

# AFTER ANARCHY



*Legitimacy & Power in the United Nations Security Council*

IAN HURD

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LEGITIMACY AND POWER IN  
THE UNITED NATIONS  
SECURITY COUNCIL

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*Ian Hurd*

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## Preface

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IN 2002, as the United States planned an attack on Iraq to remove Saddam Hussein from power, American diplomats sought political support for the mission from all quarters. They pursued bilateral negotiations for the support of foreign governments; they approached NATO to aid in the defense of Turkey; they appealed directly to publics around the world; and they brought the matter to the United Nations Security Council. The Council, famously, came to play a central role in the diplomatic drama prior to the start of the war in March 2003. It was the forum for what turned out to be perhaps the most heated diplomatic confrontation in world politics since the Cuban Missile Crisis. For its efforts, the Council earned itself scathing criticism from all sides, both supporters of the war and opponents, and the camps agreed on the key point: that the Council had “failed” a crucial test. One side believed it had failed in its responsibilities by refusing to authorize the U.S.-led war, and the other believed it had failed by being unable to stop it. As a result, the Council was revealed to be “strategically irrelevant” to the United States, “morally bankrupt,” and “simply incompatible” with the new realities of world power.<sup>1</sup> President George W. Bush himself implied that the Council had missed its last chance “to show its relevance.”<sup>2</sup> The vehemence of the attacks on the Council matched the energy devoted in earlier stages to lobbying the Council over the terms of its resolutions on Iraq. Both activities were pursued with great vigor, reflecting the belief that great stakes were in play.

The controversy at the Council was over the legitimacy that comes from a Council resolution. The two camps were aiming for the same goal—to appropriate that legitimacy for themselves, although they intended to use it for opposite political purposes. When Kofi Annan claimed that the UN Security Council holds “unique legitimacy”<sup>3</sup> to authorize military action, many states appeared to agree with him. Even the Americans apparently shared the belief that more countries would come to support the U.S. if the American position were legitimized by the Council.<sup>4</sup> The American diplomatic effort prior to the war was shaped by the per-

<sup>1</sup> Krauthammer 2003; Glennon 2003.

<sup>2</sup> Press conference, February 23, 2003, Crawford, Texas.

<sup>3</sup> Interview with Kofi Annan by BBC News, September 10, 2002, published at [news.bbc.co.uk/2/hi/middle\\_east/2250948.stm](http://news.bbc.co.uk/2/hi/middle_east/2250948.stm).

<sup>4</sup> Tharoor 2003. Statements confirming the link between Council approval and third-country support for the invasion were made by Russia, Canada, most countries in the European Union, India, and many others. For a useful summary, see the *Observer* (London), January 12, 2003.

haps strategic use of those beliefs as a tool to reduce the political costs of the mission; this is what made it rational to spend energy winning Council approval in 2002. Legitimacy, therefore, carries a behavioral implication, as Annan later explained: “The legitimacy that the UN conveys can ensure that the greatest number of states are able and willing to take” collective action against collective threats.<sup>5</sup>

But what kind of difference does legitimacy make in international politics, and under what circumstances does it work? What kind of power is it? How can it be transferred among actors, and how can it be used by states as a tool in their own pursuit of political advantage? These are the questions pursued in this book. Along the way I show that legitimacy is central to the power of international organizations (IOs) and to world politics more generally, and also that we can use it to begin to explain some phenomena in world politics that were hitherto unaccounted for. These include perennially vexing questions in the study of international organizations regarding the relation between the power of states and the power of IOs, the sources of power for IOs, and the nature of states and their interests. The focus here is on the UN Security Council and the particular consequences of its legitimacy/illegitimacy for world politics, and therefore it is the power of the Council, including the making, use, and loss of that power, that gets the most attention. The analysis, however, has implications for the study of other international organizations.

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<sup>5</sup> Secretary General’s statement to the Security Council, September 11, 2002, published at [www.un.org/apps/sg/sgstats.asp?nid-44](http://www.un.org/apps/sg/sgstats.asp?nid-44).

The project began as a dissertation written under the guidance of Bruce Russett and Alexander Wendt, and I owe them great thanks for their support. The dissertation was supported by grants from the Social Sciences and Humanities Research Council of Canada, the Department of National Defence of Canada, and the Yale Dissertation Fellowship. My interest in International Relations theory and institutions began at Carleton University in Ottawa, where I was lucky to be taught by Maxwell Cameron, Sharon Sutherland, and Barbara Jenkins. I am grateful to them for their early encouragement.

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Finally, I am endlessly indebted to Beth Hurd for her encouragement and insight in this project and in everything else. This book is dedicated, with love, to her and to our daughters, Ally and Sophie.

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## Introduction

THUCYDIDES' ACCOUNT of the negotiation between Athens and the Melians is one of the earliest known statements of the connection between legitimacy and power. Resisting an ultimatum from Athens, the Melians suggest that might does not make right: "in our view it is at any rate useful that you should not destroy a principle that is to the general good of all men—namely, that in the case of all who fall into danger there should be such a thing as fair play and just dealing."<sup>1</sup> The Melians put forward a case which differentiates between the justice that comes from superior power and the justice that comes from general rules and morals, arguing that these latter should be valued for both instrumental and normative reasons by the weak and strong alike. Some rules of war and diplomacy, they say, are legitimate and should be respected. They lose the argument, of course, and ultimately pay a high price for it, but in the process the Melians play their part in launching a long debate over the relationship between legitimacy, authority, and power. The debate has been continued in philosophic and sociological settings, carried forward by Aristotle to Machiavelli, Locke, and Rousseau, and on to Marx and the twentieth-century philosophers of modernity such as Weber. But although there is plenty of evidence that practitioners of international relations (IR) take seriously the power of international legitimacy and that academics make frequent reference to it in an ad hoc way, the concept itself only rarely receives sustained attention in analyses of the international system.

This book works on two levels. It raises important conceptual issues from the leading edge of IR theory and applies them to an understanding of the practical day-to-day operation of the UN Security Council. It can therefore be read as a work on IR theory or as a document of UN studies, as advancing theory or empirics. Better still, it might be seen as doing all of the above.

The central purpose of the book is to introduce a workable concept of legitimacy to the study of International Relations. Although the use of the term "legitimacy" is common in International Relations, very little attention is given to what it means or how it works. There is no available model of legitimacy for use in international relations that would allow serious inquiry into its causes, consequences, and implications. My first goal here is

<sup>1</sup> Thucydides 1954, 402.

to provide such a model and show its worth by using it to explain empirical phenomena in world politics. The model itself, developed by borrowing from sociology, psychology, and management studies, fills a gap in International Relations that has been widening since the rise of constructivism in the late 1980s. Absent an account of legitimacy, much of constructivism's empirical work on the "logic of appropriateness" remains ungrounded; legitimacy is inherent in the constructivist approach, and yet to date there has not been a full-fledged exploration of the concept and its operation.

The theory of legitimacy, then, contributes in two ways: first, by opening up the empirical study of the Security Council in ways previously not possible; and, second, by providing a bridge between rationalist and constructivist approaches. On the empirical contribution, my interpretation shows the importance of beginning with considerations about legitimacy and legitimation when trying to understand either the history or the current practice of the Council. From the earliest debates over the veto in 1945, to the current controversies over peace missions, new members, and the 2003 Iraq crisis, and into the future of Council reform, we can see the fundamental role played by the processes of legitimation and delegitimation in all that the Council does. It is not too much to say that the Council has power when it is seen as legitimate and loses power as that perception recedes. All Council decisions contain at least some concern for how the choices will help or hurt its legitimacy to various audiences. In some moments, as with the endgame of the Libyan sanctions in the 1990s, legitimacy concerns can come to dominate other considerations in the decision-making calculus of even the Great Powers at the Council. At such times the central role of legitimacy is made clearest; but it remains important even in the more mundane politics of day-to-day Council operation. The empirical cases in the book draw from both the moments of high-politics drama and the more commonplace "normal politics" of the Council.

The essential role legitimacy plays in international politics complicates the academic study of International Relations, because it means that at least some part of outcomes are influenced by this shifty, intersubjective quality which is only indirectly available for empirical study. The power of legitimacy to define actors' goals and interests, as well as to construct what actors take for granted, means that observers of the international field need some way to monitor and decipher actors' senses of the legitimate and illegitimate.<sup>2</sup> To read international politics without paying attention to the competition over legitimacy would leave one with no way to understand such common acts as saving face, offering justifications, using

<sup>2</sup> See Hurd 1999 for some of the theoretical foundations to the study of legitimacy in IR.

symbols, and being in a position of authority. One cannot be offended by another's rejection of protocol, or by a rival being well treated by a third party, unless one shares a common definition of what appropriate protocol requires and what constitutes a step up or down on the ladder of status. Such acts make up a large proportion of the stuff of foreign policy and international politics, just as they are common in domestic and interpersonal politics, but they cannot be decoded without a prior sense on the part of the observer of what the actors accept as legitimate and what they define as illegitimate.

An institution that exercises legitimated power is in a position of authority.<sup>3</sup> In international relations, this means that a legitimated international organization possesses sovereign authority. Sovereignty, understood as the "right to exercise final authority" over a people and territory, is distributed among various types of actors in the international system.<sup>4</sup> This includes states, of course, but also, as is shown in the following chapters, any international institutions such as the Security Council which exercise legitimated power over states. The presence of sovereign authority in nonstate actors suggests that the common understanding of the term "international anarchy" is misleading. The international system comprises diverse actors with legitimated power and so has diverse locations of sovereign authority. State interactions occur in a social space that contains authoritative institutions like the Council, and this contradicts the "anarchic" premise of much contemporary IR scholarship.

This book explores these issues through the practical workings of the Security Council. It examines how the members of the United Nations approach the Council and how the Council responds in its daily operations. The practical role of the Council in international relations is not well understood, despite the great deal of reporting and analysis on its actions since 1945. Even simple questions about the behavior of the Council and its effects on states and on the international system have complicated answers. This complexity, I suggest, is due in part to an underappreciation of the role of legitimacy and legitimation in the routine business of the Council. Without understanding the peculiar nature of power based on legitimacy, one cannot understand the behavior and effects of the Council.

Consider, for example, what appears to be a simple question: What power does the Council have in international politics? Its most tangible products are its formal resolutions: the Council issued approximately 1,675 official resolutions as of May 1, 2006, as well as many hundreds of Presidential Statements. These are all carefully negotiated statements of

<sup>3</sup> Barnett 2001; Voeten 2005.

<sup>4</sup> The definition comes from Biersteker and Weber 1996, 2.

intent, resolve, concern, or action, and together they make up the Council's most tangible contributions to world politics. Each is drafted, discussed, debated, and duly promulgated, after which it is published, publicized, and sent to research libraries worldwide. It is not entirely clear what happens after that. Some resolutions become famous because they relate to conflicts that are in the public consciousness, for instance, Resolutions 242 and 425 on the Israeli-Palestinian conflict and 660 and 678 on the Iraq-Gulf War. Most, however, do not. Moreover, the real impact on the world of even the "famous" resolutions is not easy to trace. They are generally seen as important documents in international politics, but this certainly does not mean they are automatically followed. Despite the legal obligations they might create, Council resolutions clearly do not necessarily elicit full and complete compliance by nation-states. States still seem to "pick and choose" from Council decisions those elements they respect while pretending other elements do not exist.

This obvious fact of international politics leads to a conundrum: if the most visible products of the work of the Security Council cannot be judged as clearly successful in shifting the policies of member states, then does the body really have the power it was intended to have under the UN Charter? Indeed, what actually is the power of the Security Council, and where does it come from? More broadly, where does any international organization get its power? In a world of formally independent nation-states, the answers to these questions are intrinsic to the claim that international organizations matter at all in the international system.

If we see states as sovereign bodies, legally free to make their own decisions, and international organizations as constraints on state freedom, then there is a contradiction at the heart of the most powerful organizations in international relations. The founding documents of many international organizations give them broad powers to supervise, regulate, and enforce activities throughout international politics and economics, and yet the rights of sovereign states are supposed to protect them from outside interference, including that of international organizations. States are supposed to be sovereign, and yet an effective international organization must, in some way, infringe on the freedom of states. Hardt and Negri describe the contradiction:

On the one hand, the entire U.N. conceptual structure is predicated on the recognition and legitimation of the sovereignty of individual states, and it is thus planted squarely within the old framework of international rights defined by pacts and treaties. On the other hand, however, this process of legitimation is effective only insofar as it transfers sovereign right to a real *supranational* center.<sup>5</sup>

<sup>5</sup> Hardt and Negri 2000, 4–5.

Perhaps nowhere is this paradox more clearly exhibited than with respect to the UN Security Council. The Council is endowed with tremendous formal power by the UN Charter and with primary authority in the international system over questions of international peace and security. And yet it is apparent in the post–Cold War world that attempts by the Council to use that power generate enormous controversy. The Council’s power is spelled out explicitly in the Charter, but in practice its use is always problematic.

This contradiction between international commitment and state sovereignty is traditionally resolved in academic texts by noting that international obligations are generally binding only when a state *chooses* to be bound. A state could so choose either by joining an organization like the United Nations, and thus consenting to the authority of the Security Council as defined by the UN Charter,<sup>6</sup> or by complying with or ignoring a particular decision of the Council on a case-by-case basis.<sup>7</sup> Either way, the power of the Security Council and its decisions perpetually depends on the consent of states, either prior (when the state joined the UN) or contemporary (when the state responds to a particular requirement). In this way the institution can be seen as entirely consistent with, and indeed subordinate to, the independent desires of sovereign states.<sup>8</sup>

The “consent” approach to resolving the contradiction is convenient but at odds with certain evidence about state behavior toward international rules.<sup>9</sup> On the one hand, state decision makers often seem to take at least some international obligations extremely seriously, even when they might prefer to ignore them. National governments expend a great deal of energy in managing and interpreting international obligations, while also trying to influence what international organizations say and do. On the other hand, even when states violate international commitments, that violation is usually accompanied by an effort on the part of the state to present the violation as consistent with its obligations. In both cases, the free choice of states seems at least partially constrained by the existence of the organizations, even when they do not wish to be constrained and even when they choose

<sup>6</sup> This is generally the attitude taken regarding consent in the field of International Law. The capacity to conclude treaties, and so be bound by them, is enshrined in the *Vienna Convention on the Law of Treaties (1969)* as a right possessed by every state. See Harris 1991, chap. 10.

<sup>7</sup> Realists and neorealists in IR theory tend to take this view of consent. International organizations are, in this tradition, the *reflections* of autonomous state decisions rather than independent actors in their own right. See Grieco 1993 and Mearsheimer 1994/95. For further discussion of consent in state commitments, see March and Olsen 1998; Martin and Simmons 1998; and Kahler 1998.

<sup>8</sup> Van Oudenaren (2003) suggests that the legitimacy of an international rule is gauged by the degree to which it approaches universal consent among states. I define legitimacy in non-choice terms below.

<sup>9</sup> See also Williams’s critique of the contractual model of IR (2005, 204–210).

to maneuver around an international obligation. States generally try to *manage* their relations with international organizations such as the UN and to influence their development rather than ignore them or pretend they do not exist. That some international organizations are taken for granted is important, for it means that the organization is in a position of power in international society, even if states sometimes choose not to comply.

In a notable article published in 1966, Inis L. Claude Jr. suggested a more satisfying way to resolve the conceptual conflict between state autonomy and international obligation.<sup>10</sup> Claude argued that states sometimes perceive international organizations as legitimate and therefore view the obligations they embody as acceptable and correct. Singling out the Security Council, Claude pointed to the apparent power of some organizations to confer and withhold legitimacy from actors and decisions. The Security Council of the 1960s had power, he noted, because its statements and resolutions were recognized as representing the views of a large segment of the world's states. The Council was authorized to speak and act on behalf of the "global community," and thus its utterances and behavior carried more force than had they been carried out by individual Council members.<sup>11</sup> Claude's aim was to rebut those critics of the Security Council who saw it as "merely" a talking-shop not constituted to take meaningful action. He recognized that the Security Council was powerful precisely because its actions and pronouncements represented the collective sentiment of some respected part of the international community. This power of "collective legitimation" is one potential source of the Council's influence over international relations which, significantly, does not rely on the choice or consent of individual states; its effects do not come from states *choosing* to recognize them.<sup>12</sup> Rather, they come from processes of socialization and symbolism which operate on a different level than instrumental decision making.

In the decades since Claude's contribution the field of International Relations as an academic discipline has changed dramatically, with a greater emphasis today on social phenomena of all kinds. His provocative thoughts on the UN Security Council's powers of "collective legitimation" would seem to fit more comfortably in today's IR universe, but the link between the new social theories of international relations and the question of the legitimacy of international organizations has not yet been drawn. The real world of international politics has also changed, with activity in

<sup>10</sup> The original article appeared in *International Organization* 20 (1966): 367–379. It is expanded and reprinted in Claude 1967.

<sup>11</sup> On the connection between legitimacy and community, see also Clark 2005.

<sup>12</sup> Slater's (1969) response to Claude highlights the fact that states may grow "disenchanted" with IOs that associate themselves with positions the states are opposed to, and Slater treats this as "delegitimation."

and around the Council greatly increased. The new atmosphere of cooperation among the Council's permanent members since the late 1980s has meant that the body is better able to take meaningful action on a range of issues, including sanctions, enforcement, and "peace building." These new possibilities for action in turn have caused an increase in political contestation at the Council, as states compete to use its power to serve their own strategic interests. The limits of this new freedom were made clear when the Great Powers presented competing versions of international legitimacy claims over the U.S.-Iraq issue in 2002 and 2003. At such moments the power of the Council is called into question by contests among the powerful states regarding how legitimacy should be interpreted. Yet these contests help to clarify the central place of legitimation in the politics of the Security Council.

### LEGITIMACY

"Legitimacy," as I use the term, refers to an actor's normative belief that a rule or institution ought to be obeyed.<sup>13</sup> It is a subjective quality, relational between actor and institution, and is defined by the actor's *perception* of the institution. The actor's perception may come from the substance of the rule or from the procedure or source by which it was constituted. Such a perception affects behavior, because it is internalized by the actor and comes to help define how the actor sees its interests. Once widely shared in society, this belief changes the decision environment for all actors, even those who have not been socialized to the rule, because it affects everyone's expectations about the likely behavior of other players. I make no moral claim about the universal legitimacy, or, even less, the moral worth, of any particular international rule; I am interested strictly in the subjective feeling by a particular actor or set of actors that some rule is legitimate.<sup>14</sup> In this sense, saying that a rule is accepted as legitimate by some actor says nothing about its justice in the eyes of an outside observer.<sup>15</sup> Further, an actor's belief in the legitimacy of a norm,

<sup>13</sup> The literature on legitimacy in political theory is large. Good introductions include Flathman 1993 and Beetham 1991. From the psychology literature, see the reviews in Tyler 2006 and Zelditch 2001.

<sup>14</sup> Thus I am also making the working assumption that we can treat states as unitary actors with corporate identity and the capacity to "feel" the pull of a legitimate rule. This is a contentious assumption that glosses over many angles of social life, but I think it is appropriate for the present purposes.

<sup>15</sup> Franck 1990; Buchanan 2003. How perceptions of legitimacy and justice are related within the individual remains an open question. Rawls (1971) and the contractarians generally make these one and the same.