

MYTHS AND REALITIES OF GLOBAL GOVERNANCE

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Is more global governance necessary? That was the question posed to me by the organizers of the 2021 Federalist Society Annual Conference.¹ It struck me when hearing this question that there are often deep misconceptions about the meaning of global governance lurking behind debates over whether there should be “more” or “less” of it. I hope to shine light on some of them today.

Global governance is not one thing, of course. It is a multitude of different international legal arrangements covering an array of activities that states as well as nonstate actors engage in. Yes, there is the United Nations, but that is simply one of many multinational organizations—and perhaps not even the most important of them. Global governance includes well-known organizations such as the International Monetary Fund,² the International Criminal Court,³ and the North Atlantic Treaty Organization,⁴ but it also includes

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1. This essay has been adapted from remarks delivered at the 2021 Federalist Society National Student Symposium in a debate entitled “Is More Global Governance Necessary?” with Professor Jonathan R. Macey and, as Moderator, Hon. James C. Ho, United States Court of Appeals, Fifth Circuit. The original debate can be viewed at The Federalist Society, *Debate: Is More Global Governance Necessary?*, YOUTUBE (Mar. 20, 2021), <https://www.youtube.com/watch?v=jlh321vyauI> [<https://perma.cc/4MRT-QYM8>].

2. *The IMF at a Glance*, INT’L MONETARY FUND, (Mar. 2, 2019), <https://www.imf.org/en/About/Factsheets/IMF-at-a-Glance> [<https://perma.cc/4GSV-AQYA>].

3. *About the Court*, INT’L CRIM. CT., <https://www.icc-cpi.int/about> [<https://perma.cc/874J-5PP8>] (last visited Aug. 9, 2021).

4. *What is NATO?*, N. ATL. TREATY ORG., <https://www.nato.int/nato-welcome/index.html> [<https://perma.cc/23RE-LGV9>] (last visited Aug. 9, 2021).

lesser-known organizations such as the International Coffee Organization,⁵ the Court of Arbitration for Sport,⁶ and the Wassenaar Arrangement.⁷ These organizations did not emerge of their own accord. Indeed, the greatest misconception that exists about global governance is that international organizations operate at the *expense* of states. The reality, instead, is that they are created *by* states to serve specific purposes that states find valuable.⁸ They give states a way to achieve ends that they could not achieve on their own—or that they would find much more difficult and expensive to achieve on their own. To illustrate this argument, this essay examines five key topics in global governance—international courts and tribunals, trade, use of force, international human rights, and geopolitical competition.

International Courts and Tribunals

International courts and tribunals have been a hot-button topic in debates over international institutions and global governance more generally. There are different ways in which this debate plays out. Here I offer a couple of examples to illustrate those differences.

First, consider the *Avena* case,⁹ in which the International Court of Justice ordered the United States to reconsider death sentences of over fifty Mexican nationals whose rights under the Vienna Convention on Consular Relations had not been observed. When they

5. *Mission*, INT'L COFFEE ORG., https://ico.org/mission07_e.asp?section=About_Us [<https://perma.cc/23Q9-FD6G>] (last visited Aug. 9, 2021).

6. *Frequently Asked Questions*, CT. OF ARB. FOR SPORT, <https://www.tas-cas.org/en/general-information/frequently-asked-questions.html> [<https://perma.cc/R7GP-YTF3>] (last visited Aug. 9, 2021).

7. The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (1995).

8. See Oona A. Hathaway, *The Cost of Commitment*, 55 STAN. L. REV. 1821 (2003); Oona Hathaway & Scott J. Shapiro, *What Realists Don't Understand About Law*, FOREIGN POL'Y (Oct. 9, 2017), <https://foreignpolicy.com/2017/10/09/what-realists-dont-understand-about-law/> [<https://perma.cc/JE56-JXJU>].

9. REPORTS OF JUDGMENTS, ADVISORY OPINIONS & ORDERS: CASE CONCERNING AVENA & OTHER MEXICAN NATIONALS (I.C.J., 2003) [hereinafter AVENA & OTHER MEXICAN NATIONALS].

were initially charged, their local Mexican consulate should have been notified that they were being charged with a crime.¹⁰ And then the consulate should have had an opportunity to assist in their defense.¹¹ That was not done, and they did not receive any assistance as a result.¹² After they were sentenced to death, there was a realization that for a long time, many U.S. jurisdictions had not been meeting the United States' obligation under the Vienna Convention on Consular Relations to notify consuls when foreigners were charged.¹³ Mexico brought a case against the United States in the International Court of Justice.¹⁴ The International Court of Justice decided that the United States had violated its treaty obligations and ordered the United States to review and reconsider the convictions and sentences of the Mexican nationals who were on death row.¹⁵

Now, you might wonder why the International Court of Justice had jurisdiction over the case. The answer is that the United States had signed an Optional Protocol to the Vienna Convention on Consular Relations.¹⁶ The Optional Protocol says that if there is a dispute under the Convention, then a state can go to the International Court of Justice to seek resolution.¹⁷ The United States ratified the treaty and the protocol because they were seen as advantageous to the United States and its citizens.¹⁸

10. *Id.* at 17.

11. *See id.* at 26.

12. *Id.*

13. *Id.* at 121.

14. *Id.*

15. *Id.* at 153.

16. *See* Optional Protocol Concerning the Compulsory Settlement of Disputes art. I, Apr. 24, 1963, 21 U.S.T. 325, 596 U.N.T.S. 487 [hereinafter *Optional Protocol*].

17. *Id.*

18. Richard Nixon, *Message to the Senate Transmitting the Vienna Convention on Consular Relations and the Optional Protocol Concerning the Compulsory Settlement of Disputes*, UC SANTA BARBARA: THE AM. PRES. PROJ. (May 5, 1969), <https://www.presidency.ucsb.edu/documents/message-the-senate-transmitting-the-vienna-convention-consular-relations-and-the-optional> [<https://perma.cc/3LSZ-ERFG>].

Here's why: if you travel abroad, and you get charged with a crime while you're in a foreign country that has signed and ratified the treaty (which most states have), you have the right, under the Vienna Convention on Consular Relations, to have a U.S. consulate notified.¹⁹ And then the consulate can assist in your defense.²⁰ If you're an American traveling abroad, you want that because that means you're going to get American support and there is much less likelihood that you will be railroaded and thrown in jail without anybody knowing it. If there is a dispute between the United States and the country that is holding you, you want some place for that dispute to be able to go other than that country's own courts. The International Court of Justice is a pretty good place for that.²¹ So the United States signed the treaty and the Optional Protocol, giving jurisdiction over disputes to the Court, because it was in the best interest of Americans.

The other court that has attracted a lot of attention in recent years is the International Criminal Court (ICC).²² This court has recently been especially controversial because the prosecutor there was permitted to proceed with an investigation of crimes that were committed in Afghanistan during the war there by the United States,

19. Vienna Convention on Consular Relations art. 36, Apr. 2, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261.

20. *Id.*

21. *The Court*, THE INT'L CT. OF JUST., (<https://www.icj-cij.org/en/court> [<https://perma.cc/V4K7-KYDD>] (last visited Aug. 11, 2021)). See, e.g., REPORTS OF JUDGMENTS, ADVISORY OPINIONS & ORDERS: CASE CONCERNING ELECTRONICA SICULA S.P.A. (ELSI) (I.C.J., 1989) (demonstrating the United States using international courts to sue another country as a way to protect American shareholders' rights).

22. John Bolton, for example, criticized the ICC in remarks delivered to the Federalist Society in Washington, D.C. while he was National Security Adviser. *National Security Adviser John Bolton on Global Threats and National Security*, C-SPAN, (Sept. 10, 2018), <https://www.c-span.org/video/?451213-1/national-security-adviser-john-bolton-addresses-federalist-society> [<https://perma.cc/7GFU-X3Q7>]; See Oona Hathaway, *The International Criminal Court Is No Threat to America, but John Bolton Is*, NEWSWEEK (Sept. 12, 2018), <https://www.newsweek.com/international-criminal-court-no-threat-america-john-bolton-opinion-1115820> [<https://perma.cc/JN4L-T2NM>].

Taliban, and other actors.²³ That investigation proceeded through the initial approval process that allows the prosecutor to begin to move forward.²⁴ Under the Trump Administration, the United States put in place sanctions against judges, the prosecutor, and others from the court who were involved in the case, including lawyers who were just representing clients at the ICC.²⁵

Now, the first thing to keep in mind about both of these courts, and really all international courts, is that none of these courts have jurisdiction over Americans without reason.²⁶ The courts themselves did not suddenly decide that they want to have jurisdiction. They're granted jurisdiction by states through various rules, usually through treaties.²⁷

As I noted earlier, the International Court of Justice had jurisdiction in the *Avena* case because the United States gave it jurisdiction by ratifying the Optional Protocol to the Vienna Convention on Consular Relations.²⁸ And, again, it did so because Americans benefit from the Vienna Convention and the protections it offers.

But what about the ICC? The United States has not joined the ICC,²⁹ and that has been a key argument against the investigation

23. Situation in the Islamic Republic of Afghanistan, Case No. ICC-02/17 OA4, 4 (Mar. 5, 2020) (rendering judgment on the appeal against the decision on the authorization of an investigation into the situation in the Islamic Republic of Afghanistan).

24. *Id.* Subsequently, the ICC prosecutor's request to authorize resumption of the investigation, which had been the subject of a deferral request, focused only on the Taliban and Islamic State Khorasan. Office of the Prosecutor, Request to Authorize Resumption of Investigation Under Article 18(2) of the Statute, ICC-02/17-161 (Sept. 27, 2021), https://www.icc-cpi.int/CourtRecords/CR2021_08317.PDF [perma.cc/45AZ-DJP9].

25. Exec. Order No. 13928, 85 Fed. Reg. 36139 (June 11, 2020) (revoked by Exec. Order No. 14022, 86 Fed. Reg. 17895 (Apr. 1, 2021)). These sanctions were lifted by President Biden after this speech was delivered. *See* Exec. Order No. 14022, 86 Fed. Reg. 17895 (Apr. 1, 2021).

26. *See, e.g.*, OPTIONAL PROTOCOL, *supra* note 16.

27. *See, e.g., id.*

28. *Id.*

29. *The States Parties to the Rome Statute*, INT'L CRIM. CT., https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx [https://perma.cc/2WZ8-D3G7] [hereinafter *The States*].

of U.S. actions in Afghanistan.³⁰ But what this argument against ICC jurisdiction ignores is that Afghanistan is a party to the ICC.³¹ It signed and ratified the Rome Statute, which created the ICC and gives it jurisdiction over crimes committed by or *in the territory of* member states.³² The alleged crimes fall within the jurisdiction of the Court, then, because they occurred in Afghanistan,³³ which is a party to the ICC.

The idea that a sovereign state has jurisdiction over a person who commits a crime in its territory is usually taken for granted. If I go to London and I commit a crime – say, I steal something—I can be brought in front of English courts even though I am an American, because I committed my crime in England.³⁴ There is a similar principle at work here. The main difference is that Afghanistan has transferred jurisdiction over the crime to the ICC by joining the Rome Statute.³⁵ So the ICC has been granted jurisdiction by the state that has the right to exercise jurisdiction over the crime.

Let me then turn to the question: should we have more international courts? It is worth noting that there are already a lot of international courts and tribunals.³⁶ I just mentioned two of them. There

30. *International Criminal Court Officials Sanctioned by US*, BBC NEWS (Sept. 2, 2020), <https://www.bbc.com/news/world-us-canada-54003527> [https://perma.cc/JD4V-TD7R].

31. *The States*, *supra* note 29.

32. Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute].

33. *The Prosecutor of the International Criminal Court, Fatou Bensouda, Requests Judicial Authorisation to Commence an Investigation into the Situation in the Islamic Republic of Afghanistan*, INTERNATIONAL CRIMINAL COURT (Nov. 20, 2017), <https://www.icc-cpi.int/Pages/item.aspx?name=171120-otp-stat-afgh> [https://perma.cc/N364-UCE8].

34. *Jurisdiction*, CROWN PROT. SERV. (July 26, 2021), <https://www.cps.gov.uk/legal-guidance/jurisdiction> [https://perma.cc/5FDY-GBW3].

35. Rome Statute, *supra* note 32. This is true, as well, of the crimes allegedly committed at CIA black sites in Poland, Lithuania, and Romania, which were also part of the investigation. See Office of the Prosecutor, Pre-Trial Chamber III, Situation in the Islamic Republic of Afghanistan, No. ICC-02/17 (Nov. 20, 2017), https://www.icc-cpi.int/CourtRecords/CR2017_06891.PDF [https://perma.cc/8XVY-42BH].

36. See *The International Judiciary in Context: A Synoptic Chart*, THE PROJ. ON INT'L CTS. & TRIBUNALS, https://elaw.org/system/files/intl%20tribunals%20synoptic_chart2.pdf [https://perma.cc/N4YP-GEPT] (last visited Aug. 29, 2021).

are also a number of international arbitral bodies.³⁷ There are many more formal and informal dispute resolution bodies at the international level than is commonly recognized.

Why do all these bodies exist? Why do states create them? It is because they need some way to resolve disputes among and between them and their citizens. These courts, and these arbitral bodies, give states a peaceful way to resolve disputes. Without them, the alternative would be to go to a foreign court where the state or its citizen might not necessarily get a fair hearing.³⁸ And so one of the reasons a state might want to have access to an international court for certain kinds of disputes is it provides neutral ground on which to make its arguments.

In addition to the courts I have mentioned, for instance, there are arbitral bodies that address questions like investment disputes³⁹ or commercial disputes.⁴⁰ These are very much favored by international business, because they offer an important way in which, if a business investment is illegally expropriated by a state, a business can seek recourse.⁴¹ It is favored by states, as well, because access to international arbitration encourages international investment, especially in countries with less developed legal systems. Under the New York Convention,⁴² the party that is harmed can enforce the decision of that arbitral body pretty much anywhere in the world.

37. *Id.*

38. Historically, the mode of dispute resolution was for states to go to war with one another. See HATHAWAY & SHAPIRO, *infra* note 61.

39. One example is the International Centre for Settlement of Investment Disputes. *About ICSID*, INT'L CTR. FOR SETTLEMENT OF INV. DISPS., <https://icsid.worldbank.org> [<https://perma.cc/B2B2-9ZEY>] (last visited Aug. 29, 2021).

40. One example is the ICC International Court of Arbitration. *Who We Are*, INT'L CHAMBER OF COM., *Who We Are*, <https://iccwbo.org/about-us/who-we-are/> [<https://perma.cc/52HM-ZXML>] (Aug. 29, 2021).

41. *Id.*

42. Convention on the Recognition & Enforcement of Foreign Arbitral Awards, 9 U.S.C. §§ 201–208 (1988).

And so states, businesses, and individuals benefit from these bodies.⁴³ That is why they have been created, and that is why I expect we will continue to see more of them.

U.S. courts are the place of first recourse for most Americans. But sometimes Americans are going to have disputes with foreigners, and we may prefer to have access to an international court or arbitral body rather than be stuck in the courts of other nations or have access to no court at all. That is why we see these courts emerging, evolving, and continuing to expand.

Trade

The key global institution for trade is the World Trade Organization,⁴⁴ the successor organization to the trade regime that the United States and its allies worked hard to build in the years immediately following World War II. The idea behind this global trade regime is that we need a robust global economic order if we're going to keep the peace.⁴⁵ State economies were devastated after the war, and expanding global trade was seen as core to the effort to rebuild them. Not only would that help rebuild societies that had been devastated by war, but the vision was that if we have robust, thick trade relations, then we will be less likely to go to war again in the future.⁴⁶

43. It is worth noting that arbitration has sometimes been criticized as *too* business friendly, and insufficiently attentive to human rights and environmental concerns, though there have been some signs that could be beginning to change. See, e.g., Fabio Giuseppe Santacroce, *The Applicability of Human Rights Law in International Investment Disputes*, 34 ICSID REV. 136 (2019).

44. *Accession in Perspective*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/acc_e/cbt_course_e/c1s1p1_e.htm [<https://perma.cc/U5VZ-8T7C>] (last visited Jan. 12, 2022) (stating the percentage of world trade accounted for by member states is 96.4%).

45. G. JOHN IKENBERRY, *AFTER VICTORY: INSTITUTIONS, STRATEGIC RESTRAINT, AND THE REBUILDING OF ORDER AFTER MAJOR WARS* (2001).

46. *Id.*

Today there are 164 members of the World Trade Organization (WTO).⁴⁷ Membership comes with an array of obligations as well as benefits.⁴⁸ There are rules that a state has to follow to become a member of the WTO.⁴⁹ And once a state becomes a member, there are rules that govern its behavior: there are limits on tariffs, for instance, that every member state has to follow.⁵⁰ The upside, of course, is every state not only has to follow the rules but also benefits from them as well: for instance, no other member state can place tariffs on their exported goods that exceed agreed levels.⁵¹ So member states are both constrained by and benefit from the same rules. And states join because, all things considered, they benefit from those shared constraints.

The WTO has a dispute resolution process to resolve any disagreements that arise between states.⁵² So if a state breaks the rules and harms another state as a result, then the harmed state can bring a complaint to the dispute resolution body.⁵³ That body then will resolve the dispute.⁵⁴ If a state loses, it can appeal.⁵⁵ If that appeal is

47. *Members and Observers*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm [https://perma.cc/9YXB-QU24] (last visited Jan. 13, 2022).

48. *Overview*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/whatis_e/wto_dg_stat_e.htm [https://perma.cc/R5W4-KV2V] (last visited Jan. 13, 2022).

49. *Membership, Alliances and Bureaucracy*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/whatis_e/tif_e/org3_e.htm [https://perma.cc/W3S9-26GG] (last visited Aug. 29, 2021).

50. *Tariffs*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/tariffs_e/tariffs_e.htm [https://perma.cc/WPA5-6TVJ] (last visited Aug. 29, 2021).

51. *Id.*

52. *A Unique Contribution*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm [https://perma.cc/X64Z-EZ6Y] (last visited Aug. 29, 2021).

53. *Dispute Settlement Body*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/dispu_e/dispu_body_e.htm [https://perma.cc/5PXX-CYHV] (Aug. 29, 2021) [hereinafter *Dispute*].

54. *Id.*

55. *Appellate Body*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm [https://perma.cc/KV2N-G39E] (last visited Aug. 29, 2021).

not successful, then the state that filed the complaint is permitted to put in place countermeasures against the state that has been found to have broken the rules.⁵⁶ This is a way of giving bite to the legal obligations of membership.

The idea behind this global trade organization was that it would encourage free trade across all countries who are party to it.⁵⁷ The aim of the dispute resolution process was to prevent a trade war.⁵⁸ After World War II, states wanted to avoid a breakdown in trade relations in which states might start tit-for-tat trade sanctions against one another that might get out of control.⁵⁹ This was the kind of fiasco that, for instance, preceded the Great Depression: the U.S. Smoot-Hawley tariffs and the spiraling trade protectionism that followed.⁶⁰ The long-standing consensus has been that this is in the best interests of everyone.⁶¹ Yet, we have seen that consensus unravel in the last several years.⁶² And I think that there are a few reasons for that.

Many of the attacks on free trade are not based in fact. But some of the concerns arise from the failure to fully appreciate that while free trade is in the interest of the United States as a whole, certain communities are going to be particularly hard hit, especially communities supported by industries where the United States just

56. *Dispute*, *supra* note 53.

57. *Introduction to the WTO Dispute Settlement System: 1.3 Functions, Objectives and Key Features of the Dispute Settlement System*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c1s3p1_e.htm [<https://perma.cc/4KZV-Y8MG>] (last visited Aug. 7, 2021).

58. WORLD TRADE ORG., 10 THINGS THE WTO CAN DO 12 (2013), *available at* https://www.wto.org/english/res_e/publications_e/wtocan_e.pdf [<https://perma.cc/67F4-PQGF>].

59. CHAD P. BOWN, SELF-ENFORCING TRADE: DEVELOPING COUNTRIES & WTO DISPUTE SETTLEMENT 11 (2009).

60. Tariff Act of 1930 (Smoot-Hawley Tariff), Pub. L. 71-361, 46 Stat. 590 (codified as amended at 19 U.S.C. § 1202 et seq.).

61. *See* OONA A. HATHAWAY & SCOTT J. SHAPIRO, THE INTERNATIONALISTS: HOW A RADICAL PLAN TO OUTLAW WAR REMADE THE WORLD 378–80 (2017).

62. *See* Alan S. Blinder, *The Free-Trade Paradox: The Bad Politics of a Good Idea*, FOREIGN AFFS. (Jan./Feb. 2019), <https://www.foreignaffairs.com/articles/2018-12-11/free-trade-paradox> [<https://perma.cc/Q8TS-5R4V>].

simply cannot compete in the global market. One industry that has been hard hit is steel.⁶³ The future of that industry has been a subject of debate for quite some time.⁶⁴ The United States has, at various points, put in place illegal steel tariffs to try and preserve steel manufacturing in the United States when, really, there are other countries that can produce steel much more effectively at lower cost than we can.⁶⁵ Even when we compete on a fair and level playing ground, they beat us. That is just the reality of the situation.

Now, those hard-hit communities have not been sufficiently supported, and so people are thrown out of work as a result of free trade.⁶⁶ It is not just individuals who are put out of work, but it is whole communities that suffer. And we did not do enough to address those costs. We had a very minimal trade adjustment assistance program,⁶⁷ but it provides nowhere near enough to those in hard hit industries and communities. We have not offered sufficient retraining of people thrown out of work so that they could move

63. ANTHONY P. D’COSTA, *THE GLOBAL RESTRUCTURING OF THE STEEL INDUSTRY: INNOVATIONS, INSTITUTIONS AND INDUSTRIAL CHANGE* (1999); ROBERT P. ROGERS, *AN ECONOMIC HISTORY OF THE AMERICAN STEEL INDUSTRY* (2009).

64. See Action Under Section 203 of the Trade Act of 1974 Concerning Certain Steel Products, 67 Fed. Reg. 10,593 (Mar. 5, 2002) (declaring the Bush Administration steel tariffs of 2002); Elizabeth Becker, *U.S. Tariffs on Steel are Illegal, World Trade Organization Says*, N.Y. TIMES (Nov. 11, 2003), <https://www.nytimes.com/2003/11/11/business/us-tariffs-on-steel-are-illegal-world-trade-organization-says.html> [https://perma.cc/Z787-ABBB].

65. See *Ineffective Steel Tariffs Now Illegal, Too*, FORBES (Nov. 11, 2003, 9:50 AM), https://www.forbes.com/2003/11/11/cx_da_1111topnews.html?sh=139922b3d004 [https://perma.cc/HF2C-RUNM] (describing the tension between American leadership to enforce international free-trade laws and the Bush Administration’s desire for political leverage in the face of rising Chinese steel production); HATHAWAY & SHAPIRO, *supra* note 61, at 371–73.

66. Stephen J. Rose, *Is Foreign Trade the Cause of Manufacturing Job Losses?*, URB. INST. (Apr. 2018), https://www.urban.org/sites/default/files/publication/97781/is_foreign_trade_the_cause_of_manufacturing_job_losses_2.pdf [https://perma.cc/8UK3-8NKQ].

67. *Trade Adjustment Assistance for Workers*, U.S. DEP’T OF LAB.: EMP. & TRAINING ADMIN., <https://www.dol.gov/agencies/eta/tradeact> [https://perma.cc/AP4X-W5RK] (last visited Aug. 7, 2021).

into other industries where they could earn roughly equivalent incomes to the ones they lost. That short-sightedness created real pain for not only individuals but also communities that were hurt by free trade. And I think we could have, and should have, done more to try and address that.

The answer to this problem is not to reduce free trade, as some have advocated. But we have to be mindful that the costs of a policy of free trade are real. We should try to address these costs through much more robust trade adjustment assistance, better education, thinking about what industries can come in to replace those we have lost, and stronger unemployment insurance. We need to understand ways to address real harms that people suffer as a result of the adjustments that are required as a result of free trade.

Use of Force

The rules that govern the use of force are absolutely foundational to the modern legal order. Let us start with the United Nations (UN) Charter. The UN Charter was put in place at the close of World War II.⁶⁸ And the fundamental commitment in the Charter is Article 2(4)'s prohibition on use of force: All members of the United Nations are obligated to refrain from use of force against every other state in the world.⁶⁹

I spend a lot of time providing the background on the Charter's prohibition on force in my book with Scott Shapiro, *The Internationalists*.⁷⁰ We argue that the idea of outlawing war began in 1928 with the Kellogg Briand Pact and the UN Charter reaffirmed that central obligation.⁷¹ In the book, we try to show that while that prohibition may seem not particularly interesting or important when viewed

68. *United Nations Charter*, UNITED NATIONS, <https://www.un.org/en/about-us/un-charter> [<https://perma.cc/5TZR-YXFF>].

69. U.N. Charter art. 2, ¶ 4.

70. See generally HATHAWAY & SHAPIRO, *supra* note 61 (describing the transformation from the Old to the New World Order by way of a prohibition on the use of force).

71. *Id.* at 313–14 (observing empirically a marked decline in the frequency of conquest after the Second World War); U.N. Charter art. 2, ¶ 4.

from our modern perspective, it looks very different if you view it against history. Historically, states were allowed to go to war to resolve their disputes.⁷² If, for example, a state failed to repay its debts to another, the state that was owed money could go to war.⁷³ Or if a king of one state stole another king's wife, the king who was wronged could go to war over it.⁷⁴ If a state interfered with another's trade relations, the harmed state could go to war over it.⁷⁵ War was historically how disputes were settled between states if they could not resolve them amicably.⁷⁶

The Kellogg Briand Pact and then the U.N. Charter said that states could not do that anymore—states cannot go to war against each other if they have disputes.⁷⁷ There are now very limited reasons that states can go to war. First, a state can act in its own self-defense if it is attacked, as outlined in Article 51.⁷⁸ Second, the U.N. Security Council can authorize an intervention under Chapter VII.⁷⁹ When Iraq invaded Kuwait, for example, the United States and its allies were authorized by the Security Council to expel Iraq from Kuwait for violating Article 2(4).⁸⁰ Here it is worth noting that the United States is one of the five permanent members of the Security Council, each of which has a veto over any Security Council resolution issued under Chapter VII.⁸¹ The United States is therefore in a highly privileged position in that it is able to prevent the United

72. HATHAWAY & SHAPIRO, *supra* note 61, at 38.

73. *Id.* at 39 (describing President Polk's justification for the Mexican-American War as the collection of debts).

74. *See id.* (describing Maximilian I's justification for war with France after King Charles VIII stole Maximilian's wife).

75. Oona A. Hathaway et al., *War Manifestos*, 85 U. CHI. L.R. 1139, 1193–94 (2018) [hereinafter *War Manifestos*] (cataloging examples).

76. *See* HATHAWAY & SHAPIRO, *supra* note 61, at 44–45 (identifying war as the historical enforcement mechanism of international law); *see also generally* *War Manifestos*, *supra* note 75 (cataloging examples).

77. U.N. Charter art. 2 ¶ 4.

78. *Id.* at art. 51.

79. *Id.* at art. 42.

80. U.N. Sec. Council Res. 678, ¶ 2 (Nov. 29, 1990).

81. U.N. Charter art. 23 ¶ 1; *id.* art. 27 ¶ 3.

Nations from authorizing war. Third, and finally, the host state can consent to the use of force on its territory.⁸² For instance, as of this moment, the United States is using force in Iraq with the consent of the Iraqi government to assist it in counter-terrorism operations.⁸³

One just needs to read the news to know that the prohibition on the use of force has not been perfectly observed. Lately, we have seen many ways in which the prohibition on war has been chipped away. Just to give a few quick examples: Russia invaded and seized Crimea from Ukraine in 2014.⁸⁴ That is the first successful conquest in Europe since World War II.⁸⁵ We really should be deeply concerned about that and what it signals for Russia's intent in the region. Meanwhile, China has occupied contested territory in the South China Sea, turning a number of islands and rocks that other states also claim sovereignty over into military installations.⁸⁶ China also rejected an arbitral panel decision that found its actions illegal.⁸⁷ And the United States itself has been responsible for stretching the idea of self-defense to its breaking point by claiming a wide range of operations in the Middle East were justified as legitimate acts of self-defense. For instance, the killing of Qasem Soleimani in Iraq in early 2020 was justified by the Trump Administration as an act of self-defense.⁸⁸ But the Administration really

82. Michael Wood, *International Law and the Use of Force: What Happens in Practice?*, 53 INDIAN J. INT'L L. 345, 352 (2013).

83. *U.S. Security Cooperation with Iraq*, U.S. DEP'T OF STATE (July 16, 2021), <https://www.state.gov/u-s-security-cooperation-with-iraq/> [<https://perma.cc/JDX9-PGE7>].

84. Robin Geiß, *Russia's Annexation of Crimea: The Mills of International Law Grind Slowly but They Do Grind*, 91 INT'L L. STUD. 425, 426–27 (2015).

85. Dainius Žalimas, *Lessons of World War II & the Annexation of Crimea*, 3 INT'L COMPAR. JURIS. 25, 25 (2017).

86. See generally RONALD O'ROURKE, CONG. RSCH. SERV., R42784, U.S.-CHINA STRATEGIC COMPETITION IN SOUTH AND EAST CHINA SEAS: BACKGROUND & ISSUES FOR CONGRESS (2021).

87. *In the Matter of the South China Sea Arbitration*, PCA Case No. 2013–19 (2013), <https://pcacases.com/web/sendAttach/2086> [<https://perma.cc/TA37-G5UT>].

88. Jean Galbraith, *U.S. Drone Strike in Iraq Kills Iranian Military Leader Qasem Soleimani*, 114 AM. J. INT'L L. 313, 316 (2020).

never provided any evidence that there was an immediate threat that would have justified an act of self-defense under Article 51.⁸⁹

Those of us who think that the prohibition on war is a foundational norm of the international order are concerned by these developments. To reverse the erosion of this norm, it really is up to the United States to lead the way. As a leading member of the global community and member of the Security Council, the United States is in a unique position to do so. The United States has played an important role in the past. For example, it led the charge in putting economic sanctions on Russia after the Crimea invasion.⁹⁰ The United States has also led the world in the pushback against China in the South China Sea by refusing to acknowledge formally and accept the claims that it has made over certain territories in the South China Sea.⁹¹

I would also like to see the United States be more careful about its own behavior. Pushing the boundaries of self-defense to the point where the exception threatens to swallow the rule is very troubling. Unfortunately, the Biden Administration seems to be following in the footsteps of previous administrations. For example, it recently took strikes against Iran-supported non-state actor groups in Syria, claiming that it was an act of self-defense because the

89. Oona A. Hathaway, *The Soleimani Strike Defied the U.S. Constitution*, THE ATLANTIC (Jan. 4, 2020), <https://www.theatlantic.com/ideas/archive/2020/01/soleimani-strike-law/604417/> [<https://perma.cc/8BUP-K34Q>]. It is important to acknowledge that there has been an increase in civil wars, or what are often called “intrastate wars” (which are not regulated by the UN Charter) even as there has been a rapid decline in “interstate wars” — that is, wars between states (which are prohibited by Article 2(4) of the UN Charter). See HATHAWAY & SHAPIRO, *supra* note 61, at 352–70.

90. See generally DIANNE E. RENNACK & CORY WELT, IF10779 CONG. RSCH. SERV., U.S. SANCTIONS ON RUSSIA: AN OVERVIEW (2021); HATHAWAY & SHAPIRO, *supra* note 61, at 390–94.

91. Chun Han Wong, *U.S. Rejects Most Chinese Maritime Claims in South China Sea*, WALL ST. J. (July 13, 2020, 7:58 PM), <https://www.wsj.com/articles/u-s-set-to-reject-certain-chinese-maritime-claims-in-south-china-sea-11594661229> [<https://perma.cc/Q3T5-WBH9>].

group posed a threat to U.S. troops and coalition forces in Iraq.⁹² But we have not seen clear evidence that these strikes were justified as acts of self defense under Article 51.⁹³ Moving forward, I would like to see the United States do more to reinforce the prohibition on the unilateral use of force instead of continuing to chip away at it.

The danger in adopting such an expansive interpretation of self-defense and collective self-defense under Article 51 is that other states will follow in our footsteps. To take one example: one of the claims that Russia makes for its continuing military operations in Eastern Ukraine, where it has continued to foment disruption and support separatist groups, is that it is defending Russian nationals in Ukraine.⁹⁴ The same thing has happened in northern Syria, where Turkey has argued that its right of self-defense allows it to attack Syrian Kurdish forces that have received support from the United States.⁹⁵ Crucially, once we open the door to an expansive notion of self-defense and we use it in one context, it opens the door to others to use it as well. And once self-defense becomes so expansive, the prohibition on offense threatens to become irrelevant.

International Human Rights

92. Eric Schmitt, *U.S. Carries Out Airstrikes in Iraq and Syria*, N.Y. TIMES (June 27, 2021), <https://www.nytimes.com/2021/06/27/us/politics/us-airstrikes-iraq-syria.html> [<https://perma.cc/84HW-WDHF>].

93. See Adil Ahmad Haque, *Biden's First Strike and the International Law of Self-Defense*, JUST SEC. (Feb. 26, 2021), <https://www.justsecurity.org/75010/bidens-first-strike-and-the-international-law-of-self-defense/> [<https://perma.cc/45K2-ZTVT>] (analyzing the international law justifications for the first strike, which took place in February).

94. *Ukraine Conflict: Moscow Could 'Defend' Russia-Backed Rebels*, BBC NEWS (Apr. 9, 2021), <https://www.bbc.com/news/world-europe-56678665> [<https://perma.cc/GW72-ZAN3>] (quoting Russian official stating that "Russian forces could intervene to 'defend Russian citizens'").

95. Oona Hathaway, *Turkey Is Violating International Law. It Took Lessons from the U.S.*, WASH. POST (Oct. 22, 2019), <https://www.washingtonpost.com/outlook/2019/10/22/turkey-is-violating-international-law-it-took-lessons-us/> [<https://perma.cc/GWU2-ZT2L>].

My first major law review article was titled, “Do Human Rights Treaties Make A Difference?”⁹⁶ It concluded that states that ratify human rights treaties not only do not generally do better than those that do not have treaties, but rather they, albeit counterintuitively, sometimes do worse.⁹⁷ And that was something of a bombshell in the human rights community because, of course, a lot of effort had been put into creating these treaties and encouraging states to ratify them.⁹⁸ Part of the reason for that result is that human rights treaties, with only a few exceptions, generally are not internationally enforced.⁹⁹

It is very easy for a state that has a bad human rights record and no expressed intention to change it to ratify a treaty and then not do anything differently as a result. Does that mean that human rights treaties are pointless? No. These treaties have a lot of value even if they are not directly effective in changing the behavior of states who ratify them. But the next step in the human rights revolution should be to think about how we transform those promises into reality. How do we give them life? How do we make them effective?

We need better ways to enforce human rights obligations if we think they are important commitments, as I do. Countries should not torture. People should enjoy rights to freedom of assembly and freedom of speech. People should be free of the threat of genocide. The basic protections that are included in the core human rights treaties are fundamental.¹⁰⁰ Indeed, many of these human rights obligations are ones the United States pressed hard for in the years

96. Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935 (2002).

97. *Id.* at 2021.

98. *See id.* at 2024.

99. *See id.* at 2022–23.

100. *See, e.g.*, U.N. Charter ch. IX, art. 55(c) (“[T]he United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”; G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) (affirming, in the Preamble, that

following World War II.¹⁰¹ Many of the core human rights instruments are based on commitments that the United States made domestically and wanted to internationalize. For example, the International Covenant on Civil and Political Rights really is an internationalization of the U.S. Bill of Rights.¹⁰²

If that is right, then we need to develop better ways to enforce these obligations. As noted earlier, international courts are one option.¹⁰³ For instance, in Europe, there is the European Convention on Human Rights, which is enforced by a European Court on Human Rights.¹⁰⁴ That court has been quite effective in finding that states have engaged in human rights violations and requiring them to make changes. Russia, for instance, gets brought in front of that court a lot and has been ordered to pay a lot of money and to make policy and legal changes.¹⁰⁵ There is also the Inter-American Court on Human Rights.¹⁰⁶ Unlike the European Court of Human Rights, it does not have compulsory jurisdiction.¹⁰⁷ That makes it too easy for states to evade responsibility. But it is, nonetheless, a widely accepted international mechanism for enforcing human rights.¹⁰⁸

“the inherent dignity and . . . the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world”).

101. John W. Dietrich, *U.S. Human Rights Policy in the Post-Cold War Era*, 121 POL. SCI. Q. 269, 270 (2006); MARY ANN GLENDON, *WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* (2001).

102. See International Covenant on Civil & Political Rights (1976) (Preamble recognizes “that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights . . .”).

103. See *AVENA & OTHER MEXICAN NATIONALS*, *supra* note 9.

104. European Convention on Human Rights art. 46(2), Nov. 4, 1950, 213 U.N.T.S. 221 (explicitly prescribing “the final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution”).

105. See Jeffrey Kahn, *The Relationship Between the European Court of Human Rights and the Constitutional Court of the Russian Federation: Conflicting Conceptions of Sovereignty in Strasbourg and St. Petersburg*, 30 EUR. J. INT’L L. 933, 934 (2019).

106. American Convention on Human Rights, Nov. 22, 1969, OAS Treaty Ser. No. 36, 1144 U.N.T.S. 123 (1978).

107. *Id.* at arts. 62–64.

108. *Id.*

Despite these examples, international courts are likely not the best answer to the problem of human rights enforcement. Human rights are best enforced domestically, through domestic political and legal institutions.¹⁰⁹ For example, the Alien Tort Statute is one way in which human rights law is enforced in the United States.¹¹⁰ The statute was enacted in 1789 by the first U.S. Congress, and it allows an alien to sue in tort for violations of the law of nations.¹¹¹ It has been a controversial tool for enforcing human rights.¹¹² And there has been lots of debate about what exactly it means.¹¹³ In June 2021, the U.S. Supreme Court decided *Nestlé v. Doe*, which it joined with *Cargill v. Doe*.¹¹⁴ The plaintiffs were children trafficked from Mali to Cote d'Ivoire to work in cocoa plantations.¹¹⁵ They claimed that Nestlé and Cargill were working closely with cocoa suppliers that were using child slave labor and thereby aided and abetted child slavery.¹¹⁶ The question in front of the Supreme Court was whether U.S. corporations can be held liable for aiding and abetting a human rights violation—here, child slavery—abroad.¹¹⁷ The decision, unfortunately, was no: the Court decided that the Alien Tort Statute did not apply to the extraterritorial conduct at issue in the case.¹¹⁸ That leaves the plaintiffs with no remedy for the human

109. Oona A. Hathway, *Hamdan v. Rumsfeld: Domestic Enforcement of International Law*, in *INTERNATIONAL LAW STORIES* 229 (Foundation Press 2007).

110. *The Alien Tort Statute*, THE CTR. FOR JUST. & ACCOUNTABILITY, <https://cja.org/what-we-do/litigation/legal-strategy/the-alien-tort-statute/> [<https://perma.cc/BS5B-UNHA>] (last visited Jan. 13, 2021).

111. *Id.*

112. *See id.*

113. *See id.*

114. *See Nestlé USA, Inc. v. Doe*, 141 S.Ct. 1931 (2021).

115. *Id.* at 1935.

116. *Id.*

117. *Id.* at 1935–36.

118. *Id.* at 1936.

rights violations they suffered.¹¹⁹ These kinds of cases play an important role in policing human rights violations around the world. If we do not want international courts to provide the only tool for human rights enforcement, we need to find a way to provide other fora to human rights victims.

There are efforts to enforce human rights in domestic courts in Europe as well.¹²⁰ There have been more recent cases against corporations that engage in human rights violations and environmental violations either directly or through subsidiaries in other countries, particularly in the Global South.¹²¹ There are cases in U.K. courts and Dutch courts against Shell Dutch Oil Company for environmental degradation caused by oil spills in Nigeria.¹²² Just in the last year, both U.K. and Dutch courts have allowed those cases to proceed.¹²³ That is one way in which human rights could be enforced. In Europe, there is also an effort to require corporations to engage

119. Lawrence Hurley, *U.S. Supreme Court Rules for Nestle, Cargill over Slavery Lawsuit*, REUTERS (June 17, 2021), <https://www.reuters.com/business/us-supreme-court-rules-nestle-cargill-over-slavery-lawsuit-2021-06-17/> [<https://perma.cc/873C-QS4N>]. The plaintiffs moved to amend their complaint in order to continue to case, but the district court denied that motion.

120. *Kiobel v. Royal Dutch Shell*, Rechtbank Den Haag, ECLI:NL:RBDHA:2019:4233 (May 1, 2019), <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2019:6670> [<https://perma.cc/M8NM-DBJ5>]; Patrick McAllister, *UK Supreme Court Approval of Shell-Bodo Case: Could This Be a Step Towards a More Equitable Future?*, GLOB. RISK INSIGHTS (May 4, 2021), <https://global-riskinsights.com/2021/05/uk-supreme-court-approval-of-shell-bodo-case-could-this-be-a-step-towards-a-more-equitable-future/> [<https://perma.cc/TXA3-HM43>].

121. *Id.*

122. Rechtbank Den Haag, ECLI:NL:RBDHA:2013:BY9854 (Jan. 30, 2013), <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2013:BY9854> [<https://perma.cc/E5NL-QWHX>]; David Vetter, *Niger Delta Oil Spills: Shell Ruled Responsible in Landmark Verdict*, FORBES (Jan. 29, 2021, 10:14 AM), <https://www.forbes.com/sites/davidrvetter/2021/01/29/niger-delta-oil-spills-shell-ruled-responsible-in-landmark-verdict/?sh=134c674a465e> [<https://perma.cc/3RRJ-NJ5N>]; Julia Payne & Kirstin Ridley, *Nigerians Win UK Court OK to Sue Shell over Oil Spills*, REUTERS (Feb. 12, 2021), <https://www.reuters.com/article/us-britain-shell-nigeria-judgement/nigerians-win-uk-court-ok-to-sue-shell-over-oil-spills-idUSKBN2AC16A> [<https://perma.cc/M9TM-SR5B>].

123. *Id.*

in due diligence to ensure that there are not human rights violations taking place in their supply chain.¹²⁴

Human rights violations could also be enforced through courts in the countries where they occur. The problem, however, is that courts in the places where the human rights violations are happening are generally not particularly friendly to cases being brought by the victims.¹²⁵ The government often has some complicity or role in the violations and is not eager to allow these cases to proceed. And courts are often not entirely independent. Bringing a case against human rights violators can also be dangerous. So often the only real option is for the case to proceed outside of the country where the violations have taken place. Nonetheless, there could be efforts at local rule-of-law reform to make local courts more available to those who have suffered.¹²⁶

In short, we need to invest in making human rights protections more effective. That is the next goal of the human rights revolution.

Global Governance and Geopolitical Competitors

Now that our chief geopolitical competitors have joined global governance organizations like the World Trade Organization, one might ask whether it is really in our best interests to participate in them as well. One might wonder if being a member of these global institutions really helps us all that much if it allows our competitors to take advantage of the same rules and regulations that we enjoy.¹²⁷

A prominent theory of political science, Realism, once endorsed the view that global institutions are incompatible with geopolitical competition. Realists argued that there could not be a robust and

124. See Gabriela R. Da Costa et al., *European Union Moves Towards Mandatory Supply Chain Due Diligence: Start Gearing up for New Directive*, NAT'L L. REVIEW (Apr. 29, 2021), <https://www.natlawreview.com/article/european-union-moves-towards-mandatory-supply-chain-due-diligence-start-gearing-up-for-new-directive> [https://perma.cc/339G-AXH2].

125. *The Alien Tort Statute*, *supra* note 110.

126. For more on the Alien Tort Statute, see Oona A. Hathaway et al., *Has the Alien Tort Statute Made a Difference?*, CORNELL L. REV. (forthcoming 2022).

127. HATHAWAY & SHAPIRO, *supra* note 61, at 345.

successful free trade regime between states because although all states will benefit from a free trade regime, some will inevitably benefit more than the others. Some states will grow faster than their competitors, which will change the balance of power among the parties in a way that is disadvantageous to states that, although rising, are not rising as fast. Therefore, this theory went, free trade arrangements are ultimately going to break down because the states that are not benefitting as much as others are going to want to pull out of the agreement even though they, too, are doing better because of it.¹²⁸

The modern era has disproved that theory. A key reason is the emergence of the prohibition on war, now embodied in Article 2(4) of the UN Charter.¹²⁹ This prohibition helps overcome the problem outlined above, because states need not be constantly afraid that if other states makes relative gains, they will use those gains to go to war against those who, while gaining, gain relatively less.¹³⁰ For lots of human history, that was a real concern.

Moreover, in this era, the reality is that if a state is not in the World Trade Organization and benefitting from it, other states *are* going to be in it and benefitting from it. So simply pulling out is not going to do a state any good if it is concerned with relative gains. All a state will succeed in doing is harming itself and excluding itself from the benefits of a regime that is serving the best interests of its members. At the same time, being a part of these global institutions along with its competitors—for instance, with China—allows the United States to hold those competitors to account when they fail to follow the rules. Being in the WTO with China is advantageous, ultimately, to the United States because when China breaks the rules, which it sometimes does, there is a mechanism under the WTO for the United States to bring a case against it.¹³¹ The United

128. *See id.* at 343.

129. *Id.*; U.N. Charter art. 2(4).

130. HATHAWAY & SHAPIRO, *supra* note 61, at 344.

131. *See* Jeffrey J. Schott & Euijin Jung, *In US-China Trade Disputes, the WTO Usually Sides with the United States*, PETERSON INST. FOR INT'L ECON. (Mar. 12, 2019, 3:15 PM),

States has done that several times¹³² and, when it wins, the United States is allowed to put in place countermeasures in response to those violations unless they are corrected.¹³³ So the institutions offer a way for the United States to peacefully police the bad behavior of its competitors so that they do not take an unfair advantage.

Ultimately, in this world, states have to be a part of global institutions because the party is going to go on with or without them. As a result, they are going to lose out if they opt out. Being a part of these global institutions gives a state tools to enforce the rules, whereas if they stay out of the system, they cannot police the rules as effectively. The United States is better off for having those institutions, and participating in them, even—or perhaps especially—when competitors are a part of them.

Conclusion

A challenge that we face in the United States at this moment is that the United States' relative influence compared to other countries is in decline. When you look at share of global GDP, for example, the United States is declining and others are rising.¹³⁴ In 1960, the United States' GDP made up 40% of global GDP.¹³⁵ In 2014, it was roughly half that, and projections are that it will be under 15% in 2026.¹³⁶ As a result, the ability of the United States to shape the global rules is going to be reduced in the future.

<https://www.piie.com/blogs/trade-and-investment-policy-watch/us-china-trade-disputes-wto-usually-sides-united-states> [<https://perma.cc/P3F8-WA2S>].

132. *Id.*

133. *Countermeasures by the Prevailing Member (Suspensions of Obligations)*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c6s10p1_e.htm [<https://perma.cc/79an-c9f4>] (last visited Aug. 29, 2021).

134. Mike Patton, *US Role in Global Economy Declines Nearly 50%*, FORBES (Feb. 29, 2016), <https://www.forbes.com/sites/mikepatton/2016/02/29/u-s-role-in-global-economy-declines-nearly-50/?sh=6498c7e75e9e> [perma.cc/Q9W9-STSA].

135. *Id.*

136. *Id.*; Aaron O'Neill, *United States Share of Global Gross Domestic Product (GDP) 2026*, STATISTA (Nov. 23, 2021), <https://www.statista.com/statistics/270267/united-states-share-of-global-gross-domestic-product-gdp/> [<https://perma.cc/U3CL-ZWG6>].

One reason it is in our interest to create and invest in global institutions and global rules of the road now is to shape them while we still have the capacity to do so. Creating these institutions and structures to enforce them, structures and institutions that are consistent with our values and our view about the proper way of running the world, is in our best long-term interests. Pulling out now is the most disastrous thing we can do, because it leaves it to others to define those rules—rules that we will ultimately have to live by.

The robustness of the norm against using military force has, for example, helped preserve the independence of Taiwan. I was concerned, particularly in the period after Trump's defeat and before Biden's inauguration, that China might take advantage of the difficult political transition. The fact that it did not makes me hopeful that those rules still mean something. China understands that there would be a massive price to pay for violating them. I think it is in our best interests to continue to make it clear that those are the rules that we intend to abide by, that other states are with us in believing that those are the right rules to govern the global system, and that others will join us in rejecting any effort to violate them.

Global governance serves our interests and our values. It is the way in which the United States can ensure that its values continue to govern the global order, even as we look to a future in which the United States' relative economic and military strength will not be as dominant as it historically has been. And that is why it is so important, now more than ever, that we continue to invest in creating, strengthening, and growing institutions for global governance.