultures, and an infinite variety of similar measures. Law, after all, is merely public sentiment crystallized.

There are those who would argue, in fact, that all we really need for a peaceful and just future world is the classic idea of a gradual but steady decline in militarism and military spending worldwide, as part of a generalized increase in understanding amongst countries. For just as we would no longer think of going to war with Canada and just as Great Britain and France would no longer think of going to war, so too we and Russia and others may arrive at a similar point of mutual understanding in our joint destinies.<sup>30</sup> And this new outlook would be accompanied by the de facto resort to readily available legal dispute resolution systems. Thus, there might not be that much need for a UNPF or at least not a large one.

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<sup>30</sup> As hard as it is right now to envision reconciliation with our current worst enemies, I believe that we will eventually see precisely that, especially as there is a decline in what may be called toxic religiosity, on all sides. This will be the culmination, worldwide, of the Age of Reason. Cf. THOMAS PAINE, *THE AGE OF REASON: BEING AN INVESTIGATION OF TRUE AND FABULOUS THEOLOGY* (1794)(devastating attack on organized religion, in particular the divinity of Christ, while arguing for existence of God). Cf. also [www.strategicforesight.com](http://www.strategicforesight.com) (working for an “inclusive world”); Pankaj Mishra, *The Misunderstood Muslims*, *NEW YORK REVIEW OF BOOKS*, Nov. 17, 2005, at 15-16 (reviewing books arguing that religious and gender rights reform is already under way in most of the Muslim world); KAREN ARMSTRONG, *THE BATTLE FOR GOD: FUNDAMENTALISM IN JUDAISM, CHRISTIANITY, AND ISLAM* (2000)(the author in 2008 called for creation of an interfaith Charter of Compassion devoted to shared moral priorities to foster greater global understanding); IRSHAD MANJI, *THE TROUBLE WITH ISLAM TODAY: A MUSLIM’S CALL FOR REFORM IN HER FAITH* (2008)(arguing for a return to the original Muslim emphasis upon critical thinking); and ZACHARY KARABELL, *PEACE BE UNTO YOU: THE STORY OF MUSLIM, CHRISTIAN, AND JEWISH COEXISTENCE* (2008).

Of course, all these things inevitably play together. Progress on one front will facilitate progress on other fronts. Progress on human rights and economic development will facilitate the kinds of normative changes needed for significant arms reductions and a greater willingness to rely upon global legal institutions. Arms reductions will permit greater economic and human development and a blossoming of humanity's creative capacity for good. Deeper arms reductions will likely depend upon progress on building alternative security systems and stronger international legal structures. Even though we will face the inevitable setbacks, when one takes the long view of human history,<sup>31</sup> the trajectory we are on is apparent, toward a more governed world, toward "world peace through law."

Of course, it will not happen by itself. Rather, it will take what it always takes—individual action and courage and determination in the face of strong opposition—to fight for our vision of a world without war. There are many paths to peace, things that we can do, collectively and individually, to secure a safe and sustainable world. But after many millennia of human development, we now face a profoundly fundamental choice: between what we have been doing for ages--bleeding the private sector and public sectors white with exorbitant military spending while hoping to escape the time-honored tradition in which individual empires rise and fall--and a whole new paradigm of global security, a world without war and with social justice, bottomed upon the global rule of law.

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<sup>31</sup> See Appendices A & B, which take that "long view," placing the "Milestones in International Law" in the larger context of evolution of law generally and the even larger context of humanity's evolution.

## Appendix A

### MILESTONES IN LEGAL HISTORY<sup>32</sup>

Mesopotamian/Sumerian codes (including Hammurabi's).	2500-1700 B.C.
Edict of Harmhab, Egypt.	1300 B.C.
Ancient Hebrew Laws (Pentateuch).	1200-500 B.C.
Solon's Constitutional Code, Athens.	594 B.C.
Gortyn Code, Crete.	460 B.C.
Twelve Tables of Rome.	450 B.C.
Plato's Academy (Athens) founded.	388 B.C.
Office of Praetor (Roman judge) created.	367 B.C.
First Jurisconsults established.	253 B.C.
Praetor Peregrinus created (to handle cases of non-Romans).	242 B.C.
Edict of Magistrate Julianus (consolidating equity jurisprudence).	130 A.D.
Gaius' Institutes (early Roman law treatise).	161 A.D.
New Testament.	200 A.D.
Emperor Constantine's Edict of Toleration (of Christianity).	313 A.D.
Theodosian Code.	438 A.D.
King Euric's Visigoth Code (for the Southern Goths).	466 A.D.
Germanic Lex Salica.	496 A.D.
King Alaric II's Breviarium Alaricianum.	506 A.D.
Justinian's Corpus Juris Civilis (16-man commission distills 2,000 books)	528-539 A.D.
Anglo-Saxon Doms.	600-1066 A.D.
Domesday Book.	1085-86
Law School at Bologna founded.	1087
Gratian's Decretum (first systematic arrangement of canon law).	1140
Assize of Clarendon (first of several enactments of Henry II, instituting the sworn inquest).	1166
Glanvill, Tractatus de Legibus.	1187
Magna Carta.	1215
Trial by jury in criminal cases instituted.	1220
Gregory IX's Decretals.	1234
Bracton's De Legibus et Consuetudinibus Anglia (using Roman & canon law structures and terminology and early common law content).	1256
Earliest "parliament" (grows out of thrice annual feasts for the king).	1258
St. Thomas Aquinas' Summa Theologica (seeks to reconcile theology and	1267-73

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<sup>32</sup> All dates approximate. This is a much abbreviated version (without explanatory text or footnotes) of a chart which was part of materials I created for use in an "Introductory Program" for first-year law students at the University of Montana School of Law dealing with "Evolution of Western Law" (1987). The transcript for a slideshow titled "Heritage of Our Freedoms: Milestones in Legal History," to which this chart (along with selected readings) was appended, is available upon request (jamestranney@post.harvard.edu).

Aristotelian philosophy).	
First “Year Books” (case reports).	1280
Inns of Court appear.	1292
Littleton’s Tenures (first printed lawbook in England).	1481
Petition of Right (forerunner of British and American Bill of Rights).	1628
Coke’s Institutes.	1628-1644
Sir Matthew Hale’s Pleas of the Crown.	1660’s
<i>Bushel’s Case</i> (right to free jury deliberations established, in William Penn case).	1670
English Bill of Rights (culmination of Glorious Revolution of 1688).	1689
Locke’s On Toleration and Second Treatise of Government.	1689-90
Blackstone’s Commentaries (popular in American colonies).	1765-69
First American Law Professor, Judge Geo. Wythe, Wm & Mary College.	1779
First American Law School, Litchfield, Connecticut (lasted until 1883).	1784
U.S. Constitution (ratified 1788; Bill of Rights ratified, 1791).	1787
Jeremy Bentham, An Introduction to the Principles of Morals & Legislation.	1789
<i>Marbury v. Madison</i> (power of judicial review).	1803
Napoleon’s French Civil Code.	1804
Harvard Law School founded (oldest American law school still in existence).	1817
<i>McCulloch v. Maryland</i> (interpret “necessary and proper” clause broadly).	1819
James Kent’s Commentaries on American Law.	1821-30
Joseph Story’s Commentaries.	1832-45
David Dudley Field’s Code of Civil Procedure.	1848
Fourteenth Amendment ratified.	1868
Case system of legal education, Harvard.	1870
American Bar Association founded.	1878
Uniform Laws instituted.	1896
“ <i>Lochner</i> ” era (invalidating progressive legislation).	1897-1937
Progressive & New Deal social reform/welfare/regulatory legislation (results, inter alia, in new field of administrative law).	1900-1917, 1933-1941
<i>Mapp v. Ohio</i> (beginning of Warren Court’s “due process revolution”).	1961

## Appendix B

### MILESTONES IN HUMAN HISTORY

Big Bang (estimated origin of Universe).	13.8 billion years ago
Earth coalesces into existence.	4.58 billion years ago
First life on earth (possibly, hyperthermophiles, geothermally-heated chemical-eating microbes with lipid membranes).	3.88 billion years ago
Burgess Shale era -- Wildly diverse life forms	560 million years ago.
First “true mammals.”	200 million years ago
Earliest hominid.	4.5 million years ago
Australopithecus sediba—Early ancestor of humans.	2 million years ago
Homo sapiens.	0.5 million years ago
First human settlements & agriculture.	10,000 years ago
First writing and reading.	5,000 years ago
Religious revolutions.	900-200 B.C.E.
Scientific/enlightenment/industrial/nuclear revolutions.	16 <sup>th</sup> -20 <sup>th</sup> c.