

# What Went Wrong?

From the Fall of the Berlin Wall  
to the Rise of New Fences

*Rein Müllerson*

**Rein Müllerson**

l'Institut de Droit International (IDI), Geneva, Switzerland

Member and former President;

Tallinn University

Professor Emeritus

ScopusAuthorID: 8550150900

E-mail: rein1@live.co.uk

Address: C/o IHEID, Chemin Eugène-Rigot 2, Case postale 1672, CH-1211 Genève 21,  
Switzerland

DOI: 10.31278/1810-6374-2022-20-1-30-49

## **Abstract**

Russia's military operation in Ukraine, illegal in terms of the pre-1990s international law and probably a geopolitical miscalculation, has caused a shock incomparable even with that of the 2003 American attack on Iraq that was proudly baptised Operation Shock and Awe. Remarkably, neither the twenty-year-long war in Afghanistan waged by the U.S. and its allies, nor the destruction of Libya in 2011, nor the multiple military interventions in Africa, nor even NATO's bombardment of Serbia in 1999—the first unlawful use of force in post-WWII Europe—have caused such anger. There is always a whiff of racism in the fact that wars waged against people who have chosen to be on the “wrong side of history” are not condemned by those on “right side of history” as they must be. How did it happen that after the fall of the Berlin Wall and reasonable expectations of a peaceful future, the world found itself in a situation where the use of military force has become nearly normal unless it is used against Europeans who chose the “right side of history”? How and why, in the race towards “the end of history” the

fundamental principles of international law have been twisted and crumbled to such an extent that soon there may be not a single man left in the world to contemplate this end? Today we are all in uncharted waters, but we still have a chance to survive if we learn the lessons of history which offers helpful hints of how to end military confrontations.

**Keywords:** Dangers of unilinear interpretation of history, balance of power, NATO expansion, war in Ukraine, military alliances vs collective security, 1815 Vienna Congress vs 1919 Treaty of Versailles.

On February 24, 2022, Russian forces launched a military operation in Ukraine. For me personally it is, above all, a great tragedy since I am intimately familiar with many people from both these nations. In 2014, I published an article *Ukraine: Victim of Geopolitics*, in which I analyzed the main aspects of the conflict with respect to international law, such as the annexation, or as Russia put it, “reunification with the motherland,” of Crimea (Müllerson, 2014). Both these qualifications can be used for describing what happened in March 2014. One could even use the formula “unlawful, but legitimate” borrowed from Western justifications of its illegal uses of military force. However, what happened in February 2022 is a different kind of animal, the terrible one. From the geopolitical point of view, it may well be that Russia has miscalculated. Moreover, the violations of the Minsk Accords by Kiev and the inability or unwillingness of Ukraine’s Western partners to put pressure on it in this matter do not justify Russia’s actions. Even Washington’s militarization of Ukraine and making it NATO’s *de facto* member (though without Article 5 security guarantees, which shows how little the U.S. cares about Ukraine and Ukrainians), could not serve as a basis for the use of force in Ukraine. More justifiable could have been limited use of force to protect the people of the Donetsk and Lugansk regions, who had lived for eight years under constant attacks from the Ukrainian army and extreme nationalistic paramilitaries.

However, although Russia is responsible for its actions, there are those, both in Ukraine and particularly in the West, who have been working

hard for years to transform Ukraine into a bridgehead, even a launching pad against Russia, not caring at all what it may ultimately mean not only for Russia but also for Ukraine. Responsible for wars are not only those who are the first to pull the trigger, but also those who make it inevitable, or at least highly plausible. Below I will try to show how it all went wrong and share my reflections on what could be done about it.

### **ON THE DANGERS OF TELEOLOGICAL AND LINEAR INTERPRETATION OF HISTORY**

Almost the same time—over thirty years—has passed since the Berlin Wall came down, the Soviet Union collapsed and my native country, Estonia, restored its independence. This was a period when the end of the Cold War was loudly and proudly proclaimed by many, both in the East and the West, and when quite a few international lawyers, including myself, wrote about the coming era of the primacy of law in world politics. The words about the end of the Cold War were also in the title of one of my articles published in 1989 both in America and in Moscow (Vereschcetin and Müllerson, 1989), and my comments to speeches delivered by Mikhail Gorbachev and other Soviet leaders. As an active participant in those events, first in Moscow and later in Estonia, I had high hopes for a future world if not without any conflicts (even then I was not so naïve), then at least where cooperation would prevail over confrontation, between reasonable actors in the least. Together with Lori Damrosch, I co-edited a book, *Beyond Confrontation: International Law for the Post-Cold War Era*, written by relatively young American and Soviet international lawyers not tainted by the Cold War rhetoric and mentality (Damrosch and Müllerson, 1995). We genuinely believed in the possibility of a better world. Today, however, besides COVID-19, environmental cataclysms, conflicts between liberal elites and those whom Hillary Clinton called “a basket of deplorables” whose grievances have been exploited by populist politicians, we are facing a renewed great power confrontation. What went wrong? Why did our expectations fail?

First, it must be noted that not all has gone wrong and there have been many positive developments in various domains and places. There

are still many areas of international law where, using the famous dictum of Louis Henkin, “almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time” (Henkin, 1979). Many societies have become more prosperous, and democracy has spread into countries where it was absent. In the 1990s, notwithstanding the first Gulf War (or maybe even thanks to it), when the international community acted almost unanimously against aggression, it seemed that the world had become more peaceful than before. The rise of internal conflicts after the disappearance of the restraining Cold War discipline and the increase in terrorist attacks moved center stage for the world politics agenda, since the main threat to the survival of humankind had disappeared, hopefully for good, as it was believed. It was not so much terrorist attacks as inadequate responses to them that created new serious problems. However, even in reactions to these responses one could already discover the seeds of coming divisions. Whereas terrorist attacks in New York, London, and Paris were seen as acts of those “who hate our freedoms,” similar assaults in Russia or China were depicted as responses of those whose freedoms were limited by “the authoritarian regimes.” This is a small but significant sign of the hubris of those who considered themselves to be the winners in the Cold War and on the right side of history. This hubris and the belief in the end of history form *la toile de fond*, as the French say, or the background, as the Anglo-Saxons say, of most serious challenges and confrontations the world is facing today.

After the fall of the Berlin Wall most Western (and especially American) politicians and political analysts became Fukuyamians (although most of them usually denied this) who believed that there was only one right historical track—liberal-democratic—and that only they were on the right side of history. In this respect, liberal-democratic and Marxian ideologies (both of Western origin) are methodologically close and rather unsophisticated, not to say primitive. For example, in their otherwise rather interesting and forward-looking article two prominent American experts, Daniel Deudney and G. John Ikenberry (2009), observed that “[J]ust as the Nazis envisioned a ‘new order’ for Europe and the Soviet Union designed an interstate economic and

political order, so, too, did the liberal West.” So far, so good. However, using the same method that the Marxists had exploited, these two American professors came to the optimistic conclusion that “[T]he foreign policy of the liberal states should continue to be based on the broad assumption that there is ultimately *one path to modernity* [emphasis added]—and that it is essentially liberal in character,” and that “[L]iberal states should not assume that history has ended, but they can still be certain that it is on their side.” This is only a slightly modified and moderated version of the deterministic, unilineal and unidirectional Hegelian, Marxian, and Fukuyamian end-of-history argument. Such end-of-history philosophy has been widely used to justify the expansion of liberal democracy across the world, as well as the efforts to perpetuate unipolarity and make those who are against it be seen as being on the wrong side of history.

I am not going to dwell here upon the challenges facing liberal democracies, whose roots are mostly internal. Nevertheless, one thing needs to be mentioned. The collapse of the Soviet Union thirty years ago and the success of reforms in China since Deng Xiaoping’s coming to power in 1978 signified the collapse of the communist utopia. However, the failure of this rival ideology and practices based on it also did a disservice to the winner, at least in two respects. The winner believed that this was the end of history and nothing better could emerge. Such a teleological approach to history is not only wrong but also extremely dangerous, especially if one tries to follow it in practice, particularly in foreign affairs. Also, the disappearance of the rival that had indeed underperformed in comparison with the Western model, disclosed the latter’s own internal contradictions that seemed to be secondary or were even suppressed during the Cold War. For example, liberalism and democracy, which had always had a kind of friend/enemy relationship (the more liberties, especially in the economic field, the less democracy and vice versa) became more inimical and less friendly, especially in the context of the latest wave of globalization. Inequality increased in practically all societies. However, the West continued to spread its model across the world, including in the most unfertile places such as Iraq and Afghanistan.

It is difficult to be more wrong than Condoleezza Rice was in 2006 when she spoke about the developments in the Middle East. Then Secretary of State, she claimed without any sign of irony or hesitation in her voice: “What we’re seeing here, in a sense, is the growing—the birth pangs of a new Middle East” (Rice, 2006). Birth pangs indeed, but of what? Nothing turned out as she had predicted. Today thousands upon thousands are continuing to die, not only in the Middle East but also in Europe and other places, as a result of these birth pangs. Has she, or anybody else, been held responsible, even if only politically and morally, for advocating and supporting these “birth pangs” which have birthed but monsters? After being so terribly wrong in 2006 on the Middle Eastern matters, a decade later, in March 2016, in a public lecture entitled *Challenges of a Changing World*, she taught young Ukrainians in Kiev how to build democracy at home, be thankful that they are not in “Liberia where the standard of living is much lower,” and fight the Russian aggression abroad (Observer, 2016).

The world is too big, complex, and diverse to have its rich tapestry flattened into a carpet with only one—be it Judeo-Christian, Anglo-Saxon, Confucian, Muslim, or even secular liberal-democratic—pattern dominating. Although societies often borrow from their neighbors what seems to work well, these are usually technological novelties or management practices and not ways of life. In anthropology, there is a notion of schismogenesis, which means that instead of plagiarizing ideas and practices from other societies, peoples tend to remain or even become more distinctive, retain and develop their special identity (Graeber and Wengrow, 2021). In Russia, it can be seen in what President Putin has called healthy/moderate/reasonable conservatism, a kind of reaction to the attempts to Westernize it. I am not going to discuss here the meaning of this conservatism and to what extent it is consonant with the nature and history of Russian society, but for me one thing is clear. The Kremlin has become more conservative and, also, more authoritarian thanks, at least partly, to the Western interference in Russia’s domestic affairs and its encirclement by NATO. Moreover, there is a merit not only in biological and intra-societal diversity but also in inter-societal diversity since uniformity would be the end of

experimentation and eventually of development. (Although too much diversity within societies may lead to disruption of the societal bonds that hold them together, and there are societies whose diverse practices may be difficult to accept).

### **BALANCE OF POWER—A PRECONDITION OF A MORE OR LESS PEACEFUL WORLD**

The Westphalian international society, that is, society of sovereign states, which emerged in the aftermath of the Thirty Years' War, was a regional international society, which managed to extend, mostly through colonial policies, its characteristics and principles to the rest of the world. Adam Watson writes: "The European society of states evolved out of the struggle between the forces trending towards a hegemonial order and those which succeeded in pushing the new Europe towards the independence end of our spectrum... The Westphalian settlement was the charter of a Europe permanently organized on an anti-hegemonial principle" (Watson, 1992, p. 182). Only with the emergence of relatively equal centralized nation-states could modern international law (then often called the "international law of civilized nations," that is, European international law), with its concepts of sovereign equality, non-interference in internal affairs and non-use of military force, take shape.

Of course, not all states were equal, and there was a constant struggle for dominance and attempts to either ignore international law or to reinterpret it in accordance with one's interests, or to instrumentalize it for one's own purposes. However, except for the relatively brief period of Napoleonic Europe, no power had been able to dominate the whole continent. And it was exactly for that reason, after Napoleon Bonaparte had disturbed the existing power balance to its very roots and established an almost continental-wide empire, that in 1815 in Vienna the victorious powers consciously and conscientiously created a continental international system that became known as the Concert of Europe. It guaranteed the longest peaceful period the Old Continent had ever known. Importantly, it was not only the *de facto* balance that was restored after Napoleon had been defeated; it was also the recognition

of the necessity of this balance for European security (i.e., there was practice plus *opinio juris*). Remarkably, it also secured the inclusion of France in the concert of powers, notwithstanding the efforts of some to humiliate the defeated enemy, to add insult to injury. Unfortunately, neither the winners of the First World War nor those of the Cold War were as wise as Tsar Alexander I, Viscount Castlereagh and Clemens von Metternich had been in Vienna in 1815. Similarly, when Hitler tried to conquer the Old Continent, the European powers, together with the United States, established a united front against the aggressor, notwithstanding deep ideological differences between them. The UN Charter, particularly the composition and the powers of its Security Council, also reflects the idea of the balance of power, although due to the rise of new centers of power and underrepresentation of whole continents in the Council, its composition has become somewhat outdated. However, the idea is still valid.

In this respect the world has not changed. Even today the arrogance of one superpower can be controlled and tamed by the might of another superpower or a coalition of powers; international law can be helpful and play its role in this process. Without such a balance it not only becomes helpless, but simply disappears, leading to the emergence of imperial law or a situation where everyone has its own understanding of legality (or, rather legitimacy, the term widely used today). In 1971, Richard Nixon, speaking with the editors of *Time* and referring to the 19th-century Concert of Europe, stated: “We must remember the only time in the history of the world that we have had any extended period of peace is when there has been balance of power. It is when one nation becomes infinitely more powerful in relation to its potential competitor that the danger of war arises. So, I believe in a world in which the United States is powerful. I think it will be a safer world and a better world if we have a strong, healthy United States, Europe, Soviet Union, China, Japan, each balancing the other, not playing one against the other, an even balance” (Kissinger, 2014, p. 303).

Although Kissinger’s diplomacy and Nixon’s visit to China in 1972 served, *inter alia*, the purpose of balancing the Soviet Union, the realism of the Nixon–Kissinger tandem is in stark contrast with Wilson’s (or

Lenin's, for that matter) utopian messianic idea of the betterment of the world, in the process of which societies are destroyed, and thousands, if not millions, are killed. Kissinger warns us that a stable balance of power remains as crucial now as it was in the Westphalian era, and emphasizes that today "to achieve a genuine world order, its components, while maintaining their own values, need to acquire a second culture that is global, structural and juridical—a concept of order that transcends the perspective and ideals of any region or nation. At this moment of history this would be a modernization of the Westphalian system informed by contemporary realities" (ibid, p. 372).

Any balance of power presumes, by definition, the existence of more than one center of power. Just as the separation of powers domestically presumes the existence of at least legislative, executive, and judicial branches, between which a certain equilibrium should exist. Separation of powers within a state and balance of power in international relations play comparable roles. Both these principles are meant to prevent concentration of power, which is a natural tendency (and not only in domestic and international politics but also in economics and even in academia) and which may lead to its super concentration if not properly checked. Super concentration of power usually ends in a Big Bang, similar to the explosion of black holes in the Universe, leading to the emergence of new galaxies. While totalitarian societies may explode in rebellions of those who have nothing to lose but their chains, in international relations, as world history testifies, there always emerge those who start counterbalancing the imperial center. Such periods, if not handled carefully and responsibly, tend to end in great-power wars. Unfortunately, today the world seems to be going through such a dangerous period.

### **THE COLD WAR BALANCE, UNIPOLARITY AND THE QUEST FOR NEW NORMALCY**

The Cold War-era international system was also a balance-of-power system. However, as a bipolar system, it was almost exclusively competitive, where both poles not only constantly sought to outplay each other, but also believed in a worldwide triumph of their respective social, economic, and political systems. Nevertheless, even in such an

inauspicious environment international law developed and mattered. Moreover, the period of *détente* (1969–1979) was marked by bilateral and multilateral agreements (the latter were sometimes initiated by the two superpowers and then sent to allies on a FYA—for your attention—basis), especially in the field of disarmament and confidence-building measures, with informal rules of the game and political understandings. Although such a system, with only two dominant actors seeking absolute dominance, was not the most stable one, relative power equality was a constraint on each other's arrogance and had a soothing impact, even if Mutually Assured Destruction (MAD) had the strongest pacifying effect. As Martti Koskenniemi ironically noted, “to apply [Karl] Schmitt's description of the new Nomos [law] to the behavior of the Western Powers in Kosovo and Iraq, the 50-year interlude may be explained by the Cold War having prevented a full-scale moralization of international politics. Ironically, then, for a century, the Soviet Union may have taken the role of the Schmittian *Katechon*—restrainer of the coming of the Antichrist” (Koskenniemi, 2006, p. 493). Of course, Moscow did not play the role of an idealistic or altruistic restrainer of Washington's arrogance; the Kremlin's expansionist impulses were similarly restrained by the American power, but one of the effects, or side-effects if you will, of the relative balance of power between Moscow and Washington, that none of them liked, was certainly that it put limits on the use of force in international relations, and not only between the two superpowers; it had restraining effects beyond.

This balance evaporated with the disappearance of the Soviet Union, and for the first time in the history of humankind a unipolar world emerged. The unipolar moment of the 1990s, with only one superpower (or hyper power, to use the term proposed by former French Foreign Minister Hubert Védrine) dominating the whole world, was an anomaly in the history of geopolitics. Even the greatest empires of the past, such as those of Alexander the Great or Genghis Khan, and even the British Empire in which the sun never set, controlled only parts of the planet Earth. After the collapse of the bipolar world the United States began to look at the whole world as the sphere of its vital interest where no rival power could be allowed to rise. Such an

anomalous situation, being, in fact, a historical aberration, could not last long, and due to the mistakes (in Iraq, Afghanistan, Libya, etc.) of consecutive American administrations it turned out to be even shorter than it could otherwise have been. And note, all these mistakes, though having different trigger mechanisms, had one and the same ideological source: the persisting desire to create a uniform world that would be governed from one center (to make the world safe for democracy, as the mantra went). Jean-Marie Guéhenno was right in stating in 2021 that “today we have to admit, even if reluctantly, that what was presented as a universal project, a ‘multilateral liberal world order’ was a Western project, expressing a transient moment when the West seemed to dominate the world. This ephemeral project served the interests of the American power that did not hesitate to break the rules if that seemed to be in its interest” (Guéhenno, 2021, p. 46).

Yet, from the onset of the 21st century, not only did the “usual suspects”—China and Russia—begin counterbalancing, but various regional powers also started to force multipolar elements into the emerging international system. However, such a trend has not been to Washington’s liking, and through its containment and roll-back policies, either unilaterally or through NATO and even the European Union, the United States has been targeting Russia and China in an attempt to perpetuate the unilateral moment of the 1990s. Either by misreading history or for propaganda purposes the role of domestic political regimes in foreign policy has been too often overexaggerated. Even if China or Russia were liberal democracies (which in the first case is pure utopia, and in the second case, unrealistic in the foreseeable future, considering the current trends to which Western policies have contributed considerably), they would not practice bandwagoning policies and follow Washington’s lead as most European and even non-European nations do.

### **ON ZONES OF INFLUENCE AND THE RIGHT TO BELONG TO MILITARY ALLIANCES**

In this context a comment on two ideas vented in recent years *ad nauseum* seems appropriate. The first one states that the 19th century

(or for some the Yalta) model of zones (or spheres) of interest (or influence) is outdated. In the fall of 2014 in Tallinn, President Obama said “we reject any talk of spheres of influence today” (Remarks, 2014). This statement was applauded as enthusiastically as thirty years earlier the speeches of Comrade Leonid Brezhnev had been applauded (although I am sure that in 2014 most Estonians were genuine in their enthusiasm). But like many people in the world, Estonians were naïve as it is obvious that if Washington considers Europe, the Middle East, or the Asia-Pacific region a sphere of its vital interests, it will naturally deny everybody else’s right to make similar claims.

The second idea, repeated *ad nauseum*, is the so-called NATO’s “open door policy.” It is said that it is a sovereign right of every state to choose its alliances and decide whether to belong or not to belong to NATO. Following this logic, one could also claim, for example, that every state has a sovereign right to have nuclear weapons, especially if they have not renounced this right by becoming a party to the 1968 NPT Treaty. However, we know too well that biting sanctions have been used against some aspiring nuclear powers, while even targeted military strikes have been “on the table” against others. At the same time, it is even more obvious than the desire of some states to join the nuclear club that all states, big and small, are unwilling to have neighbors belonging to hostile military alliances. Therefore, in the superpower rivalry—and it is difficult to deny that this is what is going on in the world today—any expansion of American influence, particularly in terms of its military presence, to the borders of other powers will force the latter to react. That is why the idea of NATO as a club with doors wide open for all looks disingenuous to me. Whereas membership in the European Union does not threaten vital security interests of third states (although this may involve problems as well), belonging to a military alliance whose main purpose, even whose *raison d’être*, is countering militarily a specific state (or a group of states) constitutes a security threat to the latter. Therefore, any state becoming a member of a military alliance with a clearly declared adversary (adversaries), thereby also declares that this common adversary is its potential enemy and thus forces the latter to react.

Even as a law student, I was puzzled by the Latin dictum “*Fiat iustitia, et pereat mundus,*” because it is clear that without the world justice and injustice alike cease to exist. One may, of course, sacrifice one’s own life for the sake of a just cause, but being ready to destroy the world even for a just cause is quite a different matter, and a case for psychiatric examination. The freedom to join military alliances as a sovereign right that trumps all other considerations such as collective peace and security is a similar nonsense.

In his excellent new book entitled *The Ambassadors: Thinking about Diplomacy from Richelieu to Modern Times*, Robert Cooper (2021) analyzes, *inter alia*, the 1962 Cuban Missile Crisis. He correctly observes that the Soviet nuclear weapons in Cuba would have constituted a significant new threat to the United States; they would have been “a cheap way to change the military balance, and that [was] Khrushchev’s main motive.” That is why Washington threatened to destroy the facilities being built in Cuba if the Soviets would not withdraw them, notwithstanding that neither Moscow nor Havana were in breach of the norms of international law. Dean Acheson, a distinguished American diplomat and lawyer, Secretary of State from 1949 to 1953, commented on the 1962 crisis: “The power, position and prestige of the United States had been challenged by another state; and law simply does not deal with such questions of ultimate power—power that comes close to sources of sovereignty” (Acheson, 1963, p. 14).

Robert Cooper is also right in saying that Soviet nuclear weapons in Cuba would have enhanced the Soviet Union’s security, but they would not have done much for Cuba—“the reverse, in fact: they make it a target” (Cooper, 2021, p. 327). The same is true about NATO’s, particularly U.S., military presence in countries neighboring Russia. This may enhance American security, but it makes Russia’s neighbors targets for the Russian military. Praising the leaders of the two superpowers for saving the world in 1962, Robert Cooper writes about what John Kennedy was guided by in rejecting calls for immediate all-out military action advocated by his opponents in Congress. The President followed advice that he, when a boy, had singled out when reading Basil Liddell Hart’s book: “Keep cool. Have unlimited patience. Never corner an opponent, and

always assist him to save his face. Put yourself in his shoes. ... Avoid self-righteousness like the devil—nothing is so self-blinding” (ibid, p. 341). However, to follow this great advice, one must be a politician of John Fitzgerald Kennedy’s caliber, which in the political climate prevailing in most societies today is almost an impossible demand.

### **FROM INTERNATIONAL LAW TO A WORLD LAW AND (HOPEFULLY) BACK?**

International law as such, in contradistinction, for example, to imperial legal systems that have existed or the current EU law, cannot subsist in a system with one dominant center. International law as a more or less coherent system of rules and principles started developing after the 1648 Peace of Westphalia, which had concluded the devastating Thirty Years’ War in Europe. Before, there had existed a multi-layered authority in Europe, where the Papacy, the Emperor of the Holy Roman Empire and a multitude of kings, counts, earls and dukes competed for a place under the sun (Bull, 1977).

Since its emergence as a more or less coherent system of principles, norms and procedures, international law has been based on two underlying factors: multipolarity and balance of power. If multipolarity in the international system is an obvious necessity due to the sheer scale of the world and its social, cultural, and developmental diversity, it is also a *conditio sine qua non* for the very existence of international law. This was well understood by Swiss international lawyer Emmerich de Vattel, who in 1758 in his celebrated *Le Droit des Gens* wrote about the foundation of international law: “This is the famous idea of the political balance or equilibrium of power. We have in mind a situation where no power is able to dominate absolutely, to make laws for others” (Vattel, 1758, pp. 47-48). In 1861, Sir Travers Twiss, a prominent English jurist, Queen’s Advocate-General, and also my distant predecessor as Professor of International Law at King’s College, London, wrote that “the concept of general balance designed by the treaty-systems [he had in mind the 1713 Peace of Utrecht that put an end to the wars of the Spanish succession and treaties adopted by the 1815 Congress of Vienna] would guarantee particularly the existence of the sovereignty

of less powerful nations against the more powerful states” (Twiss, 1861, p. 140). Without a counterbalancing power (powers), there would develop an imperial system where there is no place for independent entities. This is why Lassa Oppenheim wrote in the first edition (1905) of his famous treatise on international law: “Law of Nations can exist only if there is equilibrium, a balance of power, between the members of the Family of Nations” (Oppenheim, 1905, p. 73).

As was described above, after the fall of the Berlin Wall this precondition for the existence of more or less effective international law disappeared. In the relatively peaceful 1990s, when the hope that law could play an increasingly important role in international relations was still alive, many, particularly in the West, saw these changes as steps in progressive development of international law that was leaving its outdated Westphalian mode behind. However, there were some who noticed the seeds in interpretation of law and practices that were leading not to the strengthening of international law but to its undermining.

The post-Cold War unipolar moment led to attempts to transform existing international law into a unipolar normative system controlled by a single center, which had no room, desire or need for counterbalancing it. For a while, it seemed that the world and international law would indeed evolve in that direction. The widespread use of military force for humanitarian purposes—authorized by the UN Security Council (therefore lawful, though not always legitimate) or bypassing the Council (therefore illegal but legitimate for some states and experts), the rapid evolution of international criminal law and jurisdiction and high expectations that this could change the world for the better, the diminishing role of state sovereignty and almost complete neglect of the principle of non-interference in domestic affairs—were all signs of the emerging world law to replace traditional international law. International law was undermined by attempts to create a unipolar law for the unipolar world.

In my opinion, although the international system that had existed before the fall of the Berlin Wall was not up to noble ideals, there was not much wrong with international law. There is always a gap between normative requirements of law and reality. Law must be

better than the factual order to uplift the latter to legal expectations. Yet the current state of the international system corresponds even less to the fundamental principles of international law than was the case before the 1990s. The principles enshrined, for example, in Article 2 of the UN Charter and in the 1970 Friendly Relations Declaration have weakened while new generally agreed norms of equal importance have not emerged and can hardly emerge in the current geopolitical ambiance. The main reason is the clash of the two incompatible visions of the future world: concentric and polycentric, as well as—following from those visions—different understanding of the nature of the law for the future world, namely, should it be a kind of world law or international law? Especially dangerous is the situation in the center of Europe where a Western military alliance, NATO, using the temporal weakness of Russia has moved to the borders of its erstwhile enemy. On February 17, 2022, French Foreign Minister Jean-Yves Le Drian said in an interview to the *Financial Times*: there are “no more rules” governing European security and stability because arms control pacts covering everything from intermediate-range nuclear missiles to transparency on military force movements have become “nearly obsolete or irrelevant” (*Financial Times*, 2022). And this situation is characteristic of several other parts of the world.

Today, notwithstanding Kantian hopes that prevailed at the end of the Cold War, the world is increasingly revealing its Hobbesian characteristics. At the turn of the current century, instead of following Kantian instincts, we should have concentrated our efforts on taming Hobbesian reflexes. Unfortunately, many of us, like myself, and, much more importantly, those like Mikhail Gorbachev, acting upon our naïve beliefs, contributed to the rise to power of those who highjacked positive but unripe fruits that had emerged at the end of the Cold War. Yet, on a more optimistic note, I believe that not all is lost. It is necessary to work for a realistically achievable status of international relations where no state, or a group of states, would impose its visions and values on the whole world that is too big and diverse to be ruled from one center. The main role of international law should be prevention and resolution of misunderstandings, tensions, and conflicts between

states, which would not try to impose uniformity on differing societies. The latter simply does not work. Moreover, it is counterproductive. I felt cautiously optimistic hearing Theresa May declare during her visit to Washington in January 2017: “The days of Britain and America intervening in sovereign countries in an attempt to remake the world in our own image are over” (May, 2017). The British prime minister vowed never to repeat the “failed policies of the past,” referring to Western military interventions in Iraq and Afghanistan and breaking from “liberal interventionism” advocated by her distant predecessor Tony Blair and carried to the fruition by her immediate predecessor David Cameron. The latter, together with President Sarkozy of France and President Obama of the United States, who was leading from behind, ruined Libya with disastrous consequences for the whole world. The tragedies that are happening today in Mali, Burkina Faso and other countries of Sahel all stem from what Charles Maurice de Talleyrand-Périgord would have described as “worse than a crime, a mistake.” I would say, a terrible mistake, but also a crime.

Not only military interventions have all been failures; intervening in domestic affairs of other countries by means of economic sanctions or political pressure, if not authorized by the UN Security Council, have more often than not made things worse. Hubert Védrine, former French foreign minister, was right in emphasizing in 2016 that “democracy and human rights will progress in the future much less through the prescriptions and interference from the outside by the West than through dependence on the internal dynamics of individual societies” (Vedrine, 2016; see also Müllerson, 2009).

Naïve (for many) and hypocritical (for quite a few) attempts to unify the world have made it even more fragmented. A new great-power rivalry and confrontation is here and there. The Summit of Democracies, organized quite dishonestly in terms of the choice of the participants, naturally turned fruitless. The very idea of such a gathering is extremely reckless and worrying. Jean-Mari Guéhenno is right when he insightfully writes about the need for a new Copernican revolution, this time not in astronomy but in world affairs: “Today we need a radical reconfiguration of the picture of the world, similar to the

one that happened five hundred years ago. It must help us leave behind the Western-centric picture of the world and embrace the humanity in all its diversity. It is necessary to see world history not as an unstoppable movement towards worldwide liberal democracy. We must find a more adequate and less simplistic way of describing the world than the one where democracies oppose dictatorships” (Guéhenno, 2021, p. 248). In his well-argued opinion, one of the biggest mistakes made by many in the West is that it reduces the complexity of the world to two modes of organization of power: autocracy and democracy (ibid, p. 328).

Democracy is not something like God, motherhood or apple-pie. It is a form of the political organization of society, probably the best so far that has ever existed. But today the notion of democracy has acquired almost religious connotation and is claimed to be the only universal religion, to which naïve believers in democracy and opponents of democracy alike are paying lip-service. All other political forms of organization of society are ostracized as being beyond the pale and inevitably—sooner or later—giving way to democracy, preferably with the adjective ‘liberal.’ In my opinion, this is a dangerous illusion. There is a lot of duplicity in such beliefs. We have seen failures of exporting democracy to the Middle East. At best, after temporary euphoria—inside a country and even more so in the outside expert community—these societies reverted to their authoritarian past; at worst, they imploded with horrendous effects for the local people, as well as for the wider world. Responsible authoritarianism may be better for many societies. Ostracizing political regimes that do not correspond to the liberal-democratic model and are closer to the authoritarian end of the spectrum is usually counterproductive. The world is not flat, and we do not live (yet, if ever) in a global village.

### **NOW, WHAT CAN BE DONE?**

How could the world come out from this conflict with minimum damage and without paving the way for new conflicts? There have been different ways of ending armed conflicts among which I would single out two opposites: the 1815 Congress of Vienna that drew a line under the Napoleonic Wars, and the 1919 Treaty of Versailles

that ended WWI. While the latter paved the way for WWII, forcing some historians to view these two world wars as different stages of the same war, the former guaranteed relative peace in Europe for almost a century. The Treaty of Versailles not only humiliated and weakened Germany but also excluded it from what could be considered a Concert of Europe for the 20th century—the League of Nations. This was quite different from what the 1815 Congress of Vienna had done: France that had willfully invaded other European nations became a party to the Concert of Europe, though without Napoleon, yet with Talleyrand.

The Cold War ended with the triumph of the United States. Russia, notwithstanding all the efforts of its leaders in the 1990s to please Washington and be liked by the West, was never included in the European security structures led by the U.S. and centered on NATO. This means that the Cold War ended with arrangements that were closer to the Versailles mode of ending conflicts, with terrible consequences, as we see today. Now the question is: Will the world leaders, after the arrival of relative calm in Ukraine, choose the way of Clemens von Metternich and Viscount Castlereagh or those who after WWI paved the way for a new conflict?

Even if justifiable, moral indignation, especially when whipped up to consolidate the ranks, is a poor guide in foreign policy decision-making. This is true for all sides. It goes without saying that the fighting should be stopped, and Ukrainian sovereignty respected. Ukraine's best, maybe only, option would be neutrality because "*Fiat iustitia, et pereat mundus*" is a terrible maxim.

## References

Acheson, D., 1963. The Cuban Quarantine – Implications for the Future. *Proceedings of the American Society of International Law*.

Bull, H., 1977. *Anarchical Society: A Study of Order in World Politics*. London: Macmillan.

Cooper, R., 2021. *The Ambassadors: Thinking about Diplomacy from Richelieu to Modern Times*. Weidenfeld & Nicolson.

Damrosch, Lori F. and R. Müllerson (eds.), 1995. *Beyond Confrontation: International Law for the Post-Cold War Era*. Boulder: Westview Press.

Declaration, 1970. *Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United*

Nations (UN General Assembly, 24 October).

Deeney, D. and Ikenberry, J., 2009. The Myth of the Autocratic Revival. Why Liberal Democracy Will Prevail. *Foreign Affairs*, January–February.

Financial Times, 2022. France Urges Revamp of Europe’s Security Order in Face of Russia Threat. *Financial Times*, 17 February.

Graeber, D. and Wengrow, D., 2021. *The Dawn of Everything: A New History of Humanity*. Allen Lane, pp. 180-186.

Guéhenno, J.-M., 2021. *Le Premier XXIe Siècle: De la globalisation à l’émiettement du monde*. Flammarion.

Henkin, L., 1979. *How Nations Behave: Law and Foreign Policy*. Columbia University Press.

Kissinger, H., 2014. *World Order*. Penguin Press.

Koskenniemi, M., 2006. International Law and Political Theology: How to Read Nomos Der Erde? *Constellations*, 11(4), p. 493.

May, Th., 2017. Theresa May: “US and UK Will No Longer Invade Foreign Countries to Remake the World in Their Own Image.” *The Independent*, 27 January.

Müllerson, R., 2009. Democratization through the Supply-Demand Prism. *Human Rights Review*, November.

Müllerson, R., 2014. Ukraine: Victim of Geopolitics. *Chinese Journal of International Law*, 15 April.

Observer, 2016. Condoleezza to the People of Ukraine: Just Be Glad You Aren’t Liberian! *Observer*, 11 March. Available at: [observer.com/2016/03/condoleezza-to-the-people-of-ukraine-just-be-glad-you-arent-liberian/](https://observer.com/2016/03/condoleezza-to-the-people-of-ukraine-just-be-glad-you-arent-liberian/) [Accessed 10 March 2022].

Oppenheim, Lassa, 1905. *International Law: A Treatise*. Vol. I. Peace. London: Longman.

Remarks, 2014. *Remarks by President Obama to the People of Estonia*, 3 September. Available at: [obamawhitehouse.archives.gov/the-press-office/2014/09/03/remarks-president-obama-people-estonia](https://obamawhitehouse.archives.gov/the-press-office/2014/09/03/remarks-president-obama-people-estonia) [Accessed 10 March 2022].

Rice, C. 2006. *Secretary of State Condoleezza Rice. Special Briefing on Travel to the Middle East and Europe*, 21 July. U.S. Department of State. Available at: [www.state.gov/secretary/rm/2006/69331.htm](http://www.state.gov/secretary/rm/2006/69331.htm) [Accessed 10 March 2022].

Twiss, T., 1861. *The Law of Nations Considered as Independent Political Communities: On the Rights and Duties of Nations in Time of Peace*. Oxford.

Vattel, Emerich de. *Le Droits des Gens* [The Law of Nations]. Chapitre III, pp. 47-48.

Védrine, H., 2016. *Le Monde au Défi*. Fayard.

Vereschetin, V. and Müllerson, R., 1989. The Primacy of International Law in World Politics. *Sovetskoe Gosudarstvo i Pravo*, 7(6).

Watson, A., 1992. *The Evolution of International Society*. Routledge.