WHY IS THERE STILL SO MUCH CONFLICT?

The decision to outlaw war changed the world. Wars between states are now rare. Conquest has become the exception, not the rule. But if this is true, why have so many missed the remarkable success of the outlawry of war?

At least part of the reason is that the postwar world has been far from peaceful. India and Pakistan have fought over the region of Kashmir off and on since 1947. Since 1948, conflict involving Israel has led to three interstate wars and several intifadas. War raged in Korea from 1950 to 1953 and in Vietnam from 1955 to 1975. Genocidal conflicts erupted in Yugoslavia (now the former Yugoslavia) and Rwanda in the 1990s, and civil war ravaged Sudan for more than two decades. In 2014, the United States and China began playing a high-stakes game of chicken over islands in the South China Sea and many fear a war with China in the near future. And in 2015 alone, high-fatality civil wars continued in Nigeria, South Sudan, Yemen, Syria, Iraq, Afghanistan, Pakistan, Somalia, and Ukraine.[1]

Why, if war has been outlawed, is there still so much conflict?

The answer is that these conflicts are not prohibited by the Pact. Indeed, they are the predictable consequences of it. Even though the Peace Pact was extraordinarily—many thought foolishly—ambitious, it was nonetheless limited in its scope. It outlawed territorial aggression by one state against another. The United Nations Charter followed its example, prohibiting "the threat or use of force against the territorial integrity or political independence of any state." This prohibition has been remarkably effective, as the decline in conquest and interstate war shows. But the prohibition on

the use of force by one state against the territory of another has allowed two sources of conflict to simmer—one *between* states and one *within* them.

UNCERTAIN SOVEREIGNTY

International law prohibits aggression against the territory of another state. But what if it is not clear which state, precisely, a particular piece of territory belongs to? Then *every* state that thinks it has a claim to the territory will view any *other* state's incursion as a violation—and its own efforts to respond as legitimate self-defense.

In the Old World Order, a state could resolve such ambiguities by seizing the territory. But in the New World Order, conquest is prohibited. That's good if sovereignty is clear and the boundary lines broadly accepted. But if sovereignty is disputed and the lines hazy, the legal situation gets complicated very quickly.

We can analogize sovereignty in the New World Order to homeownership. If you want to own a house you admire, you cannot just take it by force. If you go to the house and throw the owner out, you don't acquire title to it. The owner will call the police, who will arrest you for breaking and entering. But even if there were no police, no one who knew what you had done would touch the property. No bank would accept the house as collateral for a loan. No one would purchase it. Friends might not even visit.

Instead, to acquire the right to property, you have to buy it from (or have it gifted to you by) the true owner. Only he can convey it. If you want to purchase the house, your lawyer will conduct what is known as a "title search." She will determine whether the seller bought the house from the true owner and whether he bought it from the true owner before that, and so on. Title searches can be laborious because they might require tracing real estate transactions over decades, even centuries.

Eventually, all title searches bottom out at what lawyers call the "root of title": the first true owner of the property. In the United States, root title is established by a land grant from the United States government. If you can prove that the current possessor bought the land from someone who bought the land from someone who bought the land—and so on—from the first true owner, you will have established a chain of title. Many jurisdictions let you

stop before reaching the first link in the chain. They may allow you to stop at a specific date—say, 1930.

State sovereignty is not that different. As ownership to property can be established by following a chain of title, so, too, can sovereignty be established by following a chain of sovereignty. Under the Old World Order, this process was easy: Whoever seized the land and claimed sovereignty over it *had* sovereignty over it. Conquests restarted chains of sovereignty with the conquering state becoming the new root sovereign—it was like a consensual purchase of a home, only much worse for the previous owners. But in the New World Order, conquest is no longer recognized. Merely occupying a territory does not establish sovereignty any more than occupying a house establishes ownership.

But how is the root of sovereignty established in the New World Order? The answer is provided by the Peace Pact: *The true sovereign is the state that had sovereignty in 1928.* As we saw in the last chapter, when war was outlawed and territorial aggrandizement prohibited, state borders hardened—lines on maps once written in pencil were traced over in permanent marker. Sovereignty became rooted. Military victories no longer established legal sovereignty, as Japan learned in 1931. A state now had to be able to show the political equivalent of title.

Many places in the world have a simple chain of sovereignty and thus pose no problems for those trying to figure out who they belong to. Unfortunately, however, not all places: There are a number of territories where sovereignty was not well established in 1928, when the permanent marker was laid down. Those territories continue to be sources of international conflict.

BLURRY LINES AND BOTCHED HANDOFFS

Perhaps the most enduring source of ongoing conflict in the postwar era is clumsy decolonization. When empires crumbled after the Second World War, they left vast uncertainty in their wake. Two of the biggest sources of that uncertainty are "blurry lines" and "botched handoffs."

Blurry lines resulted from the sloppiness with which imperial powers delineated borders between colonial holdings. Because colonial holdings often served as mere administrative divisions, imperial mapmakers tended to

draw imprecise boundaries. When these colonies became independent, the blurry lines on imperial maps became the borders of newly sovereign states. Conflicting and careless historical records provided no easy answer as to which new state had a verifiable claim to the territory in 1928—and therefore which state had the claim to the territory after independence.

The only legal way to resolve disputes over border territory post-1928 is by securing the agreement of the contesting states. But that can take decades. Indeed, some of the border disputes that emerged after decolonization have raged for close to a century. It was not until 2012 that Vietnam and Cambodia settled a border dispute that first erupted after the French withdrew in 1954. And conflict is still ongoing between Egypt and Sudan over Bir Tawil, an eight-hundred-square-mile piece of territory that both countries have claimed since the United Kingdom withdrew in 1956. That territory remains a "no-man's-land"—land claimed by both that can be developed by neither.

A second problem created by clumsy decolonization arises from what we call botched handoffs. Imperial powers often did not take enough care to identify the new sovereign of the territory they were vacating—or failed to complete the transfer in full. It would be as if you sold your house to several different people, or handed over the keys before finishing the paperwork. As you happily drive off in your moving truck, you are leaving chaos behind.

Perhaps the most infamous example of a botched handoff is former British Palestine. To trace the chain of sovereignty, we need to begin in the years before the territorial lines solidified—that is, before 1928. After the First World War, through a series of machinations the closing chapter of this book will trace, Great Britain took control of Palestine. This control was formalized in 1923, when the League of Nations issued a mandate for the British to rule in the southern part of what had been Ottoman Syria.[2] The British Mandate for Palestine created two temporary protectorates, both set to expire on May 14, 1948. One protectorate was in Palestine, an attempt to fulfill the promise of the U.K. foreign secretary Arthur James Balfour in 1917 to support the "establishment in Palestine of a national home for the Jewish people."[3] A second protectorate was in Transjordan, and was governed semiautonomously.[4]

A period of growing unrest followed. Jews continued to settle in Palestine even as Palestinian Arabs demanded an independent state.[5] The situation erupted in sporadic violence, with Arabs rioting against Jewish settlers and

Zionists resisting—sometimes violently—the efforts of the British government to limit Jewish immigration. Once the horrors of the Holocaust came to light, Britain's policy of resisting immigration of Jewish refugees into Palestine met with wide-scale revolt. Dissident Zionist forces carried out attacks on British forces and officials.

Britain turned the problem over to the newly created United Nations, which developed a plan to partition Palestine into Jewish and Arab states, with Jerusalem under United Nations control.[6] But the Arab League (formed by neighboring nations that claimed to speak on behalf of Palestinian Arabs) denounced the plan, placing the United Nations effort to resolve the conflicting claims in limbo. On the day the mandate was set to expire—May 14, 1948—David Ben-Gurion, the executive head of the World Zionist Organization and president of the Jewish Agency for Palestine, unilaterally declared "the establishment of a Jewish state in Eretz Israel, to be known as the State of Israel."[7] The next day, the neighboring Arab states of Egypt, Syria, Transjordan, and Iraq attacked.[8] It took a year before a cease-fire could be established. Jordan annexed the West Bank, including East Jerusalem. Egypt took control of the Gaza Strip. During the lull, Israel sought and won admission to the United Nations. Significant numbers of states refused to acknowledge its right to exist. Even today, more than thirty United Nations member states refuse to recognize the State of Israel.[9]

The continuing conflict in this region has many causes, and this book does not offer anything approaching a full explanation of it. But at least one reason the conflict has proven so intransigent is that the British mandate expired with no clear plan for the territory it had governed. Palestine became a legal black hole, a territory in which the chain of sovereignty had been broken. The situation was further complicated by the contradictory promises made by the colonial powers to all sides in the conflict throughout the early twentieth century. As British foreign secretary Jack Straw put it in 2002, "A lot of the problems we are having to deal with now, I have to deal with now, are a consequence of our colonial past . . . the contradictory assurances which were being given to Palestinians in private at the same time as they were being given to the Israelis—again, an interesting history for us but not an entirely honourable one."[10]

Israel is far from the only botched handoff. In Korea, Japan's unconditional surrender in 1945 meant the end of Japanese colonial rule. But Japan was in no position to make contingency plans for maintaining

legal order. The collapse of colonial rule set off a rush by the Soviets and Americans to establish control. In a hasty deal established to prevent conflicts between wartime allies, the Americans and Soviets drew a line at the 38th parallel to delineate the two occupying forces. The Korean War was the attempt by Koreans on either side of this temporary line to establish their sovereignty over the entire peninsula. Much the same happened in Vietnam, where the sudden end of Japanese rule left uncertainty—and then war—over who was the rightful sovereign after Japan relinquished control. And after India won independence from Britain and split into two independent states, India and Pakistan, in 1947, competing claims to the former Princely State of Kashmir and Jammu on the India-Pakistan border led to repeated wars in the region and fueled a nuclear arms race between the two countries.

In the New World Order, the problems created by clumsy decolonization are devilishly hard to fix. There is no way, short of Security Council intervention, to compel a resolution of the conflict. Conflicts over contested territory can only be resolved by mutual agreement. As a result, blurry lines and botched handoffs are the major reason why the rules against conquest are sometimes broken, even though Might no longer makes Right. Recall that, aside from the immediate postwar transfers, the only other recognized territorial transfers during the 1929–1948 period that were not later reversed were border disputes created by blurry lines: Saudi Arabia's seizure from Yemen in 1934, Paraguay's seizure of border territory from Bolivia in 1935, and Peru's seizure of disputed border territory from Ecuador in 1942. And many of the major conquests in the postwar era—such as Indonesia's seizure of West Papua in 1963 and North Vietnam's conquest of South Vietnam in 1975—took place following botched handoffs. When the rule against conquest is violated, then, it is almost never in cases of naked aggression against foreign sovereign territory, but rather when newly independent states attempt to fill the legal vacuums left by withdrawing empires that failed to ensure a clear chain of sovereignty.

ISLANDS OF UNCERTAINTY

Blurry lines and botched handoffs can lead to long-term conflict when they affect places people deeply care about. A very different route to territorial

conflict occurs when land people did not care about—land that nobody bothered to lay firm claim to—suddenly becomes valuable. And nowhere has this been more true than in the archipelago of the South China Sea.

Chances are good that if you look up from this book and gaze around, you will see several items that, in whole or in part, have passed through the South China Sea. Half of the world's merchant fleet tonnage and a third of its crude oil passes through this waterway. That's more than $5 trillion in shipborne trade per year. As goods make their way through the sea, they pass the coasts of Malaysia, Brunei, Philippines, Taiwan, China, Vietnam, Thailand, and Singapore, the same waterway traversed by the *Santa Catarina* when it was captured by Jacob van Heemskerck in 1603.[11]

The hundreds of tiny islands your goods passed were once close to worthless, rocky shoals that offered refuge to little more than resting wildlife and the occasional exhausted fisherman. With the exception of a few large islands that produced something of value—the Spice Islands, for example, that the Dutch and Portuguese fought over so savagely, with Grotius's permission—most islets were more trouble defending than they were worth. Few had fresh water and thus could not support agriculture or permanent settlement. States rarely bothered to establish clear sovereign authority over them.
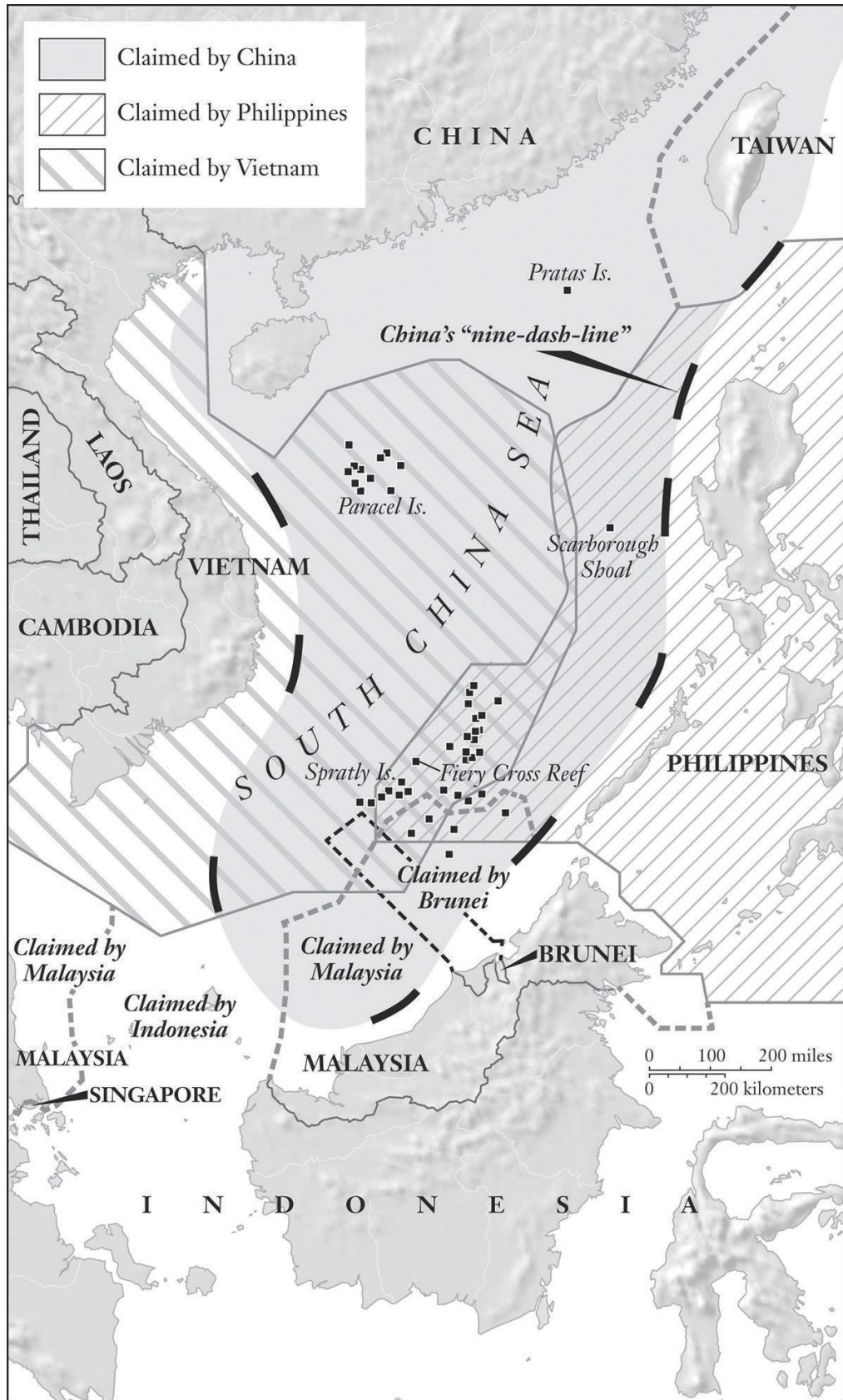
In a twist of history, it is because these islands were virtually worthless a century ago that they are the source of so much conflict today—bringing the nations of East Asia into dangerous confrontation with one another and even threatening to bring two of the world's greatest powers to the brink of war.

THE COW'S TONGUE LINE

In May 2015, a game of chicken unfolded in the skies over Fiery Cross Reef in the middle of the South China Sea. The United States sent a surveillance aircraft over the reef, where China was dredging sand to create a foundation on which it could build a planned airstrip and seaport. The American pilots ignored repeated demands by Chinese forces that the aircraft leave the area. China's Foreign Ministry later called the confrontation "irresponsible and dangerous." Secretary of Defense Ashton Carter replied, "There should be no mistake about this: The United States will fly, sail and operate wherever international law allows, as we do all around the world."[12]

The Fiery Cross Reef is just one of a vast number of rocks, atolls, and islands in the South China Sea to which the coastal states in the region have made overlapping claims. Airfields have arisen on remote and barren reefs. Immense platforms have emerged on tiny rocks. Satellite images that document this process show five ships dredging sand from the ocean floor, pumping the sand through floating pipes, and dumping it onto an emerald green reef. In successive photos taken over the course of a year, a bloom of brilliant white obscures the reef with a growing sand bar poking up through the surface of the water. The series of images ends with the emergence of a new island over one square mile in area housing numerous buildings, roads, and runways. The images are fascinating but also terrifying. For most of these "reclamations" are taking place on contested territory. No shot has yet been fired, but China has been seeking to establish its claims by gradual occupation.

China's claim in the South China Sea is the most audacious by far—including a vast area within what it has dubbed the "Nine-Dash Line" and others have called the "Cow's Tongue Line"—an accurate description of its shape but also of the appetite it represents. Though China claims it has exercised sovereignty over the area within the Cow's Tongue Line for centuries, its neighbors vehemently disagree. Coastal states such as Brunei, Malaysia, the Philippines, Taiwan, and Vietnam point to their own spotty and incomplete historical records to establish their claims to the Paracel Islands, the Pratas Islands, Scarborough Shoal, and the Spratly Islands, among many others. On most of these tiny bits of land, there were—until recently—no structures, no industry, no inhabitants, and little plant or animal life. Thus China's building campaign on contested reefs and rocks is an undisguised bid to create facts on the ground that the other claimants cannot match.

Claimed by China

Claimed by Philippines

Claimed by Vietnam

CHINA

TAIWAN

Pratas Is.

China's "nine-dash-line"

SOUTH CHINA SEA

THAILAND

LAOS

Paracel Is.

VIETNAM

Scarborough Shoal

CAMBODIA

Spratly Is.   *Fiery Cross Reef*

PHILIPPINES

Claimed by Brunei

Claimed by Malaysia

Claimed by Malaysia

BRUNEI

Claimed by Indonesia

MALAYSIA

MALAYSIA

SINGAPORE

| 0 | 100 | 200 miles |
| 0 | | 200 kilometers |

I N D O N E S I A

Until recently, this campaign over specks of land would have appeared the height of foolishness. Peace treaties, for example, frequently failed to mention all but the largest islands. At the close of the Sino-Japanese War of 1895, the Treaty of Shimonoseki provided that China ceded to Japan "the island of Formosa [Taiwan] together with all islands appertaining or belonging to said island of Formosa."[13] Which islands, precisely, appertained or belonged to Formosa was not specified. Nobody cared. Even as late as 1945, sovereignty over tiny islands was left vague. After its defeat by the Allies at the close of the Second World War, Japan relinquished its claims to much of the territory it had seized before and during the war, but failed to specify who would take charge of the islands.[14]

All this began to change in the late 1960s. A United Nations–led survey concluded that oil reserves would likely be found in the East and South China Seas.[15] Not coincidentally, that discovery took place as oil companies developed the technology for drilling below the ocean depths.[16]

The rules, too, had begun to shift in ways that would make islands much more valuable. In 1973, the United Nations held a conference on the law of the sea. That conference led to the drafting of a convention—known as the Law of the Sea Convention—that outlined the sovereign rights over the oceans. According to the convention, coastal states could establish an exclusive economic zone out to two hundred nautical miles from the shore. In this area, the coastal state has sole rights over all the natural resources: fish in the sea, minerals on the seabed, oil or natural gas under the sea. And they have sole control over minerals in the subsoil for the continental shelf— which could extend as far as 350 nautical miles. What's more, islands would get the same rights as any other coastal area.

In a few years, then, insignificant, uninhabited rocks—many barely peeking above the water in the middle of nowhere—came with over a hundred thousand square nautical miles of ocean that could be exploited (a circle with a radius of two hundred nautical miles encompasses precisely 125,637 square nautical miles). This development coincided with a drop in fisheries worldwide, which made exclusive control over any ocean area extremely valuable. Control over the seas also came with oil—in some cases, lots of it.

One of the sources of conflict in the New World Order, then, is this: If sovereignty over territory was unclear in 1928, it cannot be resolved after 1928 except by mutual agreement of all claimants to the territory. But

mutual agreement can be challenging when the stakes are high and no state with a plausible claim has a better claim than another. Moreover, military conflict can't resolve the dispute, for waging war and conquering territory no longer establishes sovereignty. In cases when no one bothered to draw clear boundaries, there is no way to figure out who's right—and so the conflict persists.

THE ROLE OF LAW

The South China Sea is the setting for a geopolitical struggle between two of the world's most powerful states, and thus it would seem that law would play only a small, even inconsequential role. Indeed, China has shown that it is willing to flout many of the rules of the system, using its outsized military to intimidate its neighbors. Meanwhile the United States has responded by sending its own massive air force and navy to push back against the Chinese claims. In this clash of military titans, how could legal niceties matter?

But stepping back, it is possible to see that the power struggle is taking place against a backdrop of law. Why were islands so worthless for hundreds of years? Because barren territory that was difficult to defend against conquest was more trouble than it was worth. Why did these islands become so valuable? *Because the law changed*. Not only did conquest become illegal (and thus defending islands unnecessary), but the new law of the sea gave states control over hundreds of miles of ocean and seabed resources surrounding islands. China and the other coastal nations scrambling to establish claims to the islands are doing so because they are pursuing their interests as determined by law. Each state wants these islands because the rules have now made these islands valuable. Law is also the reason the disputes are intractable: In the New World Order, Right cannot be settled with Might. Mere occupation cannot give China what it really wants—the right to lawfully extract the resources that come with recognized sovereignty over the islands. So the standoff continues.

QUIETING SOVEREIGNTY

In a world where Right cannot be established by Might, disagreements over sovereignty can be impossible to resolve. But is there *really* no way to resolve

this uncertainty? After all, in the case of property ownership, there are tools to settle exactly these kinds of disputes. A person can buy title insurance at the time he buys the property, just in case a dispute arises in the future. If a dispute does arise, a person seeking to establish title can go to court to "quiet title."

But geopolitics has no such thing as "sovereignty insurance." A state cannot buy an insurance policy from the United Nations to protect it from occupying disputed territory. International law does have a few ways to "quiet sovereignty." The International Court of Justice—often called "the World Court"—was created at the time the United Nations was formed to resolve legal disputes between states, including border disputes and other claims of sovereignty. It has decided fourteen border cases since its inception —most recently a boundary dispute between Malaysia and Singapore over three groups of rocky islands in the Strait of Malacca.[17] The Permanent Court of Arbitration, a more informal version of the International Court, has also resolved territorial disputes as well, though the precise number of such cases is not publicly known.[18] Neither court, however, has compulsory jurisdiction, which means that they can only hear disputes if both sides to the dispute agree to be bound by their decision.

The United Nations Security Council has the compulsory power to resolve sovereignty disputes that the courts lack—and it has used this power to "quiet sovereignty." In the early years of the U.N., eleven former colonies were placed under its trusteeship. The U.N. Trusteeship Council ensured that there was a clear successor to the colonial government, averting many of the problems that often plagued colonial handoffs and the armed conflicts they caused. All eleven trust territories became successfully independent or voluntarily associated with a state.[19] The Security Council has also weighed into a number of territorial disputes.[20] In 1999, for example, the Security Council established a mission to resolve a long-raging dispute over the territory of East Timor.[21] The mission conducted a vote on independence and, when the East Timorese people voted in favor, the U.N. Transitional Authority oversaw the territory's evolution to full and independent statehood. But in others cases, such as the dispute between Russia and Ukraine over Crimea, the threat of a veto by one or another of the permanent members has prevented the Council from acting.

Because the international community lacks a comprehensive and mandatory mechanism for resolving disputes over territory—a Supreme

Court of the World, as it were—many clashes can only be worked out in an ad hoc fashion. Individual states simply recognize one or the other claimants and do business with those they recognize. In the particularly fraught cases, there is no consensus over the owner. It is as if half the neighborhood thinks Fred is the rightful owner of the house and the other half thinks Bob is.

This problem applies not only to disputes *between* states over territory. It also applies to disputes *within* states.

THE WORLD'S NEWEST STATE

The world's newest state was born at the stroke of midnight on July 9, 2011. In Juba, the new capital, a jubilant crowd erupted in shouting, singing, drum beating, horn honking, and firework displays. An electronic billboard above the celebrants flashed a picture of the new country's flag with the words "Free at Last" and "Republic of South Sudan." At ceremonies the following day, the fledgling nation's troops marched past bleachers of dignitaries, including former U.S. secretary of state Colin Powell and U.S. ambassador to the United Nations Susan Rice. "We are a nation recognized by the outside world," one reveler explained to a reporter. "We were second citizens, but now we are free at last."[22]

The new country emerged from bloodshed. Africa's longest running civil war in modern history raged in Sudan between the largely Muslim North and the mostly Christian South. In 2003, the war grabbed headlines in the West when it boiled over into a horrific genocide in Darfur. The violence finally abated in 2005, but not before the twenty-two-year war had claimed one and a half million lives and displaced four million people out of a population of just over thirty million. The 2005 Comprehensive Peace Agreement gave the South regional autonomy, representation in a national power-sharing government, and the right to hold a referendum—a referendum in which 99 percent of the voters chose independence.[23]

The high hopes of the South Sudanese, however, were quickly dashed, for South Sudan has become the poster child for the modern failed state. After the Independence Day celebrations were over, ethnic divisions—primarily between the two largest ethnic groups, the Dinka and Nuer—erupted into violence.[24] The economy, disastrously lopsided with few opportunities to earn a living outside the army and oil industry, collapsed in January 2012

when the government of South Sudan shut down oil production over a dispute with Sudan about sharing revenues.[25] Hostilities worsened after President Salva Kiir dismissed his cabinet.[26] His former vice president, Riek Machar, who represented South Sudan at the ceremony adding its flag at the United Nations in 2011, became the leader of a rebel faction. In the fighting that followed, both sides committed horrific war crimes, including indiscriminate killing of civilians, widespread rape, and the torching of entire villages.[27]

South Sudan represents the dark side of the New World Order. Even though it possesses vast oil reserves, South Sudan need not worry about the powers that once ruled the region. Its sovereignty stands as a shield against external violence. Yet its newly won sovereignty has done nothing to prevent internal violence.

The absence of external threats has, if anything, exposed internal tensions. And the absence of external threats means that South Sudan continues to exist as a sovereign state despite the dearth of effective state institutions—police, courts, and military—that are necessary for law and order. The so-called resource curse exacerbates the situation. The state has enough energy reserves to fund itself solely by selling its oil. In 2012, 98 percent of South Sudan's government budget came from the petroleum industry.[29] Most of the population is unnecessary for running the state. And the only people the South Sudanese have to fight for control of South Sudan are one another.

SURVIVAL OF THE WEAKEST

South Sudan is not unique. Figure 6 shows the average number of failed states per year for nearly two centuries. The information comes from the Polity IV project dataset, which follows all major independent states in the world from the early 1800s through 2014. Political scientists use it to assess the characteristics of state governments—whether democratic or authoritarian or somewhere in between. Among the information it captures is "complete collapse of central political authority" (that is, "state failure or 'interregnum'" so complete that there is no government to assess). The test is stringent—probably *too* stringent.[30] Governments that are very weak or possess control over some, but not all, of its territory do not count as

"failed." (According to Polity, Iraq was not a failed state in 2014, but was in 2003.) Thus the startling numbers in the figure likely *understate* the number of failed states in recent decades.
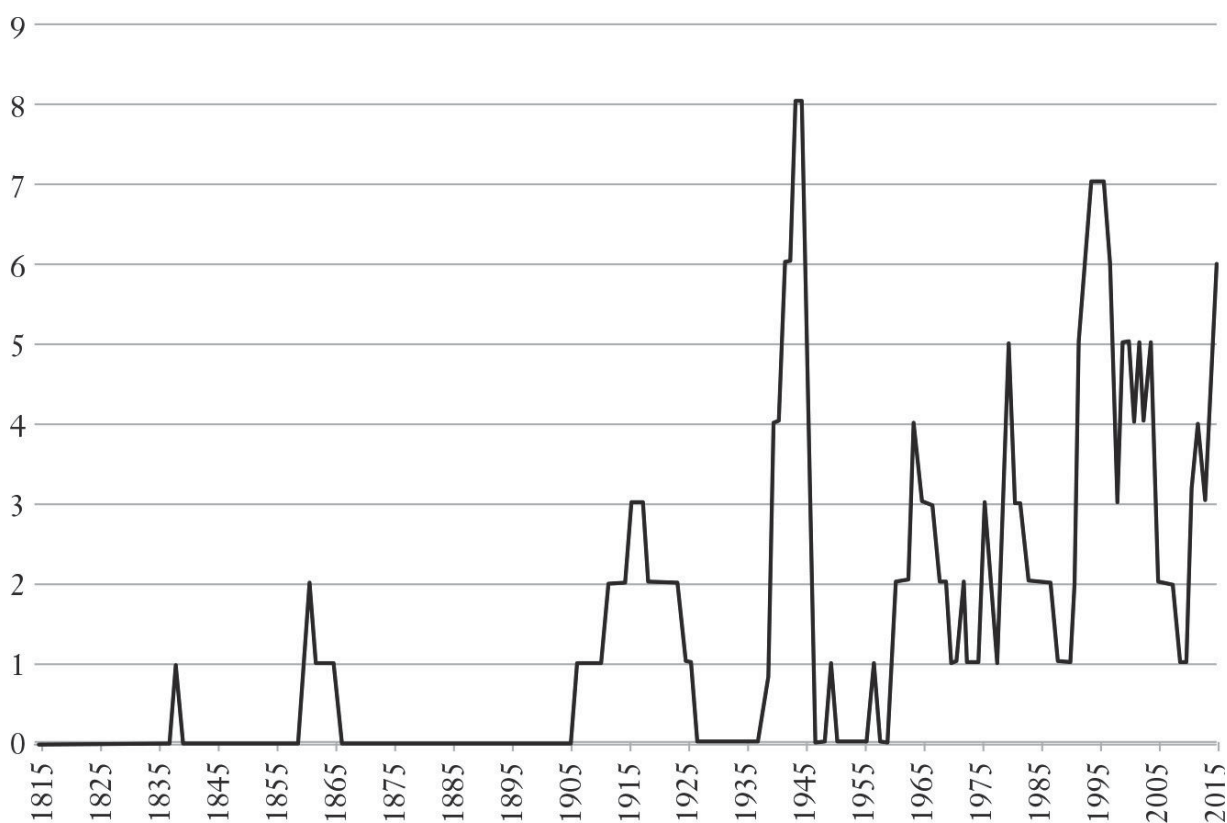

Figure 6: Number of Failed States[28]

   The history of intrastate wars—armed conflicts that take place within states, not between them—follows a similar pattern, as seen in Figure 7.[31] Data drawn from the "Correlates of War" project show that intrastate wars occurred during the 1800s, but there were never more than a dozen in any given year. In the 1950s, however, intrastate wars became *much* more common, rising from a low of 1 in 1955 to a high of 29 in 1992, before falling back down to 4 in 2009. That pause proved ephemeral, with renewed civil wars in Nigeria, South Sudan, Yemen, Syria, Iraq, Afghanistan, Libya, Ukraine, and elsewhere in recent years.
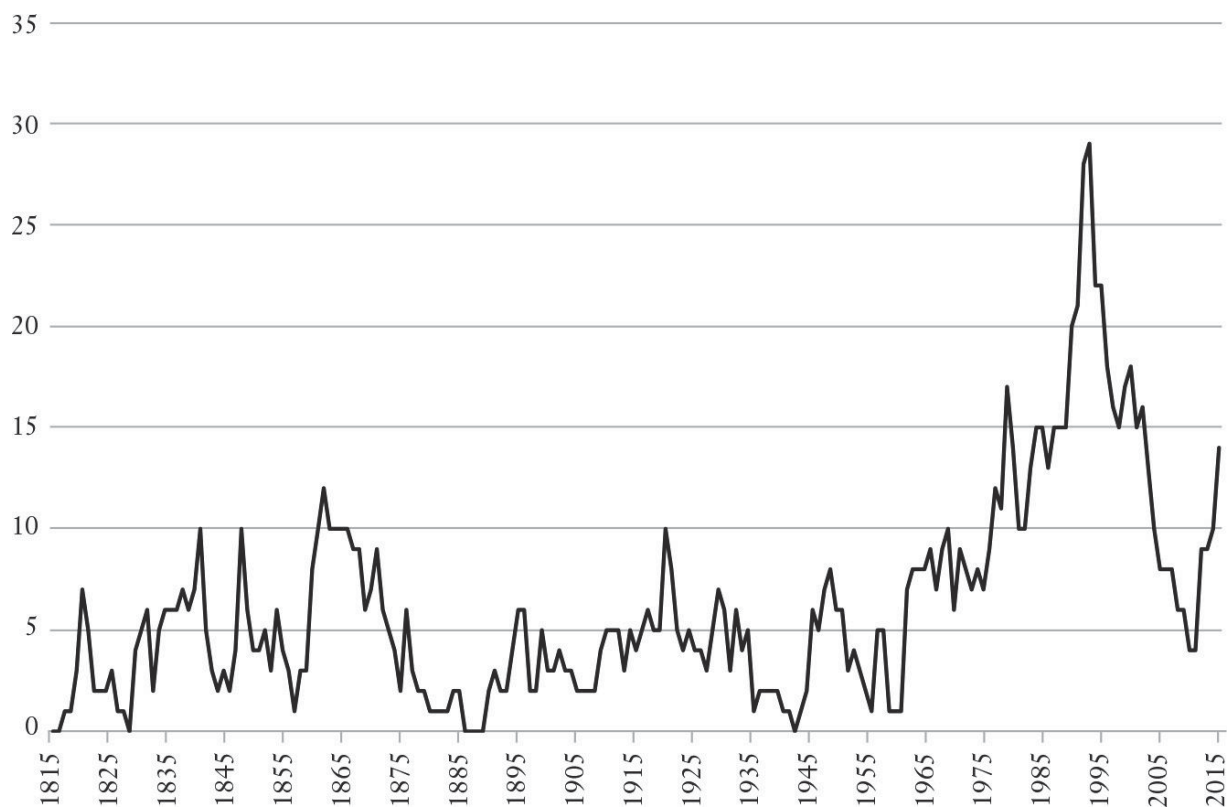
Figure 7: Number of Active Intrastate Wars[32]

The violence in failed states and intrastate conflicts is often not contained by national boundaries. Terrorist groups that are active in weak and failed states frequently reach across state borders. The Islamic State originated in poorly governed regions of western Iraq and spread into less populated region of eastern Syria before beginning to challenge government control in both countries. It has since expanded into Libya, the Sinai, Algeria, Afghanistan, Yemen, Nigeria—all countries or regions where state control is feeble or nonexistent. Similarly, the chronically fractured state of Afghanistan and the tribal regions of Pakistan served as an incubator for the terrorist group al Qaeda. Similar examples are easy to find: al Shabab in Somalia, Boko Haram in Nigeria, Hezbollah in Lebanon, Tehrik-i-Taliban in Pakistan, the Taliban in Afghanistan, Jabhat al Nusrah in Syria, the Houthi in Yemen.[33]

Though not all failed states breed terrorism and not all terrorism originates in failed states, weak and failed states are a significant source of terrorist threats. States that control their territory suppress violent groups, usually through ordinary law enforcement—police, rather than the military.

In states that cannot control their territory, by contrast, violence tends to grow, with no organized force to contain or counter it.

By removing predators from the international ecosystem, then, the outlawry of war has effectively enabled the survival of the weakest. Those weak states sometimes become failed states. And those failed states too often become breeding grounds for internal conflict and terrorism.

THE PRIZE AND ITS PRICE

The Peace Pact and the United Nations Charter embodied grand promises: the promise of a world free of interstate war; the promise of self-determination, where states could afford to be weak without the fear of conquest; the promise of free trade and right-sized states; and the promise of international cooperation and global governance. These promises have largely been fulfilled. Interstate wars are rare and conquests practically nonexistent. Global trade has become dramatically more robust, and international organizations regulate many aspects of our daily lives.

But the outlawry of war has not brought world peace. Even as its bright promises have been fulfilled, other darker threats have rushed into the void. By opting for outlawry, we have traded a world of *inter*state war for one of *intra*state war, a world where only strong states can survive for one in which failed states can survive as well, and a world where imperialism reigned for one where terrorism is on the rise.

It is tempting to think that it is possible to have it both ways—to rid ourselves of both interstate *and* intrastate wars, or prevent the wars we don't want (naked acts of aggression) but allow the ones we do (those that address terrorist threats or solve humanitarian crises). But absent a global police force and a world state to run it (which would have its own risks), the dilemma is real. Either states are allowed to enforce the law unilaterally or they aren't. Either states can use force to do what its leaders believe law and justice requires, or there are strict limits on its use. Either war is a legal method for resolving disputes or it is not.

In the Old World Order, it was, and conquest was common. In the New World Order, states cannot act unilaterally to address violence in other states unless they have been attacked or face imminent attack (or have been asked by a state to assist it in facing such a threat). The prohibition on use of

force applies regardless of whether the target state is a model democracy or crushing autocracy, a strong or a weak state, or even a failing one. This is the dilemma: The rules of the New World Order that provide so much benefit protect *all* states from the use of force, including those we do not want to protect because they are too feeble, chaotic, authoritarian, or, for lack of a better word, evil.

To see the difficulty that would arise from giving states the choice to use force when they believed they were acting justly, one need only look at Syria and Ukraine, two places where the rules against force have broken down. The United States regards the regime of Syrian president Bashar al-Assad as illegitimate and believes there is no future for his government in Syria, even as Russia is sending in troops and weapons to protect the regime from collapse. In Ukraine, the story is reversed: The United States is supporting the government against aggressive Russian-backed separatists determined to overthrow the revolutionary government that unseated Yanukovych.

The United Nations Charter has a mechanism for overriding the universal protection provided by Article 2(4)—a vote by the U.N. Security Council. But it has been hamstrung by the very disagreements just described. The permanent five members have been unable to agree to override the protection against the use of force and authorize intervention in either country. Thus the background prohibition remains—no state may use force without violating the most fundamental rule of the system, the prohibition on war. Unless we want more Syrias and Ukraines, we must keep this background prohibition in place.[I]

But the challenge is even greater than this story suggests. For the prohibition on war not only prevents states from intervening to protect the rights of others, unless the Security Council agrees to authorize an intervention or a state requests assistance defending itself from armed attack, it also prohibits states from using force to vindicate their *own* rights (except in cases of self-defense). States can refuse to join treaties with other states. After all, gunboat diplomacy is no longer allowed. Once states join a treaty, moreover, they might even refuse to comply. As opposed to the Old World Order, where a violation of international law could trigger a military response, the outlawry of war no longer permits states to unilaterally decide to wage war to right wrongs. In what may seem to be a paradox, *international law prohibits states from using force to enforce international law.*

So how does the system work at all? If every sovereign possesses a right to be free from interference—and no state may overcome that right with force —that would seem to create an insuperable barrier to effective law. Yet the system works much more often than this dire description of the situation would seem to suggest—including at times it would seem most likely to fail. For in the New World Order, states have developed a rich set of tools to replace war as a way of enforcing international law—tools we call *outcasting*.

I. The founders of the United Nations thought that it would have its own army, assembled from member states. See U.N. Charter, Art. 47. But this vision was never realized, falling victim to the Cold War before it could take shape.