



Alfred de Zayas

Building a Just World Order

Atlanta, GA (USA): Clarity Press, 2021
xiv + 466 pp., ISBN 978-1-949762-42-6

Building a Just World Order is an impressive compendium of Alfred de Zayas' insights and conclusions as United Nations Independent Expert on the promotion of a democratic and equitable international order in the period from 2012 to 2018. One might also characterize the volume as an almanac of world order and international law, covering some of the most crucial issues of our time. The author's assignment as Independent Expert was the first such mission within the UN system. In this collection of his reports de Zayas presents the summa of his scholarly and practical experience in the framework of the mandate of the UN Human Rights Council. He offers a unique synthesis of theory and practice, of legal theory and specific proposals of implementation – and he does so with an approach of methodological as well as institutional self-reflection that enables him to (re)define the meaning of expert work in a global intergovernmental organization such as the UN – beyond and above the role of a mere "guardian of the status quo." In his opinion, an Independent Expert must have the "courage to formulate unpopular recommendations." As the reader notices throughout this extensive collection, this also means to question existing paradigms and to challenge the mindset of political correctness, if necessary for the sake of intellectual honesty and moral integrity.

The present volume contains the substance of the author's altogether 14 reports to the Human Rights Council and the General Assembly of the United Nations, together with his explanatory remarks and additional reflections. He covers a wide

range of topics and problems that are crucial for just and equitable relations between peoples and states (e.g., peace as human right; the right of self-determination; non-interference in the internal affairs of states; the rule of law and the right to truth; taxation and human rights; policies of international economic and financial institutions such as the IMF and the World Bank, and their impact on human rights). Of particular importance to contemporary debates on world order and the role of the United Nations are the author's reflections on humanitarian intervention, economic sanctions, territorial integrity, and a comprehensive, not merely formal (or procedural) understanding of democracy (with the overarching principle of social justice).

With his focus on the intersection of power and law, de Zayas is able to present a wealth of creative ideas for a reform of the UN system, whether in regard to Charter amendment or organizational procedures. His proposals benefit from the meticulous exposition and examination of core concepts of a just world order such as "democracy," "equity" and "rule of law." What is almost unique in today's discourse on world affairs is the author's ability to relate the concepts to fundamental questions of philosophy and to bring in the concise wisdom of the Classics.

Of special interest to scholars of international law are the author's innovative categorization of human rights and the "25 principles of international order" that constitute the gist of his experience and analysis as Independent Expert. He criticizes the conventional formalistic distinction between human rights of the first, second and third generation and instead proposes a new "functional paradigm" for human rights, rooted in the concept of human dignity. In his approach he distinguishes between four categories: (1) enabling rights (e.g., right to food); (2) inherent rights (e.g., right to life); (3) instrumental rights (e.g., right to due process); and (4) outcome rights (e.g., right to identity, privacy, etc.). All these are interrelated and mutually reinforcing rights. Also, against the background of international power politics, he convincingly exposes the dangerous "weaponization" of human rights and the risks of "norms-warfare" ("lawfare") as tactics that undermine and erode the credibility of the international legal system.

Most useful in terms of guidelines for United Nations practice are the author's "25 principles." Starting with peace as the "paramount" principle of international order, he describes the norms and procedures of the United Nations Charter and the resolutions and decisions of the UN Security Council as foundation of today's global system. He further focuses on specific principles such as human dignity; the right to self-determination; territorial integrity; the right to international solidarity as a human right; and the right to know, which includes access to reliable information. At the meta-level, he introduces, as principles, certain basic rules for the interpretation and implementation of the norms of the international order. Among those, he lists Montesquieu's maxim of the *esprit des lois* and the postulates that (a) laws must be applied in uniformity and that (b) violations of international law by the most powerful states must not be seen as creating legal precedents. In all the analyses and recommendations presented in this volume, the author is always aware that "principles and norms are not self-executing." A normative or *idealist* approach must be embedded in a *realist* assessment. In his words: "Enforcement is the measure of international order."

The theoretical conclusions from his experience "in the field" are always to the point and avoid the superficiality of UN officialdom. His remarks on one of the buzzwords of today's global discourse – the "rule of law" – are of particular interest in that regard. In de Zayas' assessment, a merely formal, or positivistic, approach is not enough. Criticizing legal positivism, he is convinced that law always reflects power imbalances and that the "rule of law" should be transformed into the "rule of justice."

In addition, his critique of unilateral coercive measures, exemplified in the detailed country report on Venezuela, is a substantial contribution to the ongoing debate on the scope and application of state sovereignty. His observations on that basic concept of world order also touch upon a major problem of international democracy. A fresh look is certainly needed at the UN Charter's principle of sovereign *equality* of all member states. In view of global power imbalances, the author speaks of the merely "theoretical equality of the Westphalian state system" and raises inter alia the question of weighted voting. Huge differences in terms of the population size of

member states may indeed make a reassessment of the rule of "one state, one vote" within the UN system unavoidable.

Another important insight in the book relates to the concept of territorial integrity in its relation to the principle of national sovereignty. Referring to a Judgment of the International Court of Justice, de Zayas opines that the concept is confined to the sphere of relations *between* states, in consequence of the Charter's principle of sovereign equality. Accordingly, in the author's assessment, territorial integrity applies to the *external*, not the *internal* (domestic) realm. Not surprisingly, in some major international disputes in recent years the challenge was how to avoid a normative conflict between "sovereignty" (of states) on the one hand, and "self-determination" (of peoples) on the other.

The idea, advocated by the author, of the United Nations Charter as World Constitution and of the International Court of Justice as a World Constitutional Court may still have a long way to go. De Zayas, nonetheless, has set out the path – by *clarifying* the norms, *devising* elements of a comprehensive and consistent order of those norms (in defiance of the double standards of power politics), and *relating* the normative system to the social, economic and political realities of today's world.

Hans Köchler
University of Innsbruck, Austria

4 December 2021