

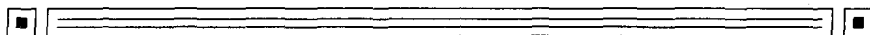
edited by RACHEL M. McCLEARY

# SEEKING JUSTICE

Ethics and  
International Affairs



CASE STUDIES IN INTERNATIONAL AFFAIRS



# SEEKING JUSTICE

## Ethics and International Affairs

edited by

**RACHEL M. McCLEARY**

United States Institute of Peace

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*Case Studies in International Affairs*

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# SEEKING JUSTICE

Ethics and  
International Affairs

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## Case Studies in International Affairs

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The case-study approach to teaching and learning is on the rise in foreign policy and international studies classrooms. Westview Press is pleased to promote this trend by publishing a series of casebooks for a variety of college courses.

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The individual case studies making up the heart of each volume were developed in conjunction with seven institutions—University of Pittsburgh, Harvard University, Georgetown University, Columbia University, Johns Hopkins University, University of Southern California, and the International Peace Academy—under the auspices of The Pew Charitable Trusts. From over 140 case studies developed by leading scholars, the editors have selected those studies that thematically and substantively offer the best classroom examples for each topic in the series.

# FOREWORD

The Westview series *Case Studies in International Affairs* stems from a major project of The Pew Charitable Trusts entitled "The Pew Diplomatic Initiative." Launched in 1985, this project has sought to improve the teaching and practice of negotiation through adoption of the case method of teaching, principally in professional schools of international affairs in the United States.

By 1989, authors associated with the seven institutions involved in the Diplomatic Initiative had written over 140 case studies in international negotiation for classroom use.<sup>1</sup> In considering a second phase of the program, The Pew Charitable Trusts determined that its emphasis should shift from writing cases to encouraging their adoption in courses taught through the case method.

One aspect of this phase has been the establishment of a clearinghouse at the Graduate School of Public and International Affairs, University of Pittsburgh, to distribute and promote the cases. During the first two years of the clearinghouse's operation, it quickly became clear that a sizeable market for the case studies (and a considerable interest in case-method teaching) existed in the larger community of university and college undergraduate instruction. By October 1990, over 15,000 single copies of cases had been sold, and the circle of customers had widened to include instructors in such countries as India, Bulgaria, and the former Soviet Union.

It also became clear that, although a classroom use for individual cases would always exist, there was instructional potential in sets of cases selected to illustrate particular issues in negotiation as well as negotiations over particular policy matters. Hence the Westview series, which offers students and instructors the opportunity to examine and discuss specific themes, including themes (such as foreign policymaking) that fall outside of the ambit of international negotiation. Each volume presents a selection of cases, some short,

others long, some essentially unchanged, others extensively edited or rewritten. Each volume also contains an introductory chapter, identifying the characteristic features and dilemmas of the kind of negotiation or issue exemplified by the cases. Each volume contains questions for discussion and suggestions for simulation and further reading.

Case-method teaching typically involves two elements. The first (and essential) element is careful reading of a case document by students. The second is one or more classroom sessions in which an instructor, using sustained Socratic questioning, tries to get students to explore the meaning of events that are described, but deliberately not interpreted or explained, in the case document.

Like all teaching, case-method teaching depends on a contract, however implicit. The contract here is framed by two norms: the first is that the material within the case provides a common stock of evidence and an obligatory point of reference. If this norm is broken by the introduction of extraneous or privileged information, the case will cease to serve as a common focus, the assumption of equal information (however artificial and fictitious it may be) will break down, and some students will feel discouraged from participating.

The second norm is one of judgmental equality—that, for purposes of the discussion, the instructor willingly suspends his or her authority for the sake of encouraging students to develop and express their own interpretations of events. Although the instructor may (indeed, should) organize discussions so as to lead students into specific questions, he or she will undermine the exploratory and interactive character of the discussions if students have the impression that they are required to discover "the right answers." This does not mean that instructors have to say (much less to believe) that they have no opinions or that one person's opinion is as good as another's. It simply means that they should be prepared to retreat, temporarily, to the roles of agenda-setter and discussion leader, rather than assuming those of decisionmaker and interpreter.

Although obviously there are some important premises regarding educational philosophy and psychology underpinning belief in case-method teaching, the case for instructors holding back is essentially pragmatic—that discussion is a good educational vehicle and that students will only climb onto it if they are allowed to share in the driving.

Case-method teaching is, then, a tool, supplementing the conventional tools of exposition. Cases can be used to follow up lectures; they can (as this series implies) be used comparatively; they can be used for discussion or for simulation. They can be used with or without accompanying writing assignments. They can be used to illustrate theoretical concepts (such as power) or to require students to enter into the agonies of political choice ("What would



you have done if you were President Carter?"). But what they invariably do is to enable—and to force—students to take responsibility for their own political and academic education. The faint burning smell of hard thinking hangs in the air after a good case discussion has taken place. Surely anything that produces that smell should be welcome.

*Martin Staniland*  
*Series Editor*

## NOTES

1. The institutions concerned were the School of International Relations, University of Southern California; the School of International and Public Affairs, Columbia University; the Edmund A. Walsh School of Foreign Service, Georgetown University; the John F. Kennedy School of Government, Harvard University; the International Peace Academy (of the United Nations); the Paul H. Nitze School of Advanced International Studies, Johns Hopkins University; and the Graduate School of Public and International Affairs, University of Pittsburgh.

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# 1

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## INTRODUCTION

From advocating the preservation of the Amazonian rain forest to supporting the military deposition of the dictator of another country, citizens and their governments engage in policies that extend beyond political boundaries. Questions about the justness and political legitimacy of these policies are raised but are frequently waylaid in favor of expediency and practicality. Yet national security issues regarding traditional military concerns, such as protection of one's borders, and, more recently, concerning the degradation of the environment, for example, pollution of the atmosphere, are increasingly bringing countries into conflict.<sup>1</sup> As each country seeks to assert its political sovereignty, maintain territorial integrity, and protect domestic interests, pressures among states mount, creating the need for responsive, flexible, and effective means of forging international consensus.

This volume deals with issues at the interface of the nature of state sovereignty, the legitimacy of domestic political arrangements, and the behavior of international orders and institutions in international affairs.<sup>2</sup> The focus is on the ethical aspects of the means and ends chosen and pursued by various actors in international affairs and on the issues of distributive justice that arise from their interactions in the international arena.

The ordering of the cases in this volume is intentional. Presented initially is the case involving the invasion of Panama by the United States. Following this is a study that considers the Vietnamese peace negotiations. Each case raises questions about the *morality of means*. Both cases grapple with the important ethical dilemmas arising with the use of violence and deception in international affairs. In their examinations of the ethical reasons for limiting the use of violence and deception, readers are invited to decide, given the circumstances, if their use was morally justified.

Integral to determining the limits of morally questionable means is the topic of political legitimacy, both on the domestic and international level. Domestically, political legitimacy is the notion that commonly recognized laws, norms, and practices exist by which the actions of public officials are judged by the people to be acceptable or not acceptable. When the United States used military power to depose Panama's General Manuel Antonio Noriega, publicly elected officials acted on behalf of the American people. Do citizens implicitly consent to the use of coercive means by their government when they elect politicians to office?

The political legitimacy of the invasion of Panama and the arrest of General Noriega by U.S. troops is determined, first, at the domestic level by the degree of accountability between the government and its people. Citizens of a country consent to certain types of military aggression on the part of their government, for example, in defense of their country against foreign intervention. The use of military force as a form of coercion in the domestic affairs of another state is different, however, because it raises questions about the government's use of morally questionable means and about the limits citizens believe ought to be placed on the use of those means.

Military intervention in the domestic affairs of another state also raises questions about the inviolability of states. Once citizens approve of their government's military intervention, they expose their own society to the possibility of foreign intervention. This leads us to the second level of political legitimacy, in the international arena.

Political legitimacy at the international level is determined according to the dictates of agreements and interpretations of the rules and regulations governing international institutions. For example, the charters of the United Nations (UN) and the Organization of American States (OAS) explicitly provide for respect for the sovereignty of states and for nonintervention in the domestic affairs of member states.<sup>3</sup> Member states frequently violate these recognized rules in pursuit of self-interested goals. In response to aberrant behavior on the part of a member state, the international organization can impose on it economic sanctions and other forms of coercive punishment. As a case in point, the United Nations Security Council imposed trade and economic sanctions on Iraq for its military invasion of Kuwait in 1990. The Security Council stipulated that part of the revenues from Iraq's oil sales were to be compensation for Kuwaiti victims of the invasion.

Other types of international agreements by which political legitimacy can be measured are international regimes, such as the Montreal Protocol. Regimes are specialized agreements that commit signatories to comply with specific requirements, such as reducing the emission of environmentally damaging chemicals within their borders. Compared to international regimes, international orders are broad and informal networks of activity. For example, international economic and trade markets are frameworks in which

states, multilateral institutions, corporations, banks, and other actors are free to participate as buyers and sellers. Specialized agreements, such as the General Agreement on Tariffs and Trade (GATT), regulate specific trade and economic activities within those frameworks. Like international organizations, international regimes explicitly provide for sanctions in the event that a member state violates acknowledged rules and regulations.

Presented next are a case study involving the Law of the Sea Treaty, followed by a case study that concerns the International Monetary Fund (IMF) and Nigeria. Both of these cases raise questions about the *morality of ends*. International regimes, such as the UN Law of the Sea Treaty, and international organizations, such as the IMF, were established with certain agreed-upon rules in mind. These rules advance certain ends that cannot be separated from the functioning of the international regime or organization. These two cases invite the reader to question how institutional rules contributed to the outcome of the negotiating process and whether or not that outcome was just.

Some public officials consider an outcome to be just if it maximizes the general welfare. Others do not accept this utilitarian view of justice but rather argue that a more egalitarian distribution of benefits is a just outcome. What constitutes a fair outcome? This question needs to be considered within the context of the empirical and political conditions constraining the negotiating process.

Next, we proffer the European Community Enlargement case study; and, finally, a case study about Brazil. These two cases show the limits of international treaties and institutions in dealing with questions of *distributive justice*. Traditionally, morality in international relations has been viewed by public officials as a constraining force in their pursuit of national interest. Morality, many argue, impedes their ability to act in the best interests of the state. Is national security so paramount that public officials can ignore the ethical considerations and conventions of international organizations whenever it is expedient to protect their national interests? The last two cases suggest the opposite: *Morality*, in the form of distributive justice, provides reasonable grounds for looking beyond national interest in order to act to meet the interests of participating nations; recognizing that to act single-mindedly in the pursuit of one's national interest will result in policies that not only do not meet anyone's goals but also could very well be detrimental to one's future interests.

## THE REQUIREMENTS OF DISTRIBUTIVE JUSTICE

When national interest is not adequate for determining distributive patterns (for example, who has fishing rights in certain seas) then what

standard should be used? In international affairs, promoting the national interest is the overriding and legitimate goal of a nation's leaders. Yet the moral skeptic's worldview, that states are independent actors pursuing their own national interests unconstrained by legal and moral principles, is not reflective of how states function in the contemporary international system nor of the international pressures often placed on governments when making domestic policy.

Issues raised in the various cases presented in this book invite the reader to examine existing distribution patterns of goods and the outcomes of those patterns in light of distributive justice. What constitutes an equitable allocation of the burdens and benefits of distributive practices? Should the rich nations of the world be required to share their affluence with the poor nations? What obligations, if any, do industrialized nations have to transfer environmentally safe technology to developing countries? Should the major polluters of global resources pay for the cleanup and preservation of natural resources?

Justice is the measure by which the distribution of goods can be equitably decided. Is the distribution just when it is done according to equality? ability? social utility? productivity? or when it applies to basic needs such as food, shelter, or clothing? supply and demand? The distribution of goods, such as fishing rights in the open seas, is just according to an equitable allocation of the rights among nations. In this sense, distributive justice is concerned with the ethical nature of means: In what way and to what extent can nations fairly divide the resources of the open seas for each nation's benefit and profit?

Notice that insofar as we are concerned with means, distributive justice is a method of allocating fishing rights in a fair manner. But nations, under a just distribution, could exploit fishing rights until the fish are extinct. Consider the case of certain fishing fleets using drift nets that indiscriminately catch many species, thereby depleting the numbers of fish in the oceans and endangering ocean life. The allocation of fishing rights needs to be reconsidered given this alarming exploitation of marine life.

One way of reassessing the distribution of fishing rights is to examine the history of the distribution practices. How did the distribution practice come into existence?<sup>4</sup> In this sense, justice is backward-looking. It is embedded in historical practices and institutions that were initiated at a different time and in a different social context, by historical accident or design. The moral legitimacy of the practices and institutions, however, needs to be scrutinized in light of contemporary events and empirical conditions.

All nations share in the exploitation of the open seas. Yet the mutual end they seek is not the extinction of marine life but the continuing exploitation of it as a source of food. The end that drives the international distribution of fishing rights is the value ocean life has to each nation as a renewable



resource. Distributive justice, then, is also concerned with the ethical nature of ends that drive the patterns of distribution: What ends do we seek to pursue when we set up institutions and create patterns of distribution?

In this sense, justice is forward-looking. It is abstract and ahistorical, lifting the individual or institution out of the social context in an attempt to identify and define universally moral ends. What goods should we distribute more equitably in order to have international regimes and institutions that allow sovereign states to function to protect the interests of their citizens yet also share resources with others? If all nations agreed that they value ocean life as a renewable resource, then they would have a foundation for agreeing that a just distribution of fishing rights requires outlawing the use of drift nets.

Certainly we believe that people have a right to food, shelter, clothing, and healthcare, and we believe these types of goods ought to be distributed equitably among peoples of the world. There are other kinds of goods, however, such as freedom, equality, and the enhancement of human capabilities, that also need to be equitably distributed through the practices of institutions and international orders. The World Bank, through its funding of development projects, seeks to promote what it calls "human development." Human development is the "enlarging of people's choice . . . to lead a long and healthy life, to acquire knowledge and to have access to resources needed for a decent standard of living."<sup>5</sup> The just or unjustness of the institutional practices promoted by the World Bank can be assessed in terms of how the institution's staff goes about fulfilling these human goods.

The ends that are valued by institutions and societies drive the distributive patterns that are employed by the people and institutions. These ends can only be identified by examining the nature and very existence of the institutions, regimes, and societies that engage and perpetuate them. The just or unjustness of institutional practices can also be determined in light of the ultimate human goods we value.

In an analysis of the ethical nature of means and ends and the justness of distributive patterns in global affairs, the means that are justified, the ends that are pursued, and the distributive patterns that are chosen are assessed within the framework of an ethical approach. It is from a particular ethical standpoint that actions and policies may be justified. How one analyzes the relevance of empirical conditions and what formal conditions ought to inform the decision depends upon the ethical perspective one takes.

#### FOUR ETHICAL APPROACHES

Various approaches to international political theory attempt to sort out the ethical limitations of state sovereignty in international affairs and the demands justice places on peoples and their governments to assist others. Four