

International Organizations and Global Justice

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I THE DEVELOPMENT OF INTERNATIONAL ORGANIZATIONS

JEAN-MARC COICAUD (JMC): *To begin our conversation, tell us how international organizations came to be.*

JOSÉ E. ALVAREZ (JA): Most histories of international organizations start with the nineteenth-century conferences where lawyers got together from different countries for various treaty-making efforts. Dissatisfactions with those ad hoc treaty-making efforts – the fact that such initiatives were left to the discretion of the host state who decided to convene them, whom to invite, and what specific issues were on the agenda – led to initiatives for greater institutionalization to permit more coherent and continuous efforts to address global issues. The deficiencies of those nineteenth-century conferences led to the creation of permanent (brick and mortar) institutions with international secretariats. Over time, some of these institutions aspired to achieve universal or quasi-universal membership. Among the first was the International Labor Organization (ILO) in 1919 and later the League of Nations. This historical account relies heavily on functionalism. The premise is that international organizations (IOs) were the product of rational state actors driven by the need to fulfill certain functions requiring international cooperation.

This functionalist explanation for IOs is clear, for example, in Duncan Snidal and Kenneth Abbott's important article which distills these functions to two: states' needs for centralized actions and their need to rely, at least for some things, on neutral or independent actors.¹ States need to combine their efforts to achieve the level of resources, financial as well as intellectual, to resolve certain issues. They also need institutions like the International Court of

¹ Kenneth W. Abbott and Duncan Snidal, "Why States Act through Formal International Organizations," *Journal of Conflict Resolution* (vol. 42, no. 3, 1998).

Justice (ICJ) and independent international civil servants led by the UN Secretary-General because these third-parties, at some remove from states, are perceived as more capable of settling interstate disputes neutrally, allocating resources impartially, or carrying out in disinterested fashion the work of IOs.

JMC: And why did this need emerge in the late nineteenth century?

JA: These needs did not emerge for the first time in the nineteenth century. Centuries before, Grotius, for example, sought to establish rules that should govern maritime trade.² But globalization – the modern world’s generation of continuous transnational flows of goods, people, capital, and ideas – generated ever more pressing needs by more and more states to coordinate their efforts, including to address the negative externalities of such flows. The increased interdependence of states, not just on economic issues but on lots of others, their need to resolve problems of the global commons, for example, emerged more forcefully starting with this period. States had to address not only how to encourage trade in goods among them but also how to prevent the transmission of diseases that may come with port traffic, for example – and the need to resolve the tension between these two goals by agreeing on certain rules became all the more acute with the turn to civil aviation.

JMC: And these needs which developed throughout the 1920s and 1930s grew even stronger in the aftermath of World War II?

JA: The UN system was indeed the product of World War II and would not have developed, at least not in the same way, without that conflict, including the horrors of the Holocaust. The last inspired the rise of the human rights revolution. The United Nations is itself a product of the perceived flaws with prior institutional efforts. Many of the provisions in the UN Charter are conscious efforts to correct the flaws of the League of Nations Covenant.³ Organizations like the UN are products of a learning process. From the UN to the WTO, IOs are efforts to correct the past. The UN Charter is at least in part a backward-looking document that seeks to build a viable collective security scheme that would, unlike the League of Nations, enable a central organ – its Security Council – to take enforcement action and impose legally binding obligations on states. The absence of such a central organ in the League, along

² Hugo Grotius (1583–1645), Dutch Jurist and author of seminal works in international law including *De Jure Belli ac Pacis* (*On the Law of War and Peace*) (1625).

³ José E. Alvarez, *International Organizations as Law Makers* (Oxford: Oxford University Press, 2005).

with its failure to delineate clearly the respective powers of all the League's organs, were flaws that the UN Charter sought to correct. The lack of institutional separation of powers in the League led to establishing a Security Council charged with "primary" obligations over peace and security, a General Assembly that is principally a talk shop for almost everything else but is also in charge of finances, and an ICJ presiding over "legal disputes." The drafters also omitted a provision to permit withdrawal, which they feared would only encourage future aggressors to exit from the organization. They sought to avoid the resulting loss of leverage that the League of Nations suffered with respect to Japan, for instance. The WTO and its relatively legalized Dispute Settlement Mechanism was established to respond to the inadequacies of the less formal GATT.

Of course, institutional learning does not just occur when IOs are first established. Organizations – at least healthy ones – learn from their own mistakes over time and adapt. The UN adapted to de-colonialization – the product of its own efforts to recognize the principle of self-determination. This led to a radical shift in the composition of the General Assembly, which went from a body that was under the control effectively of the United States and other Western powers to one that exceeded 190 members with no one country, least of all the United States, in control of a predictable majority. The UN has also had to adapt to first the Cold War – which practically paralyzed its collective security system for decades – and, later, the fall of the Berlin Wall, which, at least for a time, reactivated the Council and emboldened that body to take innovative actions, such as establishing war crimes tribunals.

II HUMANITARIAN INTERVENTION: A NEW ERA FOR INTERNATIONAL ORGANIZATIONS?

JMC: Would you say that the post-Cold War era – the 1990s and the 2000s – introduced qualitative changes in the nature and work of international organizations, especially the United Nations?

JA: Absolutely. In the immediate wake of the Cold War there was what some people have called "UN-euphoria," an optimism that a new world order was being born, as was suggested by Secretary-General Boutros-Ghali in his *Agenda for Peace*.⁴ Belief that things had completely changed was encouraged by the Council's coming together to get Iraq out of Kuwait. For

⁴ Boutros Boutros-Ghali, *An Agenda for Peace: Preventive Diplomacy, Peacemaking, and Peace-Keeping: Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992* (New York: United Nations, 1992).

some, that successful resort to Chapter VII action indicated that the collective security scheme was finally working as intended. Many thought, naively, that this meant that in the future there would be no exercise of the veto – that peacekeeping would become robust and that states would finally begin to agree in advance to provide peacekeeping forces under the standing arrangements as anticipated by article 47 of the Charter.

That post-Cold War euphoria ended in the wake of a number of UN embarrassments, including its inability to prevent killings in Rwanda and Srebrenica, its Oil-for-Food scandal, and a debacle involving peacekeeping post-Somalia.⁵ Today, no one really expects easy consensus among the Council's Permanent Members. The Council obviously remains unable to respond to many critical threats to the international peace, from those between Israel and Palestine to humanitarian crises too numerous to mention. After 9/11 we entered another period of uncertainty where the Charter's security apparatus seems ill-suited to intrastate conflicts and threats posed by non-state terrorist actors. Some argue more broadly that IOs, established by states to respond to interstate functionalist needs, now confront a paradigm shift where much of the action needing attention requires the participation of non-state actors, including multinational corporations and prominent members of international civil society. How interstate organizations adapt to a world where states are far from the only relevant actors may be the most significant challenge they currently face.

JMC: While the 1990s was an eventful period in terms of legal developments within the UN, haven't legal developments since been less significant?

JA: I don't think keen observers of the organization would agree. While perhaps there have been fewer innovations as dramatic as the Council's seizing the reins of transitional justice in places like the Former Yugoslavia and Rwanda, the current period has seen more subtle legal innovations.⁶ The Council's invocations of the responsibility to protect (R2P) principle with

⁵ See, e.g., Summary of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda, UN Yearbook (1999); Summary of the Report of the Secretary-General Pursuant to General Assembly Resolution 53/35: The Fall of Srebrenica, UN Yearbook (1999). In October 1993 the United States authorized a special ops mission supported by the United Nations Operation in Somalia (UNOSOM) II in Mogadishu, Somalia, to arrest two top lieutenants of warlord Mohammad Aidid. The mission led to an unexpected battle and eighteen US soldiers were killed and seventy-three wounded in action.

⁶ See generally, Sebastian von Einsidel, David M. Malone, and Burno Stagno Ugaret (eds.), *The UN Security Council in the 21st Century* (New York: The International Peace Institute, 2016).

respect to Libya,⁷ for example, or its creative adaptation of the “reverse veto” to implement the deal with respect to Iran’s nuclear weapons program,⁸ may, over time, prove to be even more significant than the Council’s role in reanimating hopes for international criminal justice by establishing war crimes tribunals.

JMC: Do you believe that there is a viable responsibility to protect in the sense of a new duty on states to protect their own populations and perhaps a duty on the international community to engage in humanitarian intervention if they do not?

JA: I am very doubtful about the latter but more hopeful about the former. The human rights revolution – and the rise of states’ acceptance of a multitude of human rights obligations – makes it increasingly difficult for states to deny that they owe human rights duties to those within their territory. But the fact that states have duties to prevent human rights atrocities does not mean that the Security Council will act consistently when states fail to do what they should. The Council’s inability to date to engage in or authorize humanitarian action in Syria⁹ may indicate that the Council’s invocation of R2P was merely a politically expedient label – to be used when convenient – but not a new legal principle that would be consistently applied.

JMC: Libya is an exception rather than the triggering of a new rule?

JA: I suspect that it is. Nor should we assume that the Libyan operation was either wise or legal. While the Security Council has the power to authorize states to use force, whether it authorized the kind of force that led to the collapse of the Gaddafi regime and Gaddafi’s death is debatable. Certainly, some members of the Council who voted in favor of the limited Libyan operation were surprised by the extent of the actual NATO operation that followed, as well as its consequences. Apart from legality, given the outcome of the operation – including the killing of civilians and what has emerged since the demise of Gaddafi – there is surely a question about whether bringing down the regime without having something (or someone) to replace it was wise. A resolution, ostensibly based on protecting civilians, that authorizes

⁷ See Security Council Resolution 1973 (Mar 17, 2011) (authorizing in para. 4 “necessary measures ... to protect civilians” in Libya and citing in its preamble, Libya’s “responsibility ... to protect the Libyan population”).

⁸ See Jean Galbraith, “Ending Security Council Resolution,” 109 *AJIL* 806 (2015) (discussing the innovations of S.C. Res. 2231 of July 20, 2015).

⁹ Referring to the ongoing Syrian civil war, which erupted with pro-democracy protests against the Assad regime beginning in March 2011.

only aerial action but not military occupation, may not be the best tool to protect civilians over the long term.

JMC: Why does the text of Security Council Resolution 1973 authorizing the use of force in Libya make you nervous?

JA: Because I am not sure what it means to say when it seeks to protect civilians but only to this extent. The compromises made to adapt this resolution led to disputes among NATO countries and others with respect to what was permitted: What kind of force? To what end? Does it permit or anticipate Gaddafi to stay in power even if civilians continue to be threatened? Is the real aim to remove him from power?

JMC: Yet, if we had answered all these questions it is quite probable that the resolution would not have been approved.

JA: All the more reason to question the ambiguous resolution that was adopted. When you authorize force – the most significant power any IO has – you should be absolutely clear what force is being authorized and for what purpose. As Colin Powell noted long ago, this kind of clarity is needed not only for the soldiers ordered to use force but also to give clear notice to those against whom they are fighting. Peoples' lives are at stake on all sides. You should also be clear about what it is you are trying to achieve. Are you trying to eliminate a regime or just trying to protect civilians from a specific threat for a specific period of time? Do you have a plan in place if you wound or kill Gaddafi about how the territory will be governed so that more people won't be killed in the aftermath of the conflict than before it? We rightly expect a lot from people who authorize killing others, even for noble reasons.¹⁰

JMC: And you did not foresee the Council taking similar action in Syria?

JA: Not without a considerable shift in alignment of the underlying political interests, including of Russia and the Assad regime. There is nothing in the law – or in the UN Charter – that requires the Council to authorize force consistently in response to comparable threats to the peace. The UN Charter drafters intended the Security Council to act for political reasons, whenever they secured enough votes to authorize action.

¹⁰ In the course of the Libyan civil war, deposed leader Muammar Gaddafi (in office 1969–2011) was captured and killed on October 20, 2011.

III ON GLOBAL GOVERNANCE

JMC: To go back to some of the themes which are at the core of your work on international organizations, it seems that global governance has become a central notion when talking about international affairs and the management of the international system. So, do you feel that such a notion – which is quite vague and ambiguous – is appropriate and do you think that it can be used appropriately as a way to describe the role of international institutions in terms of managing the international system?

JA: Global governance is a vague concept, but we need some term to describe what is going on that is not “government.” What a nation-state exercising control over law in its territory does constitutes a government. The world does not have an executive branch, a legislature, and courts. We do not have and probably do not want a world government. But we need a term to describe the complex interrelationships among states, international organizations, other hybrid (public/private) institutions, and NGOs that, in effect, govern the world. State and non-state actors are now deploying legal tools – soft and hard – that affect how states behave both inside their own territories and outside them. Whether you call that global governance or something else matters less than recognizing that it exists and that it needs to be closely examined and evaluated – as we do in all forms of law-making.

Global governance is not limited to actions by classic IOs like those of the UN system. It includes actions taken by the World Bank and the International Monetary Fund (IMF) that might be compared to how domestic administrative agencies regulate.¹¹ But what some call Global Administrative Law (GAL) includes much more, such as the regulatory impact of private non-state business actors and hybrid public/private institutions. Classic IOs do not regulate the Internet, ICANN does. Of course, there are different ways to describe these realities. The impact of public and private forms of governance can be described in terms of network effects, systems analysis, transnational forms of ordering, or even forms of constitutionalism.¹² The last seems especially apt when these transnational norms are enforced, as they increasingly

¹¹ See, e.g., Benedict Kingsbury, Nico Krisch, and Richard B. Stewart, “The Emergence of Global Administrative Law,” *Law and Contemporary Problems* (vol. 68, 2005), p. 15.

¹² For a survey of distinct frameworks for understanding international organizations, see Alvarez, n. 3. See also Terence C. Halliday and Gregory Shaffer, (eds.) *Transnational Legal Orders* (Cambridge: Cambridge University Press, 2015); Jan Klabbers, Anne Peters, and Geir Ulfstein, *The Constitutionalization of International Law* (Oxford: Oxford University Press, 2009).

are, by a proliferating number of international courts or tribunals.¹³ Other scholars, more normatively inclined, argue that these adjudicative bodies are helping to reshape international law into a species of “humanity’s law.”¹⁴ On this view, transnational judicial communication among the world’s adjudicators – including regimes such as trade and investment and not only human rights venues – is increasingly human rights discourse.

JMC: So, you are telling us that global governance corresponds to something which is real; it corresponds to a need which has to be filled and you feel that international organizations are really playing a strategic role in this arena of global governance. They are not being marginalized?

JA: Make no mistake: States are still the primary law-makers in the world and sometimes they marginalize IOs that they feel are not acting in their interests. But states and IOs are no longer (if they ever were) the only relevant actors in governance. There are lots of other players. These include individuals – such as those who serve as international judges or arbitrators, those who are now entitled to bring disputes before regional human rights courts or UN human rights treaty bodies, or investors able to bring an investor state dispute to the World Bank’s International Center for the Settlement of Investment Disputes (ICSID). All of these are now involved in developing a kind of “jurisprudence constante” that may have an impact not just on the interpretation of a particular treaty but on customary international law. If we did not have a term like global governance to describe these complex legal effects we would have to invent one.

JMC: Is global governance enough for the needs that we have at the global level? More and more we begin to hear about the notion of global policy, or of global public policy. In fact the European Union itself is an exercise of global policy at the regional level. Does it make sense to think that perhaps global governance is not thick enough, is not really fulfilling all the needs that we have? Beyond global governance should we think about global public policy? If so, how do you see the role of international institutions in this new landscape?

JA: The global governance that exists is indeed fragmentary and rudimentary. Many lawless gaps exist. But, as a lawyer, I am skeptical of any claim that the law can be distinguished from policy. It is a manifestation of public policy;

¹³ See Karen J. Alter, *The New Terrain of International Law* (Oxford: Oxford University Press, 2014).

¹⁴ Ruti G. Teitel, *Humanity’s Law* (Oxford, UK: Oxford University Press, 2011); Ruti Teitel and Robert Howse, “Cross-Judging: Tribunalization in a Fragmented but Interconnected Global Order,” *NYU Journal of International Law & Politics* (vol. 41, 2009), p. 41.

indeed, that is why it can be changed – as policies change. Many of the gaps in governance are reflections of public policy; that is, they exist because powerful stakeholders do not want them filled. But if the implication of your question is that interstate organizations, such as those of the UN system, have to be made more powerful in order to deal with existing challenges, I would not agree. The world that I see reaches for a variety of public and private forms of governance, that is, a mix of different and rather eclectic approaches for exercising policy judgments (whether or not in the form of international law). In a world that increasingly relies on forms of democratic governance at home, I think that a pragmatic approach – where some things are left to the local and are not internationalized – is not a bad thing. Democracies do not want and probably do not need all-powerful international organizations or international courts with hierarchical authority – and they certainly show no inclination to establish only one such institution over themselves or all other organizations. And if the implication of your question is that we increasingly need hard law enforced by courts that can authorize credible sanctions, the turn to forms of “informal law” despite the proliferation of international courts casts doubt on that.¹⁵

IV GLOBAL GOVERNANCE AND THE INTERNATIONAL CRIMINAL COURT

JMC: Do you feel that there is a need to go one step further or one step higher in terms of institutionalizing the sense of what we could call shared vulnerability? We hear this all the time in terms of trying to tackle issues having to do with development and environment and clearly the way things are working at the moment is not very satisfactory. So, do you think this is a sensible idea?

JA: No one disputes that some global commons issues require global – in the sense of universal – solutions. You need the cooperation of every state from the US to China to resolve something like climate change. But such issues do not require the establishment of a new multilateral organization or court. Institutionalization should not be the go-to solution for global challenges. Nor do I think – despite the great clamor for greater transparency and participation – that resolving such issues necessarily requires the voice or participation of every major player. Even global commons issues may begin to be resolved regionally, and there is room for bottom-up action (as by

¹⁵ Joost Pauwelyn, Ramses A. Wessel, and Jan Wouters, (eds.), *Informal International Lawmaking* (Oxford, UK: Oxford University Press, 2012).

provinces within states or even municipalities) – especially when innovative solutions are sought. In my own scholarship, I have been skeptical that international crimes need to be dealt with at the international level, by a single International Criminal Court (ICC).¹⁶ Even as an adviser to the first Prosecutor of the ICC, I urged resort to “positive complementarity” – where the shadow of the ICC inspires local efforts to prosecute international crimes and where the ICC succeeds by being only a court of truly last resort. Ideally, perpetrators of international crimes should be prosecuted where they commit their crimes, that is, in local court: Where their victims can see justice being done.¹⁷

JMC: It seems that most of the cases in the ICC are coming from developing countries, possibly because in these countries the resources to prosecute are weak. As such, in the public opinion, at times, especially in developing countries, there is a perception of lack of balance. How should we address this problem?

JA: As Mr. Ocampo, the former prosecutor of the ICC, said on more than one occasion, it should not surprise anyone if the ICC does what it is supposed to do – that is, prosecute the most serious international crimes. Nor should anyone be surprised if those atrocities occur most often in countries that have the most serious rule of law problems. But the fact that the ICC has singled out African countries for prosecution and has managed to indict only sitting African leaders has created a serious problem of backlash, within the African Union. Of course, to the extent African prosecutions have emerged because of the Security Council’s referrals of the situations in Libya and Sudan, the ICC should not be blamed. Apart from pursuing truly unbiased preliminary investigations – and of warranted prosecutions – anywhere that these are warranted, the ICC needs to embrace, more than it has, Mr. Ocampo’s notion of positive complementarity. The ICC is supposed to step in only when states are unable or unwilling to do so. Unfortunately, the ICC’s statute did not anticipate technical or other assistance to states to convince or enable them to prosecute in lieu of the Court. The Court lacks mechanisms to make this happen. At present the ICC is just a court; it exercises some leverage over states by threatening to prosecute but does not house mechanisms for rule of law assistance to enable positive complementarity to take root.

¹⁶ José E. Alvarez, “Alternatives to International Criminal Justice,” in A. Cassese (ed.), *The Oxford Companion to International Criminal Justice* 25 (Oxford: Oxford University Press, 2009), pp. 365–480.

¹⁷ See, e.g., José E. Alvarez, “Crimes of States/Crimes of Hate: Lessons from Rwanda,” *Yale J. Int’l L.* (vol. 24, 1999), p. 365.

JMC: Following up on this issue of the ICC and based on its now rather significant experience, do we have ways through which we could somehow improve the situation or is it too late?

JA: Other institutions have adapted to changing needs. The World Health Organization's (WHO) adoption of its International Health Regulations signals a real change in an organization that once avoided regulating anything other than certain specific diseases, for example. In a world that is now subject to increasing transnational health threats, including those posed by the intentional transmission of pathogens, that organization has had to adapt and become, in part, a security organization. A court is harder to change but even there the Assembly of State Parties exists precisely to enable adaptation over time. Whether the political will exists to enable the ICC to change its procedures – including on when and where it initiates a preliminary investigation – is another question entirely.

JMC: Why is a court harder to change?

JA: An international criminal court is designed to do one thing well: prosecute someone when it has jurisdiction to do so and provide a fair trial leading to a conviction or an acquittal. The ICC, unusually, has a second mandate: to assist victims through some forms of reparation. It is not clear that the ICC can ever accomplish this second goal, given the thousands of victims that may demand compensation in some cases and the scarcity of available resources. In the absence of unprecedented reforms undertaken by the ICC's Assembly of States Parties and a willingness to find additional resources for this effort, it is hard to see how the ICC can take on a third mandate: to become an engine to institutionalize, in fragile states, the rule of law.

V ON HORIZONTAL, VERTICAL, AND IDEOLOGICAL CRITIQUES OF INTERNATIONAL ORGANIZATIONS

JMC: Since you have dedicated much of your scholarship to international organizations one would assume that you see international organizations essentially in positive terms, but in fact your book provides a more balanced picture. On one hand you of course highlight the positive dimensions of international organizations, but on the other hand you also caution us against the dark side, if you will, of international organizations. Tell us a bit about why this is so.

JA: Early in my book *International Organizations as Law Makers* I rely on Robert Keohane for the proposition the study of international organizations

should never ever be confused with their celebration.¹⁸ If you are an honest scholar you look at the phenomenon under study without blinders and try to appreciate its pros and cons. Only then can you provide credible prescriptions for change. My book describes the horizontal, vertical, and ideological critiques these organizations have faced.¹⁹

The horizontal critique rests on the accusation that even though organizations like the UN are premised on sovereign equality, they do not really put all their members on the same plane. States are not equal members in most IOs and not only in the obvious ways (as with respect to the UN Security Council or the weighted voting procedures within international financial institutions). Even our “impartial” international courts or tribunals tend to privilege richer and more powerful states – if only because these nations have access to more or better lawyers. While IOs – like the WTO – are often established to “level the playing field,” that field remains horizontally challenged.

JMC: Do you think greater equality would be a plus?

JA: Yes, overall, if we believe that states should be treated at least under the law on an equal basis. Equality of arms should indeed be the rule within international courts and tribunals in practice and not just formally. Even the perception that a Court like the ICC is biased is a serious problem. Courts need to avoid even the appearance of partiality. IOs face a legitimacy deficit to the extent they continue to face critiques from the Global South that intentionally or not they are tools of hegemonic power.²⁰

But a second legitimacy deficit is the complaint, heard most loudly, but not only, in democracies, that rule by IOs suffers from a vertical disconnect. The problem is that law or norms imposed from above at the international level are not subject to the legislative or other procedures that legitimize national rules or norms from below. Even IOs that engage in law-making only through the route of traditional treaties that require state ratification are not immune from this critique insofar as treaty-making itself is seen as an initiative that inordinately privileges executive branches within governments and rarely involves the full transparency and consideration accorded to the making of national laws. This “democratic deficit” is all the more true with respect to less formal forms of IO governance not involving treaties. There is a perception that what happens in IOs, like what happens in Las Vegas, stays in IOs and is rarely

¹⁸ See Alvarez, n. 3, at xix.

¹⁹ *Ibid.*, at 627–645.

²⁰ *Ibid.*, at 199–217; 643–645.

exposed to full public view, much less the checks and balances associated with democratic governance.

The final critique is one of ideology: The complaint that these organizations are pursuing certain normative agendas that reflect cultural, economic, or other ideologies preferred by some states or national elites. A common example is the contention that, at least in the immediate wake of the Cold War, international financial institutions like the IMF were bent on promoting the Washington Consensus approach to governance and economic development. The perception that some IOs were (and possibly still are) elevating the need to deregulate, protect property rights, and promote free flow of goods and capital above other goals de-legitimizes these institutions and undermines them.²¹

JMC: What about the lack of normative or cultural universality from which international organizations suffer? Professionally, I spent quite a bit of time in Asia and I came to realize that, in addition to essentially being a Western creation, international organizations tend to put forward a Western agenda; they often reflect a dialogue between Americans and Europeans that does not reflect the whole world. Don't IOs evince a kind of truncated universality?

JA: That critique combines the horizontal and ideological critiques noted above. Chinese scholars in particular are becoming much more vocal about the fact that China and other Asian states have been, for too long, rule-takers and that it is time for them to take charge and lead IOs in new directions. We may be seeing that happening sooner rather than later, especially with respect to trade and investment issues. There is no question that much of international law, including international organizations, is a Western construct. It is impossible to deny that the US, Russia, Britain, and France were the principal drafters of the UN Charter and much of the post-World War II IOs that we have been addressing. It is an ongoing project to try to make all of these organizations more representative. It is a scandal that the IMF and the World Bank should be headed by Europeans and Americans. That is a colonialist holdover not required by any law.

JMC: Will the rise of China and others affect the nature and functions of international organizations and for that matter international law going forward? Do you think that in the future we are going to be practicing international law differently? Does a global law program like NYU's need to be internationalized?

²¹ Alvarez, n. 3, at 640–645.

JA: International law needs to be internationalized. The functions of IOs will change as a result of the rise of the BRICs and new forms of organizations are already emerging that may eventually displace (or complement) the ones that we have. Whether replacing the United States with China as the world's "indispensable nation" for achieving global governance is a desirable change, however, I am not so sure.

With respect to your question about international legal education: Making a single international law program, even one located in a cosmopolitan city within the United States, truly international is a real challenge – and not only because of language and resource constraints. No single institution, even one as relatively well off as NYU, can possibly involve persons from all over the world, but the resources of the web including social media make it easier to try. But the difficulties NYU faces pale in significance as compared to a law school located in Kuala Lumpur. How the world will train the kind of cosmopolitan international lawyers that it needs is a daunting challenge. We increasingly need to devote resources to the comparative study of international law.²² We need more attention to understanding how international law is being received and implemented around the world. This is harder than it once was insofar as international law has expanded to become a curriculum. Increasingly, international lawyers have become specialists in particular regimes – such as the WTO – and it is easier to focus on the parts over the trees. Fewer people pay attention to how trade law is being implemented around the world. I suspect that if we actually took a close look, we would find that there is no one trade regime but many. Just as we are likely to find that different countries take different approaches to what the World Bank calls corruption. In all these regimes, we pretend that there is a single treaty text and a single best interpretation of it, but the truth is more complicated – and culturally determined.

JMC: *In a sense you are telling us that not only is the law that we teach not the law which in fact exists but also it is not the law that perhaps we should be teaching?*

JA: It is actually even more complicated. While some scholars have indeed paid attention to how international law "trickles down" and penetrates into different national legal orders so that, as translated, it becomes something different in practice,²³ this assumes that we know what objective international law actually is – and can tell when national implementation efforts get it

²² See, e.g., "Symposium: Exploring Comparative International Law," 109 *AJIL* 467 (2015).

²³ See, e.g., Karen Knop, "Here and There: International Law in Domestic Courts," *NYU Journal of International Law & Policy* (vol. 32, 2000), p. 501.

wrong. But in reality some countries' particular views of international law "trickle up." Some national adaptations of international law affect, sometimes dramatically, the meaning of international law, especially if the country is powerful enough to assert its views like the United States or China. The United States has managed to expand the powers of states to respond to acts of terrorism through the use of force and through some influential Security Council resolutions since 9/11.²⁴ Similarly, China's current actions relating to the South China Sea and islands therein seem directed at changing the rules of the game.

VI REFORM OF THE INTERNATIONAL SYSTEM: BALANCING POWER AND PRINCIPLES

JMC: The generic problem seems to be the relationship between power and principles. Ideally, you would want to have principles being put at the service of power. But very often it is the other way around. So how do we connect law and justice so that actors identify the right principles and put law at their service?

JA: The connection between law and justice is quite complicated. We are now conducting this conversation in an office once occupied by Thomas Franck, who devoted his life to legitimacy and questions of fairness and justice. And Tom first approached it, as you well know, as a problem of legal legitimacy and said that fairness had to be left for a second day.²⁵ And then he tackled fairness.²⁶ That proved to be a much more difficult proposition because when we try to achieve fairness or justice we need to bring people other than lawyers into the room.

JMC: So you need to bring in philosophers and practitioners?

JA: And anthropologists and economists and many other disciplines. We have learned, thanks in part to lawyers' efforts to promote sometimes overly narrow views of what the rule of law demands, that achieving the good life requires attention to the diverse needs of people – and not only to securing the civil and political rights associated with Western rule of law states. Achieving sustainable welfare is a broad political project requiring the efforts of many others apart from lawyers.

²⁴ José E. Alvarez, "Hegemonic International Law Revisited," *AJIL* (vol. 97, 2003), p. 873.

²⁵ Thomas M. Franck, *The Power of Legitimacy Among Nations* (Oxford: Oxford University Press, 1990).

²⁶ Thomas M. Franck, *Fairness in International Law and Institutions* (Oxford: Oxford University Press, 1998).

JMC: *Would you say that bringing more nonlawyers to the table is one of the key agendas of the future?*

JA: Well, all too often the error is that too few lawyers are consulted before action is taken, but you are correct insofar as some matters are erroneously seen as exclusively the domain of lawyers. Consider the topic of bringing IOs to account for their mistakes. An age that increasingly expects governments to be accountable is bound to expect the same with respect to any other entity that purports to exercise governance. UN peacekeepers, whether engaged in rape or spreading cholera in Haiti, need to be held accountable – despite the immunity accorded to the UN in national courts.²⁷ Making sure that organizations like the UN – which purport to be spreading the rule of law to others – are themselves subject to it is going to be high on the agenda for UN reformers. But achieving accountability is not just about making sure IOs are subject to sanctions and forced to pay damages for violating the law. Making IOs responsible also requires serious efforts to address their horizontal, vertical, and ideological deficits discussed earlier. We have only begun to address some of the more obvious horizontal/vertical defects such as the lack of transparency or the need to correct weighted voting schemes (as within the IMF). Much more needs to be done.

JMC: *Up until now we could afford to be thinking and acting under the delusion that Western law was the whole of law and that somehow the Western view was the whole of law. It is less and less possible, so wouldn't you say that somehow we have to revisit what law is?*

JA: Absolutely. I have suggested that one of the core challenges that IOs will need to address in the near future is the very nature of the “law” that they are propounding.²⁸ This is why your original question about governance is so important. Once we start talking about “governance” and once we start taking seriously the fact that IOs are indeed “law-makers” (albeit creative ones), we are already taking a step outside the European–American legal positivist mindset that says all international rules have to take the form of the legal sources enumerated in Article 38 of the Statute of the ICJ. I have argued that while one could try to fit all forms of governance into the traditional boxes of

²⁷ José E. Alvarez, “International Organizations and the Rule of Law,” *New Zealand Journal of Public and International Law* (vol. 14, 2016), p. 3.

²⁸ José E. Alvarez, *The Impact of International Organizations on International Law*, at 398–420 (Leiden: Brill/Nijhoff, 2016).

treaty-custom-general principle, doing so misses much about how states, businesses, and individuals are indeed regulated by IOs.

JMC: So you want an opening up of the sources of law?

JA: That is already happening whether I want it or not. But some legal positivists argue against “de-formalizing” legal ascertainment.²⁹ For some people, IOs are merely the repositories of states; IOs are merely their agents and have no real agency of their own and it would be a mistake to elevate IO actions short of treaty-making to the status of “law-making.” As noted, I agree that states remain the principal law-making actors. Indeed, some international legal regimes appear to be subject to a historical dialectic whereby once they appear to threaten some state prerogatives, state forms of backlash emerge to restore some of that lost clout.³⁰ States retain many tools – including defiance of what IOs do – to protect their sovereign rights. But, at the same time, IOs and actors associated within them – from UN special rapporteurs to international judges – still exercise some relative autonomy. Indeed, as we discussed in terms of functionalism, IOs and persons associated with them were meant not to be wholly subject to state control. Moreover, collectivities of state representatives – such as those within the UN General Assembly – have the power to take action that is denied to any one of them. The United States could not prevent the Assembly from recognizing Palestine as an observer-state – or from the obvious consequence of that initiative, namely the ICC’s acceptance of Palestine as a state party.³¹ Of course, the actions of the collective are not always progressive or good.

JMC: All these questions are really big questions and they have to do with the reform of the international system and the reform of international institutions. Are you comfortable with the nature of the debates taking place on the reform of the international system and international institutions?

JA: No. Reform agendas within IOs are still relatively narrow. Security Council reform generally has consisted of different proposals to tinker with the numbers of permanent members with or without the veto. Few people

²⁹ See, e.g., Jean d’Aspremont, *Formalism and the Sources of International Law* (Leiden: Brill/Nijhoff, 2011).

³⁰ “Is Investor-State Arbitration ‘Public?’” (forthcoming *Journal of International Dispute Settlement*); also available as NYU IILJ Working Paper 2016/6, at www.iilj.org/documents/Alvarez_IILJ_2016_6_GAL_final.pdf. See also José E. Alvarez, “The Return of the State,” *Minnesota Journal of International Law* (vol. 20, 2011), 223.

³¹ See, e.g., Alvarez, n. 29, at 185–189 (discussing the consequences of G.A. Res. 67/19 determining that Palestine is an “observer state”).

really have any hope of deep reform of that body. A genuine reform conversation would be more expansive. It would consider, for example, what kind of collective security arm do we really want in the age of non-state threats to the peace? What ought to be the relationship between the Security Council and the General Assembly or other regional or security organizations (such as NATO)? It would consider more seriously the overlapping jurisdictions of our existing IOs and the prospects for forum-shopping between them or other forms of collaboration. We should be discussing these questions within these organizations and not just in academe.

JMC: So things are not really moving ahead?

JA: Some of the most serious forms of governance reform are occurring outside traditional IOs, not within them. International lawyers are partly to blame. International legal advisers, in government or IOs, tend to have narrow views of what is relevant or safe to discuss. They are likely to treat some things as sacred. They would be the first to suggest, for example, that the ICJ should not be reexamined – even if it seems to have a relatively small docket, it has difficulty handling fact-intensive cases, and still gives the Permanent Members of the Security Council exalted status. Lawyers' caution about establishing a precedent concerning the UN's liability is surely part of the reason why the UN took an unconscionably long time to issue an apology – albeit an ambiguous one – with respect to its responsibility for spreading cholera in Haiti.³² Despite their ostensible commitment to the rule of law, the lawyers inside IOs are not likely to be leading the charge in favor of recognizing that the victims of IO malfeasance are owed a legal remedy as much as any other human rights victim.

JMC: But in fact what you allude to here is the difficulty for international law, for international lawyers, to conceptualize and to bring about change. Why is that?

JA: As we discussed, the UN system is essentially a recent, post–World War II product. Some of those present at its creation are still with us today. It is not surprising that we are still living in the shadow of those who believe that these institutions were (and remain) great (but still fragile) institutions to secure the collective against abusive state power. There is still great sensitivity to undermining these “progressive” efforts. The perception persists that these

³² See Report of the Special Rapporteur on Extreme Poverty and Human Rights, UN Doc. A/71/367 (August 26, 2016).

are our babies and we should not criticize them before they are fully grown and can take care of themselves.

JMC: It seems that more often than not, if it were not for diplomats acting as decision-makers, change in the field of international law would not happen. Would you agree that all the changes that have happened in the field of international law in the 1990s have mainly taken place out of diplomatic activism, decision-makers' activism, and were not necessarily initiatives started by international lawyers?

JA: Yes and no. International lawyers tend to enable initiatives started by others. They facilitate and enable the change the policy-makers want. At the same time, certain visionary lawyers, including those present at the creation, were change agents. This often happens, at least within academe, when lawyers are exposed to other disciplines. That is why I applaud interdisciplinary efforts between say political scientists and lawyers. I think that those collaborations may enrich both sides: The political scientists will realize that law exists and can be made to matter, but the lawyers realize that what they are doing is politics in another guise.

JMC: What about philosophy and law?

JA: The same potential for beneficial collaborations exists. One of the positive things about the US legal academy is its strong tradition of hiring onto faculties of law those with doctorates in philosophy, economics, or other fields. We tend to hire more interdisciplinarians than others do in our law schools.

VII ON THE INTERNATIONAL INVESTMENT REGIME

JMC: Changing a bit the topic, you have published two books dealing with the international investment regime and are about to publish a third.³³ This is not a new interest for you since, more than twenty years ago, you started your career working on these issues both as a legal scholar but also as a practitioner. Why return to these issues and why is it that you feel that these issues are particularly important today?

³³ José E. Alvarez, Karl Sauvant, Kamil Gerard Ahmed, and Gabriela del P. Vizcaino (eds.), *The Evolving International Investment Regime: Expectations, Realities, Options* (Oxford: Oxford University Press, 2011); José E. Alvarez, *The Public International Law Regime Governing International Investment* (Leiden: Brill/Martinus Nijhoff Publishers, 2011); José E. Alvarez (ed.), *American Classics in International Law: International Investment Law* (Leiden: Brill/Martinus Nijhoff Publishers, 2017).

JA: The international investment regime interests me because it is one of the most active in terms of producing law. It is not just that over 3,000 international investment agreements (IIAs) exist but hundreds of arbitral awards are now producing a kind of case law rarely evident in international law. There is considerable investment governance going on – and considerable sovereign backlash in its wake. The regime highlights the vertical, horizontal, and ideological critiques of governance. It also interests me insofar as it is a regime that has been deeply influenced by US ideas and power – which go back to the earliest days of the United States as a nation. The United States is not party to many international courts and rarely permits supranational supervision over its laws but thanks to the NAFTA's investment chapter, the United States has become one of the leading respondent states before ICSID. This exposure to investor-state claims has generated buyers' remorse. The United States is having second thoughts about a regime that it once foisted on the world. It is now backtracking on providing investor protections in its more recent IIAs, and the US, along with many other states, is trying to restore more of its sovereign policy space. The regime is a perfect example of a system that has encountered challenges, is undergoing change, and happens to involve a leading economic player.

JMC: The field as it is now is very different from what it was twenty years ago?

JA: Absolutely. There is much more law – customary and treaty – to discuss than in the early days when the only game in town were the decisions rendered by the Iran–US Claims Tribunal and a handful of other rulings. In addition, for a regime that lacks an overarching multilateral bricks and mortar institution comparable to the WTO in Geneva, the investment regime offers much to students of IOs. It consists of more than bilateral investment treaties (BITs). The IMF, for example, is an investment regulator, as is, to an extent, the WTO itself and the OECD. In addition, there are many participants in the market who rank countries based on their investment risk and are de facto enforcers of the regime. States that expropriate or otherwise mistreat foreign investors are likely to face market backlash.

JMC: So you are building on your established expertise but you are also expanding expertise out of all these changes that have taken place in the last twenty years?

JA: The investment regime is an example of governance without government that also happens to operate without an overarching international organization dominating it.

JMC: *All this assumes that legal regimes are self-contained and that it is possible for them to continue to work in a self-contained fashion. But in a world which is more and more globalized, in one which is more interdependent, is this the right assumption?*

JA: No. I agree with Bruno Simma, who says that most of these regimes are probably not self-contained and should not be so treated.³⁴ We have rules that enable an investor-state arbitrator to draw from general public international law in interpreting a BIT. The Vienna Convention on the Law of Treaties itself says that you can refer to relevant rules of international law among the parties. Simma has argued in favor of using that rule to bring human rights issues into investor-state arbitrations.³⁵ Such cross-referrals are in fact happening. But I am skeptical that this will produce the “progressive” results intended. In my view, unless you change the investor-state arbitral system itself by changing who the arbitrators are, who can bring cases, the standing of others affected to participate – unless you change all of those things I am not sure that we can expect “humanity’s law” to emerge from rulings issued by commercially trained arbitrators.

JMC: *Do you think that these kinds of changes are likely to happen? One would assume that it is necessary to really have these changes taking place so that global governance become more effective?*

JA: Earlier I referred to Ruti Teitel’s and Rob Howse’s view³⁶ that there are commonalities among these international adjudicators – whether in trade, investment, or international criminal courts; they argue that all these adjudicators reach for human rights values and therefore increasingly contribute to a more coherent “humanity’s law.” I am not as optimistic as they are because I think that the background of arbitrators or judges matter. I do not think that the background of, say, a judge on the ICJ or a judge on the European Court of Human Rights is the same as the background or training of an arbitrator in one of these investor-state disputes. The broader point has been captured beautifully in the critical scholarship of David Kennedy, who argues that international law has come to be dominated by narrowly grounded experts

³⁴ Bruno Simma and Dirk Pulkowski, “Of Planets and the Universe: Self-contained Regimes in International Law,” in *European Journal of International Law* (vol. 17, 2006), p. 483.

³⁵ Bruno Simma and T. Kill, “Harmonizing Investment Protection and International Human Rights: First Steps Towards a Methodology,” in C. Binder et al. (eds.), *International Investment Law for the 21st Century: Essays in Honor of Christoph Schreuer* (Oxford, UK: Oxford University Press, 2009).

³⁶ See Footnote 14.

handicapped by disciplinary tunnel vision.³⁷ This means that where Teitel and Howse see the prospect for “humanity’s law,” others see “fragmented” law among international regimes, including international courts, as the more likely outcome.

VIII ACCOUNTABILITY AND LEGITIMACY

JMC: You have served as a special advisor to the prosecutor of the International Criminal Court. What was your role in this function and why did you decide to take on this additional responsibility?

JA: Mr. Ocampo was very persuasive. I was also honored to join his other advisors at the time: Catherine MacKinnon on gender and Juan Mendez on humanitarian issues. I advised the prosecutor on public international law matters that he brought to my attention. He sought my advice, for example, with respect to an initiative being taken by the Assembly of State Parties directed at the accountability of the Prosecutor’s Office. As I have suggested elsewhere, I found that the proposal posed some conflicts with the Rome Statute’s goal of establishing a truly independent Office of the Prosecutor.³⁸ It was an important example of how difficult it may be to achieve accountability without undermining the goals of these organizations. That particular example made me humble about how little international lawyers have contributed to the accountability debate.

Nor do I think that the International Law Commission (ILC) has made sufficient progress on this issue, despite their release of its Articles on the Responsibility of International Organizations.³⁹ I do not think that you can wave a magic wand and resolve this by simply declaring that IOs are sufficiently like states that we can replicate what the ILC has done in its entirely more successful Articles of State Responsibility. As the ICJ has told us, each international organization is a creature of its own charter. It is a legal person only insofar as those characteristics are needed to fulfill its function.⁴⁰ The legal personhood of the IMF or the OECD or the OAS may be different than

³⁷ David Kennedy, “Challenging Expert Rule: The Politics of Global Governance,” *Sydney Law Review* (vol. 27, 2005), p. 2.

³⁸ José E. Alvarez, “The Proposed Independent Oversight Mechanism for the International Criminal Court,” in Richard H. Steinberg and Fatou B. Bensouda (eds.), *Contemporary Issues Facing the International Criminal Court* (Leiden: Brill/Nijhoff, 2016), p. 143.

³⁹ International Law Commission, Draft Articles on the Responsibility of International Organizations, with commentaries, 2011, in ILC Report on its 63rd Session, UN Doc. A/66/10.

⁴⁰ Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, 1949 ICJ 174 (Apr. 11).

the personhood or the responsibilities of the UN. The responsibility owed by each needs to be resolved organization by organization. In addition, accountability is not reducible to “legal responsibility.” Sometimes IO accountability may require court-ordered legally binding remedies comparable to those applied to states, but sometimes accountability may be satisfied by turning to, for example, an ombudsperson approach (as the Security Council has done with respect to some of its sanctions programs in the wake of the critical *Kadi* ruling by the European Court of Justice).⁴¹ Sometimes IO accountability may mean creating other bodies within an organization that can check, through political action, the organ in question. Sometimes we can expect an international or even national court to act or engage in forms of “judicial review” over IO organs (even if without the possibility of enforceable sanction).⁴² And some parts of an IO, such as the prosecutor of the ICC, were intended to be largely insulated from the possibility of state “corrective” action.

JMC: And to the extent that we continue to ignore these demands for accountability, where warranted the legitimacy of these organizations will be all the more put in question?

JA: Yes. The backlash against the investment regime provides an example. Ignoring or diminishing the need to make investor-state arbitrators more accountable has not made the problem go away. It has led for calls for changes in how those arbitrators can be challenged for conflicts of interest and proposals for codes of conflict to encourage more ethical behavior. There are rules about avoiding conflicts of interest and the appearance of impropriety when it comes to national judges as well as with respect to lawyers in a national context. To date, we generally have no such rules for international judges or arbitrators generally and no single coherent set of ethical rules apply to international lawyers, apart from the disparate ones that may apply to them at the national level. These are accountability and legitimacy issues that are very likely to become prominent over the coming years. Even the way international judges are selected is likely to merit increased scrutiny. While we like to pretend that these judges are above politics, the ways that they are selected suggests that this is not the case.⁴³ We like to pretend that our judges,

⁴¹ Joined Cases C-402 and C-415/05P, *Kadi & Al Barakaat Int'l Found. v. Commission* (Kadi I), 2008 ECR I-6352; Joined Cases C-584, C-593, & C-595/10P, *Commission v. Kadi* (Kadi II), July 18, 2013.

⁴² José E. Alvarez, “Judging the Security Council,” *American Journal of International Law* (vol. 90, 1996), p. 1.

⁴³ See, e.g., Ruth Mackenzie, Kate Malleson, and Penny Martin, *Selecting International Judges: Principle, Process, and Politics* (Oxford: Oxford University Press, 2010).

including on the ICJ, are selected on a purely meritorious basis, but candidates for the ICJ have to campaign – as do the governments that nominate them – within the UN's system of regional blocs. Whether the result are the best candidates for the job remains to be seen.

JMC: And the same applies to heads of international organizations?

JA: Of course; as is true of those selected to become part of the international civil service. Only some IO positions – such as the head of the World Bank or the UN Secretary-General – get public scrutiny. We rarely examine closely less transparent appointments processes, such as those involving the selection of adjudicators for our twenty-four international courts or tribunals.

IX THE FUTURE OF INTERNATIONAL ORGANIZATIONS

JMC: Turning to the future, how do you see international organizations twenty or thirty years from now? Will they be more important or less important?

JA: I suspect that the growth period of traditional IOs with universalist aspirations is at an end. For one thing, the proliferation of IOs and other groupings of actors (e.g., the G20) that make governance claims on states poses the issue of overload. We have created a world where we are demanding almost too much from states, even in the form of reports or information. The UN human rights system alone demands so many reports from so many different bodies of a single state that it creates a substantial bureaucratic and logistical burden even for a country with the resources of the US. One can only imagine the burdens imposed on a state that has fewer lawyers or fewer resources. As is well known, states are notoriously late in providing reports to either UN human rights treaty bodies or comparable entities in the ILO. This in turn produces considerable cynicism about the credibility of human rights/labor enforcement – and helps to explain NGO resentments toward the relatively more efficacious trade and investment regimes. The legitimacy of IOs and international law is not furthered when one can say, with some justice, that the single most effectively protected human right today is the right to hold property (thanks to investor-state arbitration). As noted, one solution to this dilemma is to fold labor, human rights, and environmental into more “enforceable” regimes, such as trade and investment. That said, resistance by states is more likely to lead to another solution to the overload problem: Consolidation. Thus, some have argued for consolidating all human rights treaty bodies. But that solution creates its own set of problems. We established a distinct committee under the Convention on the Elimination of All Forms

of Discrimination Against Women (CEDAW) to handle gender-related complaints because, while gender discrimination was already part of the mandate of the UN Human Rights Committee under the International Covenant on Civil and Political Rights (ICCPR), that committee rarely addressed such issues and historically was dominated by men.

Nonetheless, we are likely to see efforts to consolidate the work of IOs in the future in response to the demands of states. On the other hand, we are also likely to see devolution of what some global IOs now do to more regional groupings, particularly if the global IO appears to be incapable of responding to regional needs. We are seeing such devolution occurring with respect to the trade regime, in the wake of the demise of the Doha round, and some see forms of devolution to regionalism occurring with respect to peacekeeping.

JMC: So consolidation, devolution, and also diversification perhaps?

JA: All three. And this includes international courts. I foresee more experimentation with different forms of international adjudication. I, for one, never expected the ICC to fully displace alternative forms of making perpetrators of international crimes accountable.⁴⁴ International criminal justice is likely to see more experimentation over time. Since the 1990s, we have gone from two ad hoc war crimes tribunals enjoying primacy with respect to jurisdiction to hybrid tribunals subject to differing jurisdictions and compositions. The Lebanon Tribunal's jurisdictional mandate is quite different from the one for Cambodia, for example. We have come to realize that truth commissions – which themselves come in different flavors – fulfill some functions that international and national criminal courts cannot and that these courts may need to work alongside such commissions to achieve the diverse goals sought for transitional justice. As noted, we are also coming to realize that the ICC cannot achieve the exalted goals of some of its advocates and that it too needs to be supplemented by other efforts, including national and possibly regional criminal courts, even with respect to states that are parties to the Rome Statute. International criminal justice will, I suspect, be an exception to any trend toward consolidation or merger of IO functions and there are likely to be others. Of course, this means that those who are threatened by the existing forms of fragmentation among IO regimes and courts will not be pleased.

JMC: So the future is relatively open.

JA: Yes and it may not be pretty.

⁴⁴ See Alvarez, n. 16.

JMC: Finally, what is your advice for emerging scholars in the field of justice?

JA: Question everything – including whether turning to law furthers justice. Try to see law and its institutions from the perspective of nonlawyers, including from the perspective of victims of the law and lawyers. Law does not displace politics, economics, anthropology, or sociology; it is all of those.

