Regional Orders, Geopolitics, and the Future of International Law

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Abstract: This article argues that the old international law of empires, greater spaces, and regional orders did not disappear with the creation of the United Nations. While revisionist histories of international law have complicated the claim that a Westphalian order of independent states completely replaced a world of more varied political forms in the mid-seventeenth century, international lawyers nonetheless largely accept that such a transformation did take place at some point. The state is treated as the normative political subject of international law, and any move away from the geography of statehood as the foundation of the international legal system is seen as novel, exceptional, or illegal. The narrative that the state has become the primary political subject and spatial form of international law masks the persistence of regional orders as a core feature of the contemporary legal system. This article shows that international lawyers have been engaged in justifying, making sense of, narrating, and assembling regional orders for at least the past century. It explores the rival regionalisms promoted during the inter-war period, the struggles over regional orders during the early decades of decolonization, the expansive vision of regional orders consolidated in the early post-Cold War decades by the United States and its allies, and the regional ambitions of China in the twenty-first century. It analyses how regional orders are assembled and resisted through international law, what values are proclaimed to justify different forms of regional ordering, whose interests are represented, and the relation between grand narratives and technical transactions in that legal work. The article concludes that bringing the concept of regional orders to the foreground can open up a new and timely set of questions about politics, representation, and the future of international law.

Key words: international law; regional orders; geopolitics; empire; Monroe Doctrine; China.

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1. Introduction

For most international lawyers, it is a truism that the state is the central political subject and spatial form at the heart of modern international law. International lawyers wrestle with principles associated with the legal meaning of statehood, such as sovereign equality, self-determination, political independence, territorial integrity, and non-intervention. International legal textbooks devote careful attention to topics such as the criteria of statehood, recognition of states, sovereignty over territory, state succession, and state responsibility, usually dealing only in passing with other subjects of international law such as international organisations, individuals, transnational corporations, and other ‘non-state actors’. Even as revisionist histories of international law have complicated the claim that a Westphalian order of independent states completely replaced a world of more varied political forms in the mid-seventeenth century, international lawyers nonetheless largely accept that such a transformation did at some point take place. The ‘subtle tenacity’ with which the state continues to structure international legal thinking has persisted in the face of normative attacks on the ‘statism’ of international law and empirical claims that states are no longer the primary international law-makers. International lawyers continue to take as a given that, for good or ill, international law essentially has ‘something to do with states’.

Yet there is another, less studied form of spatial order that has played a central role in modern international law. In the decades before the creation of the United Nations, a range of international lawyers, political thinkers, economists, and politicians were involved in discussions over whether new spatial arrangements were needed to keep pace with emerging economic arrangements, ensure access to raw materials, distribute new forms of energy, and manage the problem of ‘surplus’ population. Colonialism was seen to offer one potential model for organising space on a global scale to address such questions and the Monroe doctrine with its approach to regional hemispheric control a

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1 See A Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP 2008); J Pitts, *Boundaries of the International: Law and Empire* (Harvard UP 2018).
2 For an analysis that questions the ‘subtle tenacity’ of the state as a structuring concept for international lawyers, see K Knop, ‘Statehood: Territory, People, Government’ in J Crawford and M Koskenniemi (eds), *The Cambridge Companion to International Law* (CUP 2012) 95, 114.
3 G Simpson, ‘Something to Do with States’ in A Orford and F Hoffmann (eds), *The Oxford Handbook of the Theory of International Law* (OUP 2016) 564.
second. Relying on these precedents, fascist governments and lawyers argued that their expansionist policies, whether in the form of the Italian invasion of Abyssinia or the expansionist German policy of *Volk ohne Raum*, offered a related and legitimate form of greater spatial order or *Großraum*. While those models of ordering greater spaces were discredited after World War 2, they did not disappear completely from the new international legal order established under the UN Charter. As I will argue, forms of law that enable powerful states to control and manage greater spaces have been and remain a central feature of international law. Yet while doctrines designed to allow hegemonic states to establish regional orders were accommodated in the UN Charter, international lawyers gradually ceased to reflect upon the ways in which international law allows for the creation of greater spatial orders, perhaps because one approach to doing so became so dominant that it began to appear as a form of universalism. Tracing the legal approach to regional ordering from inter-war debates through to the early decades of the twenty-first century helps bring that significant feature of contemporary international legal argument back into focus.

This is not to say that international lawyers never discuss regionalism, but rather that it is addressed in ways that do not unsettle the foundational assumption that the state is the primary political subject and spatial form of the modern legal system. International lawyers have, of course, studied the emergence and significance of regional institutions and regimes in a technical sense, for example in the fields of human rights and economic integration. Here regional ordering tends to be envisaged as a benign process in which states participate as equals. Regionalism, however, has generally not been treated as a theoretically or conceptually rich concept. Instead, international lawyers have tended to theorise about legal concepts associated with the state

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4 See further the discussion in Part 2.

5 Important exceptions include Y Onuma, ‘When was the Law of International Society Born? – An Inquiry of the History of International Law from an Intercivilizational Perspective’ (2000) 2 *Journal of the History of International Law* 1; C Joerges, ‘Europe a Großraum? Shifting Legal Conceptualisations of the Integration Project’ in C Joerges and N Singh Ghaleigh (eds), *Darker Legacies of Law in Europe* (Hart Publishing 2003) 167; A Anghie, ‘Identifying Regions in the History of International Law’ in B Fassbender and A Peters (eds), *The Oxford Handbook of the History of International Law* (OUP 2012) 1058; M Salter, ‘Law, Power and International Politics with Special Reference to East Asia: Carl Schmitt’s Großraum Analysis’ (2012) 11 Chinese JIL 393; A Orford, ‘NATO, Regionalism, and the Responsibility to Protect’ in I Shapiro and A Tooze (eds), *Charter of the North Atlantic Treaty Organisation together with Scholarly Commentaries and Essential Historical Documents* (Yale University Press 2018) 302.
on the one hand (such as sovereignty, statehood, or self-determination), or with the global on the other (such as universalism or humanity).

To the extent that international lawyers engage with regionalism in a more overtly normative register, it is usually through a straightforward opposition of good and evil. International lawyers often represent the actions of their own states or allies in idealist or apologetic terms. The regional economic integration led by our allies is presented as a cooperative activity directed to achieving shared economic benefits, and the regional projection of force by our allies is portrayed as an expression of moral internationalism conducted in response to aggression or in defence of liberty or sovereignty. In those idealist narratives, regional ordering offers a smooth form of integration and leads to the emergence of only benign forms of hegemony. The forms of regional ordering engaged in by allies are presumed to be based on principles of state consent and sovereignty.

In contrast, when international lawyers discuss the motivations fueling the regional projection of power by ideological opponents, they often do so in realist terms. Their drive for regional hegemony or the attempt to extend power over neighbouring territories and create a sphere of influence is understood as directed to malign ends. So Western commentators routinely characterise Russian displays of regional militarism or Chinese assertions of control over adjacent seas as aggressive or imperialist while Russian and Chinese commentators treat the US projection of force or influence in the same way. While lawyers on the opposing side are presented as exhibiting partisanship and engaging in an ideological misuse of international law to defend processes of regional order that suit the interests of a regional hegemon, lawyers on our side use international law to justify the use of force in defence of sovereignty, freedom, or humanity.

The overall effect is to make it possible for international lawyers to hold together two ideas. The first is that, as a matter of law, we have formally moved beyond a world of empires and greater spaces to a world of states. The second is that, as a matter of practice, the international legal order is still vulnerable to the expansionist ambitions of...
hegemonic powers. While the attempts at regional ordering engaged in by great powers may be a fact of international politics, such conduct is considered to operate outside international law. The state is the normative political subject of international law, and any move away from the ‘geography of statehood’ as the foundation of the international legal system is seen as novel and exceptional.8

The power of the central narrative that the state has become the primary political subject and spatial form of international law can mask the persistence of regional orders as a core feature of the contemporary legal system. This article seeks to show that international lawyers have been deeply engaged in justifying, making sense of, narrating, and assembling regional orders for at least the past century. Part 2 explores the forms of regional order inherited from the pre-UN period that are embedded in the UN Charter and the subsequent struggles over continued attempts at regional ordering that played out during the era of decolonisation. Parts 3 and 4 analyse the rival regionalisms promoted first by the United States and more recently by China to make visible how regional orders are assembled through international law, what values are proclaimed to justify different forms of regional ordering, whose interests are represented, and the relation between grand narratives and technical transactions in that legal work. In Part 5, I suggest that bringing the concept of regional orders to the foreground can open up a new set of questions about politics, representation, and the future of international law.

2. Regional Orders, the United Nations, and the Cold War

At first glance, it might appear that with the creation of the United Nations, the old world of empires, greater spaces, and regional orders was replaced by a world of sovereign states. That interpretation would seem to be borne out by the UN Charter, which includes amongst the UN’s purposes the development of ‘friendly relations among nations

7 See, however, the argument that international law incorporates a concept of legalised hegemony established at the Congress of Vienna in G Simpson, Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order (CUP 2004). For accounts that treat great power hegemony and the balance of power as having a more ambivalent status in international law, see A Vagts and DF Vagts, ‘The Balance of Power in International Law: A History of an Idea’ (1979) 73 AJIL 555; A Carty, ‘Visions of the Past of International Society: Law, History or Politics?’ (2006) 6 MLR 644.

8 For an influential argument along these lines, see D Bethlehem, ‘The End of Geography: The Changing Nature of the International System and the Challenge to International Law’ (2014) 25 EJIL 9.
based on respect for the principle of equal rights and self-determination of peoples’, and declares that the United Nations ‘is based on the principle of the sovereign equality of all its Members’ and that nothing contained in the Charter ‘shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state’. These opening provisions appear to confirm that the United Nations is organised around the state as the central political form of spatial order. In addition, in joining the United Nations member states pledge to use force only to realise collective security or in individual or collective self-defence. That model of a political organization grounded on sovereign equality combined with the collectivisation of force embodied in the Charter might seem to render resort to force by regional hegemons a thing of the past. Yet the United Nations also inherited an uneasy accommodation of regionalism from its predecessor organization, the League of Nations. Attending to the way that regionalism was incorporated into the UN Charter is an essential first step in understanding the place of regional orders in modern international law.

A. The Model of the Monroe Doctrine

The contested history of the Monroe doctrine is central to this story. The Monroe doctrine emerged as a core plank of US foreign policy following its articulation by President Monroe in 1823, partly in response to concerns that members of the Concert of Europe might intervene in Latin America to revive monarchical government. In his initial articulation of the doctrine, President Monroe declared that ‘the American continents, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European powers’. As the ‘political system of the allied Powers is essentially different’ from ‘that of America’, the US would consider any attempt by European powers to ‘extend their system to any portion of this hemisphere as dangerous to our peace and safety’.

9 Message of President James Monroe at the Commencement of the First session of the 18th Congress (The Monroe Doctrine), 12/02/1823, <https://avalon.law.yale.edu/19th_century/monroe.asp> accessed 26 August 2021.
10 See C Tower, ‘The Origin, Meaning and International Force of the Monroe Doctrine’ (1920) 14 AJIL 1; CE Hughes, ‘Observations on the Monroe Doctrine’ (1923) 17 AJIL 611.
11 Hughes (n 10) 613-614.
Monroe’s formulation linked the space of the American continents to the political idea of republicanism, which was represented as ‘essentially different’ to the political system of the European alliance. His message was ‘intended to carry specific information’ to the nations of Europe—that they should not ‘contemplate the vindication of monarchical principles in the territory of the New World’. The doctrine thus expressed a new, values-based appeal to regionalism, grounded in a differentiation between the monarchic-dynastic political system governing Europe and the republican system governing America. According to Alejandro Alvarez, the Monroe Doctrine’s message that ‘the political system of Europe is different from that of the American states’ was ‘the Gospel of the New Continent’.

US commentators insisted that the Monroe Doctrine was a policy of self-defence and not a policy of aggression. Yet already by the late nineteenth century, the measures required to defend the United States were being interpreted in an expansive manner. Throughout the nineteenth century, in addition to larger-scale wars and interventions, the United States used its navy to protect American property and commercial interests, particularly in Latin America, and to warn off potential European interveners.

A major intensification of US police actions began to occur towards the end of the nineteenth century, when European powers intensified their practice of intervening in Latin American states in order to collect unpaid debts and protect the interests of European bondholders. Of particular significance was the blockade of Venezuela by the UK, Germany, and Italy in 1902 to recover compensation for losses suffered by European nationals as a result of civil strife and to secure payment of Venezuelan sovereign debt. In the subsequent 1904 award in the Venezuelan Preferential Claims Case, the Permanent Court of Arbitration found that the blockading powers had a right to

12 E Root, ‘The Real Monroe Doctrine’ (1914) 8 ASIL Proceedings 6, 8.
13 Tower (n 10) 1; C Schmitt, ‘The Großraum Order of International Law with a Ban on Intervention for Spatially Foreign Powers: A Contribution to the Concept of Reich in International Law’ [1939-1941] in T Nunan (ed), Carl Schmitt: Writings on War (Polity Press 2011) 75, 87-8.
14 A Alvarez, ‘Latin America and International Law’ (1909) 3 AJIL 269, 310.
15 See Root (n 12) 11; Hughes (n 10) 615.
16 See G Grandin, Empires Workshop: Latin America, the United States, and the Rise of the New Imperialism (Holt 2010) 20; K Greenman, ‘Aliens in Latin America: Intervention, Arbitration and State Responsibility for Rebels’ (2018) 31 Leiden JIL 617; F Veçoso, ‘Resisting Intervention through Sovereign Debt: A Redescription of the Drago Doctrine’ (2020) 1 TWAIL Review 74.
17 Veçoso, ‘Resisting Intervention through Sovereign Debt’ (n 16) 78-81.
preferential treatment as creditors in the payment of their claims against Venezuela because they had undertaken ‘warlike operations’ that resulted in benefits to all creditors.\textsuperscript{18} The claims of neutral countries that did not participate in the military operations, including those of the United States, were subordinated to those of Germany, Italy, and the United Kingdom.

The Venezuelan blockade and its legal aftermath were of concern both for Latin American states and for the United States and led to significant legal and policy responses. Capital-importing Latin American states denounced the practice of intervening to collect debts and argued that such actions infringed the rights of non-intervention and sovereign equality. The development of the Drago, Calvo, and Carranza doctrines were significant attempts to shape the transformation of international law to protect states from military intervention to collect sovereign debt and unpaid bonds.\textsuperscript{19}

President Roosevelt in turn saw the 1904 award as setting a dangerous precedent that might provide justification for further European military interventions in Latin America and thus conflicted with American commercial and strategic goals. His announcement in 1904 that an ‘international police power’ was a corollary of the Monroe doctrine was meant to signal to European investors that the United States was serious in its intention to take on the role of regional police officer.\textsuperscript{20} According to Roosevelt, the interests of the United States ‘and those of our southern neighbors are in reality identical’.\textsuperscript{21}

\textsuperscript{18} Germany, Italy, and United Kingdom v Venezuela (1904) 9 RIAA 103.
\textsuperscript{19} See further Letter by Drago, Minister of Foreign Relations of the Argentine Republic, to García Mérou, Minister of the Argentine Republic to the United States (29 December 1902) (1907) 1 AJIL Supp 1; AS Hershey, ‘The Calvo and Drago Doctrines’ (1907) 1 AJIL 26; LM Drago, ‘State Loans in Their Relation to International Policy’ (1907) 1 AJIL 692; AH Feller ‘Some Observations on the Calvo Clause’ (1933) 27 AJIL 461; MR García-Mora, ‘The Calvo Clause in Latin American Constitutions and International Law’ (1949-50) 33 Marquette LR 205; Esquirol (n 34) 568; Vecoso, ‘Resisting Intervention through Sovereign Debt’ (n 16); JP Scarfi, ‘Mexican Revolutionary Constituencies and the Latin American Critique of US Intervention’ in K Greenman, A Orford, A Saunders and N Tzouvala (eds), \textit{Revolutions in International Law: The Legacies of 1917} (CUP 2021) 218.
\textsuperscript{20} T Roosevelt, ‘State of the Union Address to Congress, 1904’ in \textit{T Roosevelt, Presidential Addresses and State Papers}, vol 3 (PF Collier & son 1905) 119, 176-81. See further CG Fenwick, ‘The Monroe Doctrine and the Declaration of Lima’ (1939) 33 AJIL 257, 259; S Ricard, ‘The Roosevelt Corollary’ (2006) 36 Presidential Studies Quarterly 17; M Maass, ‘Catalyst for the Roosevelt Corollary: Arbitrating the 1902-1903 Venezuela Crisis and its Impact on the Development of the Roosevelt Corollary to the Monroe Doctrine’ (2009) 20 Diplomacy & Statecraft 383.
\textsuperscript{21} Roosevelt, ‘State of the Union Address’ (n 20) 177.
In a passage that strikingly prefigures the ‘unable and unwilling’ language of twenty-first century US lawyers, Roosevelt argued that the United States would intervene under the Monroe Doctrine only ‘in the last resort’, and if it became evident that a state’s ‘inability or unwillingness to do justice at home and abroad had violated the rights of the United States or had invited foreign aggression to the detriment of the entire body of American nations’. He noted that ‘the Navy of the United States’ was the ‘strong arm of the Government in enforcing respect for its just rights’, and that the undertaking to secure a ‘just share’ of trade, protect US citizens ‘from improper treatment in foreign lands’, and ‘insist on the application of the Monroe Doctrine to the Western Hemisphere’ would be ‘a more boastful sham’ without the navy.

The argument that self-defence extended not only to control over land but also the sea was central to the expansive readings of the Monroe Doctrine developed by the United States in the early twentieth century. Here the arguments of Alfred Thayer Mahan are illustrative. Mahan was a US Naval Officer who taught at the Naval Academy and served as a member of the US delegation to the Hague Peace Conference of 1899. His book *The Influence of Sea Power upon History 1660-1783* has been described as ‘the naval equivalent of von Clausewitz’s *On War*’. Mahan there traced the centrality of sea power to the successes of various empires, including the British. He argued that commerce and mercantile shipping were central to a great naval power: ‘sea power in the broad sense . . . includes not only the military strength afloat, that rules the sea or any part of it by force of arms, but also the peaceful commerce and shipping from which alone a military fleet naturally and healthfully springs, and on which it securely rests’.

Importantly for the way that international lawyers have since thought about sea power, Mahan argued that ‘[t]he first and most obvious light in which the sea presents itself from the political and social point of view is that of a great highway’. The Oxford international law professor Dan O’Connell would later include this passage as the first epigraph to his classic account of the role of international law in

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22 ibid.
23 ibid, 180-81.
24 R McLaughlin, ‘Unmanned Naval Vehicles and the Law of Naval Warfare’ in H Nasu and R McLaughlin (eds), *New Technologies and the Law of Armed Conflict* (TMC Asser Press 2014) 229-30.
25 AT Mahan, *The Influence of Sea Power Upon History 1660-1783* (first published 1894, Dover Publications 1987) 28.
26 ibid 25.
For Mahan, political interests, including those articulated in the Monroe Doctrine, could not be confined to matters within US borders but allowed the United States to police those great highways through force. For Mahan, the Monroe Doctrine, ‘if reduced to its bar- est statement’ and not presented as ‘a mere political abstraction’, could be given effect ‘only through the instrumentality of a navy’. 

B. The Monroe Doctrine, Regional Arrangements, and the League of Nations

The concern of Latin American states with the expansionist ambitions of the United States was not significantly displaced by the creation of the League of Nations. The drafters of the League Covenant were forced to find a place for regional arrangements in the League Covenant due to the significance that the US Senate placed upon preserving the Monroe Doctrine. In line with its long-standing foreign policy tradition, the United States sought to ensure that joining the League of Nations would not require it to abandon the Monroe Doctrine or submit the right to interpret it to any other authority. At the insistence of the US drafters, the League Covenant was amended to include Article 21, which provided that ‘[n]othing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace’. 

The result of this odd compromise formulation was that ‘regional understandings like the Monroe doctrine’ were deemed compatible with the international system established under the League Covenant. The meaning of ‘regional understanding’ was however nowhere defined in the Covenant, with some commentators interpreting the phrase to mean understandings between states of a particular region, and others interpreting it to mean an understanding between perhaps widely separated states concerning a particular geographically defined region. The Monroe Doctrine could be used in support of either interpretation, as on the one hand it could be viewed as an understanding between American states concerning their own region, and on the other as an agreement between the United States and European states.

27 DP O’Connell, The influence of law on sea power (Manchester University Press 1975).
28 <https://www.classicsofstrategy.com/2015/07/interest-of-america-in-seapower-mahan-1897> accessed 26 August 2021
29 Covenant of the League of Nations, Art 21.
concerning the destiny of Latin America.30 Perhaps fearing the latter interpretation, the privileged place given to the Monroe Doctrine in the League Covenant was challenged by Mexico, which opposed the Doctrine’s inclusion both during the drafting of the Covenant and again when Mexico accepted the invitation to join the League in 1931.31

Throughout the interwar period, the United States continued to argue that the right to self-defence, of which the Monroe Doctrine was a particular expression, should be interpreted expansively. In 1923, US Secretary of State Charles Hughes claimed that the United States had the right to resist the foreign possession or control of any place that could be prejudicial to the safety and communications of the United States.32 This meant, for example, that in building the Panama Canal, the United States had ‘not only established a new and convenient highway of commerce’, but it had also created ‘new exigencies and new conditions of strategy and defense’. ‘It is for us’, said Hughes, ‘to protect that highway’.33

Such statements left a generation of Latin American governments sceptical about the implications of the Monroe Doctrine for the political independence of states in the region. Indeed, the development of the principle of non-intervention in international law is often associated with Latin America, both because of the frequency of European and later of US interventions in that region and because of the history of resistance articulated by Latin American international lawyers in the language of non-intervention.34 To take one example, the principles of non-intervention and of sovereign equality were included in the 1933 Montevideo Convention on the Rights and Duties of States adopted at the Seventh Pan American Conference, along with statements that

30 JH Spencer, ‘The Monroe Doctrine and the League Covenant’ (1936) 30 AJIL 400, 409-10.
31 MO Hudson, ‘Mexico’s Admission to Membership in the League of Nations’ (1932) 26 AJIL 114; PM Brown, ‘Mexico and the Monroe Doctrine’ (1932) 26 AJIL 119; A Duxbury, ‘Excluding Revolutionary States: Mexico, Russia, and the League of Nations’ in Greenman, Orford, Saunders, and Tzouvala (eds) (n 19) 85, 94-95, 102.
32 Hughes (n 10) 616.
33 ibid 620.
34 See JL Esquirol, ‘Latin America’ in Fassbender and Peters (eds) (n 5) 566-570; JP Scarff, ‘Denaturalizing the Monroe Doctrine’ (2020) 33 Leiden JIL 541; FFC Veçoso, ‘Mexican Post-Revolutionary Foreign Policy and the Spanish Civil War: Legal Struggles over Intervention at the League of Nations’ in Greenman, Orford, Saunders, and Tzouvala (eds) (n 19) 242.
foreigners may not claim rights other or more extensive than those of nationals and the commitment to peaceful settlement of disputes. In 1936, the United States finally affirmed the principle of non-intervention at the Conference for the Maintenance of Peace in Buenos Aires and introduced President Franklin Delano Roosevelt’s ‘good neighbor’ policy toward Latin America.

While the recognition of sovereign equality and non-intervention was forced on the United States by Latin American states, it proved very productive for US relations in the region. The formal adoption of the right of non-intervention paved the way for a decade of hemispheric legal cooperation, which bound the Americas together through a web of treaties, multilateral institutions, and arbitral bodies. Roosevelt’s administration negotiated trade agreements with fifteen Latin American countries between 1934 and 1942, the terms of which would in turn form the basis for much of the General Agreement on Tariffs and Trade (GATT). The goodwill created by the renunciation of militarism, and the stable relations promised by commercial treaties with Latin America, provided conditions for US corporations and their financiers to extract raw materials, establish markets for US products, and set up manufacturing bases throughout the region.

Those policies attracted the support of a powerful bloc of corporations, extractive industries, and internationally-oriented investment and commercial banks. The subsequent demand for protection by US corporations and banks once they became established in Latin America had significant effects for US foreign policy and the international legal order it worked to create. That order was premised upon the legal protection of foreign investment, free trade, non-discrimination, access to resources, and freedom of navigation, with the use of force to police those commitments as a last resort. In time, as we will see in Part 3, that model of regional order assembled in the

35 1933 Montevideo Convention on the Rights and Duties of States (1934) 165 LNTS 19, arts 8-10.
36 CG Fenwick, ‘Intervention: Individual and Collective’ (1945) 39 AJIL 645, 656; Esquirol (n 34) 570.
37 Grandin (n 16) 34.
38 DA Irwin, PC Mavroidis, and AO Sykes, The Genesis of the GATT (CUP 2008) 12; A Orford, ‘Food Security, Free Trade, and the Battle for the State’ (2015) 11 J Int’l L and Int’l Relations 1, 50-51.
39 Grandin (n 16) 36.
40 A Orford, ‘Civil War and the Transformation of International Law’ (2022) Recueil des Cours (forthcoming).
Americas would become the ‘blueprint for the construction of a global liberal multinational order, over which Washington would preside’.  

C. Geopolitics and Greater Spaces: Rudolf Kjellén and Carl Schmitt

The League’s recognition of regional understandings fuelled other claims for extended spatial orders involving both land and sea during the inter-war period. One example was the ‘British Monroe Doctrine’, as articulated in the exchange of notes that accompanied the drafting of the Pact of Paris or the Kellogg-Briand Pact of 1928. Britain there articulated its ‘distinct understanding’ that ‘self-defence rights’ extended beyond defence against invasion of a state’s territory. The British note stated that there were ‘certain regions of the world’ in which Britain had ‘a special and vital interest’ for its peace and safety, and that it reserved the right to act in self-defence against any threat to those interests. Those regions were not confined to the British Empire itself, and extended to regions strategically necessary for trade, communication, and navigation, such as the Suez Canal and the Straits of Gibraltar.

In addition, fascist governments and lawyers relied on those precedents, arguing that Italian and German expansionist policies offered a related form of greater spatial order to that represented by Britain’s relation with its colonies or the Monroe Doctrine. Geopolitical thinkers such as Rudolf Kjellén, Friedrich Ratzel, and Halford Mackinder argued that it was necessary to consider the relation of geography to politics and look beyond the state to regions, blocs, or greater spaces. For Kjellén, all of whose major works were translated into German, it was apparent that ‘the nation-state was becoming too small to correspond to the twentieth century’s political and economic necessities’. Kjellén anticipated that the existence of imperial formations organised around Britain, the United States and the USSR would make it necessary for Central Europe in turn to create a state-bloc or union under...
the leadership of a central power. His vision was of a regional order committed to multicultural unity and respect for the freedom and independence of states under the protection of Germany.46

Carl Schmitt translated Kjellén’s geopolitical thinking into international law,47 arguing that it was necessary to develop a new concept of spatial order in the form of a greater space or *Großraum* that extended beyond the state.48 Schmitt infamously sought to introduce into international jurisprudence the concept of *Großraum* and the related concept of a ‘*Großraum* order’.49 Schmitt’s *Großraum* concept was based upon a vision of the world in which nation-states coexisted with other kinds of territories (such as protectorates and border states), all of which were guaranteed their independence and security by a great power. The *Großraum* was an integrated space, composed of independent territorial states together with other kinds of spaces, under the leadership of a great power that could guarantee security and an economic sphere of interest.

Schmitt argued that Britain had played such a role in relation to its colonies, and the United States continued to play that role in relation to the Western hemisphere. The *Großraum* concept had already been embedded into twentieth-century international law through the Monroe Doctrine, which Schmitt characterised as ‘the first and, until now, most successful example of a *Großraum* principle in the modern history of international law’.50 According to Schmitt, the concept of *Großraum* was ‘the concrete concept of the present that we need’,51 as it could bring to awareness the change that existing concepts of space had already undergone.

Schmitt insisted that this concept of greater spaces was related to forms of ordering that more closely mapped onto emerging energy economies and the resulting shifts that changes in energy production and distribution meant for strategic interests and the relations of people to territory. Through the term *Großraum*, Schmitt sought to give

46 O Tunander, ‘Swedish Geopolitics: From Rudolf Kjellén to a Swedish “Dual State”’ (2005) 10 Geopolitics 546, 547, 550.
47 ibid 550-1.
48 Schmitt, ‘The *Großraum* Order of International Law’ (n 13).
49 Schmitt’s development of the *Großraum* concept was one reason for his arrest and detention at Nuremberg from 1945 to 1947. See C Schmitt, ‘Appendix I, Response to the Question: “To What Extent Did You Provide the Theoretical Foundation for Hitler’s Grossraum Policy?”’ (1987) 72 Telos 109; JW Bendersky, ‘Carl Schmitt at Nuremberg’ (1987) 72 Telos 97.
50 Schmitt, ‘The *Großraum* Order of International Law’ (n 13) 83.
51 ibid 78.
legal expression to ‘the specific forms, the typical arrangements, and the organization of the energy economy’ that had accompanied industrialization and new forms of energy distribution. According to Schmitt, those developments had given rise to ‘a technical-industrial-economic order in which the spatially small isolation and separation of the previous energy economy is made obsolete’. As a result, concepts of international law rooted in the geography of statehood had lost their capacity to make sense of economic, social, and energy integration.

Other European and American commentators expressed sympathy with the Italian and German arguments that fascist expansionism was in part a response to an unfair world order, in which colonial powers enjoyed a monopoly of access to ‘essential colonial raw materials’ and to the space perceived as necessary for addressing problems of metropolitan overpopulation. During the 1930s internationalists began to question the exceptional status and privileges of colonial powers and to explore means by which access to the resources and space of the colonial world could be distributed more fairly (meaning more fairly for those living in Europe and North America). Moves in favour of ‘doing something about raw materials’ at an institutional level were partly fuelled by the speech of Sir Samuel Hoare to the League of Nations Assembly in September 1935, the aim of which was understood to be dissuading Mussolini from invading Abyssinia. Regional and international integration were posed as solutions to the challenges of securing access to raw materials, finding space for ‘redundant’ populations, and maintaining an open door for free trade, as these questions shifted from the domain of colonial law to that of international law.

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52 ibid.
53 ibid. 79.
54 See, for example, JB Whitton, ‘Problems of Markets and Raw Materials’ (1936) 30 ASIL Proceedings 104; FS Dunn, Peaceful Change: A Study of International Procedures (Council on Foreign Relations 1937); CAW Manning (ed), Peaceful Change: An International Problem (MacMillan Company 1937); K Strupp, Legal Machinery for Peaceful Change (Constable 1937); International Institute of Intellectual Co-operation, Peaceful Change: Procedures, Population, Raw Materials, Colonies: Proceedings of the Tenth International Studies Conference, Paris, June 28–July 3, 1937 (League of Nations 1938).
55 See further AD McNair, ‘Collective Security’ (1936) 17 BYBIL 150, 158; H Nicolson, ‘The Colonial Problem’ (1938) 17 Int’l Affairs 32. For a critical reexamination of the international legal response to Fascist Italian expansionism, see R Parfitt, The Process of International Legal Reproduction: Inequality, Historiography, Resistance (CUP 2019).
56 See further Orford, ‘Food Security, Free Trade, and the Battle for the State’ (n 38); A Orford, ‘Theorizing Free Trade’ in Orford and Hoffmann (eds) (n 3) 701.
D. The Legacies of Geopolitics: Collective Self-Defence under the UN Charter

After World War 2, the fascist and colonial models of spatial ordering, in which hegemonic powers exercised control over the people and territory of the greater spaces they controlled, were discredited. The UN Charter, and indeed modern international law, was widely seen as embodying the commitment to sovereign equality and to states as the primary subjects of international law. Yet the United Nations also inherited the accommodation of regionalism introduced into the League Covenant by the United States to accommodate the Monroe Doctrine, and with it the resulting tension between universal aspirations, regional alliances, and imperial ambitions.

The relationship between the United Nations and regional arrangements became a source of debate during the drafting of the Charter. The United Nations was envisaged by its founders as a world organization on a global scale, and the maintenance of regional privileges and spheres of influence seemed a threat to that vision. The push to maintain recognition for regional defence arrangements in the UN Charter was driven initially by the US and Soviet delegations, as well as by the Latin American republics.57 The US delegation was faced with the challenge of incorporating their traditional hemispheric privileges in the UN Charter, without making space for new regional spheres of interest to be established by the USSR in Europe, or exceptional claims to be made by the UK in relation to the Empire.58 For their part, Latin American states had recently signed the Act of Chapultepec, which US Senators privately described as ‘merely the modern name for the Monroe Doctrine’, but Latin American leaders preferred to see as establishing a system of joint hemispheric defence to insulate ‘their own working and peasant classes’ from the effects of communism.59 The Cuban and Colombian delegates in particular were keen to entrench the authority and autonomy of regional organisations in the UN Charter so as to prevent extra-regional great powers from interfering in American affairs.

A number of other states, however, were concerned that regional arrangements might become a means by which powerful states could

57 It is worth noting that almost half the delegates at the San Francisco conference were from Latin America, bringing with them ‘their long experience of pan-American diplomacy’: Grandin (n 16) 37.
58 Smith (n 44) 406.
59 ibid.
dominate smaller states, destabilize the collective security mechanisms of the United Nations, and break the world up into regional groups. For that reason, the Egyptian delegation tried and failed to insert a definition of ‘regional arrangements’ into the draft of the Charter. Egypt’s amendment would have limited regional arrangements to ‘organizations of a permanent nature grouping in a given geographical area several countries which, by reason of their proximity, community of interests or cultural, linguistic, historical or spiritual affinities, make themselves jointly responsible for the peaceful settlement of any disputes which may arise between them and for the maintenance of peace and security in their region, as well as for the safeguarding of their interests and the development of their economic and cultural relations’. The drafting Committee rejected this clarification on the grounds that it was ‘unnecessary’.

The resulting compromise between universalist and regionalist visions of internationalism was enshrined in a number of sections of the Charter. First, Chapter VIII provides a tightly confined place for regionalism, in three articles regulating the relationship between the United Nations and regional arrangements, and specifically Article 53 requiring Security Council authorization of enforcement action taken under regional arrangements or by regional agencies. Secondly, and more importantly, the drafters included Article 51 in order to placate the United States and the USSR and ensure that Article 53 would not make it possible for extra-regional powers to veto regional action against external aggressors through their dominance in the Security Council. Article 51 was designed to provide an exception to the requirement for Security Council authorization of collective enforcement action in cases where states take measures not only in individual but also in collective self-defence. Thus embedded in the UN Charter through the concept of collective self-defence was the concept of greater spaces for which the Monroe Doctrine was taken as precedent. In addition, the exceptional status of Britain, France, China, the USSR, and the United States, all states with an experience of imperial rule, was recognised in their inclusion as permanent members of the UN Security Council with a veto power over decisions related to international peace and security.

60 Documents of the United Nations Conference on International Organization, Volume 12 (United Nations Information Service 1945) 850.
61 M Akehurst, ‘Enforcement Action by Regional Agencies with Special References to the Organization of American States’ (1967) 42 BYBIL 175, 176.
62 ibid 180; Smith (n 44) 407-409.
This was the complicated legal and political context concerning the role of regional arrangements that shaped the emergence of the rivalry that would become characterised as the Cold War. It was also the context that shaped the creation of the North Atlantic Treaty Organization (NATO) and the Warsaw Pact. Both NATO and the Warsaw Pact were characterised as defensive alliances under Article 51 of the UN Charter and not as regional organizations regulated by Chapter VIII of the Charter. That characterisation of NATO and the Warsaw Pact as defensive alliances was designed to ensure that Security Council members, and more importantly the rival hegemons amongst the permanent five, were not given a legal basis for vetoing their actions.

The geographical scope of NATO’s mandate, however, was also shaped by the broad anti-colonial sentiments held by former colonies (amongst them Canada and the United States). Article 5 of the North Atlantic Treaty makes clear that the obligation of allied defense arises only if there is an armed attack against one or more of the Parties in Europe or North America. Article 6 defines armed attack against one or more of the Parties in Article 5 to mean an attack ‘on the territory of any of the Parties in Europe or North America’, as well as on ‘the Algerian Departments of France’ (a clause that became inapplicable from 3 July 1962) and ‘Islands within the jurisdiction of any of the Parties in the North Atlantic area north of the Tropic of Cancer’. The definition was designed to exclude the colonial territories of Members (with Algeria at that point being considered legally and administratively part of France), so that the obligation to provide military support did not extend to mutual defense of colonial possessions. The US initially insisted that military aid pursuant to NATO was strictly for use in Europe. During the Cold War, Article 6 was regularly invoked by European states to prevent discussion of the possibility of ‘out of area’ military action. That approach was criticised by Cold War warriors such as Henry Kissinger, who was scathing about the ‘legalism’ of the European position that NATO’s operational boundaries did not extend to include the Middle East and North Africa.

It gradually became clear, however, that while the UN Charter prohibited war as a tool of foreign relations, the United Nations would

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63 AK Henrikson, ‘The Creation of the North Atlantic Alliance, 1948–1952’ (1980) XXXII Naval War College Review 4, 20.
64 See further the discussion in Orford (n 5).
65 Douglas Stuart, ‘NATO’s Future as a Pan-European Security Institution’ (1993) 41 NATO Review 15.
66 Henry Kissinger, *Years of Upheaval* (Simon & Schuster 1982).
have a more difficult task restraining the Cold War superpowers from engaging in less overt forms of intervention through proxy wars. For people and states in Eastern Europe, Southeast Asia, the Middle East, Latin America, and Africa, preventing new forms of intervention and counter-intervention in civil wars was a necessary condition for meaningful self-determination. As a growing number of states became independent, resistance to these forms of regional intervention or international police action was manifested in General Assembly and Security Council debates over specific incidents such as the Suez and Congo crises, as well as through coordinated actions by newly independent states to shape international law, including at the Bandung Conference, in the form of the Five Principles of Peaceful Coexistence adopted by China and India, and through the establishment of the Non-Aligned Movement. In addition, the General Assembly became a central forum for attempts to develop international law as a tool of resistance to great power interventions.

One key site for these debates was the six-year negotiation of what would eventually become the ground-breaking Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (or Friendly Relations Declaration) of 1970. Those negotiations revealed the tensions involved in any attempt to provide an exhaustive definition of the limits to great power intervention. While all states agreed that the principle of non-intervention was part of international law, strong divisions emerged over what that principle meant in practice.

For the large number of postcolonial states that had joined the UN in the early 1960s, the principle of non-intervention meant that powerful states should be prevented from installing compliant leaders in newly independent states or coercing those states into adopting

67 See generally A Orford, International Authority and the Responsibility to Protect (CUP 2011).
68 L Eslava, M Fakhri, and V Neshia (eds), Bandung, Global History, and International Law: Critical Past and Pending Futures (CUP 2017); M Li, Five Principles of Peaceful Coexistence: Continuity and Challenges (Xiamen Academy of International Law 2017).
69 UNGA Res 2625 (XXV) (1970): Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations.
70 G Arangio-Ruiz, The United Nations Declaration on Friendly Relations and the System of the Sources of International Law (Springer 1979); E McWhinney, ‘The “New” Countries and the “New” International Law: The United Nations’ Special Conference on Friendly Relations and Co-operation among States’ (1966) 60 AJIL 1.
particular policies. At the same time, they considered that the principle should not prevent external support for anti-colonial revolutionary movements. The USSR and its allies argued in favour of a strong norm against intervention between the Soviet and Western blocs, while at the same time arguing that non-intervention did not apply to action taken by the USSR to maintain the correct approach to socialism in Soviet bloc states. Western states tried to limit the scope of the principle still further, arguing that, in an interdependent world, it was both inevitable and desirable that states be concerned with the actions and policies of other states, and try to influence them. The only limits on state action in that respect were the founding principles of sovereign equality of states and the self-determination of their peoples. The resulting definition was sufficiently malleable, particularly when read with the other principles in the declaration, to incorporate those competing meanings.

A high point for postcolonial interpretations of the principle of non-intervention was the 1986 decision of the International Court of Justice (ICJ) in the Case Concerning Military and Paramilitary Measures in and Against Nicaragua. While the United States objected to the Court’s jurisdiction on various grounds, including that ‘the security problems of Central America’ should properly be addressed through established processes for the resolution of conflicts in the region, the ICJ found it had jurisdiction to hear the case. After that decision on jurisdiction, the United States announced that it would take no further part in the proceedings initiated by Nicaragua and terminated its acceptance of the ICJ’s compulsory jurisdiction. In the statement announcing its withdrawal from the proceedings, the United States declared that it was ‘profoundly concerned also about the long-term implications’ of the decision for the ICJ’s legitimacy, suggesting that it represented ‘an overreaching of the Court’s limits, a departure from its tradition of judicial restraint, and a risky venture into treacherous political waters’. More broadly, the US claimed that the United Nations had ‘become more and more politicized against the interests of the Western democracies’ and that it would be a ‘tragedy’ if the ICJ in turn became ‘a politicized Court’.

71 McWhinney (n 70).
72 Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment [1984] ICJ Rep 392, paras 102-108
73 ‘Statement Concerning US Withdrawal from the Nicaragua Case’, 18 January 1985, reprinted in (1985) 24 International Legal Materials 246.
The US statement offered a clear articulation of the US approach to regional order.\textsuperscript{74} It declared that US policy in Central America was ‘to promote democracy, reform, and freedom’, ‘to support dialogue and negotiation both within and among the countries of the region’, and ‘to help provide a security shield’, in so doing acting ‘in the exercise of the inherent right of self-defense enshrined in the United Nations Charter and the Rio Treaty’. The United States argued that it had taken military action ‘in defense of the vital national security interests of the United States and in support of the peace and security of the hemisphere’. Nicaragua had misused the Court and wrongly ‘portrayed the conflict in Central America as a bilateral issue’ while it should properly be understood as involving a far more complex set of regional issues. Those issues could be settled only through ‘a comprehensive approach to political settlement, regional security, economic reform and development, and the spread of democracy and human rights’.

In its judgment on the merits, the Court famously rejected that interpretation of the US role in the region. It held that the provision of financial and other assistance by the United States to the armed opposition in Nicaragua (the contras) was a breach of the principle of non-intervention, which involved the right of every state to conduct its affairs without outside interference. The Court could find no evidence to support the US claim that states had a right to intervene ‘in support of an internal opposition in another State, whose cause appeared particularly worthy by reason of the political and moral values with which it was identified’.\textsuperscript{75} In addition, the Court refused to interpret the right of collective self-defence broadly, finding that ‘States do not have a right of “collective” armed response to acts which do not constitute an “armed attack.”’\textsuperscript{76} Despite the US concern about the effect of the Nicaragua decision, many states appeared to gain increased trust in and a willingness to use the ICJ as a result of its findings in the Nicaragua decision, which in many ways redeemed the Court for the African and Asian states that had effectively boycotted it in the aftermath of the South West Africa cases.\textsuperscript{77} The percentage of states

\textsuperscript{74} ibid.

\textsuperscript{75} Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America), Merits, Judgment [1986] ICJ Rep 14, para 206.

\textsuperscript{76} ibid, para 211.

\textsuperscript{77} J Dugard, ‘The Nicaragua Case: Its Impact’ (Opinio Juris, 20 March 2012) <http:// opiniojuris. org/ 2012/ 03/ 20/ ljil- nicaragua- case- impact/> accessed 26 August 2021.
accepting the compulsory jurisdiction of the court and initiating proceedings has continued to increase since that time.\footnote{L. Damrosch, ‘The Impact of the \textit{Nicaragua} Case on the Court and Its Role: Harmful, Helpful, or In Between’ (2012) 25 Leiden JIL 135, 138.}

Overall, the period from the 1950s through to the 1980s was one of struggle over the weight to be given to competing spatial principles in the UN Charter—on the one hand, to sovereign equality, territorial integrity, and self-determination, and, on the other, to the right of regional powers to intervene in defence of collective values or to resort to force in collective self-defence.\footnote{See further Orford, ‘Civil War and the Transformation of International Law’ (n 40).} Both the United States and the USSR drew on broader defence alliances to gain a degree of legitimacy and success in their attempts at regional ordering, and both used that military power to secure networks of economic and trading relations. The balance of power between the two, rather than any commitment to legal principles of sovereign equality and non-intervention, served as the primary means of constraining the scale of such projects.

3. \textit{The US as the Sole Superpower: The Region Expands}

With the ending of the Cold War and the break-up of the Soviet Union, a different phase of regional ordering began. As the sole remaining superpower, the United States increasingly attempted to shape international law in its own image for almost two decades. In many ways, it succeeded in reproducing the model of the regional order it had created in the Americas on a global scale.

From the late 1980s, the US and its liberal democratic allies took advantage of the new geopolitical situation by engaging in the process of remaking forms of international law that directly addressed issues of trade and investment. While significant steps in that direction had begun during the 1980s with the initiation of focused projects of structural adjustment and conditionality coordinated by the World Bank and the International Monetary Fund, the 1990s was the period during which international law began to be used successfully as a vehicle for entrenching a particular approach to economic policy-making through international and regional economic integration. The US-led negotiation of ambitious new multilateral and regional agreements was central to that process. For states allied with the United States, the
decision about whether to sign on to such agreements and accept the far-ranging changes to domestic law and policy that they required was as much a geopolitical calculation about how far negotiators could afford to displease their US counterparts as it was a calculation about commercial advantage.

To take one example, the creation of the World Trade Organization (WTO) at the completion of the Uruguay Round in 1995 led to a significant expansion in the range of activities brought within the scope of the international trade regime. The United States successfully pushed for the inclusion of expansive intellectual property protections, and regulatory standardisation across regimes including services provision, measures to safeguard human and animal health and safety, and technical issues such as the regulation of product labelling. The conduct of negotiations over subsequent accessions to the WTO, notably relating to China, expanded the capacity of the United States to require the adoption of new policy settings.\textsuperscript{80} During the negotiation of subsequent bilateral and megaregional trade agreements over the following decade, the United States pushed many of its allies to adopt regulations that aligned with US models.

Perhaps the most effective mechanism through which the international facilitation of economic liberalisation took place was through the consolidation of a transnational regime of investment protection. Existing forms of investment protection were consolidated and expanded during the 1990s with the negotiation of many new bilateral investment treaties and other broad-reaching agreements such as the Energy Charter Treaty and the North American Free Trade Agreement (NAFTA). Broad interpretations of substantive provisions addressing direct or indirect ‘expropriation’, fair and equitable treatment, and full protection and security served to protect investors against the effects on profits of routine government regulation concerned with core issues such as taxation, public health, environmental protection, or the provision of vital services.\textsuperscript{81}

US military power remained a vital condition of US hegemony throughout that period. The pursuit of ever more elaborate regional economic arrangements and the liberalisation of trade and investment through international law was accompanied by attempts to transform the law governing the resort to force. From the early 1990s, US

\textsuperscript{80} PC Mavroidis and A Sapir, \textit{China and the WTO: Why Multilateralism Still Matters} (Princeton UP 2021).

\textsuperscript{81} See A Orford, \textit{International Law and the Politics of History} (CUP 2021) 21-24, 300-303.
international lawyers and lawyers from allied states began to argue for new understandings of international law to allow for more expansive forms of collective self-defence or for military intervention in situations of humanitarian emergency.

Providing new legal justifications for actions undertaken by US alliance structures, particularly NATO, was central to that process. It might have been expected that NATO, a defensive alliance of independent states with a clearly defined area of operations focused on an eternal enemy in the form of the Soviet Union, would become a Cold War relic. That was soon proved wrong. NATO actions in the Balkans, together with ‘out-of-area’ actions in Iraq, Afghanistan, and Libya, showed that with the ending of the Cold War, the US and its European allies were developing a new sense of mission and a broader area of operations.82 By 2007, Daniel Fried, US Assistant Secretary of State for European and Asian Affairs, could claim that NATO had been transformed into an ‘institution with global missions, global reach, and global partners’.83 According to Fried, the old ‘in area/out of area’ debate was over: ‘There is no “in area/out of area.” Everything is NATO’s area, potentially’.

An initial turning point in the reconceptualization of NATO’s role was Operation Allied Force in Kosovo, launched on 24 March 1999.84 That eleven-week combing campaign was the first military operation undertaken by the alliance in its history, and was conducted without Security Council authorization. To the extent that NATO governments offered a legal defence for their actions in Kosovo, they were premised on the principle of humanitarian intervention.85 The legitimacy of the intervention undertaken by NATO, as well as the legality of

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82 See further Orford, ‘NATO, Regionalism, and the Responsibility to Protect’ (n 5) 309-323.
83 D Fried, Assistant Secretary European and Eurasian Affairs, ‘Transatlantic Security: NATO and Missile Defense’, Washington DC, 17 April 2007, US Department of State Archive, <http:// 2001-2009. state. gov/ p/ eur/ rls/ rm/ 83176. htm> accessed 26 August 2021.
84 See for example TG Weiss, ‘On the Brink of a New Era? Humanitarian Interventions, 1991-94’ in DCF Daniel and BC Hayes (eds), Beyond Traditional Peacekeeping (Palgrave Macmillan 1995); FR TesÆn, ‘Collective Humanitarian Intervention’ (1996) 17 Michigan JIL 232; TJ Farer, ‘Intervention in Unnatural Humanitarian Emergencies: Lessons of the First Phase’ (1996) 18 HRQ 1; WM Reisman, ‘Kosovo’s Antinomies’ (1999) 93 AJIL 860.
85 See the references discussed in D Franchini and A Tzanakopoulos, ‘The Kosovo Crisis – 1999’ in T Ruys and O Corten with A Hofer (eds), The Use of Force in International Law: A Case-Based Approach (OUP 2018) 594, at 598-605.
humanitarian intervention more broadly, remained extremely questionable for many states outside the NATO alliance, as was made clear in collective statements issued by the Non-Aligned Movement, the Rio Group, and the Commonwealth of Independent States, and in addresses before the Security Council and General Assembly over the following year. In general, even US and European international lawyers who were sympathetic to NATO’s position did not consider that its action was legal, although many asserted that it was nonetheless legitimate or that a customary principle of humanitarian intervention was emerging alongside the UN Charter. US officials and commentators have since continued to propose that NATO’s interventions in Kosovo and more recently in Libya can serve as models for the transformation of international law and for the role of US-led alliances.

Movement of Non-Aligned Countries, Statement, Geneva, 9 April 1999; Declaration Adopted by the Inter-Parliamentary Assembly of States Members of the Commonwealth of Independent States, 3 April 1999, UN Doc A/53/920-S/1999/461, Annex II, 22 April 1999, reprinted in H Krieger, The Kosovo Conflict and International Law: An Analytical Documentation 1974-1999 (Cambridge University Press 2001) 487, 496-7.

See, for example, UN Security Council, 3989th Meeting, 26 March 1999, S/PV.3989 (statements made by Russia, India, Ukraine, Belarus, and Cuba); UN General Assembly, 54th session, 4th plenary meeting, 20 September 1999, A/54/IV.4 (statement made by Algeria); UN General Assembly, 55th session, 24th plenary meeting, 20 September 2000, A/55/PV.24 (statements made by Namibia, Cyprus, Ecuador, China, Malaysia, and Russia); UN General Assembly 55th session, 30th plenary meeting, 27 September 2000, A/55/PV.30 (statements made by the Democratic People’s Republic of Korea, India, Cuba, Iraq, and Namibia).

For arguments made by European and US lawyers, many expressing some reservations about the legality of the resort to force but nonetheless supporting the NATO intervention, see B Simma, ‘NATO, the UN and the Use of Force’ (1999) 10 EJIL 1; A Cassese, ‘Ex iniuria ius oritur: Are We Moving Towards Forcible Humanitarian Countermeasures in the World Community?’ (1999) 10 EJIL 23; MJ Glennon, ‘The New Interventionism: The Search for a Just International Law’ (1999) 78 Foreign Affairs 2; L Henkin, ‘Kosovo and the Law of “Humanitarian Intervention”’ (1999) 93 AJIL 826; R Wedgwood, ‘NATO’s Campaign in Yugoslavia’ (1999) 93 AJIL 828; C Greenwood, ‘Humanitarian Intervention: The Case of Kosovo’ (1999) 10 Finnish YBIL 168; M Matheson, ‘Justification for the NATO Air Campaign in Kosovo’ (2000) 94 Proceedings of the ASIL Annual Meeting 301; S Murphy, ‘The Intervention in Kosovo: A Law-Shaping Incident’ (2000) 94 Proceedings of the ASIL Annual Meeting 303; S Sur, ‘Le recours à la force dans l’affaire du Kosovo et le droit international’ in Les Notes de L’Ifri, no 22 (etc) (Institut français des relations internationales, 2000); A Sofiaer, ‘International Law and Kosovo’ (2000) 36 Stanford JIL 13; A Pellet, ‘Brief Remarks on the Unilateral Use of Force’ (2000) 11 EJIL 385; M Koskenniemi, ‘“The Lady Doth Protest Too Much” Kosovo, and the Turn to Ethics in International Law’ (2002) 65 MLR 159.

D Bethlehem, ‘Stepping Back a Moment – The Legal Basis in Favour of a Principle of Humanitarian Intervention’ (EJIL: Talk!, 12 September 2013) <http://www.ejiltalk.org/?s=bethlehem> accessed 26 August 2021; HH Koh, ‘Syria and the Law of Humanitarian Intervention (Part II: International Law and the Way Forward)’
Their argument is that NATO, an organisation established under Article 51 to defend the North Atlantic states, should be recognised as having the authority to ‘protect’ the populations of neighbouring regions with military force when necessary.

The alliance structure that the US had spent much of the century building was, however, put under increasing pressure in the aftermath of the attack on the United States of September 11, 2001 and the resulting commencement of a decades-long war on terror. Initially it seemed that the United States would be able to rely on its allies to support its military response to those attacks. The Security Council resolutions passed in the immediate aftermath of the attack invoked the US right to self-defence, and NATO allies and coalition partners supported the US commencement in October 2001 of Operating Enduring Freedom in Afghanistan.

However, as the war on terror became more expansive, it gradually became clear that the United States would be willing to walk away from its Western allies or the multilateral treaties upon which they had relied to create the international order after World War 2 if the Security Council would not authorize military action or existing international law did not prove sufficiently malleable. For US political commentators, it was clear that maintaining the liberal international order depended upon understanding the unique role of the United States. That position was famously expressed by Robert Kagan, whose essay on the theme was widely circulated and influential amongst Bush administration officials in the build-up to the invasion of Iraq. According to Kagan, while Europe had entered a ‘post-historical paradise of peace and relative prosperity’, the United States remained ‘mired in history’, destined to operate in a Hobbesian world ‘where international laws and rules are unreliable, and where true security and the defense and promotion of a liberal order still depend on the possession and use of military might’. In Kagan’s telling, it was the effective...
exercise of US power ‘according to the rules of the old Hobbesian order’ that had ‘made it possible for the Europeans to believe that power was no longer important’.93 The liberal order depended upon the existence of a powerful state willing to assume the responsibility for its defence.

In order to prevent the United States appearing as a rogue actor, US and allied international lawyers sought to reshape international law on the use of force and specifically the interpretation of Article 51. International lawyers argued that the ‘new phenomenon’ of terrorism as practiced in the September 11 attacks required ‘adjustments’ to the law,94 claimed that there had been a change in context between the drafting of the UN Charter and the war on terror,95 and insisted that the law on the use of force needed to be altered to meet new threats posed by non-state actors. Lawyers for the US, the UK, and allied states overtly sought to develop new interpretations of international law as ‘a means of imposing discontinuity between what went before and what is intended for the future’,96 with a particular focus on developing expansive interpretations of the law relating to self-defence. In a speech delivered at the London School of Economics in 2006, US State Department Legal Adviser John Bellinger III argued that that the inherent right to individual and collective self-defence under the UN Charter permitted states to respond with military force to attacks from non-state actors on the territory of another state ‘at least where the harbouring state is unwilling or unable to take action to quell the attacks’.97

93 ibid 73.
94 TM Franck, ‘Criminals, Combatants, or What? An Examination of the Role of Law in Responding to the Threat of Terror’ (2004) 98 AJIL 686, 688.
95 A Sofaer, ‘On the Necessity of Pre-Emption’ (2003) 14 EJIL 209; MN Schmitt, ‘Preemptive Strategies in International Law’ (2002–2003) 24 Michigan JIL 534; RJ Delahunty and J Yoo, ‘The “Bush Doctrine”: Can Preventive War be Justified?’ (2009) 32 Harvard JL and Public Policy 851.
96 D Bethlehem, ‘A Transatlantic View of International Law and Lawyers: Cooperation and Conflict in Hard Times’ (2009) 103 Proceedings of the ASIL Annual Meeting 455, at 456.
97 JB Bellinger III, ‘Legal Issues in the War on Terrorism’ (2006) 8 German LJ 735, 739. That language was subsequently taken up in the academic work of Bellinger’s former colleague Ashley Deeks. See AS Deeks, “Unwilling or Unable”: Toward a Normative Framework for Extraterritorial Self-Defense’ (2012) 52 Virginia JIL 483. For other arguments by UK and US legal scholars offering expansive readings of the right to self-defence in support of US interventions post-September 11, see T Franck, ‘Editorial Comments: Terrorism and the Right of Self-Defense’ (2001) 95 AJIL 839; S Murphy, ‘Terrorism and the Concept of “Armed Attack” in Article 51 of the UN Charter’ (2002) 43 Harvard ILJ 41; TM Franck, Recourse to Force: State Action Against Threats and Armed Attack (CUP 2002); J Yoo, ‘International Law and the War in Iraq’
The US government position, developed in tandem with the UK and other close allies, was subsequently promoted by academic lawyers, many of whom had previously been government legal advisors. For example, in 2012 Daniel Bethlehem, published his influential ‘principles relevant to the scope of a state’s right of self-defence against an imminent or armed attack by nonstate actors’ in the American Journal of International Law.  

Bethlehem there described himself as having the scholarly ‘intention of stimulating debate on the issues’ rather than purporting ‘to reflect a settled view of the law’. He made clear, however, that unlike other scholarship on the question that showed too little ‘intersection between the academic debate and the operational realities’, his principles had ‘been informed by detailed discussions over recent years with foreign ministry, defense ministry, and military legal advisers from a number of states who have operational experience in these matters’. The ‘Bethlehem principles’ were subsequently endorsed by the Legal Adviser at the US Department of State, the UK Attorney General, and the Australian Attorney General, despite the resistance of states including China, Russia, Brazil, Mexico, and Iran to those increasingly expansive interpretations of the rights of self-defence and intervention.

(2003) 97 AJIL 574; WM Reisman, ‘Assessing Claims to Revise the Laws of War’ (2003) 97 AJIL 82; C Greenwood, ‘International Law and the Pre-emptive Use of Force: Afghanistan, Al-Qaida, and Iraq’ (2003) 4 San Diego Int'l LR 7; SD Murphy, ‘The Doctrine of Preemptive Self-Defense’ (2005) 50 Villanova LR 699; WM Reisman and A Armstrong, ‘The Past and the Future of the Claim of Preemptive Self-Defense’ (2006) 100 AJIL 525.

98 D Bethlehem, ‘Self-Defense Against an Imminent or Actual Armed Attack by Nonstate Actors’ (2012) 106 AJIL 770.

99 ibid 775.

100 ibid 773.

101 B Egan, ‘International Law, Legal Diplomacy, and the Counter-ISIL Campaign: Some Observations’ (2016) 92 Intl Studies 235; J Wright, ‘The Modern Law of Self-Defence’, speech presented at the International Institute for Strategic Studies, London (EJIL:Talk!, 11 January 2017) <http://www.ejiltalk.org/the-modern-law-of-self-defence/> accessed 26 August 2021; G Brandis, ‘The Right of Self-Defence Against Imminent Armed Attack in International Law’, speech presented at the TC Beirne School of Law, University of Queensland (EJIL:Talk!, 11 April 2017) <www.ejiltalk.org/the-right-of-self-defence-against-imminent-armed-attack-in-international-law/> accessed 26 August 2021.

102 The Declaration of the Russian Federation and the People’s Republic of China on the Promotion of International Law, Ministry of Foreign Affairs of the Russian Federation (25 June 2016) <http://www.mid.ru/en/foreign_policy/news/-/asset_publisher/ckNonkJEO2Bw/content/id/2331698> accessed 26 August 2021; UNSC Verbatim Record (17 May 2018), UN Doc S/PV.8262, 44-45 (Brazil); PA Olabuenaga, ‘The Time has Come to Have a Conversation at the UN on Self-Defence’, Just Security, 13 April 2020 <https://www.justsecurity.org/69625/the-time-has-come-to-have-a-conversation-at-the-un-on-self-defence/> accessed 26 August 2021; The
Alliance-building remained essential to the conduct of the war on terror, with the United States relying on allied militaries to participate in the conduct of coalition warfare, on the Five Eyes Plus network for intelligence and surveillance capabilities, and on access to states housing more than 750 overseas US military bases. International law was central to that project of alliance-building. As then State Department Legal Adviser Brian Egan noted in 2016, ‘sixty-six partners’ were involved in the US ‘fight against ISIL’ and ‘legal diplomacy’ was central to ‘building and maintaining that strong coalition’. He commented that ‘there are times when the United States has sought the assistance of key allies in taking direct action against terrorist targets, but before these allies would aid us, the lawyers in their foreign ministries have sought a better understanding of the legal basis for our operations’. Persuading allies of that legal basis ‘can be crucial to enabling such operations’. As a result, the legal and political arguments justifying and enabling the expansive military role of US-led alliances were essential to legitimising the creation and maintenance of regional orders.

In addition, during that period the United States expanded its ‘freedom of navigation’ operations in its self-appointed role as the international police for the world’s oceans (despite refusing to sign on to the UN Law of the Sea Convention). The United States committed itself to maintaining the world’s oceans as a single ‘domain of maneuver’, both as a liberalised space through which goods and people could...
move and as a space for the projection of US military force. US international lawyers have portrayed the United States as ‘the world’s cop’ when it comes to securing the freedom of navigation and justified its naval operations as actions to protect a global public good and defend US security interests. As a result, the regional role once imagined for the United States in the terms of the Monroe Doctrine expanded to encompass the world.

Throughout that period of dominance, the United States and its closest allies consistently interpreted US power in moral terms. For the most ambitious liberal internationalists, the time had come to move beyond the sovereign state as the foundational category of international law. New possibilities and threats, including transnational terrorism, energy and financial crises, global pandemics, and the climate emergency, required the adoption of legal frameworks involving more ambitious forms of security and economic integration. The world was witnessing a moment in which ‘concepts and principles of international law’ that are ‘rooted in traditional notions of territorial geography’ were losing their relevance. While ‘Westphalian conceptions of international law’ organised around ‘the geography of statehood’ would likely ‘remain at the root of the international system’, they were ‘becoming increasingly less important’.

Yet the war on terror had also led to growing tensions within the US alliance structures and between different groups of international lawyers. The struggles within these groups of professionals, as well as within the transnational alliance of intelligence and security professionals, became increasingly damaging. Tensions rose over issues including the use of extrajudicial killing, torture, rendition, indefinite detention, and widespread surveillance of opponents, and over the related claims that such matters were of necessity beyond democratic scrutiny and judicial oversight. The growing schism between the United States and many of its allies over such issues posed practical risks, as whistle-blowers made controversial practices and technologies public. And those tensions also posed risks to the project of persuading allies to support US

109 J Kraska and R Pedrozo, *The Free Sea: The American Fight for Freedom of Navigation* (Naval Institute Press 2018).
110 A Etzioni, ‘Freedom of Navigation Assertions: The United States as the World’s Policeman’ (2016) 42 Armed Forces & Society 501, 502, 504-507.
111 D Bethlehem, ‘The End of Geography: The Changing Nature of the International System and the Challenge to International Law’ (2014) 25 EJIL 9.
112 ibid 13.
113 ibid 15.
114 Bigo (n 104) 36, 38.
hegemony, which relied upon boundaries between democratic and authoritarian regimes for much of its moral or ideological force.

Nonetheless, throughout the period of US dominance in the two decades following the Cold War, US allies largely interpreted the exercise of US power in normative terms. It was arguably the longstanding attempt to portray US power as legal and moral that led to such soul-searching amongst its allies in the context of the invasion of Iraq and the war on terror more broadly. In that sense, the Iraq invasion of 2003 without Security Council authorisation was a turning point. While for those outside Europe, concern with resort to force absent Security Council authorisation had already emerged in the aftermath of Kosovo, it was only after the split between Europe and the United States over the Iraq invasion that European liberal internationalists began to express widespread concern about US hegemonic behaviour. The narrative of the US as defender of freedom, human rights, and the rule of law that had been drawn upon to justify the exercise of US power was further disrupted with the election of Donald Trump as US President and the very transactional nature his administration took to international law and existing alliances. In addition, the military overreach of the United States saw its dominance begin to be challenged by other regional powers, particularly China and Russia. Ambitious forms of liberal internationalism began to come under attack from within Europe and the United States, with growing support for populist movements attacking multilateralism. It was in that fraught geopolitical context that rival visions of regional ordering began to reappear.

4. Rival Regionalisms and the Rise of China

Any assumption that the international order would continue to be shaped in the image of the United States began to be unsettled in the first decades of the twenty-first century, with the resurgence of a more assertive Russia and the rise of China. In particular, the economic growth of China began to shift the global balance of power. In the wake of the global financial crisis and prolonged US military

115 A Orford, ‘The Sir Elihu Lauterpacht International Law Lecture: The Crisis of Liberal Internationalism and the Future of International Law’ (2021) 28 Australian YBIL 3.
engagement in an open-ended war on terror, China became the world’s second largest economy and largest exporter, and a major player in development aid. Under Xi Jinping’s leadership, China began a more ambitious phase of engagement with international law and institutions, forming negotiating blocs at the WTO, engaging in institutional entrepreneurialism through the creation of the Asian Infrastructure Investment Bank, and playing a more significant role in shaping regional orders.

The Belt and Road initiative introduced in 2013 is a significant example of China’s regional ambitions. Hailed by Xi Jinping as the ‘project of the century’, it involves a projected US$1 trillion commitment to building roads, bridges, railways, deep water ports, pipelines, airports, and communication and digital infrastructure across more than 135 countries in Africa, Latin America, Asia, and Eastern Europe. Unlike the US attempt during the 1990s to achieve regulatory alignment through multilateral treaties and institutions, China’s Belt and Road initiative resembles something more like an expanded Marshall Plan, where relations are established through contracts, the financing of infrastructure, and the embedding of Chinese companies into domestic economies. The ability and willingness to act as a large lender without imposing conditionality and to collaborate with governments representing varied economic and political systems sets China apart from most other donors. The overall aim is to create a new global economy with China at the centre of a network of land, maritime, and data connectivity. The successful negotiation of the Regional Comprehensive Economic Partnership in 2020 further solidified China’s role as the major economic partner for many Asian economies.

In addition, China began to contest US naval dominance, particularly in the South China Sea. China’s People’s Liberation Army Navy has reached parity with the US navy in terms of fleet size, although not yet in terms of training, experience, and technology, and its capacity is bolstered by the Chinese coast guard and maritime militias, anti-ship

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116 JE Hillman, The Emperor’s New Road: China and the Project of the Century (Yale UP 2020).
117 B Macâes, Belt and Road: A Chinese World Order (Hurst & Company 2018) 2; T Winter, China’s Quest to Revive the Silk Roads for the Twenty-First Century (University of Chicago Press 2019).
missiles, and a growing ability to blind the enemy through cyberattacks.\(^{118}\) China’s professed aim is to create a ‘fortress fleet’ that can defend its territorial waters and international straits in the context of littoral warfare.\(^ {119}\) It has begun to engage in naval exercises and the building of island military bases to challenge US military power and authority in the South China Sea, East China Sea, and Yellow Sea, and is attempting to ‘persuade weaker regional states that their best bet is to ally with Beijing’ or at least remain non-aligned and maintain a regional balance of power.\(^ {120}\) China is concerned to prevent any expansion of US military bases across the region, given that the United States already has a large number of regional military bases in Japan, South Korea, Guam, Singapore, Diego Garcia, the Marshall Islands, and Australia, and has forces stationed in the Philippines.\(^ {121}\) A number of states in the ‘Indo-Pacific’ region—the new name given to the region by the United States and rapidly adopted by US allies—appear reluctant to give the United States the greater access needed for counter-strike and rapid deployment capabilities against mainland China.

International law is one field through which Chinese officials and scholars have sought to provide a normative account of those forms of regional ordering. Chinese international lawyers have narrated the emergence of China from a century of humiliation,\(^ {122}\) and the historical role subsequently played by the new China as a force for resisting imperialist war and promoting new principles of international law.\(^ {123}\) Those accounts stress the peaceful rise of China and contrast that with a history in which Western states gained power through imperialism, coercion, and unequal treaties.\(^ {124}\)

\(^{118}\) P Orchard, ‘The Nagging Question in the Indo-Pacific’, Geopolitical Futures, 2 August 2021.

\(^{119}\) For the US emphasis on littoral warfare in the twenty-first century, see M Vego, ‘On Littoral Warfare’ (2015) 68 Naval War College Review 1.

\(^{120}\) Orchard (n 120); S Chopra, ‘Is Non-Alignment Making a Comeback in Asia?’ (East Asia Forum, 16 July 2021) <https://www.eastasiaforum.org/2021/07/16/is-non-alignment-making-a-comeback-in-asia/> accessed 26 August 2021.

\(^{121}\) M O’Hanlon, ‘Evolving the US base structure in the Indo-Pacific’ in R Hass, R McElveen, and RD Williams (eds), The Future of US Policy Toward China: Recommendations for the Biden Administration (John L Thornton China Center and Paul Tsui China Center, 2020) 41.

\(^{122}\) On the relation of international law to that century of oppression by colonial powers, see T Wang, ‘International Law in China: Historical and Contemporary Perspectives’ (1990) 221 Recueil des Cours 195, 237-62.

\(^ {123}\) ibid; H Xue, Chinese Contemporary Perspectives on International Law: History, Culture, and International Law (Brill/Nijhoff 2012).

\(^ {124}\) Wang (n 122).
For example, Judge Xue Hanqin’s Hague Lectures present a history of oppression stretching from the first Opium War through the century of unequal treaties, foreign concessions, extraterritoriality, and other related privileges of colonial powers as a basis for understanding ‘why China always attaches such importance to the principle of sovereign equality in international affairs’. She argues that as a result of its ‘past colonial history and bitter experience under imperialist oppression’, China found common ground with the newly independent and non-aligned countries, while as a socialist country it was also aligned with the Soviet Union and its allies. Judge Xue presented the founding of the PRC as ‘part of the historical process that fundamentally transformed the political landscape of the world in the wake of WWII’ when ‘a large number of Asian and African countries gained independence’. While the new China was ‘very critical of traditional international law that primarily protected the interests of the colonial and imperialist powers to the detriment of the most undeveloped nations and peoples’, it did not opt to be an ‘outlaw’. Rather than accepting or rejecting international law in its entirety, China voluntarily accepted those rules and norms that reflected a commitment to ‘peace, equality, and mutual respect in international relations’.

The longer history of resisting aggression and imperialist invasion is portrayed as shaping China’s commitment to mutual non-aggression as a foundational principle of international law. In the aftermath of the Korean War, China and India formally committed to the Five Principles of Peaceful Coexistence as the basis for a new international law. The subsequent incorporation of those principles in the closing declaration of the Bandung Conference is characterised as the moment at which China re-established its links with Asia and Africa, and emerged as a leader of the Third World. Chinese international

125 Xue, *Chinese Contemporary Perspectives on International Law* (n 123) 28.
126 ibid 24.
127 ibid 34.
128 ibid 23.
129 ibid 34.
130 Li (n 68) 61-63.
131 For arguments stressing the significance of the Five Principles of Peaceful Coexistence for China’s role in shaping international law, see ibid; Wang (n 122) 263-87; H Xue, ‘Meaningful Dialogue Through a Common Discourse: Law and Values in a Multi-Polar World’ (2011) 1 Asian JIL 13.
132 Wang (n 122) 267-68.
133 See M Sornarajah and J Wang, ‘China, India, and International Law: A Justice Based Vision Between the Romantic and Realist Perceptions’ (2019) 9 Asian JIL 217. For consideration of China’s role at the Bandung conference, see Chen Y, ‘Bandung, China, and the Making of World Order in East Asia’ in Eslava, Fakhri, and Nesiah (eds) (n 68) 177.
lawyers have stressed that China’s approach to international law differs from that of other major powers, particularly the United States, in its resistance to interfering in the systems of other states and its preference for peaceful resolution of international disputes over either the resort to force or international adjudication.134 China has consistently maintained an opposition to acts of aggression, including opposing US aggression during the Korean War, defining the Vietnam War as a US war of aggression, opposing US interventions in Latin America and the Soviet invasion of Afghanistan, and condemning the US bombing of the Chinese embassy in Belgrade during the NATO intervention of 1999.135 China’s approach to international law is represented as flowing from a history of good neighbourliness based on respect for principles of sovereign equality, non-intervention, and peaceful settlement of disputes,136 with its peaceful approach to international relations traced to the traditional notion of tianxia (all under Heaven).137 The notion of China’s commitment to a ‘harmonious world’, a sister concept to that of the ‘harmonious society’, was declared by President Hu Jintao at the UN World Summit in 2005,138 and subsequently taken up in international law scholarship.139

Chinese international lawyers have also stressed the capacity of China to join with other states in resisting Western hegemonic reinterpretations of international law. For example, the approach to international order that Russia and China have collectively sought to consolidate has been expressed in legal terms, evidencing their intention to contest US control over the meaning of international law. In 2016 Russia and China jointly issued a declaration on the promotion of international law,140

134 Li (n 68) 130-38.
135 Li (n 68) 64-65. For discussions of the place of the Korean War in histories of the PRC’s role in resisting imperialism more broadly, see H Wang, China’s Twentieth Century: Revolution, Retreat and the Road to Equality (Verso 2016) 111-12, 134-35; Orford, International Law and the Politics of History (n 81) 58-59.
136 Xue, Chinese Contemporary Perspectives on International Law (n 123).
137 T Zhao, ‘A Political World Philosophy in Terms of All-Under Heaven (Tian-xia)’ (2009) 56 Diogenes 1. See further the discussion in MA Carrai, Sovereignty in China: A Genealogy of a Concept since 1840 (CUP 2019) 223-24.
138 J Hu, ‘Build towards a Harmonious World of Lasting Peace and Common Prosperity’ (New York, September 15, 2005) <https://www.un.org/webcast/summit2005/statement15/china050915.pdf> accessed 26 August 2021.
139 See, for example, S Yee, ‘Towards a Harmonious World: The Roles of the International Law of Co-progressiveness and Leader States’ (2008) 7 Chinese JIL 99.
140 The Declaration of the Russian Federation and the People’s Republic of China on the Promotion of International Law, Ministry of Foreign Affairs of the Russian Federation (25 June, 2016) <http://www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2331698> accessed 26 August 2021.
positioning the two states as champions of the approach to international law set out in the UN Charter and the Friendly Relations Declaration. The Russian-Chinese Declaration made clear their disagreement with Western powers over ‘foundational constitutional principles of international law,’[^141] and more generally over the vision of the rule of law that should underpin the future of international order.

A second way of telling the story of China’s role since the end of the Cold War foregrounds economics. The rise in power and influence of China’s reformist economists saw the Chinese Communist Party officially rename China a ‘socialist market economy’ in 1993, in recognition of the range of reforms that had been introduced over the previous decades aimed at achieving greater deregulation, marketization, and competition within the Chinese economy.[^142] China’s accession to the WTO in November 2001, after fifteen years of negotiations, was seen as a significant achievement of the Chinese economic reformists who supported neoliberal transformation.[^143]

A growing body of literature by Chinese scholars and those outside China engaging with their work has sought to interpret the success of China’s economic model in the period since 1989.[^144] For scholars associated with China’s New Left, for example, the history of China’s rise is related to the social origins of China’s rise, the development of an alternative model of rural/urban relations under market conditions, the avoidance of entrenched rigid bureaucratic systems (in part through the Cultural Revolution), investment in village and workers’ education, and a continued focus on anti-corruption as conditions of

[^141]: L. Mäksoo, ‘Russia and China Challenge the Western Hegemony in the Interpretation of International Law’ (EJIL: Talk!, 15 July, 2016) <https://www.ejiltalk.org/russia-and-china-challenge-the-western-hegemony-in-the-interpretation-of-international-law/>, accessed 26 August 2021.

[^142]: See further JY Lin, M Liu, and R Tao, ‘Deregulation, Decentralization, and China’s Growth in Transition’ in D Kennedy and J Stiglitz (eds), Law and Economics with Chinese Characteristics (OUP 2013), 467; J Gewirtz, Unlikely Partners: Chinese Reformers, Western Economists, and the Making of Global China (Harvard UP 2017).

[^143]: For analyses of the implications of China’s accession for both China and the WTO, see K Zeng and W Liang, China and Global Trade Governance: China’s First Decade in the World Trade Organization (Routledge 2013); M Wu, ‘The WTO and China’s Unique Economic Structure’ in BL Liebman and CJ Milhaupt (eds), Regulating the Visible Hand? The Institutional Implications of Chinese State Capitalism (OUP 2015), 313; M Wu, ‘The “China, Inc” Challenge to Global Trade Governance’ (2016) 57 Harvard ILJ 261; Mavroidis and Sapir (n 80).

[^144]: See H Wang, China’s New Order: Society, Politics and Economy in Transition (Harvard UP 2003); G Arrighi, Adam Smith in Beijing: Lineages of the Twenty-First Century (Verso 2007); H Wang, The End of the Revolution: China and the Limits of Modernity (Verso 2009).
China’s success and attractiveness to investors. In those accounts, China successfully competed with the United States, at least in part, by providing an educated and disciplined workforce rather than simply a cheap workforce. Chinese socialism offered an alternative to the forms of international order developed by powerful Western states that depended upon dispossession as the foundation of capital accumulation, the interdependence of military force and financial power, and extravagant energy consumption.

Chinese international legal scholars have echoed that story, arguing that despite the high price that China had to pay to join the WTO, a significant factor in its subsequent economic success has been the strength of the Chinese system in implementing economic policy combined with ‘the Chinese people’s hard-working spirit’, ‘the high qualities of the Chinese people’, and ‘the countless ordinary Chinese people working diligently to improve their living environment’. The economic rise of China is presented as providing a different model to that offered by Western states—a ‘Beijing Consensus’ to compete with the widely criticized neoliberal ‘Washington Consensus’ of the 1990s.

Chinese officials and lawyers have also situated the Belt and Road project within a historical narrative foregrounding China’s unique historical role. The Belt and Road initiative has been normatively framed as a contribution to creating a ‘regional community of common destiny’. Just as ‘the Silk Road represented friendship, peace, and commerce’, the Belt and Road initiative is said to embody ‘the idea of cooperative international law’. At the same time, China is ensuring control over the forms of investor-state dispute settlement that will be developed to protect Chinese investments in those infrastructure projects through the establishment of new international commercial courts in Xian, Shenzhen, and Beijing. International legal scholars have suggested that the new concept and structure offered by the Belt and Road Initiative could lead to a new ‘style of lawyering’ directed not

145 See Wang, The End of the Revolution (n 144). For an analysis that takes New Left interpretations as its starting point, see Arrighi (n 144) 351-78.
146 Li (n 68) 117-18.
147 See Arrighi (n 144) 379-89; W Chen (ed), The Beijing Consensus: How China has Changed Western Ideas of Law and Economic Development (CUP 2017).
148 L Zeng ‘Conceptual Analysis of China’s Belt and Road Initiative: A Road towards a Regional Community of Common Destiny’ (2016) 15 Chinese JIL 517.
149 Li (n 68) 119-20.
150 Maçães (n 117) 28.
just to addressing the short-term interests of a particular client but also the long-term interests of the Belt and Road ‘situation’.\textsuperscript{151}

While legal debates over the meaning of China’s more ambitious regional role operate largely at the level of grand narratives, lawyers are also involved in assembling a Chinese-led regional order through the technical work of drafting treaties and contracts.\textsuperscript{152} Regional ordering schemes such as the Belt and Road initiative cannot simply be ‘designed in Beijing and imposed upon others’, but are better understood as a network of policies, projects, negotiations, and actors that may at times align but at other points are contradictory.\textsuperscript{153} Just as the constitution and exercise of US power has depended upon numerous negotiations and alliances over the centuries, so too will China’s regional influence.

China’s legal scholars are also beginning to articulate a new and more ambitious role for China in the region and the world. In that context, a number of influential Chinese legal and philosophical scholars including Jiang Shigong, Wang Hui, and Liu Xiaofeng have begun to draw on Carl Schmitt’s \textit{Großraum} concept to shape possible interpretations of China’s role in resisting US imperialism through constituting new forms of spatial order.\textsuperscript{154} Those narratives position China within world and communist history, drawing on its past contributions to ‘the development of civilisation in East Asia’ and its modern struggles against Western domination to produce a narrative of China’s role in shaping ‘the future of the civilisation of humanity at large’.\textsuperscript{155} In these accounts, we get a sense of what a \textit{Großraum} with Chinese characteristics might look like—one in which China will deliver a new regional order that ends America hegemony in Asia, draws inspiration from Confucian culture, Hegelian philosophy, and international communism, and represents those people who live in Third World states.

\textsuperscript{151} S Yee, ‘Dispute Settlement on the Belt and Road: Ideas on System, Spirit and Style’ (2018) 17 Chinese JIL 907, 911.
\textsuperscript{152} H Wang, ‘The Belt and Road Initiative Agreements: Characteristics, Rationale and Challenges’ (2021) World Trade Review (forthcoming).
\textsuperscript{153} G de LT Oliveira, ‘China’s Belt and Road Initiative: Views from the Ground’ (2020) \textit{Political Geography} (on-line early) <https://doi.org/10.1016/j.polgeo.2020.102225> accessed 26 August 2021.
\textsuperscript{154} S Jiang, ‘The Internal Logic of Super-Sized Political Entities: “Empire” and World Order’ (trans D Ownby) <https://www.readingthechinadream.com/jiang-shigong-empire-and-world-order.html> accessed 26 August 2021; X Liu, ‘New China and the End of American “International Law”’ (2019) III American Affairs 155. See also the discussion in RM Mitchell, ‘Chinese Receptions of Carl Schmitt Since 1929’ (2020) 8 Penn State J L \& Int’l Affairs 181.
\textsuperscript{155} S Jiang, ‘Philosophy and History: Interpreting the “Xi Jinping Era” through Xi’s Report to the Nineteenth National Congress of the CCP’, (trans D Ownby, Reading the China Dream, 11 May 2018), <https://www.readingthechinadream.com/jiang-shigong-philosophy-and-history.html> accessed 26 August 2021.
According to Liu:

In Schmittian terms, as China continues to grow, the US has every reason to be worried. The relationship between the US Mainland and the newly-emerging space of East Asia precisely resembles how Old Europe was squeezed out of the [Western] hemisphere by the world-historic rise of America. Just so will America be squeezed out of Asia due to the world-historic rise of China: Currently this is happening with respect to [China’s] challenges of US-delineated “free space”.  

That use of Schmitt to criticise US interventionism mirrors that of European international lawyers a decade earlier. We can hear in such arguments a justification for China’s challenge to US military exercises in the South China Sea and reaction against US support for Taiwan, Hong Kong, and the Philippines. China has consistently argued that its conduct in the South China Sea is lawful under international law, and resisted claims that the law of the sea gives foreign states the right to engage in freedom of navigation exercises in a coastal state’s territorial sea or conduct military mapping, surveillance, and intelligence collection exercises in a coastal state’s exclusive economic zone (EEZ).  

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156 刘小枫 [Liu Xiaofeng], “欧洲文明的’自由空间’与现代中国: 读施米特《大地的法》劄记 [European Civilization’s ‘Free Space’ and Modern China: A Reading of Carl Schmitt’s Der Nomos der Erde] (2018) 2 中国政治学 [Chinese Politology] 21 at 63-64, cited and translated by Mitchell, 258.

157 For a critical reflection on that use of Schmitt by European scholars, see M Koskenniemi, ‘International Law as Political Theology: How to Read Nomos der Erde?’ (2004) 11 Constellations 492.

158 While China formally refused to participate in the South China Sea arbitration initiated by the Philippines, its arguments justifying China’s actions in the South China Sea were set out in Position Paper of the Government of the People’s Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines, Ministry of Foreign Affairs of China (7 December 2014) <https://www.fmprc.gov.cn/nanhai/eng/shwttcwj_1/t1368895.htm> accessed 26 August 2021.

159 Since ratifying the UN Law of the Sea Convention (LOSC), China’s position has remained that LOSC Article 58 does not give states the right to conduct military activities in another state’s EEZ. For an elaboration of the US position that it has the right to conduct military activities in China’s EEZ, see R Pedrozo ‘Preserving Navigational Rights and Freedoms: The Right to Conduct Military Activities in China’s Exclusive Economic Zone’ (2010) 9 Chinese JIL 9. For discussions of China’s response, see Z Haiwen ‘Is it Safeguarding the Freedom of Navigation or Maritime Hegemony of the United States? Comments on Raul (Pete) Pedrozo’s Article on Military Activities in the EEZ’ (2010) 9 Chinese JIL 31; S Bateman, ‘Chinese spy ships: The devil in the detail’ (The Interpreter, 31 July 2017) <https://www.lowyinstitute.org/the-interpreter/chinese-spy-ships-devil-detail> accessed 26 August 2021.
International law and international relations scholars from outside China have also begun to explore the implications of China’s new regional ordering. Much European and US scholarship has tended to concentrate on China as a threat to the West, and portrayed China’s economic success either as a result of access to cheap labour or as an effect of the differences between Chinese and Western approaches to issues such as intellectual property protection or the treatment of state-owned enterprises. Those differences are represented largely as an effect of unfair practices on the part of China or of China acting in breach of universal norms, rather than as the expression of two divergent forms of economic organisation. Western analysts have characterised China as a dragon empire responsible for the theft of Western intellectual property and manufacturing jobs, engaged in ‘predatory economics’ and neocolonialism in Africa, Asia, and the Middle East, and committed to creating a new world order imagined as an ‘alliance of autocracies’.

In addition, a chorus of voices influenced by US strategists have begun to frame the situation as one involving an allegedly novel form of ‘geoeconomics’. The term was initially coined by Edward Luttwak, an American military consultant and strategist, in a piece published in *The National Interest* in 1990. Luttwak, like many conservative strategists, was ‘looking for ways to stay relevant after the end of the

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160 For examples from a broad literature, see J Kurlantzick, *Charm Offensive: How China’s Soft Power is Transforming the World* (Yale University Press 2007); GJ Ikenberry, ‘The Rise of China and the Future of the West: Can the Liberal System Survive?’ (2008) 87 Foreign Affairs 23; H Kissinger, *On China* (Penguin 2011); P Navarro, *Death by China: Confronting the Dragon – A Global Call to Action* (Pearson FT Press 2011); RD Kaplan, *Asia’s Cauldron: The South China Sea and the End of a Stable Pacific* (Random House 2014); VI Lo and M Hiscock (eds), *The Rise of the BRICS in the Global Political Economy* (Edward Elgar 2014); M Pillsbury, *The Hundred-Year Marathon: China’s Secret Strategy to Replace America as the Global Superpower* (Henry Holt 2015); A Hurrell, ‘Hegemony, Liberalism and Global Order: What Space for Would-be Great Powers?’ (2016) 82 Intl Affairs 1; Y Huang, *Cracking the China Conundrum* (OUP 2017); K Mahbubani, *Has China Won?* (Public Affairs 2020); J Keane, ‘Enter the Dragon: Decoding the New Chinese Empire’ (2021) 11 Australian Foreign Affairs 7; S Breslin, *China Risen? Studying Chinese Global Power* (Bristol UP 2021).

161 Navarro (n 160).

162 Then-acting US Secretary of Defence Patrick Shanahan argued in 2019 that ‘China is diligently building an international network of coercion through predatory economics to expand its sphere of influence’: P Shanahan, ‘Written Statement for the Record’, Testimony presented to the US Senate Armed Service Committee (Washington DC, 14 March 2019) cited in Hillman (n 118) 6.

163 SL Myers, ‘An Alliance of Autocracies? China Wants to Lead a New World Order’ *New York Times* (29 March 2021).

164 EN Luttwak, ‘From Geopolitics to Geo-Economics: Logic of Conflict, Grammar of Commerce’ (Summer 1990) 20 National Interest 17.
Cold War’. He introduced the term geoeconomics as part of an argument that post-Cold War international relations would remain driven by conflict and rivalry between states, but that the preferred means for realising those goals would become ‘the methods of commerce’ rather than militarism. With the rise of China and the arrival of the Trump administration, the language of geoeconomics began to reappear in the US policy world, usually in the context of claiming that there was something novel about the current rivalry between the US and China conducted through battles over trade and investment and by using corporations as proxies for great power competition. It has also been taken up by academics in international relations and more recently international law, usually also in the context of discussing the novelty of the growing tension between the US and China.

In these accounts, the halcyon decades of harmonious integration following the end of the Cold War are presented as a period in which a clean line had been drawn between the politics of security policy on one hand and the technicalities of economic policy. The growing rivalry between the United States and China is portrayed as a new entangling of economics and security. The argument that there is new and different quality to the regional ordering undertaken by China is performative, making the adoption of geoeconomic strategies in response appear necessary and desirable.

165 M Wesley, ‘Australia and the Rise of Geoeconomics’ (November 2016) The Centre of Gravity Series, Strategic & Defence Studies Centre.
166 Luttwak (n 164) 19.
167 RD Blackwill and JM Harris, War by Other Means: Geoeconomics and Statecraft (Harvard UP 2016); A Roberts, H Choer Moraes and V Ferguson, ‘The Geoeconomic World Order’ (Lawfare, 19 November, 2018) <https://www.lawfareblog.com/geoeconomic-world-order> accessed 26 August 2021; A Roberts, H Choer Moraes and V Ferguson, ‘Toward a Geoeconomic Order in International Trade and Investment’ (2019) 22 J Int’l Economic L 655.
168 I have argued that the illusion of a clear separation in international law between security and economics in the post-Cold War era and more generally is an effect of liberal ideology: see A Orford, ‘Locating the International: Military and Monetary Interventions after the Cold War’ (1997) 38 Harvard ILJ 443; A Orford, Reading Humanitarian Intervention (CUP 2003); Orford, ‘Food Security, Free, Trade, and the Battle for the State’ (n 38) 19-24. For related critiques of the geoeconomics literature, see M Beeson, ‘Geoeconomics Isn’t Back - It Never Went Away’ (The Interpreter, 22 August 2018) <https://www.lowyinstitute.org/the-interpreter/geoconomics-isn’t-back-never-went-away> accessed 26 August 2021; A Tooze, ‘Whose Century?’ London Review of Books (30 July 2020) <https://lrb.co.uk/the-paper/v42/n15/adam-tooze/whose-century> accessed 26 August 2021.
169 S Scholvin and M Wigell, ‘Power politics by economic means: Geoeconomics as an analytical approach and foreign policy practice’ (2018) 37 Comparative Strategy 73, 79.
Attempts by the US and China to control space beyond their borders appears set to remain an increasingly central feature of international law, with the intensification of their rivalry set to dominate the early decades of the twenty-first century. As a result, the clash between US and Chinese-led projects of regional ordering seems only set to intensify. Given that the most contested areas between them lie in the ‘seascape’ of East Asia, their twenty-first century rivalry appears set to be a naval rivalry in which international law will play a major role.

International lawyers still largely treat the centrality of regionalism to the normative ordering of space as if it operated outside international law. We do so in part by treating the other side’s practices of regional ordering as exceptional and a challenge to international law, while largely ignoring the way that international law is being remade to accommodate the ordering of greater spaces by allies. Current struggles over who controls the Indo-Pacific region are a key site where this dynamic plays out. A recent report by the RAND Corporation provides a good example of the tendency to represent one side as engaged in respecting international law and order, while the other represents a realpolitik challenge to shared values:

The United States and China have divergent visions for Southeast Asia and the Indo-Pacific region at large. The US vision, most recently articulated by the Trump administration and building on the US pivot and rebalance to the Asia-Pacific during the Obama administration, is based on maintaining regional freedom, openness, security, and stability. This includes ensuring freedom of access to common domains, preventing China from dominating and establishing an exclusive sphere of influence, and protecting and safeguarding US, allied, and partner interests. The Chinese vision for Southeast Asia, however, is based on a China-centric model that involves expanding Chinese power, fostering greater regional integration and dependence on China, and bringing Southeast Asia under Chinese leadership.

Rather than see either US or Chinese forms of regionalism as the disruption of an international legal system founded on sovereign equality,
this article has argued that regional ordering is not a novel or an extra-
legal phenomenon. Instead of accepting that the UN era is a period in
which the state form triumphed, I have shown that other spatial
arrangements have continued to be accommodated in international
law alongside the state. Forms of greater spatial order have been
embedded or expressed in the UN Charter rules on collective security
and collective self-defence, in laws governing maritime trade and com-
munication, and in the creation of regional trade and economic agree-
ments. Those orders are not simply scaled-up states. Rather, they
involve the creation of greater spaces or regional orders assembled
through asymmetric relations between a central state and formally in-
dependent but weaker states and the securing of access to liberalized
spaces between those states. The process of creating regional orders has
been essential to the smooth operation of integrated economies and
securing the interests of capital and hegemonic states.

Today, as in past eras, competing claims to exercise control over
regions are justified and enabled by international lawyers. Yet the con-
cept of the region has not been taken up in international legal scholar-
ship with the same seriousness as that of the state, despite the
continuing significance of regional ordering for politics in the Middle
East, Latin America, and now the Indo-Pacific. Doing so would open
up a new set of questions and a different debate about the normative
framework and the values underpinning processes of regional ordering.

The first such set of questions involves the role that militarism and
the resort to force plays in the creation and maintenance of regional
orders. International lawyers could reframe debates about collective
self-defence, non-intervention, freedom of navigation, and extraterritor-
torial surveillance by thinking about the way those norms are used to
shape greater spaces. Offering legal arguments to support an allied
hegemon gain a greater freedom for manoeuvre can just as easily end
up empowering another regional hegemon to do the same thing in dif-
ferent circumstances. The overall effect is to consolidate forms of legal
argument that enable the coercive creation of greater spaces. The losers
in that game remain less powerful states. As non-aligned states have
long insisted, the starting point for resisting oppressive forms of re-
gegional ordering remains old-fashioned mechanisms such as supporting
the peaceful settlement of international disputes, creating increased
pressure for disarmament, resisting the creation and maintenance of
foreign military bases, establishing nuclear-free zones, resisting the at-
tempt to expand the legal grounds for resorting to military force, and
committing to the peaceful use of the world’s oceans.
Second, international lawyers could take the representational issues involved in creating regional orders as seriously as we take them in relation to thinking about the state or sovereignty. What might a just, democratic, egalitarian, or legitimate regional order look like? What interests and values should be prioritised in a particular region? International lawyers currently have no real language or framework for thinking about who participates in shaping regional orders and what this means for old concepts like self-determination. Even in that most sophisticated of regional orders, the European Union, the lack of institutions or decision-making processes that are adequate to current experiments in regional ordering is evident. In many ways what was at stake for the European Union in the referendum over Brexit or in debates over migration or austerity politics has been the question of who or what ‘Europe’ represents. Is the European Union a market-building project, a human rights project, a social democracy project, or a security project? Is it founded upon the values of democracy, liberalism, capitalism, imperialism, or Christianity? Does the commitment to economic stability mean jettisoning democratic traditions, national interests, or solidarity? And who decides?

Third, international lawyers could focus more attention on the borderlands of regional orders and the people who inhabit them. The changing concepts of state sovereignty and regional order have played out through struggles for legitimacy and control over populations in places such as Cuba, Vietnam, Nicaragua, Afghanistan, Iraq, Libya, Ukraine, and Hong Kong, as well as maritime spaces such as the South China Sea and the Mediterranean. It is vital to pay attention to the competing hegemonic behaviour between rival power blocs that is at the heart of such conflicts, to the forms of international law that enable and empower the conduct of great powers in such conflicts, and to what that politics means for the many people caught in the middle.

Fourth, this article has also sought to shift the focus away from the too-ready assumption that only regional hegemons have a say in making and shaping regional orders. Much of the international legal literature continues to fixate on the arguments made by US international lawyers and their closest European allies. In other words, not only have international lawyers adopted the habit of ‘seeing like a state’, we often see like a hegemonic state. Yet not even the most militarily and economically dominant states are able to control greater spaces alone.

172 For the classic argument about the limitations of thinking in those terms, see JC Scott, Seeing Like A State (Yale UP 1998).
Despite the relentlessly insular focus of many US legal scholars when discussing their government’s foreign policy, for example, the decision as to how and where US power is used is not simply a matter for the US administration but also depends upon numerous military and intelligence alliances. Taking regional orders seriously might open up space for considering how other states and their peoples have tried to shape international law in a world in which hegemonic powers exist. What kinds of political responses involving what kinds of legal strategies create more room for resisting the coercive effects of alignment demanded by great powers, or at least provide more autonomy over the terms on which alliances are established?

Finally, sweeping claims about the desirability or danger of a particular form of regional order have an important ideological function. Competing versions of hegemonic international law continue to structure the field of academic and professional practice. Today, when international lawyers argue that a particular treaty or institution or practice must be defended because it is essential or foundational to the ‘liberal international order’ or the ‘rules-based order’, they signal an alliance with the US or European vision of what that order is and should be. Chinese and Russian international lawyers and their allies in turn present competing visions of hegemonic international law. Those claims enlist our support for the technical legal work being done to assemble different versions of regional order. Legal arguments move between broad strokes and close detail, or the big ideological claim and the small technical change.\footnote{173} Lawyers link concrete situations with existing rules, principles, precedents, or exceptions expressed at various levels of abstraction. Focusing on the move between grand ideological claims and specific technical reforms being proposed in such legal arguments can help us to focus on what new rights, duties, or capacities the audience for such arguments is being invited (or required) to support, who has initiated those arguments, and with what potential immediate and long-term effects. Asking such questions might ‘force people who do find the idea of [great power] hegemony attractive to confront its implications in a concrete way’.\footnote{174}

To conclude, international lawyers have been giving normative expression to shifting projects of regional ordering by hegemonic powers and to attempts at resisting those projects for centuries. International

\footnote{173} Orford, \textit{International Law and the Politics of History} (n 81) 185, 236, 240, 271-272.  
\footnote{174} DF Vagts, ‘Hegemonic International Law’ (2001) 95 AJIL 843, 848.
lawyers remain intimately involved in the process of legitimising the creation of greater spaces, state-blocs, and regional orders. Assembling such regional orders is an ongoing process. Every such project of regional ordering proposed by the United States, China, or any other great power involves a new negotiation. The way that international lawyers participate in framing and making meaning of those negotiations and processes plays a significant role in bringing new regional orders into being and giving them legitimacy. Each time that state officials or international lawyers debate a new interpretation of collective self-defence, justify or resist freedom of navigation exercises, or negotiate a new economic agreement, they participate in the realisation of different visions for coming regional orders. The way that international lawyers choose to frame, debate, and express those power struggles is key to the capacity of regional hegemons to remake the world in their own image. In order to gain lasting power, every vision of regionalism must find expression in legal terms.

Much discussion of great power rivalry is framed as a question of values, without attending to the specific techniques, practices, actions, and claims which those values are used to justify. The United States describes its foreign policy choices in the language of freedom, humanitarianism, the rule of law, and defence of liberty at home and abroad, while China presents a narrative of anti-imperialism and respect for sovereignty to justify its actions. The effect is to cloak the more transnational character of regional ordering with a veil of normativity. In contrast, attending more closely to the practice of international legal argument allows us to analyse the movement between big ideological claims and technical details. What new relations, rights, duties, or demands are being promoted by sweeping claims about the need to support one great power or the other in their approach to freedom of navigation, economic integration, self-defence, or non-intervention? Thinking about regional order as a juridical concept, with attention to the variations in the concept historically and comparatively, can help to bring such questions into view, make visible the plural forms of spatial ordering that have long been with us, and draw attention to the political stakes of assembling regional orders through international law.