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Conceptualising the New (Global) South: Perspectives from International Law

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Introduction

"What law does is to allow a society to choose its future. Law is made in the past, to be applied in the present, in order to make society take a particular form in the future. Law carries a society's idea of its own future from the past into the future. Law carries society's structures and systems from the past into the future. Law makes possible society's possible futures." (Allot, 1998)

This was recounted by Philip Allott in 1998 to American students, arguing that there is no substantial difference between national and international law in terms of their purpose. There is, certainly, a certain symbolism in the fact that he made this statement in the United States (US), at a time when the country was at the peak of its power.

If Allott is right, that is, if international law enables society to choose its future, then the stakes regarding the role of international law in shaping the world order are as high as they could be. More specifically: if the New Global South wants to create a better world order, it must also have a vision of what kind of international law allows for that order to emerge. The aim of this short essay is to outline some of the ways in which this question could be addressed. In doing so, it is important to keep in mind that the current state of global affairs does not provide a clear outline of the future world order. This may be both a strength and a weakness: a weakness, because any vision of the future order is insufficiently grounded in the realities of the present; a strength, because it leaves enough space for our creativity to imagine the different world.

Several underlying assumptions inform this essay. They are listed below but they will not be analysed here:

1. The world we live in is suffering immensely. It is plagued by crime, injustice, structural violence, widespread and high inequality, extreme poverty and the despair of countless people ('surplus population') condemned to conditions unworthy of a living being.

2. In light of point 1, it is a moral duty of every individual to fight for a different, better world – even if such a world were a utopian one, which it certainly will not be.

3. The fight for a better world does not automatically exclude the idea that the new world could emerge worse than this one.

The essay is based on the premise that the saying *ubi societas, ibi ius* (where there is society, there is law) is essentially true, and therefore it will not explore more radical positions that envision a future world order as one without law. That argument is legitimate but exceeds the scope of this essay, the main goal of which is precisely to examine the role of law in the future world order that would be predominantly shaped by the values and aspirations of the New Global South.

1. World Order: The Meaning of the Concept and the Crisis of the Liberal International Order

In order to discuss the role of international law in a new world order built upon the values and goals of the New Global South, we must first engage with the (alleged) crisis of the existing world order. This is a highly contested issue: what order are we actually talking about; was it ever established in the way it is usually described; who are its subjects; is such an order in crisis; and, if the answer to the previous question is positive, what are the causes of that crisis.

Although there is a debate about how to define the concept of the international or world order, one of the proposed (and convincing) definition suggests that world orders are institutional arrangements among sovereign states in which institutions such as sovereignty, international law and diplomacy help achieve the fundamental goals of states or broader forms of political authority (Zarakol, 2024). The existing international order is most commonly referred to as the liberal international order, although there is some debate about whether that label accurately reflects its overall characteristics. For this reason, some authors refer to it as the post-1945 international order (Reus-Smit and Zarakol, 2023).

An increasing number of sars are discussing a crisis of this international order (Ikenberry, 2020), identifying two core aspects of the crisis: internal and external (Benabdallah, 2024). The internal aspect is reflected in elections within Western liberal democracies, where a sense of unease is growing among those who see themselves as the losers of processes predominantly shaped by the liberal international order (Adler-Nissen and Zarakol, 2021). The external aspect is visible in the emergence of external challengers to the order, most notably Iran, Russia and China. The discourse on the crisis of the liberal order was perhaps especially intensified by Russia's aggression against Ukraine – a vast number of papers have been written on this dimension of the crisis (see for example Brunk and Hakimi, 2022; Kotova and Tzouvala, 2022).

Not all scholars, however, view the crisis of the liberal international order in the same way. While some voices have raised alarms about this crisis and call for an urgent response, others perceive

the liberal international order as a system of white sovereignty that ensures domination and control of some over others (Brown, 2024), or as a continuously unjust, unequal structure − a set of norms, institutions, expectations or standards that from the outset have been designed to exclude the interests of the Global South (Benabdallah, 2024). Some scholars specifically focus on this critique of injustice within the current order (Reus-Smit and Zarakol, 2022).

Although, as previously stated, it is certainly possible to imagine a world order worse than the existing one, this essay begins from the premise that it is an ethical obligation of every (public) intellectual to strive for a better and more just order − and, more specifically, of every legal expert to examine the role of international law in that process. To examine this, it is first necessary to consider the role of international law in maintaining or transforming (any) world order.

2. The Role of International Law in the World Order

As discussed, some scholars classify international law as one of the key institutions of the world order. However, this does not define what international law actually does, what it is for (Koskenniemi, 2005) or how it works (Hurd, 2017). Even the question of what international law is remains contested. This section attempts to answer this question.

Although former president of the International Court of Justice, Rosalyn Higgins, begins her book on international law with the famous sentence that international law "is not rules", the majority of those who speak about international law tend to imagine it as a system of concrete norms (Higgins, 1995). What is often overlooked when speaking in general and abstract terms about "international law" is the breadth, depth and diversity of its norms. It is no surprise that those working in international relations typically focus on general principles of international law − such as the sovereign equality of states, the right of peoples to self-determination or the prohibition of the threat or use of force in international relations. While international law certainly encompasses these principles, it extends far beyond them. For example, it is difficult to treat equally Article 60 of the Third Geneva Convention, which outlines five classes of prisoners of war entitled to different amounts of Swiss francs while in captivity; the rules governing exclusive economic zones as maritime zones; or the prohibition of intervention in the internal affairs of other states. Essentially, the substance of these norms is rather different, but so is their function in international relations. Even beyond this argument, international law is not only about these primary rules. Beneath or above them are also the secondary rules which constitute the structure of international law.

The logical conclusion is that international law cannot be reduced to a single function – nor is it easy to speak generally about its impact on the world order. Even its most ardent critics have acknowledged its effects in certain areas, though not necessarily in those they consider most important (Chas, 2024). International law performs multiple roles in the world order – and, more importantly, it often performs mutually conflicting roles.

For instance, some international relations theories emphasise conflict between actors within the world order, while others emphasise cooperation. International law simultaneously facilitates cooperation by introducing legal certainty, predictability and clarity, and seeks to prevent conflict by providing mechanisms for the peaceful settlement of disputes, prohibiting the use of force or at least mitigating the consequences of hostilities.

On a deeper level, international law – like all law – is both a reflection of power within the order and a means of constraining it. In other words, international law is largely shaped by the nature of the world order, but at the same time it also shapes that order (Hrnjaz, 2016). How is it possible for international law to play this seemingly paradoxical dual role? In that regard, it is necessary to begin with states, which, despite all changes, remain the dominant creators of international legal norms.

In the process of creating international legal norms by states – whether through treaty law or customary norms – the power of states plays a crucial role. This power is a complex phenomenon, and it must be acknowledged that it is not the sole material source of international law, but it is certainly the most important. The most powerful actors in the world order therefore seek to shape the process of norm creation in such a way that it reflects their interests to the greatest possible extent (Jon Heller, 2024).

This raises several important questions: Why do the most powerful bother to cloak their power in the form of international legal norms? What does it mean for norms to reflect their interests to the greatest extent possible? Can (international) law be reduced to its instrumental nature? And where is the space for the subversive role of law in relation to power within the international order?
The answer to the first question lies in the issue of legitimacy. Even the most powerful actors in the global order cannot achieve their interests in the medium or long term if they rely solely on hard power:

... dominant social forces in society maintain their domination not through the use of force

but through having their worldview accepted as natural by those over whom domination is exercised. Force is only used when absolutely necessary, either to subdue a challenge or to demoralize those social forces aspiring to question the 'natural' order of things. The language of law has always played, in this scheme of things, a significant role in legitimizing dominant ideas, for its discourse tends to be associated with rationality, neutrality, objectivity and justice. (Chimni, 2017)

Additionally, some of the most powerful actors would likely prefer not to see themselves as players who achieve their goals solely through brute force. They often wish to think of themselves − and to be perceived by others − as just, righteous and fair-minded. Hence, the game of persuasion is played. In that game, international law plays one of the key roles. In fact, if one can persuade other actors that international law is on their side, that should, theoretically, be 'game over'. Not only because legal obligations should outweigh those stemming from other normative systems in situations where actors' interests are highly divergent, but for an even deeper reason: international law makes a utopian promise of justice (Onuma, 2003).

Even when international law does not determine outcomes due to the influence of other factors, it still remains one of the most important tools in this game of persuasion, and outcomes often depend on the persuasiveness of international legal argumentation. As previously mentioned, international law paradoxically both legitimises power and promises justice. For the most powerful actors to legitimise their power through international law, they must make certain concessions − at least enough to make it appear as if the law is not too far removed from the promise of neverfully-attainable justice.

In this described process of the creation and application of international legal norms, a space is created − narrow, but nonetheless important − for compromise between power relations and the promise of justice within the world order. Which of the two will prevail, and to what extent, depends on many specific circumstances: the nature of the international order (unipolar, multipolar, etc.), the particular historical moment in which processes unfold (the most important acts of international law have usually emerged following major crises), and the individual key participants involved in those processes.

Imagine, for a moment, a world in which the powerful actors use their power to achieve what they perceive as justice. It becomes even more interesting to descend from these abstract heights and look at specific processes of treaty-making, such as the Convention on the Law of the Sea and the

question of the use of the seabed (1994) or the regulation of non-international armed conflicts within international humanitarian law (Van Dijk, 2022). In these processes, we sometimes see powerful states such as the US successfully determining the outcome of the content or application of international legal norms. But there are also situations where the outcomes significantly differ from their initial intentions, such as an example analysed by Van Dijk during the adoption of the Geneva Conventions.

Regarding the application of international legal norms, there is at least one more very important point. Some authors insist that the content of international legal norms is inherently indeterminate (Koskenniemi, 2009). In such cases, the issue of interpretation becomes, in essence, a matter of political choice. Yet even here, it is not possible to give a definitive or one-sided judgment. On the one hand, there are highly precise norms of international law, such as the rule that the territorial sea is 12 nautical miles wide, or that a diplomatic agent enjoys absolute immunity from the criminal jurisdiction in the receiving state. On the other hand, not only is the level of indeterminacy of principles like sovereign equality, the prohibition of the threat, the use of force in international relations, the right of peoples to self-determination and the ban on intervention in the internal affairs of other states far greater, but numerous authors warn that this indeterminacy is an intentional consequence of the interests of actors (Fisch, 2015).

Therefore, it is important to make several clarifications. First, the indeterminacy of specific international legal norms is a matter of degree. Second, even where the indeterminacy is great, that does not imply that any argument regarding their content will be accepted or at least that it will be persuasive (Onuma, 2003). Third, the greater the indeterminacy of a norm, the wider the field of political struggle over its ‘correct’ interpretation, meaning that the scope of political discretion available to actors increases. In this sense, international law can indeed be viewed as a field of normative, argumentative or discursive practice (Postema, 2012). However, the use of international law as a field of discursive practice − like any other game − has certain rules that one must know in order to participate (Bianchi, 2015), and in that regard, knowledge of international law itself represents a kind of power.

This section ends with the issue of the use of international law in the world order. It is true that law has a purpose and should be used for the public good, but in the modern era, law has lost the higher constraints or ideals by which it used to be guided (Tamanaha, 2006). In other words, there has been a collapse of belief in the achievement of justice, in the concept of natural law against which positive law should be measured, and so on. This is one of the fundamental reasons for the

rise of instrumentalist views of law, according to which:

people see law as an instrument of power to advance their personal interests or the interests or policies of the individuals or groups they support. Today, law is widely viewed as an empty vessel to be filled as desired, and to be manipulated, invoked, and utilized in the furtherance of ends. (Tamanaha, 2006)

Of course, this does not mean that law was not understood in an instrumental way in the past, but today, this perspective has become self-evident. As will become clearer later in this essay, perceiving international law in this way can be sobering, for it has historically been used primarily as an instrument of power by the most powerful actors. In this way, from a historical perspective, international law has been complicit in relationships of domination and crimes over large parts of the globe. Those who were subjected to such domination for so long have, in a sense, learned this historical lesson and entered the battle for international law (von Bernstorff and Dann, 2019), but at the same time, this instrumentalist perspective has stripped international law of the aura that once linked it to the pursuit of justice − or at least for the public good.

Thus, paradoxically, in using international law to fight for certain goals, to a great extent, its practical value has been diminished.

3. The New Global South and International Law: Adversaries or Allies?

Since Israel launched its military offensive in Gaza following the attacks by Hamas and other groups on Israeli territory on 7 October 2023, critical theorists have found themselves faced with a rather peculiar dilemma: should one, in the struggle for the rights of Palestine and Palestinians, invoke international law or not (Krever et al., 2024)? This reflects more profound dilemmas that have come to the fore. On the one hand, the post–Cold War period has been marked, among other things, by the legalisation of international relations (Goldstein et al., 2000). It has become quite common to use international law to legitimise positions and interests in world politics (Onuma, 2003). The way certain events are described is often shaped by legal discourse and international legal concepts such as genocide, aggression or crimes. Additionally, certain international legal norms, like the protection of civilians in armed conflict, have become obvious and self-evident, although, historically, this is a relatively recent development in international humanitarian law.

It is, therefore, difficult to resist the initial instinct to legitimise political positions in the global order by referring to international legal norms. On the other hand, however, critical theorists in particular rightly emphasise that international law has also served as a tool through which the most powerful actors in the global order legitimised domination and the most monstrous crimes – perhaps especially during the colonial era (Anghie, 2005). Therefore, “the question is an old one: can the post-colonial world deploy for its own purposes the law which had enabled its suppression in the first place?” (Anghie, 2005: 8).

In the described situation, the choice seems to come down to either somewhat hypocritically invoking international law despite its dark history or rejecting it altogether as a tool for legitimising the fight for the public good in which one believes, thus diminishing one’s chances in that fight. The New Global South probably has to make that kind of choice, but perhaps it can be aided by the history of the struggle for international law already fought in its name. Anghie (2005) refers to the first group of international lawyers who belonged to the Third World Approaches to International Law (TWAIL), and who simultaneously criticised international law as a normative system legitimising domination and sought different ways to use that same international law for the interests of the Third World. On the one hand, this meant that:

jurists and diplomats from the predominantly nonaligned ‘new states’ sought to conserve those elements of the international legal system generated after the Second World War and constitutionalized in the UN Charter that underscored the foundational status of sovereignty, nonintervention, and territorial integrity. The goal here was to harness international law’s normative and ideological appeal in order to minimize foreign interference and support state-building projects designed to produce rapid and sustained socioeconomic transformation. (Özsu, 2024)

On the other hand:

those who gave legal voice to the Third World also underscored shared experiences of colonial and semi-colonial domination. They did so in order to establish collaborative institutions premised on shared need and mutual benefit. However committed they may have been to safeguarding their newfound sovereignty, those governing the world’s newest states were keenly aware of their institutional limitations and economic dependence on the very powers from which they had liberated themselves. (Özsu, 2024)

In any case, the period between 1955 and 1975 and the process of decolonisation were key to the battle to use international law for progressive purposes (von Bernstorff and Dann, 2019). This is not the place to delve into the historical details of that process, but there is no doubt today that the process of decolonisation and its immediate aftermath were marked not only by political battles but also by legal battles within the international legal order. That struggle has left a lasting mark on international law and the global order to this day.

At the most visible level, the number of UN member states dramatically increased – from 51 founding members in 1945 to 154 by 1980. For the newly created states, it was decolonisation – not world war – that constituted a tectonic shift in the world order, for in those earlier moments their hopes were largely dashed (Manela, 2009).

The political and international legal battle for decolonisation was waged on several different fronts. First and foremost, between 1945 and 1980, the right of peoples to self-determination evolved from a political concept or nascent legal principle with little force into a jus cogens norm of international law (Cassese, 1995). This struggle was accompanied by a parallel push in the UN General Assembly, where newly decolonised states slowly but surely became the majority. Though General Assembly resolutions are not formally binding, this did not mean they were devoid of normative value (ICJ, 1996).

Alongside armed struggles by national liberation movements, legal battles were waged in specific subfields of international law – such as humanitarian law, where there was a push to recognise struggles for self-determination as international armed conflicts and grant combatants prisoner-of-war status (Additional Protocol I, 1977); in investment law (von Bernstorff and Dann, 2019); or in defining and implementing the concept of the right to development (ibid). Perhaps the most significant movement in this respect was the campaign for a New International Economic Order (NIEO) (Bhagwati, 1977).

Importantly, this legal struggle for international law that would support decolonisation was not waged only within different subsystems of international law, but also by a variety of actors. In addition to the UN General Assembly, it took place before the International Court of Justice (ICJ), among states – especially via the Non-Aligned Movement – but also at the level of legal theorists. The latter was a battle of ideas that gave rise to TWAIL, which has survived in various forms to this day.

It seems that the mainstream view regarding the aforementioned battles is largely that they were lost. Koskenniemi, for example, argues at one point that international law, after the 1960s, largely lost its previous significant role in the international order (Koskenniemi, 2009). A somewhat more balanced conclusion is offered in one of his later writings, where he explains certain parts of that battlefield for progressive international law during the decolonisation period:

In case the efforts to bring about a more just economic and political order in the 1970s are discussed through the metaphor of 'battle', it is hard to avoid the impression that on most questions, the G77 'lost'. It is true that apartheid is over (at least in South Africa) and legal opinion today converges on thinking of the 1966 judgment by the ICJ as a 'mistake'. But there has been no advance on the question of occupied territories, for example, and the present terrorism obsession leaves little room to defend the cause of national liberation movements. As regards the international economic order, trade, investment, and technology, the developing world has had to content itself with quite little. The debate on generic drugs for AIDS/HIV brought a partial 'victory' and in such other questions as climate change or marine genetic resources, for example, old battles are still being waged. (Koskenniemi, 2019)

But perhaps even more importantly, Koskenniemi explains why the struggle for a different kind of international law at that time was important – and why it remains relevant today:

*The 1970s does have staying power, however, if only of the unplanned kind. So much of the present world in terms of its culture, political and otherwise, its mores and its instinctive practices, come down from that under-appreciated decade... The unstated wish of the reactionaries, overjoyed to be finally able to speak their mind, is to return to the time before the 1970s, a time before decolonization and the cultural and political change of which it was a part, a time when all kinds of aliens and activists, women, minorities and Jewish philanthropists did not tell them what to think or say. The battle may be over, but the war rages on. (*Koskenniemi, 2019)

Thus, it is not possible to give a straightforward assessment of the impact of decolonisation and the contemporaneous battle for a more progressive or just international law. On the one hand, almost all former colonies achieved statehood, which was one of the primary objectives. On the other hand, it is not an exaggeration to say that they did not achieve sovereign equality or true independence. In the post-Cold War period, deep disillusionment with the outcomes of decolonisation emerged – formal statehood did not automatically translate into (economic)

independence for newly created states. Or in Koskenniemi's words: "the battle may be over, but the war rages on."

This sense of disappointment was further amplified by the emergence of a unipolar global order at the end of the 20th century, dominated by the United States; by critical discussions around the consequences of certain interpretations of development and foreign aid; and by numerous other questions.

On the other hand, even those disappointed with the outcomes of that battle for international law admit that international law played a significant role in the decolonisation process − even though the process of liberation is certainly not finished: "the war rages on." Furthermore, as Koskenniemi reminds us, this period sowed the ideological seeds of movements and schools of thought that at least began the process of delegitimising the existing order, even if that process is far from complete.

This very ideological seed is a promising starting point for discussing the ways in which the New Global South might use international law in the struggle for a different, more just global order. A necessary precondition for this is a relatively clear vision of what the concept of the New Global South entails. This vision need not be fully developed, but it must at least offer clear contours of the world order we seek to pursue. In this regard, the key question appears to be the same one posed by the founders of TWAIL: Should/can/must the transformation of the global order be an evolution − or a revolution?

Major transformations in international law have historically emerged as consequences of dramatic shifts in the global order. This is important for at least two reasons. The first is that it is difficult to expect radical changes in international law if there are no radical changes in the world order beforehand. There is no doubt that the current world order is experiencing significant changes, but the question is whether we can qualify them as radical. Considering the historical record, we should reflect on whether we genuinely want radical transformations in the international legal system, as they have often been born out of catastrophic wars and, in our nuclear age, the stakes are immeasurably higher. Second, it is difficult to imagine an opposite process in which we make changes in the international legal system that would lead to a radical change in the world order.

Namely, every law, including international law, must simultaneously reflect, to some extent, the society it legally regulates, but it must also never fully do so − that is, it must always retain its

normative dimension − to guide society in a desirable direction with the awareness that it is impossible to ever fully achieve this. When law simply reflects societal power relations, it turns into an apology; when it tries to disregard them altogether, it becomes utopian. The New Global South, or any other movement and/or project that aims to bring about a different world order, must find balance in this process of international legal arrangement, unless it desires a radical change of the international legal order.

If we are seeking gradual rather than radical shifts, the question is how to achieve them, considering the structure of the international law system. In the existing structure, states are still the most important, though not the only, subjects, and the will of states is still crucial for norm creation, although not as it once was. Power dynamics still decisively influence the process of norm creation and implementation. In such circumstances, the question of the possibility of changes is legitimately raised. Therefore, the New Global South must first determine who the key agents of change in the world order are. Can it rely solely on states as the bearers of these changes? If the answer points in that direction, what prevents some states, when power relations within the world order change, from acting differently from the most powerful ones today? Is it possible to fight for the replacement of dominance with mutual respect and solidarity? In short, it is doubtful that the existing Chinese (He and Sun, 2020) or Russian (Mälksoo, 2015) approaches to international law show serious signs of 'progressive' approaches to international order through the mechanisms of international law. Rather, it seems that both powers approach international law predominantly instrumentally (in other words, similarly to the West) and towards legitimising their own interests in the international order, even though support for international law, democracy and even human rights is not formally questioned on the international stage. In a joint statement by the Chinese and Russian presidents at the opening of the Winter Olympics on 4 February 2022 (just a few weeks before the Russian attack on Ukraine) the following was said:

The sides underline that Russia and China, as world powers and permanent members of the United Nations Security Council, intend to firmly adhere to moral principles and accept their responsibility, strongly advocate the international system with the central coordinating role of the United Nations in international affairs, defend the world order based on international law*, including the purposes and principles of the Charter of the United Nations, advance multipolarity and promote the democratization of international relations, together create an even more prosperous, stable, and just world, jointly build international relations of a new type... Some actors representing but the minority on the international scale continue to advocate unilateral approaches*

to addressing international issues and resort to force; they interfere in the internal affairs of other states, infringing their legitimate rights and interests, and incite contradictions, differences and confrontation, thus hampering the development and progress of mankind, against the opposition from the international community. (emphasis added)

From such statements, it is possible to extract that there are commonplaces to which both Western states (hegemons) and those challenging this hegemony refer – democracy, international law, the UN Charter, human rights – but the ways they interpret the content of these concepts and their practices differ. The struggle to define the content of these terms or the actions of certain institutions is the struggle to define the future. Interestingly, in this context, it is also notable how much Russia and China refer to a large number of international legal mechanisms, institutions and treaties – ranging from the UN Charter, which is likely taken for granted but is important to Russia and China primarily due to their status as permanent members of the Security Council, to the UN 2030 Agenda for Sustainable Development, the UN Framework Convention on Climate Change and the Paris Agreement, the Treaty on the Non-Proliferation of Nuclear Weapons, and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (among many others). This once again confirms the extent to which international law and its mechanisms have become an indispensable part of diplomatic language and the legitimisation of one's interests in the world order.

Closer reading, of course, reveals certain differences between China and Russia. For example, on the one hand, China emphasises the importance of building a "community of common destiny for mankind" to ensure greater solidarity within the international community and the consolidation of efforts to respond to common challenges. On the other hand, Russia stressed the importance of establishing "a just multipolar system of international relations", which, does not seem to represent identical visions.

Considering all this, it is legitimate to ask whether the New Global South's approach to the role of international law in the emerging world order should be sought outside the binary alignment with global powers. Therefore, it seems more important to address specific issues such as the New Global South's stance on the principle of sovereignty or, even better, on some of its aspects, the issue of human rights (which rights? how?), peace and justice, etc. Some representatives of the English school in this regard write about solidarist and pluralist views of the world order, so the question could be posed as to how the New Global South positions itself in this division.

However, it is important to acknowledge that states are not the only institutions within the world order. The functioning of the current order is also secured or established through the activities of international organisations. UN institutions, including the General Assembly and the ICJ, played a crucial role in legitimising decolonisation, but the key question is their potential to play a positive role in the present and future. On the one hand, the well-known and somewhat futile discussions about UN reform, especially the Security Council, may contribute to some extent to greater inclusiveness and fairness, but it is unlikely they can bring about substantial changes, as new members in the existing order would primarily look after their own interests rather than the common good. On the other hand, as previously mentioned, in the 20th century, global wars and catastrophic consequences were necessary to bring about radical changes in the institutional order, such as the League of Nations or the UN.

This is not to say that there are no actions in the described circumstances that call into question the existing arrangement. One example is the increasingly frequent use of the ICJ as an instrument for actors from the Global South. This is one way to explain the Republic of South Africa's application against Israel before the ICJ based on the Convention on the Prevention and Punishment of the Crime of Genocide (ICJ, 2023). Furthermore, one way to protect one's interests has been the establishment of regional organisations that are more sensitive to the specific needs and interests of states belonging to the Global South, such as the African Union. Lastly, there is also the issue of global financial governance and the creation of new institutions like the New Development Bank, which aim to respond to the actions of financial institutions linked to the current international order, such as the International Monetary Fund or the World Bank. Many questions arise today regarding attempts to reshape the financial order, and the New Global South movement still needs to provide a compelling and carefully considered response.

Concluding Considerations

The liberal or post-1945 world order is indeed in crisis, but it is entirely another question what the causes of this crisis are and whether it should be saved from it or not. The goal of this essay, however, was much narrower and more modest than the aforementioned question: it was to explore what the role of international law could be in the emerging new world order. This role is certainly not unambiguous, as international law is always both a reflection of power and a means

of limiting it. The future of international law will, in this sense, undoubtedly be marked by the perspective of the most powerful actors on it, and in this regard, there are significant differences in how international law looks in a world order where China is a dominant global actor, or the European Union, or the US. On the other hand, international law could be more or less marked by the creativity and knowledge of the less powerful who will attempt to use it for subversive purposes against the interests of the hegemons.

On the one hand, the space currently existing in terms of the indeterminacy of the positive principles of international law can also be used as a field for political struggle for fairer outcomes within the world order, but also for clarifying the legal means to achieve those goals. On the other hand, it is equally important to consider what international law remains silent about the issues it insufficiently regulates. Despite attempts such as NEIO, positive international law almost never addresses key issues like the relocation of resources on a global level. The reason is simple: there is no agreement among actors on such issues, or the structure of international law (its secondary rules about how norms are created) is such that it favours maintaining the status quo, i.e., according to many, maintaining existing unjust outcomes.

Despite all these limitations, historical experience demostrates that international law can also be used as a means of limiting power or ending disenfranchisement. One such example was the process of decolonisation. Although it is true that it did not fully lead to the desired results, it does not mean that certain goals were not achieved despite all the odds. It is necessary to carefully examine the causes of that limited success in order to make use of the seeds planted at that time today. In that sense, perhaps it is possible to use international law not as a utopia or apology, but as a field of imagination.

The New Global South should first clearly set the agenda for its actions. Then, it should choose those interpretations of positive international legal norms that clearly embody the values it believes in. In addition, the New Global South should advocate for changes in the international legal system that would lead to greater inclusiveness and fairness. This is indisputable precisely because it is so abstract. If we temporarily lower the level of abstraction, very practical but fundamental questions arise to which the New Global South must offer answers − more or less sovereignty, which and what human rights, how to achieve redistribution without supreme authority, the relationship between peace, sovereignty, and justice in specific situations, etc.

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